EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE, *Plaintiffs*, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana. *Defendant*.	Civil Action No. **COMPLAINT**

INTRODUCTION

1. Louisiana's 2022 congressional map, passed by the legislature as H.B. 1 and S.B. 5 and adopted into Louisiana law over the veto of Governor John Bel Edwards, continues the State of Louisiana's long history of maximizing political power for white citizens by disenfranchising and discriminating against Black Louisianans. The 2022 congressional map dilutes Black voting strength in violation of the Voting Rights Act of 1965 ("VRA") by "packing" large numbers of Black voters into a single majority-Black congressional district, and "cracking" the State's remaining Black voters among the five remaining districts, where they constitute an ineffective minority unable to participate equally in the electoral process. Even though Louisianans who identify as any part Black constitute 31.2% of the state's voting age population, Black voters' control only around 17% of the state's congressional districts. At the same time, the plan gives disproportionate electoral power to white voters, who form a majority in five out of six, or 83%,

of the State's congressional districts, despite making up only 58% of the population. The State's denial to Black Louisianans of an equal opportunity to have their voices heard is illustrated by the fact that, whereas approximately one out of three voting age residents of Louisiana is Black, Black voters have an opportunity to elect the candidate of their choice in just one out of six congressional districts. This Court must step in and remedy this clear violation of the Voting Rights Act of 1965.

2. Plaintiffs—Black Louisiana voters and Louisiana nonprofit organizations promoting civic engagement and social equality—seek a judgment (i) declaring that the 2022 congressional map violates the Voting Rights Act, (ii) enjoining Defendant Secretary of State from conducting congressional elections the enacted 2022 congressional map; and (iii) ordering Defendant to adopt a lawful congressional redistricting plan that complies with the Voting Rights Act, including by providing for two congressional districts in which Black Louisianans have an opportunity to elect candidates of their choice ("opportunity districts").

3. Louisiana's congressional map has denied Black voters equal electoral opportunity to participate in the political process for decades. Louisiana has long had the second largest Black population by percentage of any State in the United States. Yet, except for a two-year period in the 1990s, it has never had more than one majority-Black congressional district. The State's sole majority-Black district, congressional district 2 ("CD 2"), exists as a result of a court order finding that the State's prior congressional map violated the VRA and requiring the state to adopt a new congressional map. *Major* v. *Treen*, 574 F. Supp. 325, 339-40 (E.D. La. 1983). In the forty years since *Major* v. *Treen*, there have been important changes in the geography of where Black voter reside across the state, including but not limited to higher numbers of Black voters now living in Baton Rouge.

4. H.B. 1 and S.B. 5 illegally and artificially limit Black voters' influence by "packing" Black voters into CD 2. CD 2, as drawn by the Louisiana State Legislature (the "Legislature"), includes a majority of Black voters residing in New Orleans and a large number of Black voters residing in Baton Rouge—each of which is home to a majority-Black population—as well as other areas along the Mississippi River with large Black populations. These areas, along with neighboring communities of Black voters that are placed in other congressional districts, are comprised of enough Black voters to form the core of two distinct majority-Black congressional districts. In contrast to CD 2, smaller numbers of Black voters in contiguous areas are dispersed, or cracked, among the State's remaining congressional districts, principally CD 5 and CD 6. Under the current congressional configuration, less than one-third of Louisiana's Black voting age population resides in the state's sole majority-Black district, while 91 percent of Louisiana's white voters reside in majority-white districts.

5. It is beyond dispute that Black voters in Louisiana are politically cohesive, while the white majority in Louisiana routinely votes as a bloc to defeat Black voters' candidates of choice. Courts have repeatedly found—most recently in 2020—that racially polarized voting is a persistent feature of Louisiana's political landscape. *See Louisiana State Conference of NAACP v. Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020).

6. Louisiana's stark pattern of racially polarized voting, and the lack of support among white voters for Black candidates, has resulted in Black candidates being chronically underrepresented in public office in the state. No Louisiana congressional district other than CD 2 has elected a Black representative. Louisiana has never had a Black U.S. Senator. The state of Louisiana has not had a Black governor since Reconstruction and has never had a Black Secretary of State or Attorney General. Black public officials are dramatically underrepresented

in both houses of the Legislature, in the judiciary, and every other level of public office in the state.

7. These realities exist against the backdrop of the State's well documented history of institutionalizing white supremacy through, among other techniques, disenfranchising Black voters. Poll taxes, all-white primaries, grandfather clauses, voter roll purges, and state-sanctioned violence have been followed by countless attempts to dilute the minority vote at the state and local level. Even in recent years, explicit or thinly veiled racial appeals have been a common feature of state and local political campaigns. The pernicious effects of segregation have also resulted in deep and ongoing disparities between white and Black Louisianans on virtually every measure of human well-being, including infant mortality, health outcomes, incarceration rates, educational opportunities, and economic security.

8. Since the VRA was passed into law in 1965, courts have repeatedly struck down efforts by the State of Louisiana to dilute, limit, or otherwise adversely affect minority voting access and strength by a wide variety of means, including redistricting for both federal and state elections. Between 1965 and 2013 (when the Supreme Court decided *Shelby County v. Holder*, which invalidated the coverage formula for preclearance under the VRA), the Department of Justice blocked or demanded alterations to nearly 150 voting-related changes in Louisiana. Over two-thirds of Louisiana's parishes likewise received objections from the Department of Justice, most frequently related to redistricting.

9. The Legislature was given ample time and numerous options for remedying the long-standing dilution of Black voting strength. In public meetings and throughout the Special Legislative Session leading to the adoption of the 2022 Congressional Map, members of the public, including Plaintiffs, told the Legislature that a congressional map with only a single

majority-Black district would violate the VRA, and proposed multiple alternative maps that featured two majority-Black districts while respecting traditional districting principles (such as contiguity, compactness, and respect for political subdivisions) at least as well—if not better—than H.B. 5 and S.B.1. Numerous members of the Louisiana Legislative Black Caucus even introduced various proposed congressional maps with two majority-Black districts during the Special Legislative Session, each of which were rejected.

10. Because the legislature failed to adopt a VRA compliant congressional map creating two majority-Black congressional districts, the Governor of Louisiana vetoed H.B. 1 and S.B. 5 saying that they were "not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act." Governor Edwards' veto statement explained that in failing to enact a congressional map that complies with the Voting Rights Act, the Legislature "disregarded the shifting demographics of the state." On March 29, 2022, the Legislature entered into a veto session and, in a vote that broke down along racial lines, each house voted to override the Governor's veto.

11. The VRA entitles Black voters in Louisiana to participate in the political process under an electoral map that does not unlawfully dilute their voting strength and deprive them of a meaningful opportunity to participate in the political process. H.B. 1 and S.B. 5 violate those rights. The 2022 congressional map passed by the Louisiana legislature must be enjoined, and the State must be compelled to adopt a map that complies with Section 2 of the VRA ("Section 2") by creating two congressional districts where Black voters have an equal opportunity to elect candidates of their choice.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), and 1357.

13. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

14. Venue is proper under 28 U.S.C. § 1391(b).

PARTIES

15. Plaintiff Louisiana State Conference of the National Association for the Advancement of Colored People (the "Louisiana NAACP") is a state subsidiary of the National Association for the Advancement of Colored People, Inc. It is one of the oldest and most significant civil rights organizations in Louisiana. Since its founding in 1943, the Louisiana NAACP has worked toward its mission to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination. Among the Louisiana NAACP's central objectives and mission are eliminating racial discrimination in the democratic process and ensuring the protection of voting rights and equitable political representation. Its work includes efforts to register, educate, and advocate on behalf of Black voters throughout Louisiana.

16. The Louisiana NAACP has approximately 5,000 members through-out Louisiana, including Black Louisianians who are registered voters. The Louisiana NAACP has over 40 branches comprised of adult members and 16 youth and college chapters across the state. Members live in nearly every parish in Louisiana.

17. The Louisiana NAACP has members who are registered voters and live in each of the six congressional districts in the congressional redistricting plan. In particular, members of the Louisiana NAACP include Black voters whose votes are unlawfully diluted by the packing of Black voters into CD 2 and the cracking of Black voters residing in CDs 4, 5 and 6 in violation of the VRA. Members of the Louisiana NAACP also include Black voters who would reside in a remedial second majority-Black district. These members suffer harm because they are denied the opportunity to elect candidates of their choice.

18. Louisiana's unfair and discriminatory redistricting frustrates and impedes the Louisiana NAACP organizational priorities by diminishing the voices and diluting the voting strength of Black Louisianans, who the Louisiana NAACP works to empower and engage in greater civic and political participation. If the enacted plan is not enjoined, the Louisiana NAACP will be forced to divert resources from its broader voter registration and community empowerment initiatives to the affected districts in order to protect the representation and interests of its members and to try to counteract the negative effects of vote dilution.

19. Plaintiff Power Coalition for Equity and Justice 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. The Power Coalition brings together various community-based organizations that work together to educate and empower voters across Louisiana through community organization and voter engagement initiatives.

20. In 2016, the Power Coalition mobilized a statewide campaign to reach more than 30,000 infrequent voters of color in Jefferson, Orleans, Calcasieu, Terrebonne, East Baton Rouge, Ouachita, Caddo, and Bossier parishes. In 2018, the Power Coalition played a leading role in the Unanimous Jury Coalition, a successful statewide campaign to pass an amendment ending the use of non-unanimous juries in Louisiana. In 2019, the Power Coalition made over 1.3 million voter contact attempts to over 465,000 infrequent and semi-frequent voters of color across Louisiana, approximately 60 percent of whom turned out to vote in the statewide elections. If the enacted plan is not enjoined, the Power Coalition will be required to divert resources away from these essential efforts to combat the impacts of discriminatory districts.

21. Plaintiff Dr. Dorothy Nairne resides in Assumption Parish, Louisiana. She is a Black U.S. citizen, and is lawfully registered to vote. Dr. Nairne is a regular voter, and a dues-paying

member of the Assumption Parish Branch of the NAACP. Under the enacted plan, Dr. Nairne resides in CD 6, but would reside in a new majority-Black district under alternative plans introduced during the Legislature's 2022 First Extraordinary Session devoted to redistricting (the "Special Session"). The enacted plan cracks Black voters like Dr. Nairne to prevent the creation of a second majority-Black district and, thus, dilutes her vote in violation of the VRA. She will suffer irreparable harm because she will be denied the opportunity to elect candidates of her choice in violation of the VRA if the enacted plan is not enjoined.

22. Plaintiff Bishop Edwin René Soulé resides in Hammond, Louisiana. He is a Black a U.S. citizen, and is lawfully registered to vote. Soulé is a regular voter. He resides in CD 1 under the enacted plan, which cracks Black voters like Soulé to prevent the creation of a second majority-Black district and, thus, dilutes his vote in violation of the VRA. He will suffer irreparable harm because he will be denied the opportunity to elect candidates of his choice in violation of the VRA if the enacted plan is not enjoined.

23. Plaintiff Dr. Alice Washington resides in Baton Rouge, Louisiana. She is a Black U.S. citizen, and is lawfully registered to vote. Washington is a regular voter. She resides in CD 6. H.B. 1/S.B. 5 cracks Black voters like Dr. Washington to prevent the creation of a second majority-Black district and, thus, dilutes her vote in violation of the VRA. She will suffer irreparable harm because she will be denied the opportunity to elect candidates of her choice in violation of the VRA under H.B. 1/S.B. 5.

24. Plaintiff Rev. Clee Earnest Lowe resides in Baton Rouge, Louisiana. He is a Black U.S. citizen, and lawfully registered to vote. Lowe is a regular voter. He resides in CD 6. H.B. 1/S.B. 5 cracks Black voters like Lowe to prevent the creation of a second majority-Black district and, thus, dilutes his vote in violation of the VRA. Lowe would reside in a cracked district under

H.B. 1/S.B. 5. He will suffer irreparable harm because he will be denied the opportunity to elect candidates of his choice in violation of the VRA under H.B. 1/S.B. 5.

25. Plaintiff Edgar Cage resides in Baker, Louisiana. He is a Black U.S. citizen and lawfully registered to vote. He is a leader of Together Baton Rouge. Under the enacted plan, Mr. Cage resides in CD 2. The enacted plan packs Black voters like Mr. Cage to prevent the creation of a second majority-Black district and, thus, dilutes his vote in violation of the VRA. If the enacted plan is not enjoined, he will suffer irreparable harm in the form of vote dilution.

26. Plaintiff Dr. Press Robinson resides in Baton Rouge, Louisiana. He is a Black U.S. citizen and is lawfully registered to vote. He resides in CD 2 under the enacted plan. The enacted plan packs Black voters like Dr. Robinson to prevent the creation of a second majority-Black district and, thus, dilutes his vote in violation of the VRA. Dr. Robinson would reside in a packed district under the enacted plan and will suffer irreparable harm if the plan is not enjoined.

27. Plaintiff Davante Lewis resides in Baton Rouge, Louisiana. He is a Black U.S. citizen and is lawfully registered to vote. He resides in CD 2 under the enacted plan. The enacted plan cracks Black voters like Mr. Lewis to prevent the creation of a second majority-Black district and, thus, dilutes his vote in violation of the VRA. If the enacted plan is not enjoined, he will suffer irreparable harm because he will be denied the opportunity to elect candidates of his choice.

28. Plaintiff Martha Davis resides in Baton Rouge, Louisiana. She is a Black U.S. citizen and is lawfully registered to vote. Under the enacted plan, Ms. Davis resides in CD 2. The enacted plan packs Black voters like Ms. Davis into CD 2 to prevent the creation of a second majority-Black district and, thus, dilutes her vote in violation of the VRA. If the enacted plan is not enjoined, she will suffer irreparable harm because she will be denied an equal opportunity to

elect candidates of her choice.

29. Plaintiff Ambrose Sims resides in West Feliciana, Louisiana. He is a Black U.S. citizen and lawfully registered to vote. He is President of the West Feliciana NAACP and Chairperson of the West Louisiana Democratic Party. Under the enacted plan, Mr. Sims resides in CD 5. The enacted plan cracks Black voters like Mr. Sims to prevent the creation of a second majority-Black opportunity district and, thus, dilutes his vote in violation of the VRA. If the enacted plan is not enjoined, he will suffer irreparable harm because he would be denied the opportunity to elect candidates of his choice.

30. Defendant Kyle Ardoin is the Secretary of State for Louisiana and is sued in his official capacity. The Secretary of State is the State's chief election officer. LA Const. art. 4, § 7; La. R.S. § 18:421. In that capacity, he is responsible for preparing and certifying the ballots for all elections, including elections for the U.S. House of Representatives, promulgating all election returns, and administering the election laws. *Id.* As part of his duties, the Secretary of State also qualifies candidates for the U.S. House of Representatives. La. R.S. §§ 18:452, 18:462; *Johnson* v. *Ardoin*, 2019 WL 2329319, at *3 (M.D. La. May 31, 2019).

LEGAL BACKGROUND

31. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a), prohibits any "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[.]" A Section 2 violation is established if "it is shown that the political processes leading to nomination or election" in the jurisdiction "are not equally open to participation by members of a [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." *Id.* § 10301(b).

32. The dilution of Black voting strength in violation of the Act "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). These means of diluting Black voting strength are referred to respectively as "cracking" and "packing."

33. The Supreme Court has identified three necessary preconditions for a claim of vote dilution under Section 2 of the Voting Rights Act: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) members of the minority group must be "politically cohesive" in their support of particular candidates; and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 50-51.

34. Once these preconditions are established, the court must consider whether, under the totality of the circumstances, members of a racial group 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). The Senate Report on the 1982 amendments to the Voting Rights Act identifies several non-exclusive factors, referred to as the "Senate Factors," that courts should consider when determining if, under the totality of the circumstances, the operation of the districting plan results in vote dilution in violation of Section 2.

35. The Senate Factors include: (1) the history of official 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 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 37. Additional factors which may be probative include (8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and (9) whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous. *Id.* While Section 2 does not establish a right to have members of a protected class elected in numbers equal to their proportion in the population, the Supreme Court has held that "whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area" is a "relevant consideration" in assessing whether Section 2 has been violated. *League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 426 (2006); *see also Johnson* v. *De Grandy*, 512 U.S. 997, 1000 (1994).

36. The Supreme Court has identified factor 2 (the existence of racially polarized voting) and factor 7 (the extent to which members of the minority group have been elected to public office) as the most important factors in the totality of the circumstances analysis. *N.A.A.C.P.* v. *Fordice*, 252 F.3d 361 (5th Cir. 2001) (*citing id.* at. 48 n. 15).

37. "There is no requirement that any particular number of [Senate] factors be proved, or that a majority of them point one way or the other." *United States* v. *Marengo Cty. Comm'n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); *see id.* at 1566 ("The statute explicitly calls for a 'totality-of-the circumstances' approach and the Senate Report

indicates that no particular factor is an indispensable element of a dilution claim.”).

38. The Fifth Circuit has held that it will be “only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.” *Clark* v. *Calhoun Cty.*, 21 F.3d 92, 97 (5th Cir. 1994).

FACTUAL BACKGROUND

39. The 2020 U.S. Decennial Census of Population and Housing confirmed that Louisiana is home to the second highest percentage of Black citizens in the country. According to the 2020 Census, people of color represent nearly 40 percent of Louisiana’s voting age population. Louisiana has a voting-age population of 3,570,548, with an any part Black voting age population of 1,115,769 (31.2%), a Hispanic/Latino voting age population of 223,662 (6.3%), and a non-Hispanic Asian American voting-age population of 80,672 (2.3%). Louisiana’s population of individuals who identify as any part Black, the population has increased by 3.78% over the last decade, and the total number of Black Louisiana voting age population increased by 7.22%. Indeed, Louisiana’s population growth over the last decade was driven entirely by growth in minority populations. The State’s white population decreased by 6.3%.

40. Every ten years, following the Census, the Legislature must redraw district boundaries for the congressional districts. La. Stat. Ann. § 18:1276.1; U.S. Const. art. I § 2. Under federal law, congressional districts must have nearly equal populations and must not discriminate on the basis of race or ethnicity. *Wesberry* v. *Sanders*, 376 U.S. 1 (1964).

41. The U.S. Census Bureau delivered apportionment counts for the 2020 Census on April 26, 2021. Louisiana was apportioned six seats in the U.S. House of Representatives, the same number it was apportioned following the 2010 census.

42. Between the 2010 and 2020 censuses, Louisiana’s population grew by 124,385, or 2.7

percent, according to Census Bureau data. Louisiana's Black population grew by 56,234 (3.8 percent) from 2010-2020. The non-Hispanic white population decreased by 138,182 (5.1 percent) in the same period.

43. In Louisiana, congressional districts are drawn by the Legislature, passed through the Legislature as ordinary legislation, and subject to veto by the governor. The Legislature may override a gubernatorial veto by two-thirds of the elected membership of each house.

44. Pursuant to Joint Rule 21 of the Legislature, each redistricting plan submitted for consideration by the Legislature must comply with the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the U.S. Constitution; Section 2 of the Voting Rights Act of 1965, as amended; and all other applicable federal and state laws. Each congressional redistricting plan must also (1) provide for single-member districts; (2) be comprised of districts that have a population as nearly equal to the ideal district population as practicable; and (3) be a whole plan which assigns all of the geography of the state to a district. And further "all redistricting plans shall respect the established boundaries of parishes, municipalities, and other political subdivisions and natural geography of this state to *the extent practicable*."

45. Legislators were alerted early in the redistricting process of the importance of creating maps that protected the ability of Black Louisianans to elect candidates of their choice. On October 18, 2021, a coalition of 17 civil and human rights organizations submitted a letter to the House and Senate Governmental Affairs Committees providing an overview of Section 2 and the preconditions set out by the Supreme Court in *Thornburg* v. *Gingles*. The letter explained in detail why a congressional map with only one majority-Black opportunity district likely violates Section 2. The letter also attached seven illustrative maps (the "Coalition maps"), each of which

provided for two opportunity districts comprised of a majority of Black voters and accorded with the State's traditional redistricting principles. The two opportunity districts included in the Coalition maps were based around Louisiana's two predominantly Black population centers, New Orleans and Baton Rouge.

46. Legislators were also alerted to the importance of complying with Section 2 by their own staff, who provided members of the Senate and House Governmental Affairs Committees with extensive training and education on Section 2 compliance and the need to draw majority-minority districts where facts and circumstances were present. The staff presentation, delivered at the outset of each roadshow at which the Committees solicited public participation, included a slide devoted to Section 2 of the Voting Rights Act, including the *Gingles* preconditions. The presentation stated that Section 2 "prohibits any state or political subdivision from imposing a voting qualification, standard, practice, or procedure that results in the denial or abridgment of any U.S. citizen's right to vote on account of race, color, or status as a member of a language minority group." During this section of the presentation, staff also read out the Senate factors, explained the totality of the circumstances analysis, and stated that, to avoid violations of Section 2, the Legislature "must take care to avoid a racial gerrymander." *See, e.g.*, Staff Presentation at Baton Rouge Roadshow at 0:31.

47. From late October 2021 through January 2022, the Louisiana House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs held a series of joint public meetings (commonly called "roadshows") across the state during which Louisianans could make suggestions and recommendations regarding the redistricting process and the new maps. These roadshows took place on October 20, 2021 in Monroe; October 21, 2021 in Shreveport; October 26, 2021 in Lafayette; November 9, 2021 in

Alexandria; November 16, 2021 in Capitol Area/Baton Rouge; November 30, 2021 in Northshore/Covington; December 15, 2021 in Southwest Louisiana/ Lake Charles; January 5, 2022 in Orleans Metro/New Orleans; January 11, 2022 in Bayou Region/Thibodaux; and January 20, 2022 in Baton Rouge. The Legislature represented that it intended to provide, through the redistricting roadshows, a "full opportunity for citizens to make suggestions and recommendations to the legislature."

48. The 2022 roadshows demonstrated broad public support for a second opportunity district comprised of a majority of Black voters. Out of 174 written comments received, spanning not only the congressional map, but also redistricting of the State Senate, State House, Public Service Commission, Board of Elementary and Secondary Education, and State Supreme Court, 64 comments explicitly expressed support for the creation of a second majority-Black district. *See, e.g.*, Email Testimony of Barbara Kaplinsky submitted to Orleans Metro Region Roadshow ("I back the creation of a second majority-minority U.S. House district among Louisiana's six congressional districts, when drawing this year's redistricting maps. One-third of Louisiana's more than 4.6 million residents are Black. It would only be fair to ensure one-third of the U.S. House districts reflect that reality."); Email Testimony of Catherine Gray submitted to Baton Rouge Roadshow ("I support creating a minority-majority district fir [sic] US Congressional District 5. With hopes that my voice can be heard through the efforts of representation for people who look like me and have the same concerns for issues of gun control, healthcare, policing, homelessness, etc."); Email Testimony of Lynette R. Bech submitted to Bayou Region/Thibodaux Roadshow ("We want our elected representatives who are to represent us to live in our community, so they understand the problems. We want and deserve at least 2 minority districts."); Email Testimony of Susan Weishar submitted to Orleans Metro Region

Roadshow ("Because over 1/3 of Louisiana's population is minority- at least 2 of the 6 districts should have a fair chance of electing a member of a minority.").

49. Commenters supporting the creation of a second majority Black congressional district emphasized, among other factors, the extent to which combining voters in New Orleans and Baton Rouge in a single congressional district defies logic, dilutes Black voting power, and makes effective representation of both regions less likely. *See, e.g.*, Email Testimony of Alice Elizabeth Stark submitted to Bayou Region/Thibodaux Roadshow ("I strongly believe that New Orleans and Baton rouge should not share any districts as they are two of the most populous cities in our state and are located over an hour from each other."); Email Testimony of Samuel Smith submitted to Baton Rouge Roadshow (arguing that Baton Rouge needs its "own representative solely focused on the everyday needs of the district, such as drainage, funding for potential infrastructure projects such as a potential new Mississippi Bridge or interstate improvements" and urging the Legislature to "ensure[] that the Capital Region has a unified voice in the halls of Congress.").

50. Voters also consistently expressed a desire for congressional district maps that more closely resemble the state's natural geographic and community group breakdowns and not, as expressed by one voter, "a drawing of an alligator's head by my four year old (see District 6)." Email Testimony of Julie Becnel submitted to Bayou Region/Thibodaux Roadshow. *See also* Email Testimony of Danny Wilson submitted to Baton Rouge Roadshow ("all congressional/legislative districts should follow county/parish lines and natural boundaries as much as possible… Congressional districts 2 and 6 are utterly unacceptable and the obvious result of political shenanigans."); Email Testimony of Emily Hargis submitted to Baton Rouge Roadshow ("I want to communicate clearly the importance of fair and equitable districts. These

districts should be drawn geographically to reflect populations with similar regional interests. Minority voices must not be diluted.”).

51. Only 34 of the 174 public comments expressed opposition to creation of a second majority-Black congressional district. Most of these appeared to be form emails not drafted by the individual voter submitting the comment. For example, at least 19 of these comments were nearly identical, and including the following formulaic language: “Please keep the Congressional boundaries as they are. They were already approved by the Justice Department as being compliant with voter representation guidelines. Boundaries are to be redrawn only if the Census shows a greater than 5% change. Only two out of six districts meet that criteria, and they are only slightly greater than 5%.” In contrast, comments in favor of a second majority-Black district showed no such similarity. Instead, they consisted of personal appeals and anecdotes focusing on the distinct needs of Black community groups in Louisiana.

52. In addition to written submissions, voters from across the state attended the redistricting roadshows in person to offer testimony in support of equity and fairness in the redistricting process in general and a second majority-Black opportunity district in particular. As early as the first roadshow on October 20, 2021, Legislators heard live testimony speaking to the need for equitable representation in Louisiana’s congressional maps. *See, e.g.*, Testimony of Adarian Williams at Monroe Roadshow (“In regards to congressional districts, our state lacks equal representation and competitiveness, which has consequences for our politics, our policies, communities, our economy and society as a whole. The districts we draw in 2022 will shape our lives and communities for the next decade.”); Testimony of Brenda Shepard Nelson at Monroe Roadshow at 1:48-49 (“My parents understood the importance of voting. For you see they lived at a time where they could not vote. During my mother’s last days she insisted in going to the

polls and voting for the person she felt would best represent our community… I have never missed an opportunity to vote, and I do not want my options to vote to be hampered by unfair drawing of district lines.”).

53. Throughout the roadshow process, voters consistently and passionately spoke to the need for equitable representation. *See, e.g.*, Testimony of Maggie Boccinelli at New Orleans Roadshow at 1:23-24 (“If we really stand for the ideals we espouse in the Constitution, Black people in this state need to have a fair chance at electing representatives who have walked in their shoes, representatives who know what it’s like to exist as an African American person in Louisiana, the birthplace of separate but equal and once home to the largest slave port in the country…I ask you to pass fair maps based on the population shifts in the state and to add a second majority-minority district in Louisiana”); Testimony of Angelle Bradford at Baton Rouge Roadshow at 2:24-26 (“I’m just asking you to listen to everyone tonight and really invest your time in racial proportionality and competitiveness.”); Testimony of Sharon Smith LeHost at New Orleans Roadshow at 2:15-16 (“Minorities have a community of interest in that the state’s past practices have resulted in the problems they disproportionately face every day . . . but for far too long minorities have been deprived of a fair opportunity to participate in developing the laws and policies that affect their own futures.”); Testimony of Dustin Granger at Lake Charles Roadshow at 0:56-57 (“African American and democratic voters only have 17 percent of the representation in Congress when we consistently have 40-50 percent of the voting population… So I recommend, for the congressional districts, to please divide up Baton Rouge and New Orleans.”).

54. At the Baton Rouge Roadshow on November 16, 2021, Legislators heard personal testimony from members of the community who explained that they do not feel adequately

represented by the current CD 2, which packs their communities in with New Orleans voters. *See, e.g.*, Testimony of Albert Samuels at Baton Rouge Roadshow at 1:19-22 ("I don't feel represented when I have a congressman who, given all the infrastructure needs in our community, who voted against billions of dollars for roads, highways, bridges, broadband, things that our community needs… This is why representation matters. Fairness begs the question of why, since we have had these population shifts, why can't we have a second majority-minority district… The numbers are there."); Testimony of Gary Chambers at Baton Rouge Roadshow at 2:31-33 ("If you live in Baton Rouge and you're Black, you have to negotiate with people who grew up in New Orleans. And New Orleans wants this seat [CD 2]. It has been beneficial for New Orleans and I understand it. But… what that means is that little kids who live in the Second Congressional District don't have someone in D.C. that looks like them, that understands them.")

55. In addition to the Coalition maps sent to the Legislature on October 18, individual voters proposed more congressional maps featuring two majority-Black opportunity districts. *See, e.g.*, Email Testimony of Jordan K. Landry submitted to Lafayette Roadshow; Plan Submission by Jordan Landry Scenario 2; Plan Submission entitled jchmap6block-assignments.

56. Concerns raised by those who doubted the need for or viability of a second majority-Black opportunity district were also addressed during the roadshow period. For example, on November 22, Chairman of the House and Governmental Affairs Committee Representative John Stefanski gave a press conference at the Baton Rouge Press Club opposing the creation of a second majority-Black district. Among other things, Representative Stefanski claimed that (i) he did not believe that CD 2 would remain majority-Black without Black voters in Baton Rouge; (ii) he doubted whether majority-Black districts, including those proposed in the seven Coalition maps, would effectively "perform" to allow candidates preferred by Black voters to prevail; and

(iii) because the maps drawn after the 2010 Census had been "precleared" by the Department of Justice (DOJ) under Section 5 of the VRA, "we know that this configuration [of only one majority-Black district] is legal."

57. On December 14, organizational Plaintiffs in this case—together with a smaller group of organizations that sent the October 18 letter—issued a substantive response to each of Chairman Stefanski's stated concerns. The letter referred Chairman Stefanski to the seven Coalition maps, all of which demonstrated that CD 2 could indeed remain majority-Black without the inclusion of Black voters from Baton Rouge. The letter included a preliminary analysis of recompiled election results that demonstrated that candidates preferred by Black voters would have an opportunity to prevail in both proposed majority-Black districts in the Coalition maps. With respect to the Chairman's contention about Section 5 of the Voting Rights Act, the letter noted that preclearance under that section uses a different legal standard than Section 2. Section 5 preclearance does not guarantee Section 2 compliance, and courts have expressly refused to equate the two. Finally, the letter again reminded the House and Senate Governmental Committees that a new congressional map with only one majority-Black district likely would violate Section 2, and that the illustrative Coalition maps demonstrated that there were numerous ways to draw a congressional map with a second majority-Black district that was compact and adhered to traditional redistricting principles. *See* Letter from LDF et. al. to La. House and Senate Governmental Affairs Committees (Dec. 14, 2021).

58. The Legislature held the final roadshow on January 20, 2022, in Baton Rouge. The Baton Rouge roadshow marked the first time that individual legislators asked questions about maps submitted during the roadshows.

59. Following the conclusion of the roadshows, the Legislature convened the 2022 First

Extraordinary Session (the "Special Session") to consider and enact plans. The first congressional maps were pre-filed by legislators on January 31, 2022, in advance of the Special Session.

60. During the Special Session, members of the House and Senate Governmental Affairs introduced thirty bills or amendments to bills proposing various configurations of congressional maps. Twenty of the bills and amendments included two majority-Black opportunity districts. *See* H.B. 4, 1st Spec. Sess. (La. 2022); H.B. 5, 1st Spec. Sess. (La. 2022); H.B. 7, 1st Spec. Sess. (La. 2022); H.B. 8, 1st Spec. Sess. (La. 2022); H.B. 9, 1st Spec. Sess. (La. 2022); H.B. 12, 1st Spec. Sess. (La. 2022); S.B. 2, 1st Spec. Sess. (La. 2022); S.B. 4, 1st Spec. Sess. (La. 2022); S.B. 6, 1st Spec. Sess. (La. 2022); S.B. 9, 1st Spec. Sess. (La. 2022); S.B. 10, 1st Spec. Sess. (La. 2022); S.B. 11, 1st Spec. Sess. (La. 2022); S.B. 16, 1st Spec. Sess. (La. 2022); S.B. 18, 1st Spec. Sess. (La. 2022) ; ; Amendment #88 to H.B. 1, 1st Spec. Sess. (La. 2022); Amendment #99 to H.B. 1, 1st Spec. Sess. (La. 2022); Amendment #153 to H.B. 1, 1st Spec. Sess. (La. 2022); Amendment #62 to S.B. 2, 1st Spec. Sess. (La. 2022); Amendment #116 to S.B. 5, 1st Spec. Sess. (La. 2022); Amendment #91 to S.B. 5, 1st Spec. Sess. (La. 2022). Just four of the proposed bills contained one majority-Black district. *See* H.B. 1, 1st Spec. Sess. (La. 2022); H.B. 19, 1st Spec. Sess. (La. 2022); S.B. 5, 1st Spec. Sess. (La. 2022); S.B. 20, 1st Spec. Sess. (La. 2022); S.B. 22, 1st Spec. Sess. (La. 2022).

61. The Senate Governmental Affairs Committee convened for the first time on February 2, 2022. Although congressional maps were not on the agenda, several individuals gave public testimony that echoed the comments of voters who spoke and submitted written testimony during the roadshows. They called for a second majority-Black district and demanded maps that would provide Black Louisianans an opportunity to elect candidates of their choice at all levels of

government.

62. The Senate Governmental Affairs Committee held its first hearing to discuss proposed congressional maps on February 3, 2022. The Committee discussed six congressional bills, five of which included two majority-Black opportunity districts and adopted similar configurations to the Coalition maps: S.B. 2, S.B. 4, and S.B. 9 introduced by Senator Cleo Fields (D-Baton Rouge); S.B. 11 introduced by Senator Gary L. Smith Jr. (D-Baton Rouge); and S.B. 16 introduced by Senator W. Jay Luneau (D-Baton Rouge). Only one bill proposed a map containing a single majority-Black district, S.B. 5 introduced by Senator Sharon Hewitt (R-Slidell). Senator Hewitt's map bore no resemblance to any of the maps proposed during the roadshow period.

63. All of the Senators who introduced bills with two second majority-Black opportunity districts testified that their maps were more compact than the current map on at least two of three widely recognized statistical measures of compactness, Reock, Polsby-Popper, and Convex Hull. Senator Fields' testimony in particular also touched upon the communities of interest that were considered in creation of the map proposed by his bill S.B. 2.

64. During the discussion of her bill S.B. 5, Senator Hewitt claimed (without evidence) that creating a second majority-Black district would prevent a candidate preferred by Black voters from prevailing in CD 2, the sole majority-Black district, and that 58% Black voting-age population was the "functioning number" required to give candidates preferred by Black voters an opportunity to prevail in that district.

65. Senator Hewitt touted her bill for minimizing deviation from the ideal population size required in each congressional district by the Equal Protection Clause. She also raised concerns that other proposals did not have districts with equal population.

66. Yet, the Coalition maps submitted on October 18 had no population deviation and complied with the Equal Protection Clause.

67. The Senate Governmental Affairs Committee voted on congressional plans on February 4, 2022. The Committee voted 6-3 to reject every bill that included a second majority-Black opportunity district and to send S.B. 5, Senator Hewitt's bill, to the Senate for a floor vote.

68. That same day, Senator Hewitt spoke about redistricting during a webinar held by the Public Affairs Research Council of Louisiana. Senator Hewitt raised questions, again without evidence, about whether another majority-Black district would allow candidates preferred by Black voters to prevail. She also disclosed that the Legislature had retained a law firm and an expert on racially polarized voting to conduct that analysis.

69. On February 7, during a Senate Governmental Affairs Committee hearing concerning other maps, Senator Hewitt indicated that the firm had provided her with a preliminary performance analysis. When questioned by another Senator about whether that analysis would be shared, Senator Hewitt did not commit to doing so.

70. The Senate voted on S.B. 5 on February 8. Prior to the vote, Senator Fields introduced an amendment to replace Senator Hewitt's map with a map with two majority-Black opportunity districts. Senator Fields' map performed better on all three objective measures of compactness, split fewer parishes, did not split any precincts, and had less population deviation than S.B. 5. The Senate voted to reject Senator Fields' amendment by a 12-27 vote. The Senate subsequently passed S.B. 5 by a vote of 27-12. Every Black Senator voted against S.B. 5.

71. The House and Governmental Affairs Committee convened its first meeting to discuss proposed congressional plans on February 4, 2022. The Committee discussed only one congressional bill, H.B. 1, which was introduced by Speaker of the House Representative Clay

Schexnayder.

72. H.B. 1 contained only one majority-Black district. As with Senator Hewitt's map, Speaker Schexnayder's proposal did not resemble any of the maps submitted during the roadshows. During discussion of H.B. 1, several Black Representatives asked Representative Schexnayder if he had considered or attempted drawing a second majority-Black opportunity district, and if he had consulted any members of the Black Legislative Caucus when developing his map. Representative Schexnayder refused to confirm or deny whether he had.

73. Representative Schexnayder asserted that his proposed map was his best effort to achieve population equality. However, the population deviation in H.B. 1 ranges from 29 voters to -17 voters, whereas the population in the Coalition maps, as submitted to the Legislature, deviated by no more than one voter. Speaker Pro Tempore, Representative Magee (R-Lafourche), a co-author of the H.B. 1, also claimed, "of all the maps that is [sic] going to be filed, [H.B. 1] has the lowest standard of deviation. I don't think anybody can beat it on that point." Yet Representative Gaines introduced an amendment to H.B. 1 that deviated less from the ideal population for each district. *See* H.B. 1, Amendment #88, 1st Spec. Sess. (La. 2022).

74. After Chairman Representative John Stefanski informed Committee members that a vote would be held on the congressional bill that day, one Committee member, Representative Royce Duplessis (D-New Orleans) raised concerns that holding the vote the same day it was introduced did not give the Committee sufficient time to discuss and debate the proposed congressional plan.

75. After less than three hours of discussion, the House and Governmental Affairs Committee voted by 13-5 to send H.B. 1 to the House of Representatives for a floor vote.

76. The House and Governmental Affairs Committee heard five bills on February 10, 2022,

each with a second majority-Black district. The Committee rejected each bill. *See* H.B. 4, 1st Spec. Sess. (La. 2022); H.B. 7, 1st Spec. Sess. (La. 2022); H.B. 8, 1st Spec. Sess. (La. 2022) ; H.B. 9, 1st Spec. Sess. (La. 2022). H.B. 12, 1st Spec. Sess. (La. 2022).

77. Testimony from the Representatives sponsoring those five bills focused on the fact that these maps created a second majority-Black opportunity district centered around Baton Rouge, were more compact than H.B. 1 on at least two or all three of the widely recognized statistical measures of compactness, preserved communities of interest, and adhered to traditional redistricting principles. For example, Representative Denise Marcelle spoke at length about how her map reflected the different communities of interest in Baton Rouge and New Orleans as well as the public support voiced during the roadshow for a second majority-Black district that incorporated Black voters in Baton Rouge.

78. The House voted on H.B. 1 on February 10, 2022. Prior to the vote, Representatives Marcelle and Gaines introduced two amendments to H.B. 1. Both maps provided two majority-Black districts and were more compact than H.B. 1 on two of the three widely recognized statistical measures of compactness. The map proposed by Rep. Gaines, in particular, was more compact than H.B. 1 on all three widely recognized statistical measures of compactness (Reock, Polsby-Popper, and Convex Hull), split fewer parishes, did not split any precincts, and had a smaller population deviation. The House rejected the Marcelle and Gaines amendments by a margin of 30-71 and 33-70, respectively. Several Black Representatives also noted that H.B. 1 was not as compact and split more parishes and precincts than the amendments and other maps introduced in the House and Governmental Affairs Committee. Undeterred, the House ultimately passed H.B. 1 by a margin of 70–33.

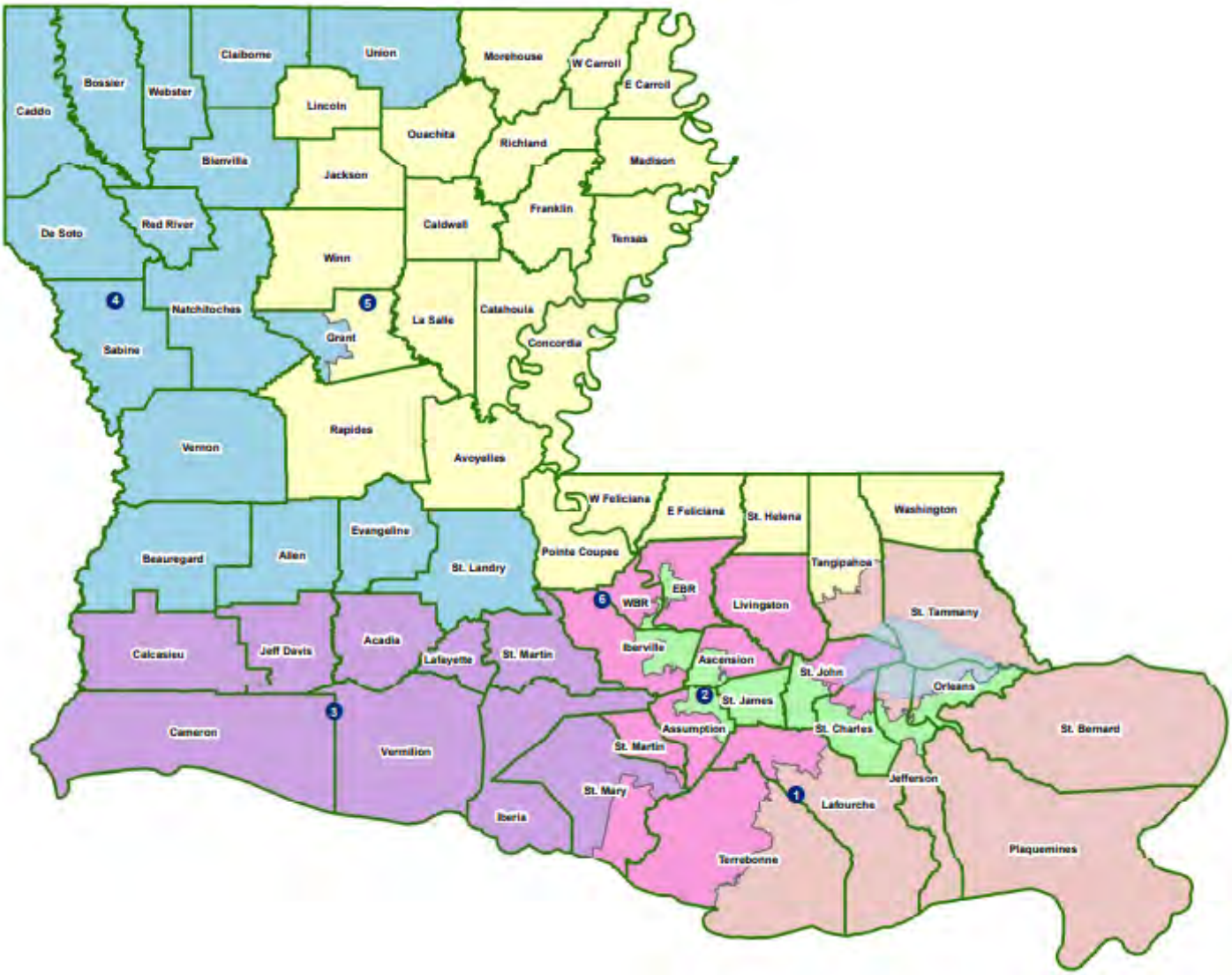
79. On February 14, the House and Governmental Affairs Committee voted in favor of a bill

introduced by Representative Barry Ivey, redrawing the map for Louisiana's Supreme Court that contained a majority-Black district with a Black voting age population of 51.23%. Unlike the congressional maps introduced by other members of the Committee, this map passed out of committee with bipartisan support, including Representative Magee. Representative Ivey's bill was ultimately rejected by the House on February 16, 2022.

80. On February 15, the House and Governmental Affairs Committee voted in favor of S.B. 5. Representative Duplessis introduced Amendment #116, which was more compact on all three widely recognized statistical measures of compactness, split fewer parishes than S.B. 5 (and H.B. 1), split no precincts, and had less population deviation. Representative Duplessis pointed out that on equal population, S.B. 5 [had] a deviation of 128 people," whereas his "amendment had an absolute range of 44 people." The House and Governmental Affairs Committee rejected the amendment by a margin of 5-9.

81. Senate Governmental Affairs Committee voted in favor of H.B. 1 on February 15, 2022. When Representative Schexnayder introduced his bill to the Committee, he claimed that he developed his map, "trying [his] best, not to split parishes and precincts." Turning to population deviation, Representative Schexnayder also boasted, "if you look at the overall range and the relative deviation . . . puts [H.B. 1] at a 0.00%." Senator Hewitt reiterated that it was "hard to argue with 0.000%, whatever the number was." Senator Price introduced Amendment #153 with two majority-Black districts, which was rejected, sending H.B. 1 to the House for a floor vote by a margin of 6-2.

82. On February 18, 2022, the Legislature passed both H.B. 1 and S.B. 5, reconciling the bills with identical compromise amendments. Each bill contained identical congressional configurations.



83. The Senate voted 27-10 to approve H.B. 1 and 26-9 to approve S.B. 5. The House voted in favor of H.B. 1 by a margin of 62-27 and S.B. 5 by a margin of 64-31. Neither bill passed with more than 70 votes, the number of votes required for the Legislature to override a gubernatorial veto. La. Const. art. III, §§ 18. Both H.B. 1 and S.B. 5 were thereafter sent to the Governor on February 21, 2022.

84. On March 9, Governor John Bel Edwards vetoed both H.B. 1 and S.B. 5, stating that the map "is not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act." Governor Edwards' veto statement explained that in failing to enact

a congressional map that complies with the Voting Rights Act, the Legislature "disregarded the shifting demographics of the state" particularly the increase in the Black voting age population by 4.4% since the 2010 census, resulting in a 2020 Black voting age population of 31.2%, almost one third of the state of Louisiana. The Governor made clear that he will veto proposed maps that do not comply with Section 2, telling Louisiana legislators that "[t]his injustice cannot continue."

85. The 2022 Regular Legislative Session convened on March 14, 2022.

86. On March 29, the Legislature entered into a veto session and, in a vote broke down along racial and party lines, each house voted to override the Governor's veto.

The *Thornburg* v. *Gingles* Preconditions Are Satisfied Here

87. As applied here, the three preconditions outlined by the Supreme Court in *Thornburg v. Gingles*—the size and geographic compactness of Black voters in Louisiana; their political cohesiveness; and bloc voting by the white majority sufficient to usually defeat Black voters' preferred candidates—are readily satisfied, and strongly support the finding that Louisiana's 2022 congressional map violates Section 2.

***Gingles* Precondition One: Size and Compactness of Black Voting Age Population**

88. Louisiana's Black voters are sufficiently numerous and geographically compact to form a majority in two properly apportioned congressional districts in a six-district plan. Black voters make up over 50 percent of Louisiana's two largest metro areas, Baton Rouge and New Orleans, and constitute more than enough voters to support the creation of two majority-Black districts that would allow Black voters to elect candidates of their choice.

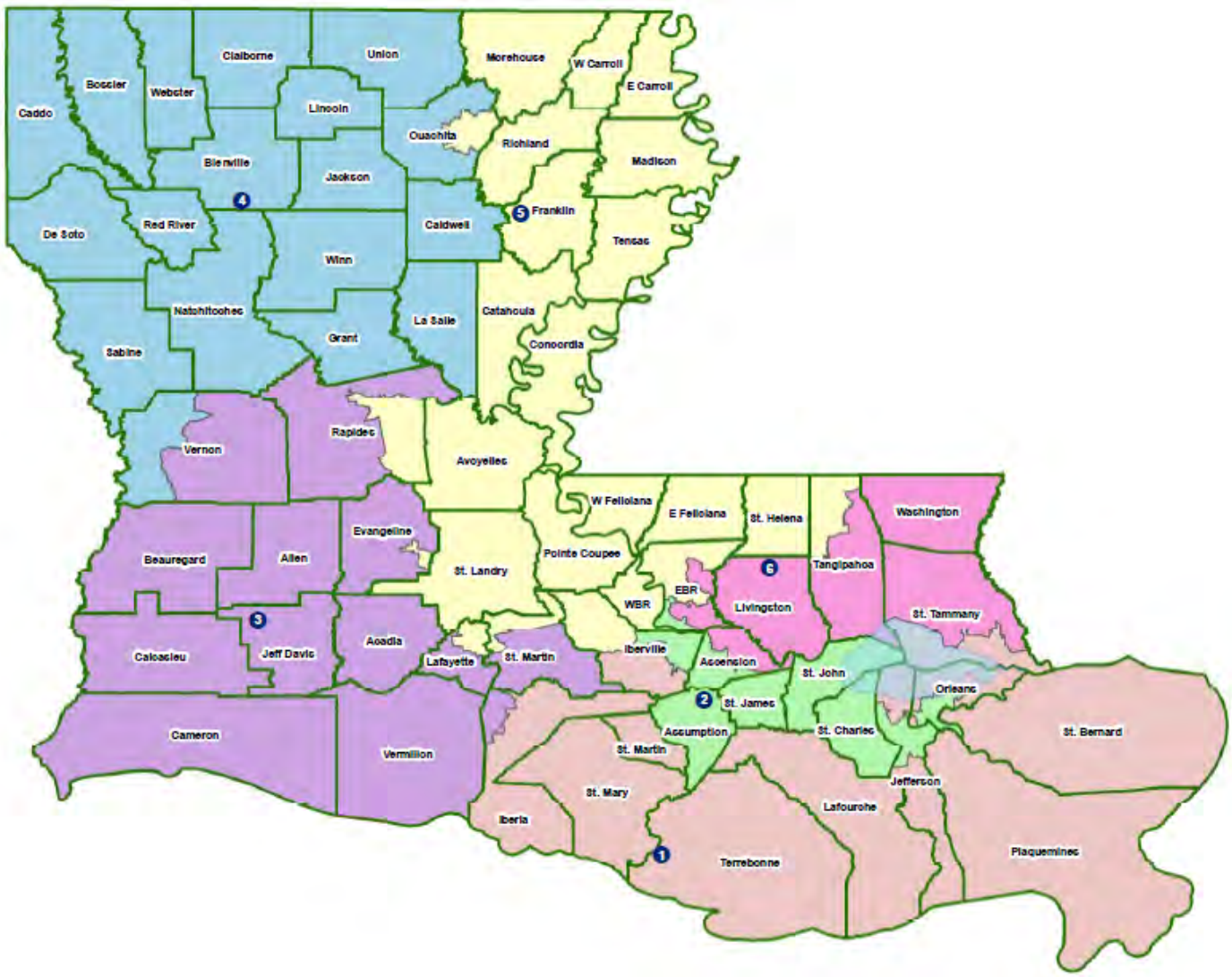
89. This is evidenced by, among other things, the multiple congressional maps either proposed during the redistricting roadshows or introduced as alternative bills or amendments during the Special Session that contain two such districts. For example, on February 8, 2022,

State Senator Cleo Fields introduced as an amendment to S.B. 5, a map proposal containing two Black opportunity districts comprised of majorities of Black voters. That map is reproduced below.

90. Under this map, Demonstrative CD 5 can be redrawn as a second majority-Black district. Demonstrative CD 5 would have a Black voting-age population (BVAP) percentage of 51.4 percent, which is sufficient for Black voters to elect a representative of their choice despite persistent racially polarized voting.

91. Demonstrative CD 5 comports with traditional redistricting principles and is narrowly tailored to comply with the Voting Rights Act. When comparing compactness at the district level, the majority-Black districts in the Demonstrative map, Demonstrative CD 2 and Demonstrative CD 5, are more compact on all three widely recognized statistical measures of compactness than the majority-Black district in H.B. 1 and S.B. 5.

92. Demonstrative CDs 2 and 5 would therefore each constitute districts in which the BVAP is sufficiently large and geographically compact to constitute a majority containing majorities of Black voters. Compared to H.B. 1/S.B. 5, this map is more compact on all three widely recognized statistical measures of compactness, splits fewer parishes, and contains no precinct splits.



93. Senator Field's map represents just one of many ways to draw two majority-Black districts. In total, nine map proposals were submitted to the Legislature by members of the public, and at least eighteen map proposals were introduced by individual legislators during the Special Session, demonstrating that Louisiana's Black voting-age population is sufficiently numerous and geographically compact to form a majority in two congressional districts.

***Gingles* Precondition Two: Political Cohesiveness of Black Voters**

94. Black voters in Louisiana are politically cohesive. Black voters overwhelmingly vote for different candidates than the candidates preferred and supported by white voters. *See, e.g.*, *St.*

Bernard Citizens For Better Gov't v. *St. Bernard Par. Sch. Bd.*, 2002 WL 2022589, at *7-8 (E.D. La. Aug. 26, 2002) (finding that Black voters "act[ed] as a politically cohesive unit" in state and local elections).

95. This pattern has extended to election after election in the state. In the 2017 general run-off election for State Treasurer, Derrick Edwards ran against John Schroder, and lost. Edwards received approximately 96 percent of the Black vote, while Schroder received approximately 79.3 percent of the white vote.

96. In the 2018 election to fill the remainder of the term for the position of Secretary of State after the sitting Secretary of State resigned, Gwen Collins-Greenup ran against Kyle Ardoin and lost. Collins-Greenup received approximately 95% of the Black vote, while Ardoin received approximately 84.1% of the white vote. Ardoin ran again in 2019, this time for a full term as Secretary of State. Again, Collins-Greenup ran against Ardoin and lost. She received approximately 96% of the Black vote, while Ardoin received approximately 86.4% of the white vote.

97. Also in 2018, Ike Jackson Jr. ran against Jeff Landry for the position of Attorney General and lost. Jackson Jr. received approximately 91.3% of the Black vote, while Landry received approximately 89.9% of the white vote.

***Gingles* Precondition Three: Bloc Voting by White Voters**

98. In districts with a white majority, white voters vote as a bloc to usually defeat Black voters' preferred candidates. In the 2020 congressional elections, voters in four out of Louisiana's five majority-white districts had a choice between Black and white congressional candidates. The white candidates prevailed in all four races.

99. Multiple courts have recognized that such stark patterns of racially polarized voting—referring to both the political cohesiveness of Black voters and bloc voting by white voters—has

been a consistent feature of Louisiana's political landscape, and that it continues to pervade statewide and local elections today. A federal district court recently found that there was sufficient preliminary evidence of racially polarized voting statewide to support a Section 2 challenge to Louisiana's Supreme Court district map. *Louisiana State Conference of NAACP* v. *Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020). Similarly, in *St. Bernard Citizens For Better Government*, a federal district court found racially polarized voting patterns in statewide gubernatorial elections, as well as local parish elections. *St. Bernard Citizens For Better Gov't*, 2002 WL 2022589, at *7 (E.D. La. Aug. 26, 2002). In *Terrebonne Par. Branch NAACP* v. *Jindal*, 274 F. Supp. 3d 395, 436-37 (M.D. La. 2017), *rev'd sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020), the district court found that stark patterns of racially polarized voting existed in the parish's judicial elections. And, although the Fifth Circuit reversed the district court's decision, it held that the district court did not err in its finding of racially polarized voting.

100. Most recently, in 2021, the DOJ sued the City of West Monroe under Section 2 over its at-large alderman elections. The DOJ contended that there was racially polarized voting sufficient to satisfy *Gingles* because "[i]n contests between Black candidates and [w]hite candidates for West Monroe Board of Alderman and other parish, state, and federal positions, White voters cast their ballots sufficiently as a bloc to defeat the minority's preferred candidate." The court agreed and entered a consent decree between the parties. *United States* v. *City of West Monroe*, No. 21-cv-0988 (W.D. La. Apr. 14, 2021); *see also United States v. City of Morgan*, No. 00-cv-1541 (W.D. La. Aug. 17, 2000) (holding that "[r]acially polarized voting patterns prevail in elections for the City Council of Morgan City. In contests between [B]lack and white candidates for City Council, [B]lack voters consistently vote for [B]lack candidates and white

voters vote sufficiently as a bloc to usually defeat the [B]lack voters' candidates of choice.").

Under the Totality of the Circumstances, H.B. 1/S.B. 5 Violate Section 2 of the VRA

101. The factors enumerated in the Senate Judiciary Committee Report to the 1982 amendments to the VRA ("Senate Factors")—including, but not limited to, Louisiana's history of official voting-related discrimination, the extent to which Black residents bear the effects of discrimination, the use of racial appeals in political campaigns, and the underrepresentation of Black elected officials in the state—likewise weigh in favor of finding that the 2022 congressional map violates Section 2.

Factor 1: History of Official Voting-Related Discrimination

a. Suppression Targeting Black Voters Before the Voting Rights Act

102. Louisiana has a long, deeply entrenched history of voting-related discrimination. Throughout its long history of chattel slavery, only white people possessed the right to vote. "Disenfranchisement of blacks as an acknowledged state policy pre-dates the Civil War. Even free blacks who were property owners were denied the right to vote. Most blacks, consequently, even while ostensibly 'free,' remained enslaved, bereft of one of the most basic of human rights—the right to vote." *Citizens for a Better Gretna v. City of Gretna, La.*, 636 F. Supp. 1113 (E.D. La. 1986), *aff'd*, 834 F.2d 496 (5th Cir. 1987).

103. Even after the Civil War and Reconstruction, Black people were systematically denied the right to vote in the decades that followed. Although the emancipation of slaves and the post-Civil Reconstruction period brought change—including the first Black people elected to state office—that initial progress was swiftly reversed after the federal government ceased to monitor state government starting in 1877. Black people's efforts to vote in the nineteenth and twentieth centuries were suppressed through extreme racial violence and targeted state actions, such as frequent public lynching, the enactment of a grandfather clause, a poll tax, literacy tests, voter

roll purges, and discriminatory changes to state and local maps during redistricting.

104. In 1898, Louisiana lawmakers convened a constitutional convention to update the state constitution, with the explicit goal of enforcing white supremacy and disenfranchising Black people. At that convention, the state established the "grandfather clause," a constitutional provision, common to post-Reconstruction states in the former Confederacy, imposing onerous property and education requirements on prospective voters, but waiving those requirements for registrants whose fathers or grandfathers had been registered to vote before 1867—all of whom, of course, were white. The president of the Constitutional Convention at which the clause was adopted openly acknowledged that its purpose was to "let the white man vote" and to "stop the negro from voting."

105. These and other state-sanctioned voting restrictions were frequently supplemented by systemic violence against Black Louisianans to intimidate and prevent them from exercising the franchise and to entrench white supremacy. In 1868 alone, more than 1,000 people—most of them Black—were killed in massacres and lynchings. This widespread violence took place with the implicit and explicit approval of State officials. Louisiana parishes comprised four out of five local jurisdictions in the United States that had the most lynchings between 1877 and 1950, including 549 documented lynchings in that time period. In the 1873 "Colfax Massacre," a white mob massacred approximately 150 Black residents in Colfax, Louisiana after a close gubernatorial race. Anti-Black violence was almost never punished by law enforcement or the courts.

106. In the twentieth century, the State continued to develop ways to discourage Black Louisianans' participation in the political process and to suppress their effective voting power. It implemented an "understanding" clause requiring citizens 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) (Kessler, J., concurring in part and dissenting in part) (internal quotation marks and citation omitted), *vacated on other grounds*, 520 U.S. 471 (1997). It levied poll taxes and purged Black voters from registration rolls. In 1923, the State authorized an all-white Democratic Primary, which "functioned to deny [Black voters] access to the determinative elections." *Major*, 574 F. Supp. at 339-40. In the 1950s, Louisiana implemented citizenship and "morals" tests, and anti-single shot voting provisions (the latter designed to minimize the ability of minority voters to effectively marshal their voting power in multimember districts). In 1959, the Legislature established a majority-vote requirement for election to party committees that impeded minorities from obtaining fair representation on those committees.

107. Louisiana's voting restrictions achieved their intended effect. The restrictions imposed in the late nineteenth century, including the grandfather clause, "reduce[d] black voter registration [in the state] from approximately 135,000 in 1896 to less than 1,000 in 1907." *Major*, 574 F. Supp. at 340. From 1910 until 1944, less than 1 percent of Louisiana's voting-age Black population was registered to vote. By 1948, the percentage of Black registered voters stood at 5 percent. By 1964—nearly a century after Black people received the right to vote—only about a third of Louisiana's Black voting-age population was registered to vote, compared with the overwhelming majority of the white voting-age population.

b. Continued Efforts After the Voting Rights Act to Minimize Black Voting Power

108. In 1965, Congress passed the VRA, and Louisiana, as a result of its history of disenfranchising Black voters, was declared a "covered" jurisdiction under Section 4(b) of the Voting Rights Act. *See South Carolina* v. *Katzenbach*, 383 U.S. 301, 312-13 (1966). As a covered jurisdiction, Louisiana was required under Section 5 of the Act to have any changes to

its election practices or procedures precleared by the U.S. Department of Justice or a federal court.

109. Even after the passage of the VRA, Louisiana continued its efforts to discourage Black voting by diluting Black voting strength. These efforts are reflected in the large number of instances in which changes it sought were blocked or altered by the DOJ and many judicial decisions finding the state and local jurisdictions violated Section 2.

110. Between 1965 and 2013, when the Supreme Court invalidated the preclearance formula under Section 5, the DOJ blocked or altered nearly 150 voting related changes in Louisiana, with many of those objections preventing attempts to dilute minority voting strength. Indeed, in every redistricting cycle after the passage of the VRA through 2000, at least one of Louisiana's maps was blocked as discriminatory.

111. Courts have also repeatedly struck down efforts in Louisiana to dilute, limit, or otherwise adversely impact minority voting access and strength, including as recently as 2021. These efforts have included attempts to discriminate against Black voters through at-large voting schemes. *See, e.g.*, *United States* v. *City of West Monroe*, No. 21-cv-0988 (W.D. La. Apr. 14, 2021); *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496, 504 (5th Cir. 1987); *Ausberry* v. *City of Monroe*, 456 F. Supp. 460, 467 (W.D. La. 1978); *Wallace* v. *House*, 538 F.2d 1138, 1141 (5th Cir. 1976).

112. Louisiana's statewide district maps—including those governing congressional elections—have been successfully challenged under the VRA in numerous redistricting cycles since 1965. In 1981, the state implemented a congressional redistricting plan that "cracked" the Black majority in Orleans Parish between two congressional districts. Plaintiffs alleged—and a federal court agreed—that the proposed map improperly diluted Black voting power. The court

required that a new map be drawn, which resulted in what is today Louisiana's only majority-minority district. *Major* v. *Treen*, 574 F. Supp. 325, 339-40 (E.D. La. 1983). In the 40 years since that case, Louisiana's Black population has become sufficiently large and geographically compact as to necessitate two majority-minority congressional districts.

113. That same year, the Legislature also attempted to limit Black influence at the state level by approving a plan to reduce the number of majority-minority State House of Representatives districts throughout the state, including Orleans Parish and East Baton Rouge Parish. The DOJ objected to the plan, noting that it "impact[ed] adversely upon black voting strength." As a result of the DOJ's objection, the plan did not become effective.

114. In 1991, the DOJ objected to a subsequent State House redistricting plan, noting that in at least seven areas the proposed plan minimized Black voting strength.

115. In 2001, the Legislature sought to eliminate an opportunity district in Orleans. The Legislature sought preclearance in the D.C. District Court. *Louisiana House of Representatives* v. *Ashcroft*, No. 1:02-cv-00062 (D.D.C. Jan. 14, 2002). Both the DOJ and the NAACP Legal Defense Fund opposed Louisiana's preclearance submission. The case settled on the eve of trial, with the state withdrawing the plan and restoring the opportunity district.

116. In 2018, nine Black voters in Louisiana sued the Secretary of State, alleging that Louisiana's 2011 congressional redistricting plan violated Section 2. Plaintiffs argued that the legislature packed Black voters into CD 2 and split them among three other congressional districts rather than unifying them to create a second majority-minority district, thereby diluting their voting strength and political influence. On March 12, 2019, a federal district court denied the state's motion to dismiss on the grounds that plaintiff had failed to state a claim of vote dilution. *Johnson* v. *Ardoin*, No. 3:18-cv-00625, ECF No. 51. Plaintiffs amended their

complaint and, on May 31, 2019, the court denied a second motion to dismiss. *Johnson* v. *Ardoin*, No. 3:18-cv-00625, ECF No. 72. The district court stayed the action pending the outcome of the Fifth Circuit's *en banc* decision in another action, *Thomas* v. *Reeves*, 961 F.3d 800 (5th Cir. 2020). After the stay was lifted, the *Johnson* parties ultimately stipulated to a dismissal.

117. The State has similarly faced successful challenges to proposed changes to other election positions, such as state court judges and school boards, that would discriminate against Black voters. No fewer than six times between 1969 and 1994, Louisiana attempted to add at-large or multimember judicial seats, over the objections of the DOJ. *See, e.g.*, *Clark* v. *Roemer*, 777 F. Supp. 445 (M.D. La. 1990). The consent decree in the line of VRA cases stemming from *Clark* v. *Roemer* ultimately established majority-minority subdistricts in nine district courts, a family court, and a court of appeal circuit, and required the Legislature to create such subdistricts in another court of appeal circuit and several other district courts. A separate line of cases challenging the election system for the Louisiana Supreme Court under the VRA resulted in the *Chisom* decree, which allowed the first Black justice to be elected to the Louisiana Supreme Court. *See In re Off. of Chief Just., Louisiana Supreme Ct.*, 2012-1342, 101 So. 3d 9, 21 (La. Oct. 16, 2012). In December 2021, the State moved to dissolve the consent decree in the Chisom case, arguing "the Consent Decree has accomplished its objectives." *Chisom, et al* v. *Jindal et al*, No. 2:86−cv−04075, ECF No. 257 (E.D. La. 2021).

118. The State currently faces a separate Section 2 challenge to its single-member districts for state supreme court elections. *See Allen* v. *Louisiana*, No. 3:19-CV-00479. Last year, a federal district court denied the state's motion to dismiss for lack of subject matter jurisdiction and the Fifth Circuit affirmed. *Louisiana State Conf. of NAACP* v. *Louisiana*, 490 F. Supp. 3d 982

(M.D. La. 2020), *aff'd sub nom. Allen* v. *Louisiana*, 14 F.4th 366 (5th Cir. 2021). The case is currently proceeding through the discovery process.

119. In 2001, the Legislature approved a plan for St. Bernard Parish to reduce the size of the school board from eleven single-member districts to five single member districts and two at-large seats, eliminating the sole majority-minority voting district in the parish. A federal court later found that this new plan violated Section 2. *St. Bernard Citizens For Better Gov't* v. *St. Bernard Par. Sch. Bd.*, 2002 WL 2022589, at *10 (E.D. La. Aug. 26, 2002). Lynn Dean, a white state senator who was involved in restructuring the St. Bernard school board and was the highest-ranking public official in the Parish, testified at the trial that he had used the "n-word" and "ha[d] done so recently." *Id.* Louisiana localities have also repeatedly discriminated against Black voters through changes to their voting rules. Over 67% of Louisiana's parishes received objections from the DOJ during the time that Louisiana was a covered jurisdiction, and the majority of the objections have been for redistricting changes.

120. Louisiana has also failed in recent years to comply with public assistance agency voter registration requirements under the National Voter Registration Act (NVRA), a failure that disproportionately impacts Black residents of the state. *See Scott* v. *Schedler*, 2013 WL 264603, at *18 (E.D. La. Jan. 23, 2013) *aff'd in part, vacated in part on other grounds*, 2014 WL 5801354 (5th Cir. Nov. 5, 2014).

Factor 2: The Extent of Racial Polarization

121. As described in detail in paragraphs 92-104 regarding the *Gingles* preconditions, the state's elections evince stark patterns of racial polarization. In 2020, Louisiana's most recent congressional elections, voters in four of the five white majority districts had a choice between Black and white candidates and in each of these instances, the white candidate prevailed. Moreover, the consistent gap between Black and white support for Black-preferred candidates is

significant and consistent across elections at every level of government.

Factor 5: Effects of Louisiana's History of Discrimination

122. Louisiana's history of discrimination has not been limited to the obstacles it has deliberately placed in the way of Black citizens attempting to exercise their right to vote. As in many other states, Louisiana enacted "Black Codes" and Jim Crow laws starting in the late nineteenth century. These laws enforced a regime of state-sanctioned segregation in nearly every sphere of life including transportation, housing, education, business ownership, contracting, criminal justice, and public accommodations.

123. Today, Black Louisianans still bear the effects of the state's long history of racial discrimination. These disadvantages continue to hinder their ability to participate effectively in the political process. "The courts have recognized that disproportionate educational[,] employment, income level[,] and living conditions arising from past discrimination tend to depress minority political participation." *St. Bernard Citizens For Better Gov't* v. *St. Bernard Par. Sch. Bd.*, 2002 WL 2022589 (E.D. La. Aug. 26, 2002) (quoting 1982 Senate Report at 29 n. 114).

124. Black residents of Louisiana badly trail white residents across multiple economic metrics. In 2019, 29.4% of Black people in Louisiana lived below the poverty line, compared to 12.5% of white people. Nearly half of Louisiana's Black children live in poverty. Unemployment data from early 2021 shows that Black people were unemployed at more than twice the rate of whites—12% compared to 5.3%. As of 2010, white citizens in Louisiana were also more than three times more likely than Black citizens to own a home.

125. Severe racial discrimination in employment also persists. According to the U.S. Equal Employment Opportunity Commission, for the 2011 fiscal year, Louisiana accounted for 3% of all U.S. race-based employment discrimination charges filed in the United States and 6.1% of all

charges of discrimination based on color, even though according to the 2010 U.S. Census, Louisiana comprises only 1.5% of the U.S. population and 1.6% of the U.S. minority population.

126. Health disparities also persist among Black as compared to white Louisianans. According to the Louisiana Department of Health and Hospitals, "[f]rom 2000–2005, Black or African American Louisiana residents had the highest death rate from all causes, approximately 1-2 times higher than White residents." In 2016-2018, the infant mortality rate in Louisiana was 10.9 per 1,000 live births for black infants and 5.4 per 1,000 live births for white infants.

127. De facto racial segregation remains the rule in the state's educational system. As of 2018, 23 of Louisiana's 69 traditional school districts remain under a desegregation order, meaning that no court has found that they have achieved unitary status. 56 of Louisiana's 69 traditional school districts (81%) are rated high or medium on the "dissimilarity index," a formula used to evaluate school district segregation, while just four districts were rated low. In highly segregated districts, Black students were nearly four times more likely to be suspended or expelled than their white counterparts. Meanwhile, white students in highly segregated districts are slightly over three times more likely to be enrolled in at least one Advanced Placement course.

128. The incarceration rate in Louisiana, as elsewhere, has expanded greatly over the last few decades. Since 1970, the total jail population in Louisiana has increased 665%. As of December 2019, Louisiana has the highest rate of individuals in jails and the second highest rate of individuals in prison in the country. Black Louisianans are dramatically overrepresented in Louisiana's incarcerated population. Despite constituting 33% of state residents, Black Louisianans represent 52% of the jail population and 67% of the prison population in the state.

<u>Factor 6: Presence of Racial Campaign Appeals</u>

129. Louisiana political campaigns have consistently been characterized by both overt and

implicit racial appeals. The political career of long-time neo-Nazi and former Ku Klux Klan leader David Duke is sadly illustrative. In 1989, Duke was elected to the Louisiana State House of Representatives.

130. Duke would go on to run for higher public office in the state multiple times over the course of the next few years, in each case receiving tens or hundreds of thousands of votes. For example, in his 1990 race for U.S. Senate, Duke received approximately 43% of the total vote (including 60% of the white Republican vote), raised $2.4 million, and ultimately came in second place in the open primary. As recently as 2016, Duke ran again for Senate to, in his words, "defend the heritage of European American people," and received 58,000 votes.

131. Other candidates in Louisiana have followed a similar playbook for racial appeals. During his successful 1995 race for Governor against a Black opponent, Mike Foster did not repudiate an endorsement he received from a white nationalist group associated with Duke. He stated publicly Jefferson Parish was "right next to the jungle in New Orleans and has a very low crime rate." Foster received 63.5% of the total vote share, including 84% of the white vote, in that election. Foster's opponent, Black Louisiana state senator Cleo Fields, won 96% of the Black vote.

132. In 2002, current U.S. Representative for Louisiana's first congressional district Steve Scalise spoke to a white supremacist group while serving as a Louisiana state legislator. Scalise confirmed that he spoke at the event, but claimed that he didn't know at the time about the group's affiliation with neo-Nazi activists.

133. In 2012, a candidate for Louisiana Supreme Court District 5, Justice Jeff Hughes, darkened the image of his Black opponent John Guidry in certain of his campaign materials, and referred to Guidry as an "affirmative action Democrat."

134. In 2018, a white Tangipahoa School Board Member and candidate for reelection posted a picture on Facebook of a noose. The picture carried the caption "IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT."

135. In 2019, Eddie Rispone, the Republican gubernatorial candidate opposite Governor John Bel Edwards, ran a number of ads that contained implicit racial appeals. One ad mentioned "welfare for illegal immigrants," while another claimed that Edwards released "hundreds" of "dangerous criminals" from prison.

Factor 7: Extent to Which Black Louisianans Have Been Elected to Public Office

136. Despite constituting approximately one-third of the state's population, Black Louisianans remain chronically underrepresented in public office in the state.

137. Louisiana has never had a Black U.S. Senator.

138. None of the majority white congressional districts in Louisiana has ever elected a Black representative. Indeed, the only current Black congressional representative is from CD 2, a majority-minority district created in the 1980s as a result of a Section 2 challenge to Louisiana's congressional scheme. In total, the state has elected only five Black Congresspeople since Reconstruction. The lack of representation extends beyond seats in the federal government. Louisiana never had a Black Secretary of State or Attorney General, and has not had a Black governor since Reconstruction.

139. Only 26 of the current 105 members of the Louisiana State House and 10 of the 39 members of the State Senate are Black.

140. Only three of the current 11 members of Louisiana Board of Elementary and Secondary Education are people of color. Under the previous administration, that number was two out of 11 members (18%).

141. Black judges have also been "underrepresented in the trial and appellate courts. While the black population comprises about 30.5 percent of the voting age population in Louisiana, black people only account for about 17.5 percent of the judges in Louisiana." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 445. This includes the state's highest court, which did not seat a Black justice until 1992. Only one of the seven justices of the Louisiana Supreme Court today is Black.

142. Of the 42 district courts in the state, Black women judges serve or have served on only six district courts and Black men serve or have served on 13 district courts.

Factor 8: Lack of Responsiveness to the Particularized Needs of Black Voters

143. The lack of representation of Black Louisianans in public office has contributed to the failure of elected officials to respond to the particularized needs of the Black community.

144. As discussed above, Black Louisianans suffer from the effects of discrimination across many areas, including education, employment, and health. *See supra* ¶¶ 126-132. In each of these areas, the continued existence of severe racial disparities is indicative of a failure on the part of elected officials to address the needs of Black residents.

145. For example, a 2009 study on the occupants of top-level city administrative positions in East Baton Rouge Parish found that white employees in the parish are disproportionately appointed, hired, and maintained in the highest paying jobs.

146. The lack of responsiveness to the needs of Black voters has been thrown into sharp relief by the devastating effects that the COVID-19 pandemic has wrought upon the state. Black residents have the highest rates of COVID-19 cases and deaths in Louisiana. Although only one-third of the state's population, Black Louisianans accounted for more than 70% of the Louisianans who died of COVID-19.

147. Racial disparities have also been observed in the distribution of COVID-19 vaccines across the state. Compared with white neighborhoods, parts of the state with high concentrations of Black residents (such as North Baton Rouge) have suffered from fewer vaccination sites.

148. Disparities in access to healthcare and COVID-19 death rates are not the only examples of areas in which Louisiana's Black community face a lack of responsiveness from their elected officials. Black Louisianans experience a higher burden of exposure to air pollution than white Louisianans.

149. Congressional Bill H.R. 5376 Build Back Better contained provisions specifically aimed at reducing such health disparities, including measures to reduce the existing Medicare coverage gap and to expand home and community-based care for Louisiana's senior and disabled citizens. The bill also contained provisions to address existing disparities in education, housing, and the economy. Despite its benefits, all but one of Louisiana's congressional representatives, the only Black congressional representative from the state, Representative Troy Carter, voted against the bill.

Factor 9: Tenuousness of Justifications for Restricting Black Voters to One Majority-Black District

150. Throughout the redistricting roadshow and Special Session, opponents of a second majority-Black district in the Legislature provided shifting and tenuous justifications for their opposition to a second majority-Black district. Each of the purported justifications were refuted extensively throughout the process. After justifications were refuted, opponents of a second majority-Black district often shifted to other, new justifications for their opposition.

151. During a November 22, 2021 press conference, Representative Stefanski claimed that there was interest from some members in preserving the existing congressional configuration by simply "tweaking around the edges" because the existing map had been precleared by the DOJ

under Section 5 of the VRA and would therefore be "legal." As the Plaintiffs and their now counsel explained in a December 14, 2021, letter sent to the House and Senate Governmental Affairs Committees, this claim is wrong as a matter of law. DOJ preclearance determinations are based on compliance with Section 5 of the VRA, not compliance with Section 2, and the Supreme Court has expressly "refuse[d] to equate a Section 2 vote dilution inquiry with the Section 5 retrogression standard." *See Georgia v. Ashcroft*, 539 U.S. 461 (2003).

152. Even after this was pointed out to members of the House and Senate Governmental Affairs Committees, Representative Farnum nevertheless repeated this justification, weeks later, on February 4, 2022, claiming that the current map with only one majority-Black district "obviously" did not violate Section 2 "because it was approved and that's the one we live by today."

153. Representative Stefanski also falsely argued that it was not mathematically possible to maintain District 2 as a majority-Black district without including Baton Rouge in that district.

154. During his November 22 press conference, Representative Stefanski also expressed doubt about whether CD 2 would remain majority-Black without including Black voters in Baton Rouge. On December 14, the Coalition responded to Representative Stefanski's concerns by referring the Chairman to the seven illustrative Coalition maps, each of which demonstrated that CD2 could indeed remain majority-Black without the inclusion of Black voters from Baton Rouge. Indeed, each of the maps with two majority-Black districts introduced by legislators contained a second majority-Black district without including substantial portions of the Black community in Baton Rouge.

155. Legislators who opposed maps with a second majority-Black district largely ignored that the maps submitted with two majority-Black districts were generally more compact than H.B. 1

or S.B. 5. These legislators failed to provide any justification for rejecting maps that were objectively more compact than H.B. 1 or S.B. 5. After this fact was pointed out, opponents of a second majority-Black district generally shifted to other justifications for their opposition.

156. Numerous legislators repeatedly claimed that they wished to prioritize keeping parishes and precincts whole. Senator Hewitt claimed that S.B. 5 did "the best job of the maps presented in this committee in keeping . . . parishes and precincts together." She asserted that her map respected "established boundaries of political subdivision and contain[ed] whole precincts to the extent practicable" and "[kept] 49 of 64 parishes whole." While presenting H.B. 1, Representative Schexnayder testified on two occasions that his map was developed "using whole precincts" to avoid precinct splits, and that he tried "his best not to split parishes and precincts." Representative Stefanski attempted to distinguish H.B. 1 by asking if there were "split precincts in those [proposed Coalition] maps." But, as noted above, opponents of a second majority-Black district largely ignored the fact that there had been multiple proposals submitted that split fewer parishes than H.B. 1 or S.B. 5 while achieving two majority-Black districts. And Senator Fields', Representative Gaines', and Representative Duplessis' amendments to H.B. 1 and S.B. 5 split fewer parishes, only 14 parishes compared to 15 parishes in S.B. 5/H.B. 1, and split no precincts when compared to S.B. 5/H.B. 1. After this fact was pointed out, legislative opponents of two majority-Black districts shifted to other justifications for their opposition.

157. Representative Schexnayder, Representative Magee, and Representative Stefanski then contended that reducing the population deviation as much as possible should be a top priority, and boasted that H.B. 1, sponsored by Speaker Schexnayder, had the lowest population deviation of any proposal because the difference between the largest and smallest districts was only 46 people as originally introduced. Representative Magee claimed that "of all the maps that is [sic]

going to be filed, [H.B. 1] has the lowest standard of deviation. I don't think anybody can beat it on that point." Representative Stefanski, a co-author of H.B. 1, contended, "[o]ur duty to make sure that these populations are equal is an overriding duty, especially on this map. We have to try to get down to as close to the nearest person. I think, the numbers speak for themselves on that." Representative Schexnayder responded, "[i]f you look at [the numbers], I think we've done a great job at that."

158. But the maps that achieved the best population equality were in fact the seven Coalition maps, which deviated from the ideal population by no more than one person. And, among the maps that maintained whole precincts, the proposals that achieved the best population equality were actually maps that included two majority-Black districts, including Amendment #91 to S.B. 5 introduced by Senator Fields, Amendment #116 to S.B. 5, introduced by Representative Duplessis, and Amendment #88 to H.B. 1 introduced by Representative Gaines – in which the difference between the largest and smallest districts was only 44 people. After this fact was pointed out, opponents shifted to other justifications for their opposition. For instance, when introducing his amendment to S.B. 5, Representative Duplessis pointed out that S.B. 5 [had] a deviation of 128 people," whereas his "amendment had an absolute range of 44 people." The House and Governmental Affairs Committee nevertheless rejected his amendment by a margin of 5-9.

159. Senator Hewitt claimed —without providing support—that in all of the proposed maps with two majority-Black districts, the Black voting age population in the two majority-Black districts was too low and would result in Black voters being unable to elect candidates of their choice in either district. On February 3, she testified, "if we did 50% plus one, you would not . . . be giving the minority population an equal opportunity to elect a candidate of their choice. She

claimed that in her map, the majority-Black district "is the same as it . . . currently is around 58% . . . because we know that is a functioning number." However, when pressed by Senator Price about how she derived this conclusion, she admitted that her statements were unfounded as she was still "working on getting that data" to "do a better job of . . . assessing that."

160. On February 4, while speaking during a webinar held by the Public Affairs Research Council of Louisiana, Senator Hewitt again claimed that she doubted whether another minority district would perform, because "technically by law, a minority district is one that is 50%+1 minority, but I don't think there is anybody in the building that would necessarily believe that a minority district like that, that there's a very high probability that the minority would elect a candidate of their choice, with only 50%+1 in their district." When asked how she reached that conclusion, she admitted that she had not received any substantive analysis supporting her assertion from the law firm retained to evaluate the Legislature's maps.

161. Again, on February 8, during the debate on S.B. 5 on the Senate floor, Senator Hewitt conceded that her statements were based on "some of the preliminary information [she had] been given and [she did not] have any documentation in [her] hand that [she] could share with anybody." Representative Stefanski made similar statements on November 22, during a press conference, about whether a second majority-Black district could perform to allow the Black-preferred candidate to elect the candidate of choice.

162. All of these concerns, however, are belied by the fact that the House and Governmental Affairs Committee voted in favor of a bill redrawing the map for Louisiana's Supreme Court that contained a majority-Black district with a Black voting age population of 51.23%. Unlike the congressional maps introduced by other members of the Committee, this map, introduced by Representative Ivey, passed out of committee with bipartisan support, including Representative

Magee. Representative Ivey's bill was ultimately rejected by the House on February 16, 2022.

163. Finally, the argument (advanced by Senator Hewitt and others) that the VRA does not establish a right to two majority-Black districts simply because one-third of the state's population is Black is a red herring. Cases acknowledge that underrepresentation of Black voters is a relevant equitable consideration in a Section 2 analysis. There is no contention—and the VRA does not guarantee—that a violation is proven by lack of proportionality alone. Instead, there must be a showing of the preconditions set out by the Supreme Court in *Thornburg* v. *Gingles*, and courts are guided by the Senate Factors when determining if, under the totality of the circumstances, the districting plan results in vote dilution in violation of Section 2. These circumstances are present in Louisiana today, and compel the conclusion that the H.B. 1/S.B. 5 dilute the voting strength of Black Louisianans in violation of the VRA.

CAUSE OF ACTION

Count One

H.B. 1/S.B. 5 violate Section 2 of the Voting Rights Act of 1965
52 U.S.C. § 10301; 42 U.S.C. § 1983
(Vote Dilution)

164. Plaintiffs re-allege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

165. Section 2 of the Voting Rights Act prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that results in the denial or abridgement of the right of any U.S. citizen to vote on account of race, color, or membership in a language minority group. 52 U.S.C. § 10301(a).

166. The current district boundaries of Louisiana's 2022 congressional map results in the dilution of the electoral strength of those voters in violation of Section 2 of the Voting Rights Act.

167. Black Louisianians are sufficiently numerous and geographically compact to constitute a majority of eligible voters in two of Louisiana's six U.S. congressional districts.

Black voters in Louisiana are politically cohesive, and recent elections reveal a stark pattern of racially polarized voting that nearly always results in the defeat of Black voters' preferred candidates in statewide elections and in districts in which the majority of voters are white.

168. Moreover, considering the totality of the circumstances in Louisiana, Plaintiffs, Black Louisianians and organizations of which they are a part, have less opportunity than other members of the Louisiana electorate to participate in the political process and to elect representatives of their choice to Congress.

169. By engaging in the acts and omissions alleged herein, Defendant has acted and continues to act to deny Plaintiffs rights guaranteed to them by Section 2 of the Voting Rights Act. Defendant will continue to violate those rights absent relief granted by this Court.

170. Plaintiffs will be irreparably harmed if this Court fails to temporarily and permanently enjoin Defendant from conducting congressional elections under the enacted plan, in that, among other things, they would be subject to racial vote dilution. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Declare that the 2022 congressional map violates Section 2 of the Voting Rights Act;

B. Issue a preliminary and permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of the congressional districts as adopted in the 2022 congressional map, including barring Defendant from conducting congressional elections in accordance with that plan;

C. Order the adoption of a valid congressional redistricting plan for Louisiana that includes two districts in which Black voters have an opportunity to elect candidates of their choice;

D. Award Plaintiffs' their costs, expenses, and disbursements, and reasonable attorneys' fees incurred in bring this pursuant to in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. 1988;

E. Retain jurisdiction over this matter until the Defendant has complied with all orders and mandates of this Court; and

F. Grant such additional further relief as the Court considers just.

Dated: March 30, 2022

By: */s/John Adcock*

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**Pro hac vice* applications forthcoming

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

This the 30 day of March 2022.

/s/ John Adcock
COUNSEL FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Robinson, Press; Cage, Edgar; Nairne, Dorothy; Soule, Edwine Rene; Washington, Alice, et al.

(b) County of Residence of First Listed Plaintiff East Baton Rouge
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

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DEFENDANTS

Ardoin, Kyle

County of Residence of First Listed Defendant East Baton Rouge
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☒ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
52 U.S.C. § 10301

Brief description of cause:
Voting Rights Act regarding Congressional redistricting.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE C.J. Shelly D. Dick; Mag. J. Scott D. Johnson DOCKET NUMBER 22-178-SDD-SDJ

DATE
Mar 30, 2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT B

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

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. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard file this Complaint for Declaratory and Injunctive Relief against Defendant R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State, and allege as follows:

1. Plaintiffs bring this action to challenge Louisiana's new congressional districting plan, House Bill 1 ("HB 1"), on the ground that it violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

2. Louisiana has the second-highest proportion of Black residents in the United States, comprising nearly one-third of the state's population. But Black Louisianians have the opportunity to elect their candidates of choice in only *one* of Louisiana's six congressional districts. Meanwhile, white Louisianians, who make up just 57.1 percent of the state's population, can elect their candidates of choice in the remaining five—*83 percent* of the state's congressional districts.

3. HB 1 perpetuates this imbalance by packing Black voters into the Second Congressional District while cracking Louisiana's other Black communities into districts that

extend into the southern, western, and northern reaches of the state. In so doing, HB 1 dilutes the electoral strength of the state's Black community.

4. The Louisiana State Legislature was well aware of the need to draw a second majority-Black congressional district when it passed HB 1. Governor John Bel Edwards vetoed the map when it arrived on his desk, explaining that it "is simply not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act." The Legislature ignored the Governor's admonition, overrode his veto, and enacted HB 1 into law.

5. The 2020 census data confirm that Black Louisianians are sufficiently numerous and geographically compact to form a majority of eligible voters—which is to say, a majority of the voting-age population[1]—in a second congressional district. This new majority-Black district would unite communities of shared interests while respecting neutral districting principles.

6. An array of factors—including Louisiana's sordid history of racial discrimination in voting, the continued use of racial appeals in the state's elections, and persistent socioeconomic disparities between Black and white Louisianians that hinder the ability of Black voters to participate effectively in the political process—further demonstrates that the Legislature's failure

[1] The phrases "majority of eligible voters" and "majority of the voting-age population" have been used by courts interchangeably when discussing the threshold requirements of a vote-dilution claim under Section 2 of the Voting Rights Act. *Compare, e.g.*, *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) ("[T]he first *Gingles* precondition . . . requires only a simple *majority of eligible voters* in a single-member district." (emphasis added) (quoting *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991))), *and Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 428 (M.D. La. 2017) (similar), *overruled on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020), *with Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality op.) ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up *more than 50 percent of the voting-age population* in the relevant geographic area?" (emphasis added)). The phrase "majority of eligible voters" when used in this Complaint shall also refer to the "majority of the voting-age population."

to create a second congressional district in which Black voters have an opportunity to elect their preferred candidates dilutes Black voting strength in violation of Section 2.

7. Accordingly, Plaintiffs seek an order (i) declaring that HB 1 violates Section 2 of the Voting Rights Act; (ii) enjoining Defendant from conducting future elections under HB 1; (iii) ordering adoption of a valid congressional districting plan that gives Black voters the opportunity to elect their candidates of choice in two districts; and (iv) providing any and such additional relief as is appropriate.

JURISDICTION AND VENUE

8. This Court has original jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C.§§ 1331, 1343(a)(3) and (4), and 1357 because the matter in controversy arises under the laws of the United States and involves the assertion of deprivation, under color of state law, of rights under federal law.

9. Venue is proper under 28 U.S.C. § 1391(b) because "a substantial part of the events or omissions giving rise to the claim occurred" in this district.

10. This Court has authority to grant declaratory and injunctive relief under Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

PARTIES

11. Plaintiff Edward Galmon, Sr. is a Black citizen of the United States and the State of Louisiana. Mr. Galmon is a registered voter and intends to vote in future congressional elections. He is a resident of St. Helena Parish and located in the Fifth Congressional District under Louisiana's new congressional plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Galmon resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly

drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The new congressional districting plan dilutes the voting power of Black voters like Mr. Galmon and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

12. Plaintiff Ciara Hart is a Black citizen of the United States and the State of Louisiana. Ms. Hart is a registered voter and intends to vote in future congressional elections. She is a resident of East Baton Rouge Parish and located in the Sixth Congressional District under Louisiana's new congressional plan, where she is unable to elect candidates of her choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Hart resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The new congressional districting plan dilutes the voting power of Black voters like Ms. Hart and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

13. Plaintiff Norris Henderson is a Black citizen of the United States and the State of Louisiana. Mr. Henderson is a registered voter and intends to vote in future congressional elections. He is a resident of Orleans Parish and located in the Second Congressional District under Louisiana's new congressional plan. The Second Congressional District is a district in which Black voters like Mr. Henderson are packed, preventing the creation of an additional district in which Black voters have an opportunity to elect their preferred candidates, as required by the Voting Rights Act.

14. Plaintiff Tramelle Howard is a Black citizen of the United States and the State of Louisiana. Mr. Howard is a registered voter and intends to vote in future congressional elections. He is a resident of East Baton Rouge Parish and located in the Second Congressional District under Louisiana's new congressional plan. The Second Congressional District is a district in which Black voters like Mr. Howard are packed, preventing the creation of an additional district in which Black voters have an opportunity to elect their preferred candidates, as required by the Voting Rights Act.

15. Defendant R. Kyle Ardoin is the Louisiana Secretary of State. He is the "chief election officer of the state," La. R.S. 18:421(A), and as such will be "involved in providing, implementing, and/or enforcing whatever injunctive or prospective relief may be granted" to Plaintiffs. *Hall v. Louisiana*, 974 F. Supp. 2d 978, 993 (M.D. La. 2013).

LEGAL BACKGROUND

16. Section 2 of the Voting Rights Act prohibits any "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). Thus, in addition to prohibiting practices that deny outright the exercise of the right to vote, Section 2 prohibits vote dilution.

17. A violation of Section 2 is established if "it is shown that the political processes leading to nomination or election" in the jurisdiction "are not equally open to participation by members of a [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." *Id.* § 10301(b).

18. Such a violation might be achieved by "cracking" or "packing" minority voters. To illustrate, the dilution of Black voting strength "may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters"—cracking; "or from the

concentration of blacks into districts where they constitute an excessive majority"—packing. *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

19. In *Gingles*, the U.S. Supreme Court identified three necessary preconditions for a claim of vote dilution under Section 2: (i) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (ii) the minority group must be "politically cohesive"; and (iii) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50–51.

20. Once all three preconditions are established, Section 2 directs courts to consider whether, "based on the totality of circumstances," members of a racial minority "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).

21. The U.S. Senate report accompanying the 1982 amendments to the Voting Rights Act identified several nonexclusive factors that courts should consider when determining if, under the totality of circumstances in a jurisdiction, the operation of the electoral device being challenged results in a Section 2 violation. *See Gingles*, 478 U.S. at 44–45; *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991). These "Senate Factors" include:

a. the history of official voting-related discrimination in the state or political subdivision;

b. the extent to which voting in the elections of the state or political subdivision is racially polarized;

c. 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;

d. the exclusion of members of the minority group from candidate slating processes;

e. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;

f. the use of overt or subtle racial appeals in political campaigns; and

g. the extent to which members of the minority group have been elected to public office in the jurisdiction.

22. "No one of the factors is dispositive; the plaintiffs need not prove a majority of them; [and] other factors may be relevant." *Westwego Citizens*, 946 F.2d at 1120; *see also NAACP v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001) (explaining that 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" (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))).

FACTUAL ALLEGATIONS

I. Louisiana's 2011 Congressional Redistricting

23. On April 13, 2011, the Legislature established Louisiana's six previous congressional districts. The Louisiana State Senate voted 25 to 13 to approve the 2011 congressional plan and the Louisiana House of Representatives voted in favor 63 to 56; the vast

majority of Black legislators voted against the plan. It was signed into law as Louisiana Revised Statute 18:1276.1 by then-Governor Bobby Jindal on April 14, 2011.

24. Prior to the enactment of the 2011 congressional plan, multiple alternative maps were proposed, including maps containing a second Black-opportunity district.

25. Senator Lydia Jackson proposed a congressional map that contained two horizontal districts for north Louisiana, one of which contained a Black voting-age population of approximately 36 percent. It was anticipated that this district would be one in which Black voters would have the ability to exert greater influence over congressional elections and demand greater responsiveness from their congressional representatives. While this plan initially passed through the Senate, it died in the House's redistricting committee after Governor Jindal publicly threatened to veto it. A similar minority-opportunity congressional district was proposed in the House by Representative Rick Gallot; this proposed plan gained even less traction, dying in committee and never reaching the House floor.

26. Senate President Pro Tempore Sharon Weston Broome and Representative Michael Jackson introduced amendments to the 2011 congressional plan that would have created two majority-Black congressional districts. The additional majority-Black district would have included, among other parishes, East Feliciana, West Feliciana, and St. Helena, as well as the bulk of East Baton Rouge Parish's Black voters. Although all Black members of the Senate and most Black members of the House voted in favor of these amendments, they were ultimately defeated.

27. The single majority-Black district in the 2011 congressional plan, the Second, contained parts of New Orleans and weaved around to Baton Rouge, capturing its western and northern neighborhoods. The shape of this Second Congressional District was significantly more contorted than it had been under the prior congressional districting plan.

II. The 2020 Census

28. The 2020 decennial census reported that Louisiana's resident population, as of April 2020, was 4,657,757. This is an increase from a decade ago, when the 2010 census reported a population of 4,533,372.

29. Louisiana's Black population increased by 3.8 percent overall between 2010 and 2020, with Black Louisianians now compromising roughly one-third of the state's population. By contrast, the state's white population *decreased* by 6.3 percent.

III. Louisiana's 2022 Congressional Redistricting

30. Throughout the redistricting process that followed the 2020 census, Black Louisianians and civil rights groups again called for the enactment of a second majority-Black congressional district. At a public meeting of the Legislature's joint redistricting committee in Baton Rouge on November 16, 2021, residents pointed out that while Black Louisianians make up one-third of the state's population, only one of its six congressional districts is majority-Black. Representative Ted James, chair of the Legislative Black Caucus, emphasized this imbalance during his five-minute speech, repeating, "One-third of six is two."

31. Although Louisianians were given various opportunities to provide public comment on the redistricting process, representatives of the Public Affairs Research Council of Louisiana concluded, in a guest column published in *The Advocate*, that the Legislature "disregarded many of the public comments and much of the hours of testimony they received and fell into age-old patterns of protecting incumbent officials, political parties and personal allies." They noted in particular that "[l]awmakers rejected overwhelming calls from people who attended hearings around the state and at the Louisiana Capitol to expand the number of majority-minority districts across several of the maps. It's not clear the Legislature made any significant changes to district lines, big or small, based on citizen input."

32. The Legislature completed its redistricting process during an extraordinary legislative session that commenced on February 2, 2022.

33. The House passed HB 1—establishing a map that largely mirrors the 2011 congressional map and preserves Louisiana's lone majority-Black congressional district, the Second—on February 11, 2022, and sent it to the Senate for further consideration and passage. The Senate took HB 1 under consideration while continuing deliberation of its own proposed map, Senate Bill 5 ("SB 5"), which was nearly identical to HB 1 save for minor discrepancies.

34. Throughout this process, the Legislature had several opportunities to consider and enact a new congressional map with two majority-Black districts. Senator Cleo Fields—who observed that "[i]t would be unconscionable for [the Legislature] to pass a plan with a single Black district"—introduced *three* maps that included two majority-Black districts. Similar proposals were offered by Senator Karen Carter Peterson, Senator Gary Smith, Senator Gerald Boudreaux, Senator Jay Luneau, and Senator Joseph Bouie, Jr. Many of these proposals included a new majority-Black Fifth Congressional District that united Black voters in north Baton Rouge with the delta parishes along the Mississippi River. Ultimately, none of the maps containing two majority-Black congressional districts made it to the House or Senate floor.

35. Likewise, both chambers' redistricting committees failed to advance any of the amendments to the House's HB 1 or the Senate's SB 5, which would have created an additional majority-Black congressional district while improving the map's overall adherence to traditional redistricting principles.

36. Opponents of HB 1 and SB 5 criticized the proposed maps for diluting the voting strength of Black Louisianians. Notably, the drafters of HB 1 and SB 5 did not conduct Section 2 analyses of these maps to ensure compliance with the Voting Rights Act.

37. HB 1 and SB 5 passed their respective chambers on near-party-line votes on February 18, 2022.

38. Consistent with his earlier pledge to veto any congressional map that "suffer[s] from defects in terms of basic fairness," Governor Edwards vetoed the proposed maps on March 9, 2022. In his veto message, he explained that he

> vetoed the proposed congressional map drawn by Louisiana's Legislature because it does not include a second majority African American district, despite Black voters making up almost a third of Louisianans per the latest U.S. Census data. This map is simply not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act. The Legislature should immediately begin the work of drawing a map that ensures Black voices can be properly heard in the voting booth. It can be done and it should be done.

39. Rather than heed this advice and draw a new congressional plan that complied with the Voting Rights Act, the Legislature instead overrode the veto of HB 1 on March 30, 2022.

IV. Louisiana's New Congressional Plan

40. In enacting Louisiana's new congressional map, the Legislature diluted the political power of the state's Black voters. Rather than create a second majority-Black congressional district, the Legislature packed Black voters into the Second Congressional District, the state's single majority-Black district, and cracked other Black voters among districts that extend into predominantly white communities in the southern, western, and northern reaches of the state.

41. Notably, three of the state's five parishes with the highest Black populations—East Carroll Parish (70.7 percent), Madison Parish (63.5 percent), and Tensas Parish (55.8 percent)—are located in the predominantly white Fifth Congressional District.

42. The Second and Sixth Congressional Districts both sacrifice compactness and other redistricting principles to dilute Black voting strength by respectively packing and cracking Black voters. For example, the Sixth Congressional District oddly carves up East Baton Rouge Parish, which is home to the historically Black college Southern Agricultural and Mechanical University

and has an overall Black population of about 46 percent. Many other parishes are similarly split along the winding, circuitous border between the Second and Sixth Congressional Districts, including several with Black populations above 40 percent like Iberville and St. John the Baptist.

43. Ultimately, the Black population along the Louisiana/Mississippi border and in the central part of the state is sufficiently numerous and geographically compact to create a second majority-Black congressional district, one that readily complies with traditional redistricting principles.

V. Racial Polarization in Louisiana

44. As courts in this state have long concluded, voting in Louisiana is severely racially polarized, with Black and white voters cohesively supporting opposing candidates. *See, e.g.*, *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 436–37 (M.D. La. 2017) (recognizing racially polarized voting in Terrebonne Parish), *overruled on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020); *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 v. City of Gretna*, 636 F. Supp. 1113, 1124–31 (E.D. La. 1986) (recognizing racially polarized voting in City of Gretna), *aff'd*, 834 F.2d 496 (5th Cir. 1987); *Major v. Treen*, 574 F. Supp. 325, 337–39 (E.D. La. 1983) (three-judge court) (recognizing racial polarization in Orleans Parish).

45. Black voters in Louisiana are politically cohesive and overwhelmingly support the same candidates.

46. The state's white voters, in turn, are also politically cohesive, voting in opposition to Black-preferred candidates.

47. The white majority in Louisiana votes as a bloc usually to defeat Black voters' candidates of choice.

48. For example, *The New York Times* reported that in the 2020 presidential election, the vast majority of Black voters in Louisiana—88 percent—voted for Joe Biden, as compared to only 22 percent of white voters. Consequently, President Biden lost the statewide vote by a margin of nearly 20 percentage points.

49. This pronounced racially polarized voting exists both statewide and in the individual congressional districts at issue in this case.

VI. Voting-Related Racial Discrimination in Louisiana

50. Louisiana has a long, tragic history of voting-related discrimination—one 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*, 636 F. Supp. at 1116. This pattern of discrimination is not confined to history books. The legacy of prejudice and state-sponsored intimidation manifests itself today in state and local elections marked by racial appeals and undertones, and the consequences of the state's historic discrimination persist as well, as Black Louisianians continue to experience socioeconomic hardship and marginalization.

51. From the state's inception through Reconstruction, Louisiana's constitution limited the right to vote to white males, wholly excluding Black citizens from the franchise. In 1898—after the Fifteenth Amendment to the U.S. Constitution guaranteed suffrage to Black men, and as Black voter registration began to increase—Louisiana called a constitutional convention with the purpose of, in the words of the chairman of the convention's judiciary committee, "establish[ing]

the supremacy of the white race." To that end, the delegates enacted several constitutional provisions that specifically targeted Black voters.

52. For example, Louisiana expanded its felon-disenfranchisement policy to include all individuals convicted of "any crime punishable by imprisonment, and not afterwards pardoned with express restoration of the franchise," as well as all individuals "actually confined in any public prison." This was a drastic expansion from the state's earlier policy, which had limited disenfranchisement to select crimes (bribery, forgery, perjury, and high crimes and misdemeanors), and was directly aimed at disenfranchising Black voters.

53. Louisiana also became one of the first states to implement a "grandfather clause," a constitutional provision mandating that voter registrants whose fathers or grandfathers had not been registered to vote before 1867 comply with additional property and education requirements. As the president of the state constitutional convention explained, the clause was implemented specifically to "let the white man vote" and "stop the negro from voting."

54. After the convention, the then-Governor stated that "[t]he white supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the Constitution as a fundamental part and parcel of that organic instrument." The effects of the 1898 constitutional changes were profound: Black voter registration was reduced from approximately 45 percent to a mere *4 percent* by 1900.

55. Louisiana's grandfather clause remained in place until it was struck down by the U.S. Supreme Court in *Guinn v. United States*, 238 U.S. 347 (1915). But versions of the state's felon-disenfranchisement policy, which disproportionately affects Black voters, have remained a part of Louisiana's laws governing access to the franchise.

56. Following the 1898 constitutional convention, Louisiana continued to develop alternative ways to ensure that its Black citizens could not participate in the political process. For example, to replace the grandfather clause, the State implemented "a requirement that an applicant '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). This "understanding clause" was enforced until 1965, when it was invalidated by the U.S. Supreme Court in *Louisiana v. United States*, 380 U.S. 145 (1965).

57. Throughout the second half of the 19th century and the first half of the 20th century, Black Louisianians were subjected to sustained political terror and violence. White mobs employed lynchings and massacres of Black citizens to intimidate and prevent them from exercising their constitutional rights. This systemic violence occurred with either the tacit or explicit collusion of state actors and was almost never punished by state law enforcement. In 1868 in St. Landry Parish, for example, white Democrats, angered by growing Black support for white Republican candidates, murdered over 100 Black Louisianians over a two-week period. In 1873, in what became known as the "Colfax Massacre," a white mob massacred approximately 150 Black citizens after a close gubernatorial race. No one was ever prosecuted for these murders.

58. Ultimately, four out of the five local jurisdictions in the United States that had the most lynchings between Reconstruction and the 1950s were Louisiana parishes, responsible for 540 documented lynchings during that time period.

59. In the early 1900s, Louisiana also levied poll taxes, which largely prevented Black citizens from voting, and purged Black voters from the registration rolls. In 1923, "the state authorized an all-white Democratic primary which functioned to deny blacks access to the

determinative elections, inasmuch as Republican opposition to the Democratic party in the general elections was nonexistent." *Major*, 574 F. Supp. at 340. The all-white primaries remained in place until 1944, when they were also invalidated by the U.S. Supreme Court in *Smith v. Allwright*, 321 U.S. 649 (1944).

60. Black voters were also discouraged from voting through force and intimidation. In 1950, for example, George and Frank Guillory, two young Black farmers from St. Landry Parish, visited Opelousas to register for the draft. French speakers, the pair mistakenly ended up in the voter registration office. They were beaten and thrown in jail.

61. During the 1950s, Louisiana continued its discriminatory voting tactics by implementing a citizenship test and prohibiting single-shot voting provisions. The elimination of the latter was particularly detrimental to Black electoral participation, as single-shot voting had given members of minority communities the ability to aggregate their votes behind single candidates in multimember elections. In 1959, the Legislature established a majority-vote requirement to be elected to party committees, and "from 1940 to 1964, the States Rights Party spearheaded a strong movement against black enfranchisement and judicially-directed desegregation." *Major*, 574 F. Supp. at 340.

62. In 1965, Congress enacted the Voting Rights Act, and Louisiana was immediately declared a covered jurisdiction under Section 4(b) due to its maintenance of a literacy test and its low level of minority voter registration. *See South Carolina v. Katzenbach*, 383 U.S. 301, 312–13 (1966). As a covered jurisdiction, Louisiana was required to "preclear" any changes to its election practices or procedures with either the U.S. Department of Justice or a federal court.

63. Even after coming under federal oversight, however, Louisiana persisted in its efforts to limit Black voting power, with Section 5 of the Voting Rights Act often serving as the

lone bulwark to prevent Louisiana from further excluding Black voters from the franchise. Indeed, between 1965 and 2013—at which time the U.S. Supreme Court effectively barred enforcement of the Section 5 preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013)—the Department of Justice blocked or altered nearly 150 voting-related changes in Louisiana under Section 5. In 1968, for example, an effort to minimize and dilute Black voting strength by allowing parish school boards and police juries to switch to at-large election systems was prevented by objections from the Department of Justice. These objections notwithstanding, between 1971 and 1972, at least 14 parishes—St. Helena, Jefferson Davis, Tangipahoa, Franklin, St. Charles, Assumption, Ascension, Bossier, De Soto, East Feliciana, Natchitoches, Caddo, St. James, and St. Mary—attempted to switch to at-large election systems under the nullified laws.

64. Undeterred, the Legislature passed a law in 1973 that provided for the use of divisions or numbered posts for multimember elected bodies in all districts, parishes, municipalities, and wards in Louisiana. This would have significantly curtailed the ability of minority candidates to win elections to multimember offices in localities with patterns of racial bloc voting. Again, the law was blocked by a Department of Justice objection. In 1975, the Legislature attempted to prevent single-shot voting in school board elections—an effort that was also blocked by a Department of Justice objection.

65. Since 1981, much of Louisiana's voting-related discrimination has been perpetrated through discriminatory redistricting schemes that have packed Black voters into few districts or cracked them among many districts, limiting their influence overall. This discriminatory redistricting has been carried out at the state and local levels.

66. Notably, in 1981, the Legislature attempted to limit Black influence in Congress by implementing a redistricting plan that "cracked" the Black majority in Orleans Parish between two

congressional districts. At the time of the redistricting, highly concentrated Black residents comprised 55 percent of the total population in Orleans Parish. Although multiple plans that included a majority-Black district were proposed, then-Governor Dave Treen "publicly expressed his opposition to the concept of a majority black district, stating that districting schemes motivated by racial considerations, however benign, smacked of racism." *Major*, 574 F. Supp. at 331. The 1981 congressional plan was challenged under Section 2, with the plaintiffs asserting that it diluted Black voting strength. *See id.* at 327. A federal court agreed, enjoining implementation of the plan and requiring that a new map be drawn. *See id.* at 356. The resulting map established the Second Congressional District, the state's first—and today, only—majority-Black congressional district.

67. The Legislature also attempted to limit Black political influence at the state level in 1981 through a new districting plan for the Louisiana House of Representatives. It approved a map that reduced the number of majority-minority House districts throughout the state, including in Orleans and East Baton Rouge Parishes. The Department of Justice objected to the plan, citing unsatisfactory explanations for the configuration of districts in Orleans, East Baton Rouge, East Feliciana, St. Helena, West Feliciana, and Rapides Parishes, and noting that, overall, the proposed plan "impact[ed] adversely upon black voting strength."

68. A similar practice was observed during the next two redistricting cycles—in 1991 and 2001—when the Legislature again enacted discriminatory House redistricting plans. In 1991, the Department of Justice objected once more, noting that the proposed House plan minimized Black voting strength in at least seven areas. The Department of Justice explained that "the state has not consistently applied its own [redistricting] criteria, but it does appear that the decision to deviate from the criteria in each instance tended to result in the plan's not providing black voters with a district in which they can elect a candidate of their choice."

69. In 2001, the Legislature again sought to eliminate a Black-opportunity House district in Orleans Parish. The State sought preclearance in federal court; both the Department of Justice and the NAACP Legal Defense Fund opposed Louisiana's preclearance submission. The case settled on the eve of trial, with the State withdrawing the plan and restoring the Black-opportunity district.

70. In addition to the State's efforts to minimize minority representation through congressional and legislative redistricting, the Legislature has also taken other actions to discriminate against Louisiana's Black citizens. In 1994, Louisiana attempted to impose a photo ID requirement for first-time voters who cast their ballots by mail. The Department of Justice found that this law would adversely impact the state's Black population.

71. Throughout the 1980s and 1990s, Louisiana continued its attempts to expand and reinforce at-large voting for judges, school boards, and boards of alderman, despite repeated warnings of the detrimental impact at-large systems have on Black voters. Indeed, in 1969, 1989, 1990, 1991, 1992, and 1994, Louisiana attempted to add at-large or multimember judicial seats, blatantly ignoring objections and requests for more information raised by the Department of Justice in response. The State's actions were so egregious that, in 1990, this Court reprimanded Louisiana in *Clark v. Roemer*, stating that it had "absolutely no excuse for its failure, whether negligent or intentional, to obtain preclearance of legislation when such preclearance is required by the Voting Rights Act of 1965." 751 F. Supp. 586, 589 n.10 (M.D. La 1990) (three-judge court), *reversed on other grounds*, 500 U.S. 646 (1991).

72. In 1998, the Legislature attempted to facilitate local governments' resistance to drawing additional majority-minority districts when it passed a law freezing local voting precinct lines through 2003—which included the three years following the 2000 census. The Department

of Justice objected, preventing the law from being implemented. Nevertheless, in 2009, the Legislature again tried to freeze precinct lines; the Department of Justice again objected.

73. In 2001, the Legislature adopted a plan that allowed electors in St. Bernard Parish to reduce the size of the school board from eleven single-member districts to five single-member districts and two at-large seats, thus eliminating the sole majority-minority voting district in the parish. A federal court later found that this new plan violated Section 2. *See St. Bernard Citizens*, 2002 WL 2022589, at *10.

74. In addition to these actions at the state level, localities have also repeatedly discriminated against Black Louisianians through changes to their voting rules. At least 44 of Louisiana's 65 parishes—over 67 percent—received objections from the Department of Justice during the time that Louisiana was a covered jurisdiction, including, among others, Ascension, Assumption, Avoyelles, East Baton Rouge, East Feliciana, East Carroll, Iberia, Iberville, Madison, Orleans, Pointe Coupee, St. Mary, St. Landry, St. Charles, St. James, St. Helena, St. Martin, Tensas, West Feliciana, and West Baton Rouge Parishes. A majority of these objections concerned redistricting.

75. Louisiana's practice of voter discrimination is not merely historic. The State continues to implement voting practices that have hindered the ability of Black citizens to participate equally in the political process.

76. The Department of Justice authorized sending observers to more than 11 Louisiana parishes—including Orleans Parish as recently as 2016—to ensure compliance with federal voting laws.

77. Moreover, as discussed above, Louisiana continues to disenfranchise felons. Although voters approved a 1974 constitutional provision that made suspension of voting rights

permissive for people "under order of imprisonment for conviction of a felony," the Legislature later decided to make this suspension *mandatory* and defined the phrase to include all people in prison, on probation, or on parole. Although recent legislative efforts and legal challenges have reduced the scope of Louisiana's felon-disenfranchisement laws, they continue to have a disproportionate impact on the state's Black voters.

VII. Ongoing Effects of Louisiana's History of Discrimination

78. During the late 19th century, in a direct repudiation of political gains made by Black Louisianians during Reconstruction, the State began enacting Black Codes and Jim Crow laws that restricted the liberty of Black citizens in nearly every sphere of life, including transportation, housing, education, business ownership, contracting, criminal justice, and public accommodation. Louisiana's Black citizens bear the effects of the State's official history of discrimination even today. These socioeconomic disadvantages hinder their ability to participate effectively in the political process.

79. "*De facto* racial segregation remains in education in Louisiana. About 74% of all black elementary and secondary students attend majority-minority schools. Only thirteen states have higher percentages of black students in these majority-minority schools." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 442–43 (footnote omitted). According to the U.S. Census Bureau's 2019 American Community Survey ("ACS") 1-Year Estimate, Black Louisianians are also more than 10 percent less likely to hold bachelor's degrees than white Louisianians.

80. In addition to lower levels of educational attainment, Black Louisianans experience lower employment rates and correspondingly higher levels of poverty than white residents. According to the 2019 ACS 1-Year Estimate, the unemployment rate for Black Louisianians was nearly double that of white Louisianians, while the median household income for Black Louisianians was almost half of the median for white Louisianians. Black Louisianians are three

times as likely as white Louisianians to receive food stamps, and based on the 2019 ACS 1-Year Estimate, 24.9 percent of Black households live below the poverty line, compared to just 8.8 percent of white households.

81. The effects of Louisiana's long history of discrimination are also evident in persistent health disparities. According to the Louisiana Department of Health, the death rate for Black Louisianians was approximately one to two times the rate for white Louisianians. The Centers for Disease Control and Prevention reported that the infant mortality rate—a key indicator of overall health status—is the highest for Louisiana's non-Hispanic Black infants and more than double the non-Hispanic white infant mortality rate. The Louisiana Department of Health reported in 2018 that four Black mothers die for every white mother and two Black babies die for every one white baby.

82. As of 2015, not only did Louisiana rank number one in its statewide imprisonment rate, but Black inmates were overrepresented in the state's jails while white Louisianians were underrepresented. Indeed, as of 2014, Black residents of Louisiana were four times as likely to be imprisoned as white residents.

VIII. Racial Appeals in Louisiana Politics

83. In addition to Louisiana's history of voting-related discrimination against its Black citizens, the state's political campaigns have been subjected to both overt and subtle racial appeals.

84. In 1989, Louisiana made national headlines when David Duke—former Grand Wizard of the Knights of the Ku Klux Klan—was elected to the Louisiana House of Representatives. Duke, who claimed to be the spokesman for the "white majority," went on to run for the U.S. Senate in 1990, Louisiana governor in 1991, and the U.S. Senate again in 2016.

85. During his 1991 campaign for governor, Duke stated that one of his opponents, then-Governor Buddy Roemer, was "an NAACP member who supports reverse discrimination."

Duke placed second in the initial round of voting with 31.7 percent of the vote. During the subsequent runoff election, Duke equated affirmative action with "racist" and "intolerant organizations," and his campaign was characterized by rhetoric promising to save Louisiana by giving Black residents "tough love." Duke stated, "If you are white these days you are a second-class citizen in your own country." While Duke lost the runoff election, he garnered more than 670,000 votes—nearly 40 percent—and ultimately claimed a moral victory, saying, "I won my constituency. I won 55% of the white vote." When asked why he voted for Duke, one of Duke's supporters explained, "I feel like the blacks get too much their own way. You don't see white people spitting out babies like they do."

86. In 2016, Duke made a second run for the U.S. Senate. In explaining why he joined the race, Duke's campaign manager stated, "He became very concerned in regards to the Obama administration and the unhealthy way the mainstream media was affecting the racial climate in this country, with this bias toward African Americans against the police officers."

87. Even moderate Republican candidates in Louisiana have made subtle racial appeals. In particular, the white candidate and eventual winner of the 1995 gubernatorial race ran against Black Congressman Cleo Fields—the first Black candidate for governor in Louisiana in over 100 years—and supported a platform of repealing affirmative action, challenging a second majority-Black congressional district in Louisiana, and opposing the National Voter Registration Act, which was widely viewed as a tool to increase Black voter registration. Moreover, the winning candidate did not repudiate an endorsement he received from a white nationalist group associated with Duke, and at one point stated that Jefferson Parish was "right next to the jungle in New Orleans and has a very low crime rate." The white candidate won the runoff election with 64 percent of the vote, compared to 36 percent for Congressman Fields. Reports indicated that only 4

percent of Black voters cast ballots for the eventual winner, while 98 percent of Congressman Fields's support came from Black voters.

88. As another example of race-based appeals in Louisiana campaigns, in 2014, it was revealed that Congressman Steve Scalise spoke to a white supremacist gathering while serving as a Louisiana state representative in 2002.

IX. Black Officeholders in Louisiana

89. Against this backdrop of discrimination and racial appeals, Black Louisianians struggle to be elected to public office. None of the current statewide elected officials is Black. Louisiana has not had a Black governor since Reconstruction—even though Black candidates advanced to runoff elections in 1995 and 1999—and Louisiana has never had a Black U.S. senator.

90. Although Black candidates have experienced some success in local races, this has predominantly occurred in majority-Black areas. For example, only one Black justice sits on the Louisiana Supreme Court; she was elected in a majority-Black district originally created as a result of a consent decree resulting from a Section 2 challenge to Louisiana's at-large judicial electoral scheme. Likewise, fewer than one-quarter of the members of the Louisiana State Senate and Louisiana House of Representatives are Black; all were elected from majority-minority districts.

91. "Statewide, blacks have also 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." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 445.

92. The only Black member of Louisiana's delegation to the U.S. House of Representatives is from the Second Congressional District, the state's sole majority-Black congressional district.

CLAIM FOR RELIEF

COUNT I
Violation of Section 2 of the Voting Rights Act
52 U.S.C. § 10301

93. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

94. Section 2 of the Voting Rights Act prohibits the enforcement of any "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, or" membership in a language minority group. 52 U.S.C. § 10301(a).

95. Louisiana's congressional district boundaries, as newly drawn, crack and pack the state's Black population with the effect of diluting its voting strength, in violation of Section 2.

96. Black Louisianians are sufficiently numerous and geographically compact to constitute a majority of eligible voters in a second congressional district stretching from Baton Rouge to the delta parishes along the Mississippi River.

97. Under Section 2 of the Voting Rights Act, the Legislature was required to create this additional congressional district in which Black voters would have the opportunity to elect their candidates of choice.

98. Black voters in Louisiana, including in and around this area, are politically cohesive. Elections in this area reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

99. The totality of the circumstances establishes that the new congressional plan has the effect of denying Black voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

100. In enforcing the district boundaries of the new congressional map, Defendant has and, absent relief from this Court, will continue to deny Plaintiffs' rights guaranteed to them by Section 2 of the Voting Rights Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that HB 1 violates Section 2 of the Voting Rights Act;

B. Enjoin Defendant, as well as his agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in HB 1, including an injunction barring Defendant from conducting any further congressional elections under the new map;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid congressional plan that includes a second congressional district in which Black voters have the opportunity to elect their preferred candidates, as required by Section 2 of the Voting Rights Act; and

D. Grant such other or further relief the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: March 30, 2022

Respectfully submitted,

By /s/ Darrel J. Papillion
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Counsel for Plaintiffs

**Pro hac vice* application forthcoming

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard

(b) County of Residence of First Listed Plaintiff St. Helena Parish
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Darrel J. Papillion, Walters Papillion Thomas Cullens
12345 Perkins Rd, BR, LA 70810, 225-236-36363

DEFENDANTS

R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State

County of Residence of First Listed Defendant East Baton Rouge
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [ ] 1 U.S. Government Plaintiff
- [x] 3 Federal Question *(U.S. Government Not a Party)*
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury - Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [x] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 448 Education

PRISONER PETITIONS

Habeas Corpus:
- [ ] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

Other:
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent - Abbreviated New Drug Application
- [ ] 840 Trademark
- [ ] 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit (15 USC 1681 or 1692)
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
52 U.S.C. § 10301

Brief description of cause:
Voting Rights Act; Congressional Redistricting

VII. REQUESTED IN COMPLAINT:

[ ] CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [x] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Shelly D. Dick DOCKET NUMBER 3:22-cv-00211

DATE 3/30/2022

SIGNATURE OF ATTORNEY OF RECORD /s/ Darrel J. Papillion

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

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. _____

STATEMENT REGARDING COLLATERAL PROCEEDINGS
PURSUANT TO LOCAL CIVIL RULE 3.1

NOW INTO COURT, through undersigned counsel, come Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard, who, pursuant to the Local Rules of the United States District Court for the Middle District of Louisiana, Local Civil Rule 3.1, respectfully represents:

1. This case involves subject matter that comprises a material part of the subject matter or operative facts of another action currently pending in the Middle District of Louisiana: *Press Robinson et al. v. Kyle Ardoin, in his official capacity as Secretary of State for Louisiana*, No. 3:22-cv-00211, filed on March 30, 2022, and pending before Judge Shelly D. Dick.

2. Both suits are actions to challenge Louisiana's new congressional districting plan, House Bill 1, on the ground that it violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

[SIGNATURE BLOCK ON NEXT PAGE]

Dated: March 30, 2022

Respectfully submitted,

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Counsel for Plaintiffs

**Pro hac vice* application forthcoming

EXHIBIT C

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCMENT OF COLORED PEOPLE ("NAACP"), LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, Defendant	Case No.: 3:22-CV-0211-SDD-RLB

ANSWER AND DEFENSES BY DEFENDANT/INTERVENOR STATE OF LOUISIANA, THROUGH JEFF LANDRY IN HIS OFFICIAL CAPACITY AS LOUISIANA ATTORNEY GENERAL

NOW INTO COURT, through undersigned counsel, comes Defendant/Intervenor, the State of Louisiana ("State"), through Jeff Landry, in his official capacity as Louisiana Attorney General ("Attorney General"), who responds to the Complaint by denying each and every paragraph thereof except as expressly admitted herein and further answers and pleads defenses as follows:

AFFIRMATIVE DEFENSES

First Defense - Lack of Subject Matter Jurisdiction

A.

The case raises a political question reserved to the Congress of the United States pursuant to the Elections Clause (Article I, Section 4, Cl. 1) of the U.S. Constitution so that this Court lacks jurisdiction over the subject matter of the claim to the extent the case seeks to alter an act of the Louisiana Legislature relating to the time, place and manner of holding elections for U.S. Representatives.

B.

These claims are not justiciable claims capable of resolution by the federal courts to the extent they assert or involve partisan gerrymandering that is traditionally and historically beyond the reach of the courts as political questions.

Second Defense - Failure to State a Claim Upon Which Relief Can Be Granted

Some or all of the plaintiffs fail to state a claim upon which relief can be granted.

Third Defense – Failure to Join a Required Party

Plaintiffs failed to join parties required under Fed. R. Civ. P. 19(a) who have an interest relating to the subject of the action and are so situated that disposing of the action in their absence may as a practical matter impair or impede their ability to protect their interests.

The States reserves the right to raise other defenses.

AND NOW FURTHERING ANSWERING the particular allegations and averments of the Complaint, the State pleads as follows:

ANSWERS TO PLAINTIFFS' AMENDED COMPLAINT

INTRODUCTION

1. The allegations in Paragraph 1 are denied in part and admitted in part. The demographics of the State of Louisiana speak for themselves. It is admitted that House Bill 1 was enacted into

law after the Louisiana Legislature voted to override the veto of Governor John Bel Edwards, but deny that Senate Bill 5 was enacted into law. The remaining allegations are denied.

2. The allegations in Paragraph 2 essentially contain the prayer for relief and do not require an answer. To the extent a response is required, the allegations are denied.

3. The allegations in Paragraph 3 are denied. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

4. The allegations in Paragraph 4 are denied.

5. The allegations in Paragraph 5 are denied.

6. The allegations in Paragraph 6 are denied.

7. The allegations in Paragraph 7 are denied. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

8. The allegations in Paragraph 8 are denied. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

9. The allegations in Paragraph 9 are conclusory requiring no response from the State but nonetheless denied as characterized by Plaintiffs.

10. The allegations in Paragraph 10 are denied as written. It is denied that the legislature failed to adopt a VRA compliant congressional map. Further, the legislative history and Governor John Bel Edwards' veto statement are the best evidence of their contents.

11. The allegations in Paragraph 11 are conclusory requiring no response from the State but nonetheless are denied as characterized by Plaintiffs.

JURISDICTION AND VENUE

12. Reserving the jurisdictional objections raised in its Affirmative Defenses, the State admits that the jurisdictional statutes cited in Paragraph 12 are the correct jurisdictional statutes for this claim, but the State avers that the claims asserted in the Complaint arise, in whole or in part, under the United States Constitution.

13. Reserving the jurisdictional objections raised in its Affirmative Defenses, the State admits that the jurisdictional statutes cited in Paragraph 13 are the correct jurisdictional statutes for this claim, but the State avers that the claims asserted in the Complaint arise, in whole or in part, under the United States Constitution and therefore impact whether this is the proper court to decide this matter.

14. To the extent the court has jurisdiction, the State admits that the venue statute cited in Paragraph 14 is the correct venue provision for this case.

PARTIES

15. The allegations in Paragraph 15 are denied for lack of information to justify a belief therein.

16. The allegations in Paragraph 16 are denied for lack of information to justify a belief therein.

17. The allegations in Paragraph 17 are denied for lack of information to justify a belief therein.

18. The allegations in Paragraph 18 are denied for lack of information to justify a belief therein.

19. The allegations in Paragraph 19 are denied for lack of information to justify a belief therein.

20. The allegations in Paragraph 20 are denied for lack of information to justify a belief therein.

21. The allegations in Paragraph 21 are denied for lack of information to justify a belief therein.

22. The allegations in Paragraph 22 are denied for lack of information to justify a belief therein.

23. The allegations in Paragraph 23 are denied for lack of information to justify a belief therein.

24. The allegations in Paragraph 24 are denied for lack of information to justify a belief therein.

25. The allegations in Paragraph 25 are denied for lack of information to justify a belief therein.

26. The allegations in Paragraph 26 are denied for lack of information to justify a belief therein.

27. The allegations in Paragraph 27 are denied for lack of information to justify a belief therein.

28. The allegations in Paragraph 28 are denied for lack of information to justify a belief therein.

29. The allegations in Paragraph 29 are denied for lack of information to justify a belief therein.

30. The allegations in Paragraph 30 are admitted that R. Kyle Ardoin is the Louisiana Secretary of State designated as chief election officer of the state by the Louisiana constitution and statutes.

Otherwise, Paragraph 30 contains conclusions that require no response but are denied out of an abundance of caution.

LEGAL BACKGROUND

31. The allegations in Paragraph 31 contain legal conclusions to which no response is required. The requirements of the Voting Rights Act are set out in statute and constitute the best evidence of its terms, and the excerpts set out in Paragraph 31 do not constitute a complete statement of the terms and meaning of the statute and are thus denied.

32. The allegations of Paragraph 32 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

33. The allegations of Paragraph 33 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

34. The allegations of Paragraph 34 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

35. The allegations of Paragraph 35 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

36. The allegations of Paragraph 36 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

37. The allegations of Paragraph 37 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

38. The allegations of Paragraph 38 are denied to the extent a response to the conclusory statement of law and its application contained therein requires a response.

FACTUAL BACKGROUND

39. In response to the allegations of Paragraph 39, the best evidence of census data is the official results of the census by the United States Census Bureau. The characterization of that information in Paragraph 39 is denied as characterized. The Census data speaks for itself.

40. The allegations in Paragraph 40 contain legal conclusions to which no response is required.

41. The allegations in Paragraph 41 are admitted.

42. In response to the allegations of Paragraph 42, the best evidence of census data is the official results of the census by the United States Census Bureau; therefore, the characterization of that information in Paragraph 42 is denied. The Census data speaks for itself.

43. The allegations in Paragraph 43 are admitted.

44. The allegations in Paragraph 44 contain legal conclusions to which no response is required. To the extent a response is required, the State admits that the allegations purport to describe the requirements of Joint Rule 21, which speaks for itself.

45. The allegations in the first sentence of Paragraph 45 are denied. The remaining allegations in Paragraph 45 purport to characterize submissions to the House and Senate Governmental Affairs Committees, which speak for themselves. The allegations in Paragraph 45 are denied for lack of information to justify a belief therein.

46. The allegations in Paragraph 46 are denied for lack of information to justify a belief therein.

47. The allegations in the first two sentences of Paragraph 47 are admitted. The remaining allegations are denied for lack of information to justify a belief therein.

48. The allegations in Paragraph 48 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered during public meetings, which speak for themselves.

49. The allegations in Paragraph 49 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered during public meetings, which speak for themselves.

50. The allegations in Paragraph 50 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered during public meetings, which speak for themselves.

51. The allegations in Paragraph 51 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered to the legislature, which speak for themselves.

52. The allegations in Paragraph 52 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered during public meetings, which speak for themselves.

53. The allegations in Paragraph 53 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered during public meetings, which speak for themselves.

54. The allegations in Paragraph 54 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment offered during public meetings, which speak for themselves.

55. The allegations in Paragraph 55 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize public comment and submissions offered during public meetings, which speak for themselves.

56. The allegations in Paragraph 56 are denied for lack of information to justify a belief therein.

The allegations purport to quote from and characterize statements by Legislators, which speak for themselves.

57. The allegations in Paragraph 57 are denied for lack of information to justify a belief therein. The allegations purport to quote from and characterize statements by Legislators, which speak for themselves.

58. The first sentence of Paragraph 58 is admitted. The remaining allegations in Paragraph 58 are denied for lack of information to justify a belief therein.

59. The allegations in Paragraph 59 are admitted.

60. The allegations in Paragraph 60 are denied as written. It is admitted that during the 2022 First Extraordinary Session bills, and amendments to those bills, proposing congressional redistricting plans were offered, and that those bills speak for themselves.

61. The first sentence in Paragraph 61 is admitted. The remaining allegations in Paragraph 61 purport to quote from and characterize public testimony offered during the Committee on Senate and Governmental Affairs, which speak for themselves, thus, the remaining allegations in Paragraph 61 are denied.

62. The first sentence in Paragraph 62 is admitted. The remaining allegations in Paragraph 62 purport to quote from and characterize testimony offered during the Senate Committee on Senate and Governmental Affairs, which speaks for itself. The remaining allegations in Paragraph 62 are denied.

63. The allegations in Paragraph 63 purport to characterize testimony by Legislators during session, which speaks for itself. The remaining allegations in Paragraph 63 are denied.

64. The allegations in Paragraph 64 purport to characterize testimony by Legislators during session, which speaks for itself. The remaining allegations in Paragraph 64 are denied.

65. The allegations in Paragraph 65 purport to characterize testimony by Legislators during session, which speaks for itself. The remaining allegations in Paragraph 65 are denied.

66. The allegations in Paragraph 66 are denied for lack of information to justify a belief therein.

67. The first sentence of Paragraph 67 is admitted. The remaining allegations purport to set forth the legislative history. The bills proposing congressional redistricting plans speak for themselves, to the extent a response is required the allegations are denied as characterized.

68. The allegations in Paragraph 68 purport to characterize testimony by Legislators during session, which speaks for itself, to the extent a response is required the allegations are denied as characterized.

69. The allegations in Paragraph 69 purport to characterize testimony by Legislators during session, which speaks for itself, to the extent a response is required the allegations are denied as characterized.

70. The first, fourth, fifth, and sixth sentences in Paragraph 70 of the Complaint are admitted. The remaining allegations purport to characterize an amendment offered by a legislator, which speaks for itself. The remaining allegations are denied for lack of information to justify a belief therein.

71. The allegations in Paragraph 71 are admitted.

72. The allegations in Paragraph 72 purport to characterize testimony by Legislators during session, and statements by other Legislative members, which speak for themselves. The remaining allegations in Paragraph 72 are denied as characterized.

73. The allegations in Paragraph 73 purport to characterize testimony by Legislators during session, and statements by other Legislative members, which speak for themselves. The remaining allegations in Paragraph 73 are denied as characterized.

74. The allegations in Paragraph 74 purport to characterize testimony by Legislators during session, and statements by other Legislative members, which speak for themselves. The remaining allegations in Paragraph 74 are denied for lack of information to justify a belief therein.

75. The allegations in Paragraph 75 are admitted that the House Committee on House and Governmental Affairs voted to report House Bill 1 favorably by a vote of 13 to 5, the remaining allegations are denied as characterized.

76. The allegations in Paragraph 76 are admitted in so far as House Bills 4, 7, 8, and 9, which speak for themselves, were heard by the House Committee on House and Governmental Affairs on February 10, 2022, and that the remaining bills were not reported favorably by the Committee. The remaining allegations in Paragraph 76 are denied.

77. The allegations in Paragraph 77 purport to characterize testimony by Legislators during session, and questions by other Legislative members, which speak for themselves. The remaining allegations in Paragraph 77 are denied.

78. The allegations in Paragraph 78 are admitted to the extent that House Bill 1 passed the House on February 10, 2022, by a vote of 70 to 33, and that the House voted not to adopt the amendments by Representative Marcelle and Gaines by margins of 30 to 71 and 33 to 70, respectively. The remaining allegations in Paragraph 78 purport to characterize those amendments and statements made by various legislators, which speak for themselves. The remaining allegations in Paragraph 78 are denied.

79. The allegations in Paragraph 79 are admitted that Representative Ivey introduced a bill. However, the remaining allegations are denied for lack of information as this paragraph does not identify the specific bill that Representative Ivey introduced.

80. The allegations in Paragraph 80 are admitted that the House Committee on House and Governmental Affairs reported Senate Bill 5 favorably on February 15, 2022 and that the Committee did not adopt Amendment 116 offered by Representative Duplessis by a vote of 5-9. Other allegations in Paragraph 80 purport to characterize testimony by Legislators during session, and questions and statements by other Legislative members, which speak for themselves. The remaining allegations in Paragraph 80 are denied.

81. The allegations in Paragraph 81 are admitted that Senate Bill 5 was reported favorably by the Senate Committee on Senate and Governmental Affairs on February 15, 2022 by a vote of 6 to 2, and that the Committee did not adopt Amendment 153 offered by Senator Price, which speaks for itself. Other allegations in Paragraph 81 purport to characterize testimony by Legislators during session, and statements by other Legislative members, which speak for themselves. The remaining allegations in Paragraph 81 are denied.

82. The allegations in Paragraph 82 are admitted that the Legislature passed both H.B. 1 and S.B. 5 on February 18, 2022. The remaining allegations are denied for lack of knowledge sufficient to form a belief as to the accuracy of the depiction of the congressional plan depicted in the map adjacent to paragraph 82 of the Complaint.

83. The allegations in Paragraph 83 are admitted that the Senate passed House Bill 1, as amended, by a vote of 27 to 10, and concurred in the House's amendments to Senate Bill 5 by a vote of 26 to 9. The allegations are admitted that the House passed Senate Bill 5 as amended, by a vote of 64 to 31, and concurred in the Senate's amendments to House Bill 1 by a vote of 62 to 8. It is admitted that House Bill 1 was sent to Governor Edwards on February 21, 2022. The remaining allegations are denied.

84. The allegations in Paragraph 84 are admitted that Governor Edwards vetoed both house Bill 1 and Senate Bill 5. The remaining allegations in Paragraph 84 purport to quote from and characterize statements by the Governor, the veto statement speaks for itself. The remaining allegations in Paragraph 84 are denied as characterized by Plaintiffs.

85. The allegations in Paragraph 85 are admitted.

86. The allegations in Paragraph 86 are denied, except to admit that the Legislature voted to override the Governor's veto of House Bill 1.

Denied that the Thornburg v. Gingles Preconditions are satisfied.

87. The allegations in Paragraph 87 are denied.

88. The allegations in Paragraph 87 are denied.

89. The allegations in Paragraph 89 are denied, except to admit that Senator Fields introduced an amendment to Senate Bill 5. That amendment speaks for itself.

90. The allegations in Paragraph 90 are denied for lack of information to justify a belief therein.

91. The allegations in Paragraph 91 are denied for lack of information to justify a belief therein.

92. The allegations in Paragraph 92 are denied for lack of information to justify a belief therein.

93. The allegations in Paragraph 93 are denied, except to admit that multiple map proposals purporting to draw two majority-Black districts were submitted to the Legislature. The remaining allegations in Paragraph 93 are denied for lack of information to justify a belief therein.

94. The allegations in Paragraph 94 are denied for lack of information to justify a belief therein.

95. The allegations in Paragraph 95 are denied for lack of information to justify a belief therein.

96. The allegations in Paragraph 96 are denied for lack of information to justify a belief therein.

97. The allegations in Paragraph 97 are denied for lack of information to justify a belief therein.

98. The allegations in Paragraph 98 are denied for lack of information to justify a belief therein.

99. The allegations in Paragraph 99 are denied for lack of information to justify a belief therein.

100. The allegations in Paragraph 100 are denied for lack of information to justify a belief therein.

101. The allegations in Paragraph 101 are denied. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

102. The allegations in Paragraph 102 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

103. The allegations in Paragraph 103 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

104. The allegations in Paragraph 104 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

105. The allegations in Paragraph 105 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

106. The allegations in Paragraph 106 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

107. The allegations in Paragraph 107 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

108. The allegations in Paragraph 108 are admitted to the extent that Congress passed the Voting Rights Act in 1965 and that Louisiana was a covered jurisdiction under Section 4(b), the remaining allegations in Paragraph 108 are denied for lack of information to justify a belief therein. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

109. The allegations in Paragraph 109 are denied. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

110. The allegations in Paragraph 110 are denied for lack of information to justify a belief therein. Preclearance can be denied under Section 5 or liability found under Section 2 without a finding of intentional "efforts . . . to dilute, limit, or otherwise adversely impact minority voting access and strength." As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

111. The allegations in Paragraph 111 are denied for lack of information to justify a belief therein.

112. The allegations in Paragraph 112 are legal conclusions which do not require a response, to the extent a response is required the allegations in Paragraph 112 are denied.

113. The allegations in Paragraph 113 are admitted that the U.S. Department of Justice objected to the redistricting plan proposed by the Legislature in 1981, and that the plan did not become effective after the objection. The remaining allegations in Paragraph 113 are denied.

114. The allegations in Paragraph 114 are denied as written. Any objection by the U.S. Department of Justice speaks for itself.

115. The allegations in Paragraph 115 are denied was written. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs.

116. The allegations in Paragraph 116 are denied. The allegations purport to characterize other legal proceedings, which speak for themselves. The fact that a lawsuit was filed is irrelevant, there was no finding of liability on behalf of the state.

117. The allegations in Paragraph 117 are denied as written, except to admit that the State moved to dissolve the consent decree in Chisom. As the Supreme Court recently noted remote history is no longer germane to voting rights questions, and burdens imposed by the Voting Rights Act must be justified by current needs. Further, the allegations purport to characterize other legal proceedings, which speak for themselves.

118. The allegations in Paragraph 118 purport to characterize other legal proceedings, which speak for themselves. The allegations in Paragraph 118 are denied to the extent inconsistent with the holdings of the cases cited therein.

119. The allegations in Paragraph 119, the first sentence, purport to characterize a plan adopted by the Legislature in 2001, which speaks for itself. The remaining allegations purport to characterize other legal proceedings, which speak for themselves. These allegations are denied for lack of information to justify a belief therein.

120. The allegations in Paragraph 120 are denied. The allegations purport to characterize other legal proceedings, which speak for themselves.

121. The allegations in Paragraph 121 are denied.

122. The allegations in Paragraph 122 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

123. The allegations in Paragraph 123 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

124. The allegations in Paragraph 124 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

125. The allegations in Paragraph 125 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

126. The allegations in Paragraph 126 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

127. The allegations in Paragraph 127 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

128. The allegations in Paragraph 128 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

129. The allegations in Paragraph 129 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

130. The allegations in Paragraph 130 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

131. The allegations in Paragraph 131 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

132. The allegations in Paragraph 132 and denied for lack of information sufficient to form a belief as to the truth of the allegations.

133. The allegations in Paragraph 133 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

134. The allegations in Paragraph 134 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

135. The allegations in Paragraph 135 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

136. The allegations in Paragraph 136 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

137. The allegations in Paragraph 137 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

138. The allegations in Paragraph 138 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

139. The allegations in Paragraph 139 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

140. The allegations in Paragraph 140 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

141. The allegations in Paragraph 141 are denied.

142. The allegations in Paragraph 142 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

143. The allegations in Paragraph 143 are denied.

144. The allegations in Paragraph 144 are denied.

145. The allegations in Paragraph 145 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

146. The allegations in Paragraph 146 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

147. The allegations in Paragraph 147 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

148. The allegations in Paragraph 148 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

149. The allegations in Paragraph 149 are denied for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

150. The allegations in Paragraph 150 are denied.

151. The allegations in Paragraph 151 contain legal conclusions to which no response is required. To the extent those allegations are interpreted to contain any factual allegations, any such allegations are denied. The remaining allegations in Paragraph 151 purport to characterize testimony by Legislators, which speak for themselves.

152. The allegations in Paragraph 152 purport to characterize testimony by Legislators, which speak for themselves. The remaining allegations in Paragraph 152 are denied.

153. The allegations in Paragraph 153 purport to characterize testimony by Legislators, which speak for themselves. The remaining allegations in Paragraph 153 are denied.

154. The allegations in Paragraph 154 purport to characterize testimony by Legislators during session, which speak for themselves. The remaining allegations in Paragraph 154 are denied.

155. The allegations in Paragraph 155 are denied.

156. The sixth and last sentences in paragraph 156 of the Complaint is denied. The remaining allegations in paragraph 156 of the Complaint purport to quote from and characterize statements made by and bills proposed by various legislators, which speak for themselves, and are denied as characterized.

157. The allegations in paragraph 157 of the Complaint purport to quote from and characterize statements made by and bills proposed by various legislators, which speak for themselves, and are denied as characterized.

158. The allegations in the third sentence of paragraph 158 of the Complaint are denied, except to admit that the House Committee on House and Governmental Affairs did not adopt the amendment to Senate Bill 5 offered by Representative Duplessis. The remaining allegations in Paragraph 158 purport to quote from and characterize submissions by members of the public, amendments offered by legislators, and statements by those legislators, which speak for themselves.

159. The allegations in paragraph 159 of the Complaint purport to quote from and characterize statements by Senator Hewitt, which speak for themselves. The remaining allegations are denied.

160. The allegations in paragraph 160 of the Complaint purport to quote from and characterize statements by Senator Hewitt, which speak for themselves. The remaining allegations are denied.

161. The allegations in paragraph 161 purport to quote from and characterize statements made by Representative Stefanski and Senator Hewitt, which speak for themselves. The remaining allegations are denied.

162. The first sentence of Paragraph 162 is denied. It is admitted that Representative Ivey introduced House Bill 22, which speaks for itself, and that House Bill 22 was reported favorably

by the House Committee on House and Governmental Affairs and tabled by the House of Representatives. The remaining allegations in Paragraph 162 are denied.

163. The first and last sentences in Paragraph 163 are denied. The remaining allegations in paragraph 163 of the Complaint contain only legal conclusions to which no response is required. To the extent those allegations are interpreted to contain any factual allegations, any such allegations are denied.

CAUSE OF ACTION

164. The State of Louisiana incorporate its responses to Paragraphs 1-163 of the Complaint as if fully re-stated herein.

165. The allegations in Paragraph 165 contain only legal conclusions to which no response is required. To the extent those allegations are interpreted to contain any factual allegations, any such allegations are denied.

166. The allegations in Paragraph 166 are denied.

167. The allegations in Paragraph 167 are denied.

168. The allegations in Paragraph 168 are denied.

169. The allegations in Paragraph 169 are denied.

170. The allegations in Paragraph 170 are denied.

ANSWER TO PRAYER FOR RELIEF

The Prayer for Relief contains a summary of the relief Plaintiffs seek, to which no response is required. To the extent a response is required, the State of Louisiana denies that the Plaintiffs are entitled to any of the relief sought.

WHEREFORE, having fully answered the Complaint, the State of Louisiana prays as follows:

1) That this Answer be deemed good and sufficient;
2) That, after all proceedings are had, there be judgment rendered in his favor, dismissing Plaintiffs' claims with prejudice and at their costs;
3) For all general and equitable relief that justice requires.

Dated: April 12, 2022

Respectfully Submitted,

Jeff Landry
Louisiana Attorney General

/s/ Angelique Duhon Freel
Elizabeth B. Murrill (LSBA No. 20685)
Solicitor General
Shae McPhee's (LSBA No. 38565)
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CERTIFICATE OF SERVICE

I do hereby certify that, on this 12th day of April 2022, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Angelique Duhon Freel
Angelique Duhon Freel

EXHIBIT D

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, *et al*

versus

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana

CIVIL ACTION

22-211-SDD-SDJ

consolidated with

EDWARD GALMON, SR., *et al*

versus

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana

CIVIL ACTION

22-214-SDD-SDJ

RULING

Before the Court are two motions: the *Motion of the Presiding Officers of the Louisiana Legislature to Intervene*[1] filed by Clay Schexnayder, Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, President of the Louisiana Senate (collectively, "the Legislators"), and the *Motion to Intervene*[2] filed by Louisiana Attorney General Jeff Landry ("the Attorney General"). Both *Motions* are opposed,[3] though the *Robinson* Plaintiffs specify that they take no position on the Legislators' *Motion*.[4] For the reasons that follow, both *Motions* shall be GRANTED.

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[1] Rec. Doc. No. 10.
[2] Rec. Doc. No. 30.
[3] The *Galmon* Plaintiffs filed a combined opposition to both motions (Rec. Doc. No. 36), and the *Robinson* Plaintiffs filed an opposition to the Attorney General's motion (Rec. Doc. No. 37).
[4] Rec. Doc. No. 37, p. 2, n. 2.

I. BACKGROUND

On March 30, 2022, *Robinson v. Ardoin*[5] and *Galmon v. Ardoin*[6] were filed in the Middle District of Louisiana. Both suits challenge Louisiana's new congressional districting plan. In the interest of efficiency and judicial economy, *Galmon*, which had initially been allocated to Judge Brian A. Jackson, was reassigned to this Court, and on April 14, 2022, *Robinson* and *Galmon* were consolidated.[7] Now seeking to join the consolidated cases as parties are Clay Schexnayder, Speaker of the Louisiana House of Representatives, Patrick Page Cortez, President of the Louisiana Senate, and Louisiana Attorney General Jeff Landry. All of the putative intervenors assert that they are entitled to intervention as of right under Federal Rule of Civil Procedure 24(a), or, in the alternative, permissive intervention under Rule 24(b). Plaintiffs oppose the interventions, arguing, *inter alia*, that the would-be parties have no independent interests to assert and that whatever interests they do have are already adequately represented by Defendant Kyle Ardoin, the Louisiana Secretary of State. The Court will address the parties' arguments in turn.

II. APPLICABLE LAW

A. Intervention of Right Under Rule 24(a)

Federal Rule of Civil Procedure 24(a) provides that, on timely motion, the Court must permit anyone to intervene who is given an unconditional right to intervene by a federal statute; or who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical

[5] 3:22-cv-211.
[6] 3:22-cv-214.
[7] Rec. Doc. No. 34.

matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest. The movant bears the burden of establishing his right to intervene, but Rule 24 is to be liberally construed. The United States Court of Appeals for the Fifth Circuit instructs that "[f]ederal courts should allow intervention where no one would be hurt and the greater justice could be attained."[8] "The inquiry is a flexible one, and a practical analysis of the facts and circumstances of each case is appropriate."[9]

Although "[t]here is not any clear definition of the nature of the interest ... that is required for intervention of right,"[10] the Fifth Circuit has previously interpreted Rule 24(a)(2) to require a "'direct, substantial, legally protectable interest in the proceedings.'"[11] The Fifth Circuit has held that, ultimately, the "inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way."[12]

As for representation, the Fifth Circuit has made clear that the movant's burden of proving inadequate representation is a "minimal" one that is met if the movant shows that "'representation may be inadequate.'"[13] "Although the applicant's burden of showing inadequate representation is minimal, "it cannot be treated as so minimal as to write the requirement completely out of the rule."[14] The Fifth Circuit has held that "'[w]hen the party

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[8] *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015)(quoting *Sierra Club v. Espy,* 18 F.3d 1202, 1205 (5th Cir.1994)).
[9] *Brumfield v. Dodd,* 749 F.3d 339, 342 (5th Cir. 2014)(internal quotations omitted).
[10] 7C Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 1908.1 (3d ed. 2007) [*Wright & Miller*] (internal quotation marks omitted).
[11] *Edwards v. City of Houston,* 78 F.3d 983, 1004 (5th Cir. 1996).
[12] *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015).
[13] *Brown v. Jefferson Par. Sch. Bd.*, No. CV 21-40, 2021 WL 949679, at *8 (E.D. La. Mar. 12, 2021)(quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994)).
[14] *Cajun Elec. Power Co-op., Inc. v. Gulf States Utilities, Inc.*, 940 F.2d 117, 120 (5th Cir. 1991) (quoting *Bush v. Viterna,* 740 F.2d 350, 355 (5th Cir.1984)).

seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the petitioner must demonstrate adversity of interest, collusion, or nonfeasance.'"[15]

B. Permissive Intervention Under Rule 24(b)

Rule 24(b) provides that the Court may permit anyone to intervene who (1) is given a conditional right to intervene by a federal statute or (2) has a claim or defense that shares with the main action a common question of law or fact. This rule gives district courts discretion to allow intervention when "(1) timely application is made by the intervenor, (2) the intervenor's claim or defense and the main action have a question of law or fact in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties."[16] "Permissive intervention is 'wholly discretionary' and may be denied even when the requirements of Rule 24(b) are satisfied."[17]

III. ANALYSIS

I. The Legislators' *Motion*

Clay Schexnayder and Patrick Page Cortez ("the Legislators") aver that they clearly satisfy the elements of intervention of right, which, again, are:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.[18]

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[15] *Bush v. Viterna*, 740 F.2d 350, 355 (5th Cir. 1984).
[16] *League of United Latin Am. Citizens v. Clements,* 884 F.2d 185, 189 n. 2 (5th Cir. 1989).
[17] *Turner v. Cincinnati Ins. Co.,* 9 F.4th 300, 317 (5th Cir. 2021).
[18] *Miller v. Vilsack*, No. 21-11271, 2022 WL 851782, at *2 (5th Cir. Mar. 22, 2022).

On the first point, the Court agrees; there is no dispute that the *Motion* is timely, since it was filed only one week after the *Complaints* and before anything meaningful transpired in the case. Thus, the Legislators' entitlement to intervention of right hinges on the nature and magnitude of the interest articulated, as well as their ability to demonstrate that their interest is not already adequately represented. The Legislators assert a laundry list of interests in this case.[19] In the Court's view, many of these interests do not satisfy the requirements for intervention of right under Rule 24(a). Several of the assertions boil down to the Legislators' desire to avoid having their maps undone by an order of this Court or to be forced to redraw them; this strikes the Court as nothing more than a "generalized preference that the case come out a certain way." Other alleged interests are too ineffable, such as the Legislators' interest in defending "the injury to the legislative department of Louisiana, and the State itself."[20]

Nevertheless, the Court finds that the Legislators have articulated a legitimate interest where they cite their desire to defend the merits of the redistricting plans passed by the Legislature. In *League of United Latin Am. Citizens, Council No. 4434 v. Clements,*[21] the Fifth Circuit signaled that parties who play a "part in creating or revising the election scheme" meet the "real party in interest" test. And, as the Legislators note,

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[19] "[T]o respond to allegations regarding the actions of the Legislature"; defending the redistricting plans passed by the Legislature; "an interest in seeking to prevent their votes in favor of the challenged plans from being nullified by an order deeming the plans violative of the Voting Rights Act"; "defending the injury to the legislative department of Louisiana, and the State itself, that would result from an injunction against the challenged plans"; preventing the Court from "transfer[ing] redistricting authority from the Legislature and to the court"; "avoiding a second redistricting process," which would divert time and resources from other pressing legislative issues; "a compelling and justiciable interest in defending and advancing legitimate legislative policies"; "an interest in ensuring that [] a remedy implements legitimate legislative policies"; "an interest in ensuring that [the Legislature's] policy choices guide redistricting overseen by a court"; "an interest in advocating their understanding of the legal requirements applicable to redistricting plans"; and "a compelling interest that Louisiana citizens' equal protection rights are honored in any future redistricting plan" (*See* Rec. Doc. No. 10).

[20] Rec. Doc. No. 10, p. 5.

[21] 884 F.2d 185, 188 (5th Cir. 1989).

the participation of legislators is a not-uncommon feature of recent redistricting litigation across the country.[22] Moreover, as a matter of common sense, the Court finds that the leaders of the legislative bodies that enacted the challenged maps have an interest in participating in a process where the various policy choices and judgments that went into creating the maps will be scrutinized. Especially in light of the liberal and flexible standard prescribed for Rule 24, the Court finds that the Legislators have established an interest.

The argument that the Legislators' interest will be impaired or impeded without their participation is heavily intertwined with their argument regarding adequacy of representation. Essentially, the Legislators argue that the only named Defendant in this suit, Secretary of State Ardoin, "did not enact the challenged plans, lacks constitutional authority to do so, has no knowledge of the policy considerations underpinning them, has no particular interest in defending those policy choices, and will not be tasked with enacting new plans if they are enjoined."[23] Therefore, they argue, their interest in defending the plans will be impaired if Secretary of State Ardoin, whose function is one of implementation, not development or defense of maps, is the sole Defendant. The Court credits this argument as persuasive.

As for adequacy of representation, the Fifth Circuit instructs that "'[w]hen the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented.'"[24] The Court is persuaded by the

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[22] *See, e.g., Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *7 (N.D. Ala. Jan. 24, 2022), *cert. granted before judgment sub nom. Merrill v. Milligan,* 142 S. Ct. 879 (2022)(granting legislators' motion to intervene to defend the redistricting plan); *Carter v. Chapman*, 270 A.3d 444, 453 (Pa. 2022) (granting intervenor status to the Speaker and Majority Leader of the Pennsylvania House of Representatives and the President Pro Tempore and Majority Leader of the Pennsylvania Senate); *Harper v. Hall*, 2022-NCSC-17, ¶ 3, 868 S.E.2d 499.

[23] Rec. Doc. No. 10, p. 10-11.

[24] *Bush v. Viterna*, 740 F.2d 350, 355 (5th Cir. 1984)

Legislators' assertion that their interest in defending House Bill 1 and Senate Bill 5 is not adequately represented by the Secretary, since his ultimate objective is "administering whatever election rules may apply by law, not in administering the specific plans challenged in this case."[25] Although the Secretary's interest in "orderly elections" may, in this case, mean that he disfavors any attempt to defeat the already-existing maps, the Legislators point out that ultimately, the Secretary may be disinterested in the merits as long as any remedy "were to occur in time to administer the next scheduled legislative elections."[26] This divergence of interests is evidence of inadequate representation.

Finding that the Legislators have demonstrated their entitlement to intervene as of right under Rule 24(a), the Court orders that their *Motion* shall be GRANTED.

II. The Attorney General's *Motion*

Attorney General Jeff Landry's *Motion* is timely, coming only two weeks after the *Complaints* and before any significant developments in the case. Though he cites a number of state statutes giving him authority to represent the state and to intervene in civil suits,[27] he points to no federal statute giving him a right to intervene under Rule 24(a). Therefore, to intervene as of right, he must satisfy the now-familiar factors under Rule 24(a)(2).[28]

As an initial matter, the Court is underwhelmed by the Attorney General's assertion that his interest in this suit is "to protect the interests of the State."[29] This is an overly general statement by the standards of Rule 24(a), which requires a *particularized* interest.

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[25] Rec. Doc. No. 10, p. 11 (citing La. R.S. § 18:18).
[26] *Id*. at p. 13.
[27] Rec. Doc. No. 30, p. 4-5.
[28] *See supra,* p. 4.
[29] Rec. Doc. No. 30, p. 6.

The Attorney General further asserts that "[t]he State has unique sovereign interests not shared by the other parties," but, at his most specific, he describes that interest as the need "to defend the State's congressional plan."[30] This interest is not unique – it is explicitly shared by the Legislators who also moved to intervene. Also unavailing is the Attorney General's argument that he is entitled to intervene in this suit because he is charged with various election-related responsibilities under state law.[31] Intervention of right requires a direct and substantial interest in *this proceeding*; the Attorney General does not explain how being designated as statutory counsel for each Parish Board of Election Supervisors, for example, is relevant to congressional redistricting.

That being said, the Court is mindful of the United States Supreme Court's recent instruction that "a State's opportunity to defend its laws in federal court should not be lightly cut off."[32] In *Cameron v. EMW Women's Surgical Center, P.S.C.*, decided March 3, 2022, the high Court, in a *Ruling* affirming the Kentucky attorney general's intervention to defend a Kentucky abortion law, wrote as follows:

> Paramount among the States' retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law. Therefore, a State "clearly has a legitimate interest in the continued enforceability of its own statutes," and a federal court must "respect ... the place of the States in our federal system". . .Respect for state sovereignty must also take into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court.[33]

The Supreme Court also relied upon provisions of Kentucky law that mirror Louisiana law with respect to the role of the attorney general:

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[30] Rec. Doc. No. 30, p. 5.
[31] *Id*. at p. 7.
[32] 142 S. Ct. 1002, 1011 (2022).
[33] *Cameron v. EMW Women's Surgical Ctr., P.S.C.,* 142 S. Ct. 1002, 1011 (2022)(internal citations omitted).

> In this case, although the secretary for Health and Family Services apparently enjoyed the authority under state law to defend the constitutionality of HB 454, the secretary shared that authority with the attorney general. Indeed, it is the attorney general who is deemed Kentucky's "chief law officer" with the authority to represent the Commonwealth "in all cases."[34]

Under Louisiana law, the Attorney General is the "chief legal officer," charged with "the assertion or protection of any right or interest of the state."[35] Overall, *Cameron* suggests that the Attorney General's desire to represent Louisiana as a sovereign state is a legitimate interest in this proceeding.

As to adequacy of representation, the Attorney General claims that he does not share the same ultimate objective as Secretary of State Ardoin, because Ardoin's objective is "the orderly implementation of whatever election rules are in force," while the Attorney General is "tasked specifically with defending the laws and sovereign interests of the State of Louisiana."[36] This argument seems to elide that "whatever election rules are in force" are, of course, set forth in those very state laws that the Attorney General is bound to defend, but the Court credits the distinction that the Secretary of State's focus is the *implementation* of laws, not defending their legality.

Lastly, the Attorney General's argument that the State's interest would be impaired in his absence is lacking. He maintains that "the Court's determination could have long lasting impacts on the State,"[37] but that would be the case regardless of Landry's presence or absence as a party to this suit. Primarily, the Attorney General argues that the State's interest would be impaired if he is not allowed to intervene and is thus

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[34] *Id*.
[35] La. Const. art. IV, § 8.
[36] Rec. Doc. No. 30, p. 9.
[37] *Id*. at p. 8.

prevented from "providing a defense to Plaintiffs' challenge to the method of electing members to Congress."[38] But, as Plaintiffs point out, Attorney General Landry is fully empowered to represent Secretary of State Ardoin;[39] Landry never articulates why he must mount a defense by becoming party to the suit *himself* instead of, in his capacity as "chief legal officer," representing the existing state Defendants.

The Court finds that Attorney General Landry has failed to establish that he is entitled to intervention of right. But, in light of *Cameron*, the Court will allow permissive intervention for the Attorney General to defend the enforceability of Louisiana law, here, the existing maps. There is no doubt that Landry's *Motion* is timely or that his proposed defense shares questions of law or fact in common with the claims in the underlying litigation. Therefore, the Court exercises its discretion to grant permissive intervention, finding that "no one would be hurt and the greater justice could be attained."[40]

III. Plaintiffs' Concerns

Plaintiffs worry that allowing additional defendants to intervene will "unnecessarily duplicate" efforts, "effectively doubling or even tripling page limits and argument time."[41] The Court shares this concern, but finds that it can be mitigated by careful management of the briefing process and the evidentiary hearing. Indeed, "[f]ederal courts have inherent powers necessary to achieve the orderly and expeditious disposition of their dockets."[42]

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[38] *Id*. at p. 8.
[39] *See* La. R.S. 49:257 ("Notwithstanding any other law to the contrary, the attorney general, at his discretion, shall represent or supervise the representation of the interests of the state in any action or proceeding in which the constitutionality of a state statute or of a resolution of the legislature is challenged or assailed").
[40] *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015)(quoting *Sierra Club v. Espy,* 18 F.3d 1202, 1205 (5th Cir.1994)).
[41] Rec. Doc. No. 36, p. 8.
[42] *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.,* 86 F.3d 464, 467 (5th Cir. 1996). *See also, e.g.,* Federal Rule of Evidence 611.

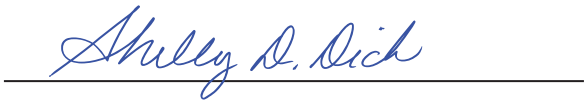
In the Court's view, the greater threat to the expedient adjudication of this case would be the delays associated with a potential appeal from this Court's denial of a motion to intervene as of right, which is immediately appealable in the Fifth Circuit.[43]

III. CONCLUSION

For the foregoing reasons, the *Motion of the Presiding Officers of the Louisiana Legislature to Intervene*[44] filed by Clay Schexnayder, Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, President of the Louisiana Senate and the *Motion to Intervene*[45] filed by Louisiana Attorney General Jeff Landry are hereby GRANTED and the movants permitted to intervene as Defendants in the consolidated cases.

IT IS SO ORDERED.

Signed in Baton Rouge, Louisiana on April 19, 2022.



JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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[43] *Sommers v. Bank of Am., N.A.,* 835 F.3d 509, 512 (5th Cir. 2016)("Under our precedents, '[t]he denial of a motion to intervene of right is an appealable final order under 28 U.S.C. § 1291,' but 'we have only provisional jurisdiction' to review the denial of permissive intervention"); *Valley Ranch Dev. Co. v. Fed. Deposit Ins. Corp.*, 960 F.2d 550, 555 (5th Cir. 1992) ("[A] denial of intervention is immediately appealable as a collateral order"); *Edwards v. City of Hous.*, 78 F.3d at 992 ("The denial of a motion to intervene of right is an appealable final order....")

[44] Rec. Doc. No. 10.

[45] Rec. Doc. No. 30.

EXHIBIT E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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, by and through their counsel, respectfully move this Court to: (i) enjoin Defendant from administering the upcoming election in November 2022 under the recently enacted congressional district map; (ii) order that the election be administered under the Robinson Plaintiffs' illustrative map, as described in the expert report of Anthony Fairfax; (iii) stay the execution of its order implementing the illustrative map until the adjournment of the current legislative session, June 6, 2022, in order to provide the Louisiana Legislature an opportunity to enact a compliant map. A preliminary injunction is justified for the reasons set out in the memorandum of law filed concurrently with this motion, and the declarations, expert reports, and other materials attached thereto.

Plaintiffs readily satisfy the traditional elements for a preliminary injunction—a likelihood of success on the merits, irreparable injury if the injunction is not granted, and the balance of equities and the public interest all favor an injunction.

Plaintiffs are likely to succeed on the merits of their claim that the 2022 congressional map violates Section 2 of the Voting Rights Act because it fails to include two districts in which Black voters have an equal opportunity to elect their candidate of choice. Louisiana's population is nearly one-third Black, and the Black population is sufficiently geographically compact to create an additional majority-Black district. The threshold factors identified by the Supreme Court in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986) for establishing a violation of Section 2 in the redistricting context are satisfied, as is the further requirement that, considering the totality of circumstances, "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by Black Louisianans. 52 U.S.C. § 10301(b).

Rather than select one of the numerous maps that complied with the Voting Rights Act and were presented to the Legislature during the redistricting process, the Legislature chose a map that dilutes Black voting power.

Plaintiffs will also suffer irreparable injury if forced to vote pursuant to maps that unlawfully dilute their vote. *See Patino* v. *City of Pasadena*, 229 F. Supp. 3d 582, 590 (S.D. Tex. 2017); *see also League of Women Voters of N.C.* v. *North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). As the Fourth Circuit noted in that case, "Courts routinely deem restrictions on fundamental voting rights irreparable injury." *Id*.

Finally, the balance of equities and the public interest support an injunction. The harm to Plaintiffs' right to vote is egregious, and the Defendant has no legitimate countervailing interest in conducting an election in violation of the Voting Rights Act. Nor would the State's ability to administer the 2022 congressional election be impeded by an injunction, when that election is nearly seven months away.

Plaintiffs also request that the Court waive the posting of security as otherwise required by Federal Rule of Civil Procedure 65(c), a matter left to the discretion of the trial court, which "may elect to require no security at all." *Kaepa, Inc.* v. *Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). In exercising this discretion, courts in the Fifth Circuit have waived the security requirement where a motion for preliminary injunction seeks to enjoin the enforcement of a state law that, in part, is claimed to violate Section 2 of the Voting Rights Act. *See, e.g.*, *City of El Cenizo* v. *Texas*, 264 F. Supp. 3d 744, 813 (W.D. Tex. 2017) (no security for preliminary injunction in challenge to immigration enforcement law challenged, in part, under the Voting Rights Act).

By: /s/*John Adcock*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record, on this 15th Day of April, 2022.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Louisiana's 2022 congressional map, enacted by the Louisiana State Legislature (the "Legislature") over a gubernatorial veto and without the support of a single Black member of either house of the Legislature, is only the latest action by the State that improperly dilutes the power of Louisiana's Black voters and impedes their ability to participate fully and equally in the political process. Throughout the history of the State, Black Louisianans have experienced persecution and discrimination, including at the ballot box. The pernicious effects of slavery, segregation, and more than a century of voting restrictions are evident today in explicit and implicit racial appeals in the electoral process, chronic underrepresentation of Black representatives in elected positions, wide disparities in areas such as education, employment, and health, and a stark pattern of racially polarized voting in election after election.

These facts and more establish that the 2022 congressional map violates Section 2 of the Voting Rights Act of 1965 ("VRA"), 52 U.S.C. § 10301, by depriving Black Louisiana voters of an equal opportunity to elect their candidates of choice to Congress. The VRA was enacted by Congress in 1965 and reenacted in 1982 to protect Black voters from voting practices that discriminate against or prevent Black citizens from exercising their voices equally in the political process. Although Black voters represent nearly one-third of Louisiana's voting age population, the 2022 congressional map dilutes Black voting strength by "packing" large numbers of Black voters into a single majority-Black congressional district (Congressional District 2, or CD 2), and "cracking" the State's remaining Black voters among the five remaining districts, all of which are majority white. By failing to adopt a congressional map with two majority-Black districts, the State falls far short of what the VRA requires.

Plaintiffs readily satisfy the requirements for demonstrating that a preliminary injunction is warranted here. To begin with, Plaintiffs are likely to succeed on the merits of the Section 2

claim. The threshold factors identified by the Supreme Court in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986) for establishing a VRA violation in the context of redistricting have been met. As shown in the accompanying expert report of Anthony Fairfax, Black voters represent a sufficiently large and geographically compact group such that creation of a congressional map with two majority-Black congressional districts and conforming to traditional districting criteria is entirely feasible. The illustrative plan prepared by Mr. Fairfax (the "Illustrative Plan") not only includes two majority-Black districts, but scores better than or as well as the Legislature's map by every traditional redistricting metric. *See* Ex. 1[1] And, as shown in the accompanying expert report of Dr. Lisa Handley, the remaining *Gingles* factors are also readily satisfied: Black voters in Louisiana are politically cohesive, and Louisiana's white majority votes sufficiently as a bloc to enable it usually to defeat the candidate preferred by Black voters. *See* Ex. 2. Finally, Plaintiffs easily satisfy their burden on the totality of the circumstances, including the stark underrepresentation of Black elected officials at all levels of State government; large gaps in educational attainment, unemployment, and other socioeconomic indicators between Black and white Louisianians; political campaigns marked by explicit and coded racial appeals; and the tenuous nature of the Legislature's proffered justifications for refusing to adopt a map with two majority-Black districts. The 2022 congressional map impairs the ability of Black voters to elect their candidates of choice, as shown in the accompanying expert reports of R. Blakeslee Gilpin and Dr. Traci Burch. *See* Exs. 3 & 4.

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[1] Citations to "Ex." Refer to Exhibits to the Declaration of John Adcock.

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

The remaining preliminary injunction factors also weigh strongly in favor of granting Plaintiffs' motion. As a matter of law, Plaintiffs will suffer irreparable injury if forced to vote pursuant to maps that improperly dilute their vote in violation of the VRA. Likewise, the balance of equities and the public interest strongly favor granting an injunction. Plaintiffs' rights are protected and the public interest is advanced by the implementation of a congressional map that complies with federal law. Any burden of an injunction upon Defendant is minimal, particularly in view of the fact that Election Day is still more than six months away. Moreover, any burden on the State from an injunction results not from any action by Plaintiffs or the Court, but from the decision by the Legislature to enact a map with only a single majority-Black district despite compelling evidence in the legislative record that a congressional map with two majority-Black districts is both feasible and required by the VRA.

Timely intervention by this Court is needed to implement a congressional district map that satisfies the requirements of Section 2 of the VRA if the legislature fails to act, and to do so sufficiently in advance of the coming election. The period for candidates to declare their candidacies, between July 20 and 22, 2022, is only a few short months away.[2] Voters—and the organizations that work to educate and engage them—will likewise need time to learn the candidates' positions in order to participate effectively in the political process.

Plaintiffs seek by this motion to protect the fundamental right of Plaintiffs and Louisiana's Black voters to vote on an equal basis and to cast undiluted ballots this year for the congressional candidates of their choice. This Court possesses ample authority to grant the relief that Plaintiffs seek and that Louisianans deserve. Plaintiffs respectfully move for a preliminary

[2] The dates of the candidate qualifying period and other election deadlines can be found on the Secretary's website. Ex. 16.

injunction to prevent Defendant from conducting the 2022 congressional elections under the enacted district maps, to set a deadline of June 6, 2022 for the Legislature to enact a compliant map and, if the Legislature fails to do so, order that the November 2022 election be conducted under the Illustrative Plan. *See* Ex. 1.

This proposed remedial schedule allows the legislature ample time to have the first opportunity to implement a remedial map. The legislature is currently in session, and the date for final adjournment of that session is June 6, 2022, at 6:00 pm. Bills concerning congressional redistricting have already been introduced in both chambers of the Legislature, including at least three bills that would address the violation of the Voting Rights Act outlined below, any of which could serve as a vehicle for the adoption of a remedial map. If the legislature fails to act in this time frame, Plaintiffs' Illustrative Plan, which includes two majority-Black districts and conforms to all of the Legislature's stated redistricting criteria, provides an appropriate interim remedy that can be ordered immediately, providing ample time for the Defendant implement an interim plan and to administer the 2022 Congressional Election without disruption.

FACTUAL BACKGROUND

The 2020 U.S. Decennial Census of Population and Housing confirmed that Louisiana is home to the second highest percentage of Black citizens in the country. Black Louisianans represent approximately 31.2% of the State's voting age population, and non-whites collectively represent nearly 40%. Ex. 1 at 16. Yet only one of the six congressional districts, representing little over 16% of the Louisiana's congressional delegations, has a majority-minority population. Ex. 2 at 9–10. In the 2020 census, the total number of Black Louisianans of voting age increased by 7.2%. Ex. 1 at 16, Table 2. Louisiana's population growth over the last decade was driven entirely by growth in minority populations, while the State's white population decreased by 5.1%. Ex. 1 at 15, Table 1. Louisiana's white population is dramatically overrepresented in the

2022 congressional map: only 58% of Louisiana's voting age population is non-Hispanic white, but non-Hispanic whites are a substantial majority in five of the State's six congressional districts—over 83%. Ex. 1 at 16, Table 2.

The Legislature must redraw congressional district boundaries after each decennial census. U.S. Const. art. I § 2. Pursuant to Joint Rule 21 of the Legislature, each redistricting plan submitted for consideration by the Legislature in the current redistricting cycle must comply with state and federal law, including Section 2 of the VRA. Ex. 17.

On February 18, 2022, the Legislature passed both H.B. 1 and S.B. 5—bills that contained identical district configurations, including only a single majority-Black district. Comp. ¶ 82. In public meetings and throughout the Special Legislative Session leading to the adoption of the 2022 congressional map, members of the public—including Plaintiffs—told the Legislature that such a congressional map with only a single majority-Black district would violate the VRA. *See, e.g.*, Ex. 22. The Legislature was provided multiple potential alternative maps that featured two majority-Black districts while respecting traditional districting principles (such as contiguity, compactness, and respect for political subdivisions) at least as well as—if not better than—H.B. 1 and S.B. 5.[3]

On March 9, Governor Edwards vetoed both H.B. 1 and S.B. 5, stating in his veto letters a "firm belief" that the map "violates Section 2 of the Voting Rights Act." *See, e.g.*, Ex. 21.

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[3] *See, e.g.*, H.B. 4, 1st Spec. Sess. (La. 2022); H.B. 5, 1st Spec. Sess. (La. 2022); H.B. 7, 1st Spec. Sess. (La. 2022); H.B. 8, 1st Spec. Sess. (La. 2022); H.B. 9, 1st Spec. Sess. (La. 2022); H.B. 12, 1st Spec. Sess. (La. 2022); S.B. 2, 1st Spec. Sess. (La. 2022); S.B. 4, 1st Spec. Sess. (La. 2022); S.B. 6, 1st Spec. Sess. (La. 2022); S.B. 9, 1st Spec. Sess. (La. 2022); S.B. 10, 1st Spec. Sess. (La. 2022); S.B. 11, 1st Spec. Sess. (La. 2022); S.B. 16, 1st Spec. Sess. (La. 2022); S.B. 18, 1st Spec. Sess. (La. 2022); Amendment #88 to H.B. 1, 1st Spec. Sess. (La. 2022); Amendment #99 to H.B. 1, 1st Spec. Sess. (La. 2022); Amendment #153 to H.B. 1, 1st Spec. Sess. (La. 2022); Amendment #62 to S.B. 2, 1st Spec. Sess. (La. 2022); Amendment #116 to S.B. 5, 1st Spec. Sess. (La. 2022); Amendment #91 to S.B. 5, 1st Spec. Sess. (La. 2022).

Governor Edwards's veto letter explained that in failing to enact a congressional map that complies with the Voting Rights Act, the Legislature "disregarded the shifting demographics of the state," particularly the increase in the Black voting age population since the 2010 census. *Id.* The 2022 Regular Legislative Session convened on March 14, 2022. On March 29, the Legislature entered into a veto session and each house voted to override the Governor's veto—the first successful veto override in over a quarter century. Every Black legislator voted against the override.

The 2022 congressional map artificially limits Black voters' influence by "packing" them into CD 2 and "cracking" them among the State's five remaining districts. These district lines, coupled with high levels of racially polarized voting (as federal courts have repeatedly recognized), greatly dilute the ability of the State's Black voters to elect their candidates of choice. State voters have elected only four Black members of Congress since Reconstruction. Ex. 4 at 25. Louisiana has not had a Black Governor or Lieutenant Governor since Reconstruction. It has not had a Black U.S. Senator, Secretary of State, or Attorney General since joining the Union in 1812. Blacks are persistently underrepresented at every level and in every branch of the State's government.

Plaintiffs are Black citizens and voters in Louisiana, who are denied an equal opportunity to elect candidates of their choice because the Legislature's congressional map dilutes their votes, as well as the NAACP and Power Coalition, organizations working to empower and engage civic and political participation that now must divert resources to combat the discriminatory impacts of the congressional district plan. *See, e.g.*, Ex. 14 ¶¶ 13–14; Ex. 15 ¶¶ 20–23. Time is of the essence. Absent swift relief, the 2022 elections will be held using maps that violate Section 2 of the Voting Rights Act.

ARGUMENT

In order to prevail on a motion for a preliminary injunction, the movant must prove (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *Harding* v. *Edwards*, 487 F. Supp. 3d 498 (M.D. La. 2020), *appeal dismissed sub nom. Harding* v. *Ardoin*, No. 20-30632, 2021 WL 4843709 (5th Cir. May 17, 2021); *see also Janvey* v. *Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). 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). Because all four criteria are met here, the Court should issue an injunction.

I. Plaintiffs are substantially likely to prove that the Legislature's congressional district map violates Section 2 of the Voting Rights Act

Section 2 of the Voting Rights Act prohibits any "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). To prove a violation of Section 2 of the VRA in the redistricting context, Plaintiffs must satisfy the three preconditions the Supreme Court set out in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986): (1) Black voters are "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) Black voters are "politically cohesive"; and (3) the white majority "votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50–51; *see also LULAC* v. *Perry*, 548 U.S. 399, 425 (2006); *Citizens for a Better Gretna* v. *City of Gretna, La.*, 834 F.2d 496, 497 (5th Cir. 1987). Once all *Gingles* preconditions are met, the Court must examine "the totality of circumstances"—including the nine factors identified in the Senate report that accompanied the

1982 amendments to the Voting Rights Act—to determine whether "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44.

A. *Gingles* One: An additional, compact, majority-Black district can be drawn in Louisiana.

The Illustrative Plan presented by Plaintiffs' expert, Anthony Fairfax, demonstrates that Louisiana's Black population is sufficiently numerous and geographically compact to comprise a majority of the voting age population in two districts in the State's six-district congressional plan. Mr. Fairfax's Illustrative Plan performs as well as or better than the enacted congressional plan on every measure of customary redistricting principles, as well as the state's own redistricting guidelines as set out by the Louisiana legislature in Joint Rule 21. Ex. 17.

To establish the first *Gingles* precondition ("*Gingles* I") here, Plaintiffs must demonstrate that the Black voting age population is sufficiently numerous and geographically compact to form a second majority-Black congressional district in a six-district plan. Satisfying the first part of *Gingles* I, compactness, normally requires submitting as evidence hypothetical redistricting schemes in the form of illustrative plans. *See, e.g.*, *Fairley* v. *Hattiesburg, Miss.*, 584 F.3d 660, 669 (5th Cir. 2009). In assessing these plans, the issue is not whether plaintiffs' plan is "oddly shaped, but whether the proposal demonstrate[s] that a geographically compact district could be drawn." *Houston* v. *Lafayette Cnty., Miss.*, 56 F.3d 606, 611 (5th Cir. 1995) (emphasis omitted).

Compactness also requires accounting for "traditional districting principles such as maintaining communities of interest and traditional boundaries." *LULAC*, 548 U.S. at 433 (a compactness "inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries" because "[t]he recognition of

nonracial communities of interest reflects the principle that a State may not assume from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls") (quoting *Abrams* v. *Johnson*, 521 U.S. 74, 92 (1997)).

Mr. Fairfax's Illustrative Plan readily satisfies *Gingles* I. It is more compact than H.B. 1 and S.B. 5 by objective measures, adheres as well as or better than H.B. 1 and S.B. 5 on all traditional redistricting principles, and includes two congressional districts with a Black citizen voting age population of greater than 50%. Ex. 1 at 3–4, 12, 13. Plaintiffs' Illustrative Plan ensures equal population, contiguity, and compactness; minimizes or eliminates political subdivision splits, both of precincts and parishes; preserves communities of interest, including cities, landmarks, and census-designated places, and mitigates cracking of the Black population equal to or better than the enacted 2022 congressional map. Ex. 1 at 18–23. For example, legislators like Senator Hewitt emphasized that the 2022 congressional map kept census-designated places like the Fort Polk military base intact and "in connection with their surrounding communities." Senator Hewitt, Feb. 3 Senate and Governmental Affairs Testimony. The Illustrative Plan also preserves census-designated places, including the Fort Polk military base. Ex. 1 at 21–22. Mr. Fairfax's analysis underscores that the state could have achieved all of its stated redistricting objectives without diluting Black voting power.

B. *Gingles* Two and Three: Black Louisianans are politically cohesive and white Louisianans vote as a bloc to defeat candidates preferred by Black Louisianans

Gingles precondition II requires that Black voters in Louisiana are "politically cohesive," and precondition III requires that the white majority "votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate." *LULAC*, 548 U.S. at 425 (citation omitted). Plaintiffs, therefore, must prove (II) voting in Louisiana is highly polarized along racial lines and (III) under the enacted congressional map racially polarized voting ("RPV") will

result in the defeat of Black Louisianans' preferred candidates in majority-white districts. *Gingles*, 478 U.S. 56–63.

As shown in the accompanying expert report of Dr. Handley, these preconditions are met here. Ex. 2 at 1. Dr. Handley's analysis is in accord with the consistent finding by federal courts that voting in Louisiana is racially polarized. *See, e.g.*, *Terrebonne Par. Branch NAACP* v. *Jindal*, 274 F. Supp. 3d 395, 433–37 (M.D. La. 2017), *rev'd on other grounds*, *Fusilier* v. *Landry*, 963 F.3d 447 (5th Cir. 2020) (finding RPV in judicial elections in Terrebonne Parish); *St. Bernard Citizens For Better Gov't*, 2002 WL 2022589, at *6–7 (E.D. La. Aug. 26, 2002) (finding RPV in statewide gubernatorial and local parish elections); *La. State Conference of NAACP* v. *Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020) (holding that plaintiff had standing to challenge Louisiana's Supreme Court district map on the basis, in part, of allegations of polarized voting).

It is beyond dispute that Black voters in Louisiana have voted as a cohesive bloc. Dr. Handley used the standard statistical tool of ecological inference to review 15 biracial exogenous statewide elections from 2015 to 2020. Ex. 2 at 7. These 15 contests consist of recent statewide elections that include Black candidates, *id.*, which are considered the most probative evidence of RPV. *See League of United Latin Am. Citizens, Council No. 4434* v. *Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (holding that evidence from "elections between white candidates [is] generally less probative in examining the success of minority-preferred candidates . . . [than] elections involving black or Hispanic candidates"). In these 15 elections, voting was highly racially polarized. *Id.* at 7. The average percentage of Black voter support for the Black-preferred candidate was 83.8%, even when some contests had multiple candidates. *Id.*; *see Gingles*, 478 U.S. at 68 ("[I]t will frequently be the case that a black candidate is the choice of blacks, while a white

candidate is the choice of whites."). Moreover, in contests with just two candidates, the cohesion is stronger, with the support for the preferred Black candidate averaging 93.5%. Ex. 2 at 7.

Dr. Handley's analysis of nine recent *endogenous* congressional elections involving Black candidates shows the same pattern of Black voters voting as a cohesive bloc. *Id.* at 7. Analysis of voting patterns in endogenous elections—ones that involve districts at the same level of government at issue in the litigation—is important. *See Clark* v. *Calhoun Cnty.*, 88 F.3d 1393, 1397 (5th Cir. 1996).[4] This analysis included three elections in CD 2 and six elections in other congressional districts. Ex. 2 at 7–8 and App. B. All six of the elections outside CD 2 were racially polarized. *Id.*[5] CD 2 is the only district in Louisiana with a majority-Black population, and its current congressman is Representative Troy Carter, who is Black. Within all

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[4] However, while "exogenous elections are less probative than elections for the particular office at issue . . . 'the exogenous character of . . . elections does not render them nonprobative.'" *NAACP* v. *Fordice*, 252 F.3d 361, 370 (5th Cir. 2001(quoting *Rangel* v. *Morales*, 8 F.3d 242, 247 (5th Cir. 1993)). Moreover, "plaintiffs may not be denied relief simply because the absence of black candidates has created a sparsity of data on racially polarized voting in purely indigenous elections. Rather, plaintiffs' claims should stand or fall based upon the probative value of the evidence of racial bloc voting that they *have* adduced, along with the presence or absence of other factors demonstrating a lack of access to the political process." *Westwego Citizens for Better Government* v. *Westwego*, 872 F.2d 1201, 1209-10 (5th Cir. 1989) (emphasis added).

[5] However, Dr. Handley noted that the results for the 2020 election in Congressional District 2 were inconclusive. Ex. 2 at 7 and n.11. Three out of the four evaluations Dr. Handley preformed show polarized voting with a plurality of white votes supporting then-Representative Cedric Richmond's white opponent. Ex. 2 at 7 and App. B. Moreover, there are likely special circumstances to explain Mr. Richmond's success with white voters of a little over 50% in the 2018 election. The only white candidate on the ballot in the 2018 election was Jesse Schmidt. He was not a viable candidate, described in local news coverage as an "underfunded, long shot candidate." Ex. 18. White voters' support of Mr. Richmond dropped considerably in the 2020 election when a viable alternative white candidate was on the ballot. Special circumstances that explain a minority candidate's success should not be used defeat claims of vote dilution in otherwise racially polarized electorate. *See, e.g.*, *Rodriguez* v. *Bexar Cnty.*, 385 F.3d 853, 864 (5th Cir. 2004) (citing *Gingles*, 478 U.S. at 57); *Fusilier*, 963 F.3d at 447.

these endogenous elections, Black voters voted has a cohesive bloc. In CD 2, Black voters have supported their candidate of choice with a range of support from 80% to 96%. Ex. 2 at App. B. In the other six elections involving Black candidates, all of which involved multiple candidates, the voting patterns demonstrate that Black voter support was cohesive. Ex. 2 at 8. Of the six contests, four were decided at the primary stage, with the white candidate that was preferred by white voters prevailing. Two elections required a runoff, but due to white bloc voting, no Black candidate made it to the runoff in either case. Ex. 2 at App. B.

It is also beyond dispute that racial bloc voting by white voters nearly always results in the defeat of Black Louisianans' preferred candidates in majority-white districts. *Gingles*, 478 U.S. 56–63. While Section 2 does not guarantee Black electoral success, "[o]ne may suspect vote dilution from political famine." *Johnson* v. *De Grandy*, 512 U.S. 997, 1017 (1994). Dr. Handley found that in every one of the 15 statewide election contests in which a Black candidate was running, white voters voted in bloc against the candidate supported by Black-voters, preventing the Black voters' candidate of choice from being elected. Ex. 2 at 7. The average percentage of white voters for the Black-preferred candidate in these elections was only 11.7%. *Id.* Likewise, in the recent endogenous congressional elections, the Black-preferred candidate did not win in any district other than in CD 2. *Id.* at 8. White support for the Black congressional candidates in the six elections in districts outside of CD 2 ranged from 1.1% to 7.4%. *Id.* at App. B. For example, in CD 5 in 2020, Sandra Christopher, who is Black, was the plurality choice of Black voters, but less than 5% of white voters supported her and she did not even make it to the runoff election. *Id.* at 9. In Louisiana congressional elections, Black preferred candidates outside CD 2 fail to win or even advance to the runoffs. *Id.*

Dr. Handley also found that the recently enacted 2022 congressional map, like the 2011 map, offers only one district where Black voters will have the opportunity to elect their candidate of choice. *Id.* at 10–11, Table 4. Performing a functional analysis, Dr. Handley found Black-preferred candidates in recent statewide elections would have performed similarly under the enacted plan as they did under the 2011 map, and the new plan is therefore unlikely to result in the election of Black-preferred candidates in future congressional elections outside of CD 2. *Id.*

Dr. Handley also conducted an analysis of the extent to which Black voters would have greater electoral opportunities under Mr. Fairfax's Illustrative Plan, looking at likely voting patterns of Congressional Districts 2, 3, 4, 5 and 6 in the enacted plan. *Id.* at 12–13. Under Mr. Fairfax's plan, the additional majority-Black district, CD5, draws in parts of each of these districts. Dr. Handley found that in all of these districts, Black voters vote as a cohesive bloc. *Id.* at 13. The percentage of support of Black voters for Black-preferred candidates across all five districts that would contribute voters to illustrative CD 5 was 82.8% to 84.5%. *Id.*

Gingles preconditions II and III have been met. In Louisiana, the Black community is cohesive in support of its preferred candidates and white voters consistently vote in bloc to defeat these candidates.

II. The totality of the circumstances indicates that the Legislature's map denied Black voters a meaningful opportunity to elect their preferred candidates

As shown in detail in the accompanying expert reports of Dr. R. Blakeslee Gilpin and Dr. Traci Burch, each of the factors relevant to an assessment of the totality of the circumstances shows that the Legislature's congressional map deprives Black voters of a meaningful opportunity to elect their candidates of choice. *See Gingles*, 478 U.S. at 36–37 (setting forth relevant Senate factors). We summarize their findings briefly here.

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

Louisiana has been persistent and creative in seeking to prevent its Black citizens from voting. Louisiana maintained a Grandfather Clause until the Supreme Court struck down this device in 1915. *See* Ex. 3 at 30. Thereafter, the state enacted an Understanding Clause to replace it, which required Louisiana voters to "give a reasonable interpretation of any section of the federal or state constitution in order to vote." *Bossier Parish School Board* v. *Reno*, 907 F. Supp. 434, 455 (D.D.C. 1995) (Kessler, J., dissenting) (internal quotation marks omitted). Poll taxes and voter roll purges were also used to hinder Black registration. *Major* v. *Treen*, 574 F. Supp. 325, 340 (E.D. La. 1983). The state at one time "prohibited elected officials from helping illiterates" and established an all-white democratic primary, which completely excluded Black Louisianans from the political process between 1923 and the Supreme Court's condemnation of the practice in 1944. *See* Ex. 3 at 30; *Smith* v. *Allwright*, 321 U.S. 649 (1944). In 1950, citizenship tests and a prohibition against single-shot voting were instituted. *Major*, 574 F. Supp. at 340. Between 1940 and 1964, the States Rights Party "spearheaded a strong movement against black enfranchisement and judicially-directed desegregation." *Id.*

From 1965 to 1989, the U.S. Attorney General issued 66 objection letters (11 to the State and 55 to local governments) nullifying over 200 voting changes. Ex. 3 at 35. Louisiana's preclearance requirement was renewed in 1970, 1975, and 1982. *Id.* at 35. From 1990 until the preclearance regime was struck down in *Shelby County* v. *Holder*, 570 U.S. 529 (2013), the U.S. Attorney General issued 79 additional objection letters in response to voting related changes in the State. *See* Department of Justice, *Section 5 Objection Letters*, https://www.justice.gov/crt/section-5-objection-letters (last visited Apr. 14, 2022).

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

The post-1990 round of redistricting was also tainted by Voting Rights Act violations. Ex. 3 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." Ex. 19. 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 VRA. Ex. 3 at 39. 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.*

Local jurisdictions in the state have repeatedly been the subject of Section 5 objections and findings of liability under Section 2 of the VRA. Ex. 3 at 40–41.

2. Senate Factor 2: Louisiana voters are highly racially polarized

Federal courts have consistently found that voting in Louisiana is racially polarized to a very great extent. As described in detail, *supra* pp. 9–13, and in the expert report of Dr. Lisa Handley, the state's elections demonstrate stark patterns of racial polarization. In 2020, Louisiana's most recent congressional elections, voters in four of the five white majority districts had a choice between Black and white candidates. In each instance, the white candidate

prevailed with little Black support, while white support for Black candidates was virtually non-existent. *See* Ex. 2 at 8. Moreover, the gap between Black and white support for Black-preferred candidates is significant and consistent across elections at every level of government.

3. Senate Factor 5: Discrimination in Louisiana has produced severe socioeconomic disparities impairing the ability of Black Louisianans to participate in the political process

The ongoing effects of discrimination on Black Louisianans, which can be seen across multiple metrics, including economic, health, employment, living, and environmental conditions, hinder Black Louisianans' ability to participate in the political process in the state.

Economic: The U.S. Census Bureau's American Community Survey ("ACS") demonstrates that Black and Latino poverty rates are nearly three times as high as the white poverty rate in Louisiana. The median income for Black Louisianan households is about $29,000 less than that of white households. Ex. 4 at 10. Over three times as many Black households lack access to a vehicle as white households. *Id*. Moreover, Black Louisianans are underrepresented among small business owners. *Id*. Black Louisianans, while often located in areas of the State most affected by natural disasters, face more difficulty than white Louisianans in securing relief to rebuild homes and businesses after natural disasters occur. *Id*.

Health: Dramatic health disparities between Black and white Louisianans persist in Louisiana. According to the Centers for Disease Control and Prevention ("CDC"), in Louisiana, white men are expected to live over seven years longer than Black men and white women are expected to live over five years longer than Black women. Ex. 4 at 16–17.

Between 2016 and 2018, infant and child mortality rates among Black children were about twice as high as those for white children, Ex. 4 at 17. While rates of invasive cancer are similar for Black and white Louisianans, there is a statistically significant disparity in the mortality rate from invasive cancers (211.2 deaths per 100,000 adults for Black Louisianans vs.

173.6 deaths per 100,000 for white Louisianans). Ex. 4 at 16. According to the CDC, 42.9% of Black Louisianans are obese, compared to 32.4% of white Louisianans. *Id*. According to the 2019 ACS, white Louisianans are more likely to have health insurance than Black Louisianans. Ex. 4 at 17–18.

Employment: Severe racial discrimination in employment persists in Louisiana. Between 2011 and 2021, nearly 8,700 charges of race- or color-based employment discrimination were filed in Louisiana. Ex. 4 at 10.

Education: Black Louisianans have faced educational discrimination throughout Louisiana's history, and de facto racial segregation remains a persistent feature of the State's educational system. As recently as 2017, ProPublica's *Miseducation* project demonstrated high levels of racial segregation within 50% of all Louisiana school districts, with nine out of 68 school districts over 87% non-white. Ex. 4 at 7.

School segregation detrimentally affects the academic performance of minority students. Despite comprising 43.5% of public school students in the 2017-2018 school year, Black students were only 22.9% of students in gifted and talented programs and 35.5% of students taking Advanced Placement courses. Ex. 4 at 8. Two-thirds of the students with a school suspension that school year were Black. Ex. 4 at 8. Among current students, there is a racial gap in assessment test scores. Black eighth graders score 30 points lower in Math on average and 26 points lower in Reading on average than white eighth graders. Ex. 4 at 8.

Environmental living conditions: As a result of racial residential segregation, chemical plants and other hazards are located near heavily Black residential areas. In Cancer Alley, an area of Louisiana between New Orleans and Baton Rouge, studies have linked elevated levels of air pollution to increased risk of cancer, COVID-19, and asthma. Ex. 4 at 18. Flooding in

Louisiana disproportionately affects Black neighborhoods. Ex. 4 at 16. When Hurricane Katrina hit southeast Louisiana in 2005, the damage was most extensive in the region's Black neighborhoods. *Id.* Mortality rates for adults 30 years and older were significantly higher for Black residents of Orleans Parish than white residents. *Id.* at 18. In the aftermath of Hurricane Katrina, Black New Orleans residents were more likely to be displaced, and for longer periods, than white New Orleans residents, and Black residents had a more difficult time returning to their neighborhoods due to delays in disaster relief and rebuilding efforts. *Id.*

Criminal Justice & Incarceration: As of 2021, Louisiana has the highest incarceration rate in the country. *Id.* at 20. Black Louisianans are dramatically overrepresented in the incarcerated population: despite comprising just 33% of state residents, Black Louisianans are imprisoned at a rate double their presence in the population. Nearly 66% of prisoners, 49% of probationers, and 70 % of parolees in Louisiana are Black. Ex. 4 at 20.

4. Senate Factor 6: Louisiana political campaigns are marked by overt and subtle racial appeals

Louisiana's political campaigns have persistently been characterized by both explicit and implicit racial appeals. Most notable is the political career of former state legislator and Ku Klux Klan leader and long-time neo-Nazi David Duke. In 1989, Duke, who founded the National Association for the Advancement of white People, openly appealed to white racial fears in his numerous bids for public office in Louisiana. Ex. 4 at 23. Duke has also endorsed other Louisiana politicians in recent elections, including former Louisiana Governor Mike Foster, who went on to win 84% of the white vote. *Id.*

Several other candidates have likewise been associated with white-supremacist groups. In 2002, Steve Scalise, the current U.S. representative for CD 1 (which is 72.7% white) spoke at

a conference organized by a white supremacist group associated with neo-Nazi activists while serving as a Louisiana state representative. Ex. 20.

Even where there is no explicit endorsement of white supremacy, candidates regularly attempt to make racial resentment and fear salient in the minds of voters. Ex. 4 at 22. In 2012, a candidate for Louisiana Supreme Court District 5, Justice Jeff Hughes, darkened the image of his Black opponent, John Guidry, in campaign materials, and referred to Guidry as an "affirmative action Democrat." *La. State Conf. of the NAACP*, 490 F. Supp. 3d at 993. 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, and in which Rispone blamed Governor Edwards for crimes committed by people after early release from prison. Ex. 4 at 23. The images are juxtaposed with all-white images of Rispone with his constituents. *Id*.

5. Senate Factor 7: Black candidates in Louisiana are underrepresented in office and rarely win elections outside majority-minority districts

Despite constituting approximately one-third of the Louisiana population, Black Louisianans remain underrepresented in public office at all levels. Louisiana has never had a Black U.S. Senator. Louisiana has only elected four Black congresspeople since Reconstruction. Ex. 4 at 25. Representative Troy Carter (the only Black member of Louisiana's current House delegation) is from the CD 2, a majority-Black district created in the 1980s as a result of a Section 2 challenge to Louisiana's congressional scheme.

This significant lack of representation extends beyond representation in the federal government. Louisiana has not had a Black Governor or Lieutenant Governor since Reconstruction. Ex. 4 at 25. Louisiana has never had a Black Secretary of State or Attorney General, seats that directly impact voting and criminal justice. Currently, Black legislators hold

25% of state legislative seats (36 of 144). Ex. 4 at 25. There are ten Black State Senators (10/39) and 26 Black members of the State House (26/105). All were elected from majority-Black districts. *Id.*

Less than a quarter of Louisiana mayors are Black (71/304). *Id*. Only two of the eight elected Board of Elementary and Secondary Education members are Black. Ex. 4 at 25–26.

Black judges have also 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." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 445. Today, 26.1% of Louisiana's state court judges are Black. Ex. 4 at 25. Of the 42 district courts in the state, Black women serve or have served as judges on only six district courts and Black men serve or have served as judges on 13 district courts. Only one Black justice sits on the Louisiana Supreme Court, Ex. 4 at 26, and she was elected in a majority-Black district created as a result of a Section 2 challenge to Louisiana's at-large judicial electoral scheme. *In re Off. of Chief Just., Louisiana Supreme Ct.*, 2012-1342, 101 So. 3d 9, 21 (La. Oct. 16, 2012).

6. Senate Factor 8: Louisiana is not responsive to Black residents

As discussed above, Black Louisianans disproportionately suffer from the effects of racial discrimination across many areas, including health, employment, and education. In each of these areas, severe racial disparities are indicative of a failure on the part of elected officials to address the needs of Black residents.

During the redistricting roadshow, Black Louisianans often and explicitly connected the lack of responsiveness of officials to race. For instance, at a meeting in Lake Charles, Lydia Larse, a Black resident, said: "I feel as though my voice is not being heard because y'all don't need us. We're not needed. You don't care." Ex. 4 at 27.

7. Senate Factor 9: The justification for the new congressional map is tenuous

The sponsors and advocates of H.B. 1 and S.B. 5 provided several justifications for supporting these bills over maps that provided for two majority-Black districts in Louisiana. However, many of the given justifications lacked evidentiary support or were based on misunderstandings. The final plan adopted by the Louisiana legislature did not achieve the very redistricting principles the bill sponsors stressed were important.

Sponsors of H.B. 1 and S.B. 5 claimed that traditional redistricting principles, such as compactness, maintaining communities of interest, or respecting political boundaries, were important. When presented with alternative bills that added a second majority-Black district while outperforming H.B. 1 and S.B. 5 on those metrics, they backed away from these principles. In fact, by the end of the process, supporters of H.B. 1 in particular shifted their legislative priorities. Instead of compactness or other measures, Representative Magee said that the primary criterion for drawing the congressional districts was "to honor the traditional boundaries as best as possible." Ex. 4 at 39. Representative Magee said the drafters of H.B. 1 prioritized the traditional boundaries after looking at all the other criteria they could have used. Yet Representative Magee publicly stated that he did not even look at any performance data on this or any other metric to compare H.B. 1 with plans that would create two majority-Black districts.

III. Plaintiffs will suffer irreparable injury absent an injunction

If preliminary relief is denied, Plaintiffs and similarly situated Louisiana voters will suffer irreparable injury. Vote dilution in violation of Section 2 of the VRA "irreparably injures the plaintiffs' right to vote and to have an equal opportunity to participate in the political process." *Patino* v. *City of Pasadena*, 229 F. Supp. 3d 582, 590 (S.D. Tex. 2017); *Casarez* v.

Val Verde Cty., 957 F. Supp. 847, 865 (W.D. Tex. 1997) (holding that violation of local election laws and the Voting Rights Act was "a harm monetary damages cannot address").

Plaintiffs have a strong interest in exercising their right to vote free from a racially discriminatory districting scheme that violates Section 2 of the VRA. But if Defendant moves forward with the current legally non-compliant map, Plaintiffs will have no choice and ultimately be forced to vote in districts that dilute their vote. *See, e.g.*, Ex. 5 ¶¶ 8-9; Ex. 13 ¶ 12; Ex. 11 ¶ 12. Plaintiffs residing in "packed" and "cracked" districts will not have equal access to their congressional representatives as compared to voters in other districts. *See, e.g.*, Ex. 10 ¶ 10; Ex. 7 ¶ 12.

Plaintiffs, and all similarly situated Black voters, will be deprived of the opportunity to elect candidates of their choice. *Id.* And "once the election occurs, there can be no do-over and no redress," so the injury to "voters is real and completely irreparable if nothing is done to enjoin" the challenged conduct. *League of Women Voters of N.C.* v. *North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). The "restriction on [this] fundamental right to vote therefore constitutes irreparable injury." *Michigan State A. Philip Randolph Inst.* v. *Johnson*, 833 F.3d 656 (6th Cir. 2016).

IV. The balance of equities and the public interest weigh in favor of an injunction

When the defendant is a government actor, courts consider the harm to the opposing party and the weight of the public interest together. *See Nken*, 556 U.S. at 435. In this case, on balance, preserving the rights of Louisianans is strongly in the public interest and the threat of disenfranchising Black Louisianans vastly outweighs the minimal potential administrative burden that an injunction might impose on Defendant.

The injury faced by Plaintiffs is grave—a denial of their fundamental right to vote. *See Dunn* v. *Blumstein*, 405 U.S. 330, 336 (1972) (right to vote is of particular public importance because it is "preservative of all rights" (internal quotation marks omitted)). The public interest "favors permitting as many qualified voters to vote as possible." *Obama for Am.* v. *Husted*, 697 F.3d 423, 437 (6th Cir. 2012). It will serve the public interest for Defendant to be prohibited from enforcing, implementing, or conducting elections using a map that violates Section 2.

In contrast, the harm, if any, that this injunction would cause to the State is minimal. A state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found to violate Section 2 of the VRA. On the contrary, courts have found that such injunctions benefit the state. *Giovani Carandola Ltd.* v. *Bason*, 303 F.3d 507, 521 (4th Cir. 2002); *see also Charles H. Wesley Educ. Found., Inc.* v. *Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005). Further, "[t]he public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve." *Casarez*, 957 F. Supp. at 865 (quoting *Nobby Lobby, Inc.* v. *City of Dallas*, 767 F. Supp. 801, 821 (N.D. Tex. 1991), *aff'd*, 970 F.2d 82 (5th Cir. 1992)). On balance, any harm the State can identify pales in comparison to the harms suffered by Plaintiffs in this case.

Though the state may argue that it is too late in the election cycle to implement a new congressional plan without risking voter confusion, the facts of this case are not at odds with the so-called "*Purcell* principle." The Supreme Court and the Fifth Circuit have recognized that the *Purcell* principle warns "lower federal courts should ordinarily not alter . . . election rules *on the eve of an election*." *Republican Nat'l Comm.* v. *Dem. Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (emphasis added); *Tex. Democratic Party* v. *Abbott*, 978 F. 3d 168, 181–82 (5th Cir. 2020). Under *Purcell*, courts should avoid issuing orders that may cause voters to become

confused and stay away from the polls. *Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006); *Mi Familia Vota* v. *Abbott*, 497 F. Supp. 3d 195, 221–22 (W.D. Tex. 2020). Historically, court-ordered changes to the impending election process that do not pass muster under *Purcell* are those that would confuse the electorate and that are ordered immediately before an impending election. *See, e.g.*, *Veasey* v. *Perry*, 769 F.3d 890, 893–95 (5th Cir. 2014) (seeking an injunction that would require new election procedure nine days before election period, and which would require the state to train 25,000 new poll workers). The Supreme Court's recent redistricting rulings are consistent with granting a preliminary injunction here. *Compare, e.g.*, *Merrill* v. *Milligan*, 142 S. Ct. 879, 879 (2022) (applying *Purcell* to stay injunction against Alabama's congressional map entered seven weeks before the beginning of primary election), *with Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 142 S. Ct. 1245 (2022) (striking down Wisconsin's state legislative plans five months before the beginning of primary election). Here, the election is over six months away, meaning the risk of confusing the electorate is significantly reduced. Moreover, courts have noted that if there is a countervailing threat to the deprivation of the fundamental right to vote, this threat outweighs the potential harm laid out in the *Purcell* doctrine. *See Self Advocacy Sols. N.D.* v. *Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020); *Mi Familia Vota*, 497 F. Supp. 3d at 222. The chaos and harm that would be suffered by the Louisiana voters if maps violating Section 2 of the VRA are used in the 2022 elections would result in precisely the type of confusion the *Purcell* doctrine seeks to avoid. The sooner this Court imposes an injunction on Defendant, the more strongly the public interest will be served.

CONCLUSION

For the foregoing reasons, the preliminary injunction should be granted.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

DECLARATION OF JOHN ADCOCK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, John Adcock, hereby declare as follows:

1. I am over 18 years of age and am competent to make this declaration.

2. I am an attorney in good standing with the Louisiana Bar and able to practice before the Middle District of Louisiana.

3. I have personal knowledge of the statements made in this affidavit and each is true and correct.

4. I am an attorney with John Adcock Law LLC.

5. I am counsel for Plaintiffs Press Robinson, Edgar Cage, Dorothy Nairne, Edwin René Soulé, Alice Washington and Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, Louisiana State Conference of the NAACP ("Louisiana NAACP"), Power Coalition for Equity and Justice ("Power Coalition"), in the above-captioned action and submit this declaration to provide the Court true and correct copies of certain documents submitted in support of Plaintiffs' Motion for Preliminary Injunction:

Exhibit 1 is a true and correct copy of the expert report of Tony Fairfax, dated April 14, 2022.

Exhibit 2 is a true and correct copy of the expert report of Dr. Lisa Handley, dated April 14, 2022.

Exhibit 3 is a true and correct copy of the expert report of Dr. Blakeslee Gilpin, dated April 14, 2022.

Exhibit 4 is a true and correct copy of the expert report of Dr. Traci Burch, dated April 14, 2022.

Exhibit 5 is a true and correct copy of the declaration of Dr. Press Robinson, dated April 14, 2022.

Exhibit 6 is a true and correct copy of the declaration of Edgar Cage, dated April 14, 2022.

Exhibit 7 is a true and correct copy of the declaration of Dr. Dorothy Nairne, dated April 14, 2022.

Exhibit 8 is a true and correct copy of the declaration of Edwin René Soulé, dated April 14, 2022.

Exhibit 9 is a true and correct copy of the declaration of Dr. Alice Washington, dated April 14, 2022.

Exhibit 10 is a true and correct copy of the declaration of Clee Earnest Lowe, dated April 14, 2022.

Exhibit 11 is a true and correct copy of the declaration of Davante Lewis, dated April 14, 2022.

Exhibit 12 is a true and correct copy of the declaration of Martha Davis, dated April 14, 2022.

Exhibit 13 is a true and correct copy of the declaration of Ambrose Sims, dated April 14, 2022.

Exhibit 14 is a true and correct copy of the declaration of Michael W. McClanahan, dated April 14, 2022.

Exhibit 15 is a true and correct copy of the declaration of Ashley Shelton, dated April 14, 2022.

Exhibit 16 is a true and correct copy of the following web page: 2022 Elections, La. Sec'y of State, publicly available at https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2022.pdf.

Exhibit 17 is a true and accurate copy of Louisiana State Legislature, *JRule 21*, publicly available at https://www.legis.la.gov/Legis/Law.aspx?d=1238755.

Exhibit 18 is a true and correct copy of the article entitled "With Clear Path to Re-Election, Cedric Richmond Can Look to a Bigger Platform in Democrats' Future." The article, authored by Jessica Williams, was published on NOLA.com on October 23, 2018 and is publicly available at https://www.nola.com/news/article_c4191476-a8f8-58b6-93af-5d8663ed3731.html.

Exhibit 19 is a true and correct copy of a Letter to Jimmy Dimos, then-Speaker of the Louisiana House of Representatives, from John R. Dunne, then-Assistant Attorney General for Civil Rights. The letter is dated July 15, 1991 and is publicly available at https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1730.pdf.

Exhibit 20 is a true and correct copy of the article entitled "Steve Scalise's Attendance at 2002 White Nationalists Event Ignites Political Firestorm." The article, authored by Julia O'Donoghue, was published on NOLA.com on December 30, 2014 and is publicly available at https://www.nola.com/news/politics/article_b608193c-c9f4-531a-8e24-01534407c15a.html.

Exhibit 21 is a true and correct copy of a letter to Clay J. Schexnayder, Speaker of the Louisiana House of Representatives, from Governor John Bel Edwards. The letter is dated March 9, 2022 and is available publicly at https://gov.louisiana.gov/assets/docs/Letters/SchexnayderLtr20220309VetoHB1.pdf.

Exhibit 22 is a true and correct copy of a letter to the Louisiana State and Governmental Affairs Committee from Michael Pernick, et al. The letter is dated December 14, 2021 and is available publicly at https://www.naacpldf.org/wp-content/uploads/2021.12.14-Louisiana-Congressional-Redistricting-Advocacy-Follow-Up-Letter.pdf.

Dated: April 15, 2022

Respectfully submitted,

By: /s/*John Adcock*

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

PROPOSED ORDER GRANTING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

This Court has considered Plaintiffs' motion for preliminary injunction and supporting authorities, the submissions of the other parties, and the evidence and pleadings of record, and finds that Plaintiffs have clearly established their burden of persuasion as to each of the four elements required for a preliminary injunction.

Plaintiffs' motion for preliminary injunction is therefore **GRANTED**.

IT IS SO ORDERED:

Defendants, as well as their agents and successors in office, are **PRELIMINARILY ENJOINED** from enforcing or giving any effect to the boundaries of the congressional districts as enacted in La. Rev. Stat. § 18:1276, including conducting any further congressional elections under the enacted map.

The Court further **ORDERS** that Defendant Louisiana Secretary of State Kyle Ardoin shall conduct the November 8, 2022 Congressional Election Open Primary and December 10, 2022 General Elections using the Congressional districts defined in the Illustrative Plan submitted by the Robinson Plaintiffs. The Court, however, stays execution of this paragraph of its order until the adjournment of the current legislative session, June 6, 2022, in order to provide the Louisiana Legislature an opportunity to enact a map compliant with Section 2 of the Voting Rights Act.

Should the Legislature pass a new Congressional plan on or before June 6, 2022, the parties shall have 5 days from the date of passage by the Legislature to notify the Court of their positions with respect to whether the Legislature's plan is sufficient to remedy the violation of Section 2 of the Voting Rights Act alleged in the Complaint. However, absent further action by this Court, this Order shall remain in effect, and the 2022 Congressional Elections shall be conducted pursuant to the Robinson Plaintiffs' Illustrative Plan.

SO ORDERED this _____ day of _____, 2022.

_____
United States District Judge

EXHIBIT F

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

GALMON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard, for the reasons set forth herein and in the memorandum of law filed concurrently with this motion, and as supported by the materials submitted therewith, respectfully move for an order preliminarily enjoining Defendant R. Kyle

Ardoin, in his official capacity as Louisiana Secretary of State, from enforcing the boundaries of the congressional districts as drawn in House Bill 1 ("HB 1").

A preliminary injunction is warranted here because Plaintiffs are likely to succeed on the merits of their claim that HB 1 violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, by failing to include a second congressional district in which Black voters have the opportunity to elect their preferred candidates. Louisiana has a Black population sufficiently large and geographically compact to create an additional majority-Black congressional district that includes the Baton Rouge area and the delta parishes along the Mississippi border. Rather than draw an additional Black-opportunity district as required by federal law, the Louisiana State Legislature instead chose to limit the ability of Black Louisianians in this area to elect candidates of their choice to Congress, thus diluting the voting strength of a politically cohesive minority group in violation of Section 2. *See Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994). Plaintiffs have shown that they have satisfied the threshold preconditions established in *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986), and that, considering the totality of circumstances, "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by members of Louisiana's Black community. 52 U.S.C. § 10301(b).

Moreover, Plaintiffs will suffer irreparable injury to their fundamental voting rights without preliminary injunctive relief. *See, e.g.*, *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). The balance of equities and the public interest favor an injunction that "would result in expanded voting opportunities for Louisiana voters." *Harding v. Edwards*, 487 F. Supp. 3d 498, 527 (M.D. La. 2020); *see also, e.g.*, *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp.

3d 1338, 1348–49 (N.D. Ga. 2015) (finding that "the harm [plaintiffs] would suffer by way of vote dilution outweighs the harm to the [defendant]" and that "the public interest is best served by ensuring . . . that all citizens . . . have an equal opportunity to elect the representatives of their choice"). And given that Louisiana's candidate qualifying period does not begin until the end of July—more than *three months* from now—there is ample time for the adoption and implementation of a remedial congressional plan.

Plaintiffs therefore request that the Court issue a preliminary injunction enjoining Defendant from enforcing or giving any effect to the boundaries of the congressional districts as drawn in HB 1, including barring Defendant from conducting any congressional elections under the enacted map, and ensure that necessary remedies are timely adopted and a lawful congressional map is in place in advance of this year's midterm elections.

Plaintiffs further request that the Court waive the posting of security as otherwise required by Federal Rule of Civil Procedure 65(c). *See, e.g.*, *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604, 652 (M.D. La. 2015) (security requirement "may be waived where the gravity of interest is great and no proper showing of a harm's likelihood or a probable loss is made"); *see also New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1307 n.33 (N.D. Ga. 2020) (exercising discretion to waive security in voting rights case).

[SIGNATURE BLOCK ON NEXT PAGE]

Dated: April 15, 2022

Respectfully submitted,

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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

***GALMON* PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Consider at the outset two critical facts: Louisiana has six congressional districts and a Black population of over 33%—one-third of the state's population. Given this demographic reality, it is unsurprising that voices across Louisiana called for the creation of a second Black-opportunity congressional district during the latest round of redistricting. This chorus, which shared the simple belief that the state's congressional delegation ought to reflect its population, came from all quarters. Activists, community leaders, and ordinary Louisianians petitioned lawmakers. Legislators introduced multiple maps that included a second majority-Black district. And Governor John Bel Edwards pledged to veto any new map that failed to comply with the requirements of federal law. Governor Edwards was correct: The creation of a second district in which Black voters have the opportunity to elect their candidates of choice is not only the fairest result for the people of Louisiana—it is *required* by Section 2 of the Voting Rights Act of 1965.

Despite the mandates of federal law and the entreaties of citizens and government officials alike, the Louisiana State Legislature enacted House Bill 1 ("HB 1"), drawing a new congressional map that dilutes the votes of the state's Black citizens. Louisiana has a Black population sufficiently large and geographically compact to create a second majority-Black congressional district that includes the Baton Rouge area and the delta parishes along the Mississippi border. Rather than draw this district as required by federal law, the Legislature engaged in textbook examples of "packing" and "cracking": The new plan packs Black voters into the Second Congressional District and cracks the rest among the state's remaining, predominantly white districts. Consequently, Louisiana's new congressional map—combined with the state's racially polarized voting, the severe socioeconomic disparities between Black and white Louisianians, and the ongoing effects of a tragic history of discrimination and racial appeals in campaigns—denies the state's Black voters equal access to the political process in violation of Section 2.

This case calls for a straightforward application of settled Voting Rights Act precedent—no more, no less. Without this Court's intervention prior to the 2022 elections, Louisiana will subject its Black citizens, including Plaintiffs, to an unlawful congressional districting plan and irreparably violate their fundamental right to vote. Plaintiffs are highly likely to succeed on the merits of their Section 2 claim, and given Louisiana's late election calendar, there is more than enough time to feasibly draw and implement a remedial plan. Plaintiffs therefore request that the Court preliminarily enjoin implementation of Louisiana's enacted congressional map and ensure the creation of an additional congressional district in which Black voters have the opportunity to elect their candidates of choice.

BACKGROUND

Over the past decade, Louisiana's population grew by more than 120,000 people. *See* Ex. 1 ¶ 13.[1] The entirety of this growth is attributable to the state's minority population. *Id.* While the state's Black population increased by 3.8% overall between 2010 and 2020, its white population *decreased* by 5.1%. *Id*. By 2020, Louisiana's Black residents comprised 33.13% of the state's population. *Id*.

Throughout the redistricting process that followed the 2020 census, Black Louisianians and civil rights groups called for the enactment of a second congressional district where minority voters would have a realistic opportunity to elect their preferred candidates. For example, at a public meeting of the Legislature's joint redistricting committee in Baton Rouge on November 16, 2021, residents pointed out that while Black Louisianians make up one-third of the state's population, only one of Louisiana's six congressional districts is majority Black. Representative Ted James, chair of the Legislative Black Caucus, emphasized this imbalance during his five-

[1] All exhibits are attached to the Declaration of Darrel J. Papillion, filed concurrently with this motion.

minute speech, repeating, "One third of six is two." Ex. 10. However, as representatives of the Public Affairs Research Council of Louisiana concluded, the Legislature "disregarded many of the public comments and much of the hours of testimony they received and fell into age-old patterns of protecting incumbent officials, political parties and personal allies." Ex. 11. They noted in particular that "[l]awmakers rejected overwhelming calls from people who attended hearings around the state and at the Louisiana Capitol to expand the number of majority-minority districts across several of the maps. It's not clear the Legislature made any significant changes to district lines, big or small, based on citizen input." *Id.*

As the Legislature deliberated, Senator Cleo Fields—who observed that "[i]t would be unconscionable for [the Legislature] to pass a plan with a single Black district"—introduced *three* maps that included two majority-Black districts. Ex. 12. Similar proposals were offered by Senators Karen Carter Peterson, Gary Smith, Gerald Boudreaux, Jay Luneau, and Joseph Bouie, Jr., many of which included a new Fifth Congressional District that would afford Black voters the opportunity to elect their preferred candidates. *Id.* But none of these maps was adopted by the Legislature. Instead, during an extraordinary legislative session that commenced on February 2, 2022, the House passed HB 1, which established a map that largely mirrors the 2011 congressional plan and preserves Louisiana's lone majority-Black congressional district. Ex. 13. The Senate in turn passed its own map, Senate Bill 5 ("SB 5"), which also included only a single minority-opportunity district. Ex. 14. Notwithstanding objections that the failure to draw a second majority-Black congressional district dilutes the votes of Louisiana's minority communities, the Legislature sent HB 1 and SB 5 to Governor Edwards's desk following final votes on February 18. Ex. 15.

Consistent with his earlier pledge to veto any congressional map that "suffer[s] from defects in terms of basic fairness," Ex. 16, Governor Edwards vetoed the proposed maps on March 9, 2022. In his accompanying message, he explained that he

> vetoed the proposed congressional map drawn by Louisiana's Legislature because it does not include a second majority African American district, despite Black voters making up almost a third of Louisianans per the latest U.S. Census data. This map is simply not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act. The Legislature should immediately begin the work of drawing a map that ensures Black voices can be properly heard in the voting booth. It can be done and it should be done.

Ex. 17; *see also* Ex. 18. Rather than heed this advice and draw a new congressional plan that complies with Section 2, the Legislature overrode Governor Edwards's veto of HB 1 on March 30, 2022. Ex. 19.

Louisiana's new congressional map packs Black voters into the state's only majority-Black district and cracks other Black voters among districts that extend into predominantly white communities in the southern, western, and northern reaches of the state. Consequently, the Second Congressional District, a serpentine district that snakes through New Orleans and Baton Rouge to collect minority voters, has a Black voting-age population of 58.67%, Ex. 1 ¶ 40—far more than is needed for Black voters to elect their candidates of choice in the district. Meanwhile, three of the state's five parishes with the highest Black populations—East Carroll Parish (70.7%), Madison Parish (63.5%), and Tensas Parish (55.8%)—are located in the predominantly white Fifth Congressional District. Ex. 1, Ex. C-1.

LEGAL STANDARD

A preliminary injunction "should issue" when a plaintiff shows

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the

> injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Speaks v. Kruse, 445 F.3d 396, 399–400 (5th Cir. 2006).

ARGUMENT

Plaintiffs readily satisfy the four required elements for issuance of a preliminary injunction.

I. Plaintiffs are substantially likely to prove that HB 1 violates Section 2 of the Voting Rights Act.

Section 2 of the Voting Rights Act prohibits any "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). This includes the

> manipulation of district lines [to] dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.

Johnson v. De Grandy, 512 U.S. 997, 1007 (1994).

To prevail on their Section 2 claim, Plaintiffs must show that (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group "is politically cohesive"; and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). Once Plaintiffs make this threshold showing, the Court must examine "the totality of circumstances"—including the nine factors identified in the Senate report that accompanied the 1982 amendments to the Voting Rights Act—to determine whether "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–45; *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991).

Significantly, "[n]o one of the factors is dispositive; the plaintiffs need not prove a majority of them; [and] other factors may be relevant." *Westwego Citizens*, 946 F.2d at 1120; *see also NAACP v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001) (explaining that 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" (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))).

A. *Gingles* One: A second compact, majority-Black district can be drawn in Louisiana.

Plaintiffs satisfy the first *Gingles* precondition because it is possible to "creat[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (plurality opinion) (quoting *De Grandy*, 512 U.S. at 1008). The numerosity requirement of this precondition involves a "straightforward," "objective, numerical test: 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).

Expert demographer William Cooper has offered three illustrative plans that unequivocally satisfy the first *Gingles* precondition. *See, e.g.*, *Terrebonne Par. Branch NAACP v. Edwards*, 399 F. Supp. 3d 608, 611 (M.D. La. 2019) (first *Gingles* precondition satisfied based on illustrative maps). Mr. Cooper's illustrative maps demonstrate that Louisiana's Black community is sufficiently large and geographically compact to comprise more than 50% of the voting-age population in a second congressional district that connects the Baton Rouge area and St. Landry Parish with the delta parishes along the Mississippi border. *See* Ex. 1 ¶¶ 47, 60, 66, 71. Notably,

Mr. Cooper's illustrative maps are nearly as or even more compact than the new plan drawn by HB 1. *Id.* ¶¶ 72–77. They also comply with other traditional districting principles, including population equality, contiguity, maintaining political boundaries, and avoiding pairing of incumbents, *see id.* ¶¶ 52–56—all of which were guidelines adopted by the Legislature during this past redistricting cycle. *See* Ex. 20.

As described in the declarations of Christopher Tyson and Charles Cravins, a congressional district that includes the Baton Rouge area, St. Landry Parish, and the delta parishes along the Mississippi border would unite Louisianians with shared historical, familial, and economic interests. *See* Exs. 4–5. Baton Rouge has long served as the urban anchor for the delta parishes, providing educational and economic opportunities that link the state capital with communities to the north along the Mississippi River. Ex. 4 ¶¶ 6–11. And Baton Rouge and St. Landry Parish similarly possess strong economic and educational ties. Ex. 5 ¶¶ 3–6.

Moreover, Dr. Maxwell Palmer confirmed that Black voters would be able to elect their preferred candidates in each of Mr. Cooper's illustrative majority-Black districts. Under all three maps, Black-preferred candidates would have won at least 14 of 18 analyzed elections in the new majority-Black districts, with an average of at least 55% of the vote. *See* Ex. 2 ¶¶ 25–26. Plaintiffs therefore satisfy the first *Gingles* precondition. *See Davis v. Chiles*, 139 F.3d 1414, 1425 (11th Cir. 1998) (first *Gingles* factor requires "an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate").

B. *Gingles* Two: Black Louisianians are politically cohesive.

Plaintiffs also satisfy the second *Gingles* precondition because Louisiana's Black voters 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.

Dr. Palmer analyzed political cohesion and racially polarized voting across the state and in each individual congressional district. *See* Ex. 2 ¶ 6. To perform his analysis, Dr. Palmer used official election data from 2012 to 2020 and a widely accepted methodology called ecological inference analysis. *See id.* ¶¶ 9–11; *see also, e.g.*, *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1305 (M.D. Ga. 2018) (recognizing ecological inference as "the 'gold standard' for use in racial bloc voting analyses"), *aff'd*, 979 F.3d 1282 (11th Cir. 2020).

Dr. Palmer found "a clear pattern of racially polarized voting" statewide and in each individual congressional district. Ex. 2 ¶¶ 21–22. His analysis shows that Black Louisianians voted cohesively in most elections over a decade span. *Id.* ¶ 17. In 18 of the 22 elections he analyzed, Black voters had clearly identifiable preferred candidates and voted as a bloc for these candidates with an average of 91.4% of the vote. *Id.* ¶¶ 17–18. These results more than satisfy the legal threshold of cohesive voting, and Plaintiffs therefore satisfy the second *Gingles* precondition. *See* 478 U.S. at 56 ("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.").

C. *Gingles* Three: White Louisianians engage in bloc voting to defeat Black-preferred candidates.

Finally, Plaintiffs satisfy the third *Gingles* precondition because, in the area where Mr. Cooper proposes a new majority-Black district, "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidates." 478 U.S. at 51.

Dr. Palmer found high levels of white bloc voting in opposition to the candidates whom Black voters cohesively supported. In 17 of the 18 elections where Black voters had a preferred candidate, the white majority voted as a bloc against the Black-preferred candidate with an average

of 82.9% of the vote. Ex. 2 ¶¶ 18–19. Dr. Palmer found similar results exist in each individual congressional district. *Id.* ¶ 22.

The effect of this bloc voting is unmistakable: The candidates preferred by white voters won 18 of the 20 elections analyzed, while Black-preferred candidates prevailed only *twice* across the same elections. *Id.* ¶¶ 23–24. In short, Black Louisianians' candidates of choice are consistently defeated by white bloc voting statewide and in each of the state's congressional districts, except where Black voters make up a majority of eligible voters—thus satisfying the third *Gingles* precondition. *See* 478 U.S. at 68 ("Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice.").

D. Under the totality of circumstances, HB 1 denies Black voters equal opportunity to elect their preferred candidates to Congress.

Considering the "totality of circumstances," HB 1 denies Black Louisianians an equal opportunity to elect their preferred congressional representatives. 52 U.S.C. § 10301(b). Notably, "it 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." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1342 (11th Cir. 2015) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)). This is not an unusual case.

The factors outlined in the Senate Judiciary Committee report accompanying the 1982 Voting Rights Act amendments—the "Senate Factors"—are "typically relevant to a § 2 claim" and guide this analysis. *LULAC*, 548 U.S. at 426; *see also Gingles*, 478 U.S. at 36–37 (listing Senate Factors). They 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, at 29 (1982)); *see also Westwego Citizens*, 946 F.2d at 1120.

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

As courts have recognized—and as explored in the expert report of Dr. Allan Lichtman, *see* Ex. 3—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). These discriminatory actions have evolved over the years, but they have persisted. As a result of the centuries-long effort to marginalize and disenfranchise Black Louisianians, they still lack equal access to the state's political processes today.

In 1898, Louisiana called a constitutional convention for the sole purpose of "establish[ing] the supremacy of the white race." Ex. 3 at 9 (alteration in original). One tactic the State employed was imposition of educational and property requirements for voter registration on residents whose fathers or grandfathers were not registered to vote prior to January 1, 1867—the "Grandfather Clause." *Id.* The convention's president made the intent of the Grandfather Clause evident, asking, "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?" *Id.* at 9–10. The U.S. Supreme Court's decision in *Guinn v. United States*, 238 U.S. 347 (1915), ultimately struck down the Grandfather Clause, finding that while it was race neutral, it was also designed to protect the voting rights of illiterate white voters while disenfranchising Black voters. Ex. 3 at 10.

The Supreme Court's intervention did not deter state officials, who subsequently introduced a number of measures to discourage and prevent Black voting in Louisiana. *Id.* These racially discriminatory measures included the all-white primary and a type of literacy test made possible by the "Understanding Clause," which was put in place during the state's 1921 constitutional convention. *Id.* This clause required voters to give a "reasonable interpretation" of a section of the state's constitution, and if that interpretation was incorrect under a registrar's unfettered discretion, then the applicant's registration application was rejected. *Id*. This and other discriminatory measures were so effective that, by the advent of the Voting Rights Act, only about *one-third* of Louisiana's Black voting-age population was registered to vote, compared with the overwhelming majority of the white voting-age population. *Id.* at 10–11. The Understanding Clause remained in force until 1965, when the U.S. Supreme Court struck it down in *Louisiana v. United States*, 380 U.S. 145 (1965).

That same year, Congress passed the Voting Rights Act of 1965, which sparked a widespread increase in Black voter registration—and just as it did following ratification of the Fifteenth Amendment, the State of Louisiana retaliated. In July 1968, Louisiana enacted new laws authorizing at-large elections for police juries and parish school boards, which were previously prohibited. Ex. 3 at 11. In 1969, the U.S. Department of Justice objected to this new system, finding that the at-large electoral system would discriminate against Black voters if implemented. *Id.* Indeed, since the late 1960s, the Department of Justice has filed nearly 150 objections to proposed laws in Louisiana that would discriminate against Black voters. *Id.*

Louisiana's discrimination against Black voters is not confined to history books; instead, it has persisted well into the 21st century. In June 2018, the U.S. Commission on Civil Rights found that geographical areas within the state with more Black residents have fewer polling places

per voter. *Id.* at 14. On average, Louisiana's Black voters must therefore travel farther than white voters to access polling locations. *Id.* at 14–15. The commission also found that polling places were inadequate for early voting, with only four early voting locations in each of the three most populated—and most diverse—parishes of East Baton Rouge, Jefferson, and Orleans. *Id.* at 15. And Caddo Parish in the northwestern corner of the state, which has a 53% minority population, has only *one* early voting location for its 260,000 residents. *Id.* Louisiana's racial discrimination in voting persists in indirect ways as well: The State overincarcerates, and consequently disenfranchises, its Black citizens. *Id.* at 17–23.

Louisiana's centuries-long efforts to discriminate against Black voters continue to this day. This factor thus weighs decidedly in Plaintiffs' favor.

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

"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)). Courts have found that voting in Louisiana is racially polarized.[2] These findings were confirmed by Dr. Palmer's analysis discussed above, *see supra* Sections I.B–C, which found "a clear pattern of

[2] *See, e.g.*, *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 436–37 (M.D. La. 2017) (recognizing racially polarized voting in Terrebonne Parish), *overruled on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020); *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).

racially polarized voting" statewide and in each of the state's six congressional district. Ex. 2 ¶¶ 21–22. This factor thus supports a finding of vote dilution.

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

As discussed above, Louisiana has historically employed a variety of voting practices that have discriminated against Black voters. *See supra* Section 1.D.1; Ex. 3. Even today, the state employs a unique open primary system that negatively impacts minority voters. *See City of Port Arthur v. United States*, 459 U.S. 159, 167 (1982) (describing how such circumstances "permanently foreclose a black candidate from being elected").

Louisiana's open primary system effectively imposes a majority-vote requirement; that is, a candidate prevails if they win an outright majority in the open primary, but if no candidate receives a majority, then only the top two candidates proceed to the general election. Ex. 3 at 33–34. The same rules apply to elections where there are multiple seats to be filled. *Id.* Consequently, even if a Black or Black-preferred candidate were to win a plurality of the vote in a predominantly white jurisdiction because the white vote is divided among multiple candidates, that candidate would be defeated by white bloc voting in the subsequent general election. *See id.* at 34.

This phenomenon has been repeatedly illustrated in statewide elections. In the 2015 race for lieutenant governor, Black Democrat Melvin Holden won 33% of the vote compared to his nearest competitor, white Republican Billy Nungesser, who earned only 30%. *Id.* In the general runoff election, Nungesser decisively won 55% of the vote to Holden's 45%. *Id.* Similarly, in the 2017 race for state treasurer, Black Democrat Derrick Edwards won 31% of the primary vote while his nearest competitor, white Republican John Schroeder, finished with only 24%. *Id.* In the general election, Schroeder defeated Edwards, 56% to 44%. *Id.*

Ultimately, Louisiana's open primary system serves to reduce the opportunity of Black voters to elect their preferred candidates to office. *See City of Port Arthur*, 459 U.S. at 171. This factor thus weighs in Plaintiffs' favor.

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

Because Louisiana's congressional elections do not use a slating process, *see* Ex. 3 at 2, this factor is not relevant to Plaintiffs' claim.

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

Louisiana's Black community continues to suffer as a result of the state's history of discrimination.

Black per-capita income ($19,381) is barely half of white per-capita income ($34,690), while the Black child poverty rate (42.7%) is nearly triple the white child poverty rate (15.0%). Ex. 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.*

These striking data points only confirm the findings of previous courts as to the stark socioeconomic disparities between Black and white Louisianians. *See, e.g.*, *Major v. Treen*, 574 F. Supp. 325, 340–41 (E.D. La. 1983) (three-judge court) (finding that "Blacks in contemporary Louisiana have less education, subsist under poorer living conditions and in general occupy a lower socio-economic status than whites"; that "[t]hese factors are the legacy of historical discrimination in the areas of education, employment and housing"; and that "[a] sense of futility engendered by the pervasiveness of prior discrimination, both public and private, is perceived as discouraging blacks from entering into the governmental process").

As Dr. Lichtman documents, these persistent inequities significantly hinder Black Louisianians' ability to participate in the political process. Ex. 3 at 36–39. For example, 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. *Id.* Ultimately, "[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." *Id.* at 37. This factor thus supports a finding of unlawful vote dilution.

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

As explored in detail in Dr. Lichtman's report, *see* Ex. 3 at 39–46, racial appeals have been a mainstay in Louisiana politics over the past four decades.

Most infamously, David Duke—former Grand Wizard of the Knights of the Ku Klux Klan—made several runs for statewide political office, including a successful 1989 run for the Louisiana House of Representatives. *See id.* at 39; Ex. 21. In the 1991 Louisiana gubernatorial

race, Duke finished second to former Governor Edwin Edwards. Ex. 3 at 39. During the campaign, Duke compared affirmative action in the United States to the Holocaust, stating, "The closest thing that I know to the policies of Germany in this country is the so-called affirmative action or quota systems." *Id.* Duke also stoked fears of a rapidly diversifying America, stating to loud applause at a rally on the shore of Lake Pontchartrain, "If you are white these days you are a second-class citizen in your own country." Ex. 22. Although Duke lost the election, he still amassed more than 670,000 votes—nearly 40%—and declared a symbolic victory: "Perhaps the messenger was rejected in this state of Louisiana, but the message wasn't. The people believe in what I believe. The polls all show that." Ex. 23.

While David Duke might be the most overt and salacious purveyor of racial appeals in Louisiana's modern political history, other examples abound. In the 1995 gubernatorial race, the successful Republican candidate—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." Ex. 3 at 39–40. Scholars later observed 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. 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. *Id.* at 41. And in 2014, a Louisiana congressman—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.*

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." *Id.* 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.* Four years later, Governor Edwards's Republican opponent released a campaign ad promising to "end taxpayer benefits for illegal immigrants," despite non-citizens being ineligible for such benefits. *Id.* In a different campaign ad, the Republican candidate falsely claimed that New Orleans was a sanctuary city for immigrants. *Id.* at 42–43.

In short, Louisiana's history of racial appeals in campaigns continues to this day. This factor also weighs in Plaintiffs' favor.

7. Senate Factor Seven: Black Louisianians are historically underrepresented in elected office.

As a consequence of Louisiana's history of voter suppression and racially polarized voting, Black Louisianians have struggled to win election to public office. Not a single Black candidate has been elected to statewide office in Louisiana since Reconstruction. Ex. 3 at 46–47. 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. And no Black Louisianian has been elected to Congress from a non-majority-Black district. *Id.*

Since 1990, the percentage of Black members of the Legislature has remained relatively constant. *Id.* 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.

Black Louisianians are also underrepresented in the state's judiciary. *Id.* 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.* And only one Black justice sits on the Louisiana Supreme Court. *Id.* at 48–49. This factor thus supports a finding of vote dilution.

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

Louisiana is largely unresponsive to the needs of its Black citizens in virtually every metric of general well-being: education, healthcare, economic opportunity, criminal justice, and environmental quality. The socioeconomic inequities created by this nonresponsiveness foreclose Black citizens' political participation, *see supra* Section I.D.5, and overall diminishes their quality of life.

In his report, Dr. Lichtman describes the vast disparities between Black and white Louisianians and how government nonresponsiveness has exacerbated this inequality. For example, Louisiana's public school system is majority-minority and consistently ranks near the bottom of state educational systems nationwide on measures for elementary and secondary schooling. Ex. 3 at 50–51. As for higher education, a study by the University of Southern California Race and Equity Center ranked Louisiana last on its higher education racial equity score for public institutions. *Id.* at 52. Notwithstanding these shortcomings, Louisiana slashed its spending on higher education by 44.9% from 2008 to 2017—the second-highest cut among all states. *Id.*

In the area of criminal justice, Louisiana has chronically underfunded its public defender system. *Id.* at 54–56. In January 2019, the Louisiana Public Defender Board found that the system is understaffed and only has the capacity to handle 21% of its workload—that is, the current workload for Louisiana public defenders is *five times* what it should be. *Id*. at 55.

Perhaps the most egregious instances of the state's nonresponsiveness to the Black community concern the environment and pollution. A stretch of petrochemical plants and refineries along the Mississippi River known as "Cancer Alley" or "Death Alley" is primarily

situated near impoverished Black neighborhoods. *Id.* at 56–57. A 2017 study by the U.S. Environmental Protection Agency reported six census tracks in this strip of land that fall within the 95th and 99th percentiles for air-toxic cancer risks. *Id.* at 57. A March 2021 report by the United Nations Human Rights Commission noted that "human rights experts today raised serious concerns about further industrialization of the so-called Cancer Alley in the southern U.S. state of Louisiana, saying the development of petrochemical complexes is a form of environmental racism." *Id.* A 2020 academic study found that exposure to particulate-matter pollution was highly correlated with concentrations of Black population in Louisiana. *Id.* at 57–58. The study additionally found that exposure to pollutants was correlated with COVID-19 deaths: Of the 10 Louisiana parishes with the highest death rates as of July 17, 2020, six were in, and two were adjacent to, "Cancer Alley." *Id.* at 58. Reports by academics and activists have tied the disproportionate impact of pollution on Louisiana's Black residents to government inaction. *Id.* at 58–60.

Ultimately, the stark socioeconomic disparities between Black and white Louisianians not only discourage political participation in the state's Black community—they are also exacerbated by government disregard and official nonresponsiveness. This factor also weighs in Plaintiffs' favor.

9. Senate Factor Nine: The justification for the new congressional map is tenuous.

Finally, no legitimate government interest justifies denying Black Louisianians the ability to elect candidates of their choice to Congress. HB 1 was met with resounding opposition from Black voters and legislators across the state, and Governor Edwards vetoed the new map because it fails to comply with the Voting Rights Act. *See* Exs. 12–18. Although lawmakers were on notice of HB 1's legal infirmities—and despite having before them various proposed congressional plans

that included a second minority-opportunity congressional district—they nevertheless chose not to draw one. *See id.* Although the Legislature touted preservation of past district boundaries as a rationale for HB 1, *see* Ex. 13, this is insufficient: A desire to keep things the same simply does not justify the continued dilution of Black voting strength—or, for that matter, excuse the requirements of federal law.

10. Black Louisianians are significantly underrepresented—and white Louisianians are significantly overrepresented—under HB 1.

Although not one of the enumerated Senate Factors, proportionality "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 Black Louisianians. *LULAC*, 548 U.S. at 437 (quoting 52 U.S.C. § 10301(b)); *cf. De Grandy*, 512 U.S. at 1012 (noting that "proportionality . . . is obviously an indication that minority voters have an equal opportunity, in spite of racial polarization, 'to participate in the political process and to elect representatives of their choice.'" (quoting 52 U.S.C. § 10301(b))).

HB 1's disproportionality is readily apparent. Black Louisianians make up 33.13% of the state's total population and 31.25% of its voting-age population. Ex. 1 ¶¶ 14, 18. But under the new congressional plan, Black Louisianians will be able to elect their candidates of choice in less than *17%* of the state's congressional districts. By contrast, white Louisianians comprise 55.75% of the state's total population and 58.31% of its voting-age population, *id.*—and yet will be able to elect their candidates of choice in more than 83% of the state's congressional districts. There is no justification for this strikingly disparate treatment.

The creation of a second congressional district in which Black voters will be able to elect their preferred candidates—as otherwise required by Section 2—would bring Louisiana much closer to proportionality. Under Mr. Cooper's illustrative plans, Black Louisianians would be able

to elect their preferred candidates in one-third of the state's districts—roughly equal to their share of the population. White Louisianians, in turn, would be able to elect their preferred candidates in the remaining two-thirds of districts—still more than 10 percentage points higher than their share of the state's population.

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

Plaintiffs will suffer irreparable harm absent preliminary injunctive relief. The candidate qualification period for the 2022 congressional elections is scheduled to begin on July 20, 2022, with the state's open primary election following on November 8. *See* Ex. 24. If this deadline and the elections that follow occur under HB 1's unlawful congressional map, then Black Louisianians' voting rights will be unlawfully diluted—a violation of their fundamental rights for which there is no adequate remedy. "[O]nce the election occurs, there can be no do-over and no redress" for citizens whose voting rights were violated. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Accordingly, "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury." *Id.* (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986)).

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

The balance of the equities and the public interest, which "merge when the Government is the opposing party," *Nken v. Holder*, 556 U.S. 418, 435 (2009), also strongly favor injunctive relief. As courts have recognized, the "cautious protection of . . . franchise-related rights is without question in the public interest." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005); *accord Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1348–49 (N.D. Ga. 2015) ("[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."). 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 scheme that violates Section 2.

Significantly, enjoining HB 1—and implementing a remedial congressional plan—would be more than feasible at this time. Courts must weigh the benefits and import of injunctive relief in the voting rights context against the confusion it might cause, particularly "[a]s an election draws closer." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *see also Merrill v. Milligan*, 142 S. Ct. 879, 879–80 (2022) (Kavanaugh, J., concurring) (cautioning against enjoining congressional maps when beginning of election is "imminent"). But here, the qualifying period for Louisiana's congressional candidates does not begin until July 20—more than *three months* from now. Ex. 24. And given the state's unique jungle primary, the open congressional primary election will not occur until November 8, with early voting commencing on October 25. *Id.*; *cf. Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring) (staying preliminary injunction of congressional map issued on January 24 where early voting for primary election purportedly began on March 30); *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1251 (2022) (per curiam) (vacating court-ordered maps and remanding for adoption of new maps on March 23 where early voting for primary election is scheduled to begin on July 26).

Indeed, the feasibility of implementing a remedial map in this case was underscored *by Defendant himself* in previous state court litigation. In objecting to a state court's exercise of jurisdiction over redistricting claims as premature, Defendant 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." Declinatory, Dilatory, & Peremptory Exceptions on Behalf of the Secretary of State to Plaintiffs' Petition for Injunctive & Declaratory Relief at 3, *Bullman v. Ardoin*, No. C-716690 (La. 19th Jud. Dist. Ct. Mar. 16, 2022) (attached as Ex. 26); *see also* Declinatory, Dilatory, & Peremptory Exceptions on Behalf of Clay Schexnayder, in His Official Capacity as Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, in His Official Capacity as President of the Louisiana Senate at 4, *Bullman v. Ardoin*, No. C-716690 (La. 19th Jud. Dist. Ct. Mar. 29, 2022) (attached as Ex. 27) ("Even 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.").[3] The Legislature's regular session is scheduled to end on June 6, 2022, Ex. 25; accordingly, Defendant represented to the state court that a new map could be passed and implemented *after* June 6 of this year—nearly two months from now. Defendant's view confirms that there is ample time for this Court to consider Plaintiffs' motion and order the adoption of a remedial congressional map that complies with Section 2 ahead of the 2022 elections.[4]

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[3] Defendant repeated this argument in a motion for a stay of the state court proceedings. *See* Motion for Stay to Be Taken up After Exception Hearing, If Exceptions Are Denied by the District Court at 3, *Bullman v. Ardoin*, No. C-716690 (La. 19th Jud. Dist. Ct. Mar. 24, 2022) (attached as Ex. 28).

[4] Notably, if the Court were to give the Legislature an opportunity to craft a remedial congressional plan in the first instance, then it would need to allow only a brief period to craft a new map—especially given that Louisiana contains only six congressional districts, and the availability of alternative maps introduced during the legislative process and by Mr. Cooper in this litigation. *See, e.g.*, *Harper v. Hall*, 867 S.E.2d 554, 558 (N.C. 2022) (providing 14 days for legislature to adopt new congressional *and* state legislative plans); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Nos. 2021-1193, 2021-1198, 2021-

CONCLUSION

Plaintiffs have readily demonstrated that HB 1 violates Section 2 of the Voting Rights Act, and the equities weigh strongly in favor of immediate relief to safeguard the fundamental voting rights of Black Louisianians. Plaintiffs therefore request that the Court preliminarily enjoin implementation of HB 1 and ensure the creation of a second congressional district in which Black voters have the opportunity to elect their preferred candidates. Plaintiffs further request that the Court expedite its consideration of this motion to ensure that necessary remedies are timely adopted and a lawful congressional map is in place well in advance of this year's midterm elections.

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1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022) (providing 10 days for redistricting body to adopt new state legislative plans).

Dated: April 15, 2022

Respectfully submitted,

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***Pro hac vice* application pending

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

DECLARATION OF DARREL J. PAPILLION IN SUPPORT OF
***GALMON* PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Darrel J. Papillion, hereby declare as follows:

1. I am over the age of 18 and competent to make this declaration. I am an attorney with the law firm Walter, Papillion, Thomas, Cullens, LLC and am admitted to practice law in the State of Louisiana. I am admitted in this Court and am counsel for Plaintiffs Edward Galmon, Sr.,

Ciara Hart, Norris Henderson, and Tramelle Howard in the above-captioned matter. I submit this declaration to provide the Court true and correct copies of certain documents submitted in support of Plaintiffs' Motion for Preliminary Injunction:

Exhibit 1 is a true and correct copy of the expert report of William Cooper, dated April 15, 2022.

Exhibit 2 is a true and correct copy of the expert report of Dr. Maxwell Palmer, dated April 15, 2022.

Exhibit 3 is a true and correct copy of the expert report of Dr. Allan Lichtman, dated April 15, 2022.

Exhibit 4 is a true and correct copy of the declaration of Christopher J. Tyson, dated April 15, 2022.

Exhibit 5 is a true and correct copy of the declaration of Charles Cravins, dated April 15, 2022.

Exhibit 6 is a true and correct copy of the declaration of Edward Galmon, Sr., dated April 15, 2022.

Exhibit 7 is a true and correct copy of the declaration of Ciara Hart, dated April 15, 2022.

Exhibit 8 is a true and correct copy of the declaration of Norris Henderson, dated April 14, 2022.

Exhibit 9 is a true and correct copy of the declaration of Tramelle Howard, dated April 15, 2022.

Exhibit 10 is a true and correct copy of the article entitled "'When We Sue, We Win': Black Baton Rouge Residents Call for Second Majority Black Congressional District." The article was published by *The Daily Reveille* on November 21, 2021, and is publicly available at https://

www.lsureveille.com/news/when-we-sue-we-win-black-baton-rouge-residents-call-for-second-majority-black-congressional/article_35da528c-4a3d-11ec-bff3-f341498a4f66.html.

Exhibit 11 is a true and correct copy of the guest column entitled "Legislature Sought Public Input in Redistricting, but Mostly Ignored It." The guest column was published by *The Advocate* on February 23, 2022, and is publicly available at https://www.theadvocate.com/baton_rouge/opinion/article_c42f8b5a-94d0-11ec-81ec-7732dee83c2c.html.

Exhibit 12 is a true and correct copy of the article entitled "Should Louisiana Draw a Second Majority-Black Congressional District? Here's What Lawmakers Proposed." The article was published by *The Advocate* on February 1, 2022, and is publicly available at https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_2324563e-83a3-11ec-9ce2-b3e0b1ee1a99.html.

Exhibit 13 is a true and correct copy of the article entitled "Louisiana House Approves Congress Map With 1 Majority Black District." The article was published by the *Louisiana Illuminator* on February 10, 2022, and is publicly available at https://lailluminator.com/2022/02/10/louisiana-house-approves-congress-map.

Exhibit 14 is a true and correct copy of the article entitled "Louisiana Senate Approves Map for Congress Without New Minority District." The article was published by the *Louisiana Illuminator* on February 8, 2022, and is publicly available https://lailluminator.com/2022/02/08/louisiana-senate-approves-map-for-congress-without-new-minority-district.

Exhibit 15 is a true and correct copy of the article entitled "Louisiana Legislature Sends Congressional Map With One Majority-Black District to Governor's Desk." The article was published by *The Advocate* on February 18, 2022, and is publicly available at https://

www.theadvocate.com/baton_rouge/news/politics/legislature/article_dd507448-90e1-11ec-bc5d-1faf116428b4.html.

Exhibit 16 is a true and correct copy of the article entitled "Gov. John Bel Edwards Says 'Fair' Congressional Maps Would Include Another Majority-Black District." The article was published by *The Advocate* on December 16, 2021, and is publicly available at https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_64e99736-5ea6-11ec-bea4-2fa9f0b6f8c9.html.

Exhibit 17 is a true and correct copy of the press release entitled "Gov. Edwards Vetoes Proposed Congressional District Map, Announces Other Action on Newly Drawn District Maps." The press release was published by the Office of the Governor on March 9, 2022, and is publicly available at https://gov.louisiana.gov/index.cfm/newsroom/detail/3585.

Exhibit 18 is a true and correct copy of the letter from Governor John Bel Edwards to Speaker of the House Clay J. Schexnayder regarding the veto of House Bill 1 of the 2022 First Extraordinary Session, dated March 9, 2022. The letter was published by the Office of the Governor, was last accessed on April 11, 2022, and is publicly available at https://gov.louisiana.gov/assets/docs/Letters/SchexnayderLtr20220309VetoHB1.pdf.

Exhibit 19 is a true and correct copy of the article entitled "Louisiana Legislature Overrides Gov. Edwards' Veto of Congressional Map." The article was published by the *Louisiana Illuminator* on March 30, 2022, and is publicly available at https://lailluminator.com/2022/03/30/louisiana-legislature-overrides-gov-edwards-veto-of-congressional-map.

Exhibit 20 is a true and correct copy of Joint Rule No. 21. The rule was published by the Louisiana State Legislature, was last accessed on April 11, 2022, and is publicly available at https://www.legis.la.gov/Legis/Law.aspx?d=1238755.

Exhibit 21 is a true and correct copy of the article entitled "Former Leader of Klan Narrowly Wins Contest in Louisiana." The article was published by *The New York Times* on February 19, 1989, and is publicly available at https://www.nytimes.com/1989/02/19/us/former-leader-of-klan-narrowly-wins-contest-in-louisiana.html.

Exhibit 22 is a true and correct copy of the article entitled "Duke Softens Past in Louisiana Race." The article was published by *The New York Times* on September 24, 1991, and is publicly available at https://www.nytimes.com/1991/09/24/us/duke-softens-past-in-louisiana-race.html.

Exhibit 23 is a true and correct copy of the article entitled "The Numbers From Louisiana Add up Chillingly Duke's Claim on White Vote Shows Depth of Discontent." The article was published by *The Baltimore Sun* on November 17, 1991, and is publicly available at https://www.baltimoresun.com/news/bs-xpm-1991-11-18-1991322072-story.html.

Exhibit 24 is a true and correct copy of the document entitled "2022 Elections." The document was published by the Louisiana Secretary of State, was last accessed on April 11, 2022, and is publicly available at https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2022.pdf.

Exhibit 25 is a true and correct copy of the webpage entitled "Session Information for the 2022 Regular Session." The webpage was published by the Louisiana State Legislature, was last accessed on April 11, 2022, and is publicly available at https://legis.la.gov/legis/SessionInfo/SessionInfo_22RS.aspx.

Exhibit 26 is a true and correct copy of Declinatory, Dilatory, & Peremptory Exceptions on Behalf of the Secretary of State to Plaintiffs' Petition for Injunctive & Declaratory Relief, *Bullman v. Ardoin*, No. C-716690 (La. 19th Jud. Dist. Ct. Mar. 16, 2022).

Exhibit 27 is a true and correct copy of Declinatory, Dilatory, & Peremptory Exceptions on Behalf of Clay Schexnayder, in His Official Capacity as Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, in His Official Capacity as President of the Louisiana Senate, *Bullman v. Ardoin*, No. C-716690 (La. 19th Jud. Dist. Ct. Mar. 29, 2022).

Exhibit 28 is a true and correct copy of Motion for Stay to Be Taken up After Exception Hearing, If Exceptions Are Denied by the District Court, *Bullman v. Ardoin*, No. C-716690 (La. 19th Jud. Dist. Ct. Mar. 24, 2022).

Dated: April 15, 2022

Respectfully submitted,

By *s/Darrel J. Papillion*

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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

[PROPOSED] ORDER GRANTING
***GALMON* PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

This Court has considered the motion for preliminary injunction and supporting authorities filed by Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard; the submissions of the other parties; and the evidence and pleadings of record, and finds that (1) Plaintiffs are likely to succeed on the merits of their claim that Louisiana's new congressional

districting map as drawn by House Bill 1 ("HB 1") violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301; (2) Plaintiffs will suffer irreparable injury unless the injunction is issued; (3) the threatened injury to Plaintiffs outweighs possible harm that the injunction may cause the opposing parties; and (4) the injunction is in the public interest. *See Speaks v. Kruse*, 445 F.3d 396, 399–400 (5th Cir. 2006).

Specifically, as the merits of Plaintiffs' Section 2 claim, the Court finds that:

a. a second reasonably compact district can be drawn in Louisiana in which Black voters would form a majority of eligible voters sufficient to elect candidates of their choice, *see Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986);

b. Black Louisianians throughout the state, including in the area where this second majority-Black congressional district could be drawn, are politically cohesive, *see id.*;

c. White Louisianians throughout the state, including in the area where this second majority-Black congressional district could be drawn, engage in bloc voting that enables them usually to defeat Black-preferred candidates, *see id.*; and

d. under the totality of circumstances—including Louisiana's ongoing history of official, voting-related discrimination; the state's racially polarized voting; voting practices that enhance the opportunity for discrimination in the state; severe socioeconomic disparities that impair Black Louisianians' participation in the political process; the prevalence of racial appeals in the state's political campaigns; the underrepresentation of Black officeholders in the state; Louisiana's nonresponsiveness to its Black residents; and the absence of legitimate justifications for the congressional map drawn by HB 1—the state's "political processes leading to nomination or election . . . are not equally open to participation" by Louisiana's Black community. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44.

Because Plaintiffs have clearly established their burden of persuasion as to each of the four elements required for a preliminary injunction, Plaintiffs' motion is therefore GRANTED.

IT IS HEREBY ORDERED that Defendant, as well as his agents and successors in office, are PRELIMINARILY ENJOINED from enforcing or giving any effect to the boundaries of the congressional districts as drawn in HB 1, including conducting any further congressional elections under the enacted map.

Baton Rouge, Louisiana, this _____ day of _____, 2022

_____
HONORABLE SHELLY D. DICK
UNITED STATES CHIEF DISTRICT JUDGE

EXHIBIT G

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON., *et al.* Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al* Defendant and Intervenor-Defendants,	Case No.: 3:22-cv-00211-SDD-SDJ
AND	(c/w)
EDWARD GALMON, SR., *et al.* Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al.* Defendant and Intervenor-Defendants,	Case No.: 3:22-cv-00214-SDD-SDJ

INTERVENOR-DEFENDANT THE STATE OF LOUISIANA'S COMBINED OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

Intervenor-Defendant the State of Louisiana, by and through Jeff Landry, the Attorney general of Louisiana (the "State"), files this Combined Response in Opposition to Plaintiffs' Motions for Preliminary Injunction.[1]

[1] The State will refer to Plaintiffs in the following ways: if one set of Plaintiffs only, then "*Galmon*" or "*Robinson*" Plaintiffs; together it will be "Plaintiffs." Any reference to the pre-consolidation dockets will reference the specific case name with the corresponding ECF number.

INTRODUCTION

The legislative process is a machine with many moving parts. The passage of a law is not something that happens in a few weeks. Needless to say, there is give and take from both sides of the aisle as a bill passes through various committees, both legislative chambers, and the executive branch. This elaborate political process is how the Louisiana State Legislature passed HB1, the bill that determined the boundaries for Louisiana's six congressional districts. However, despite new elections being just around the corner, Plaintiffs ask this Court to override the months-long deliberative legislative process and require that new congressional boundaries be drawn. Instead of months of bicameral hearings and careful deliberation by the elected representatives of the people, Plaintiffs want this matter to be decided by a single judge in a matter of weeks.

A rushed preliminary injunction process should not replace the deliberative legislative process. That is especially true here where the facts will show just how tenuous Plaintiffs' factual and legal arguments are. This case should play out in the same deliberative and careful process as the passage of a bill—both sides should have adequate time to prepare and be heard, and witnesses and experts should be questioned after both sides have had adequate time to prepare. If the Court rushes through a new congressional map via a preliminary injunction the primary losers will be the people of Louisiana. After all, laws are established by the will of the people. This Court should deny Plaintiffs' Motions for Preliminary Injunction and allow the legal process to play out in due course.

ARGUMENT

To obtain a preliminary injunction, Plaintiffs must show: (1) a substantial likelihood of success on the merits, (2) a substantial threat that Plaintiffs will suffer irreparable injury in the absence of an injunction, (3) that Plaintiffs' threatened injury outweighs the threatened harm to the defendant, and (4) that granting the preliminary injunction is not against the public interest. *PCI Transp. Inc. v. Fort Worth & W.R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005). The Fifth Circuit and the Supreme Court have "cautioned repeatedly that a preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has 'clearly carried the burden of persuasion' on all four requirements." *Id.* (quoting *Lake Charles Diesel, Inc. v. General Motors Corp.,* 328 F.3d 192, 195 (5th Cir. 2003)); *Nken v. Holder*, 556 U.S. 418, 428 (2009) (calling an injunction an "extraordinary remedy." (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). Plaintiffs have failed to carry their burden of meeting "all four requirements" for a preliminary injunction here. *Id.*

Further, it must be noted that "the purpose of [a preliminary injunction] is *not* to conclusively determine the rights of the parties." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). What's more, "mandatory injunctive relief, which goes well beyond simply maintaining the status quo *pendente lite*, is particularly disfavored, and should not be issued unless the facts and the law *clearly* favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976); *see also Miami Beach Fed. Sav. & Loan Assoc. v. Callander*, 256 F.2d 410, 415 (5th

Cir. 1958) ("A mandatory injunction, especially at the preliminary stage of proceedings, should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party."); *Justin Industries, Inc. v. Choctaw Secur., L.P.,* 920 F.2d 262, 268 (5th Cir. 1990) (per curiam) (The party "seeking a mandatory injunction . . . bears the burden of showing *clear entitlement* to the relief under the facts and the law." (emphasis added)).

I. Plaintiffs Are Unlikely Succeed on the Merits of their Voting Rights Act Claims.

Louisiana is vested with the authority, under the Elections Clause, to determine the "Times, Places and Manner of holding Elections for . . . Representatives." U.S. Const. art. I, § 4, cl. 1. To that end, "reapportionment is primarily a matter for legislative consideration and determination." *White v. Weiser*, 412 U.S. 783, 794 (1973). In order to be successful on the merits of their Voting Rights Act claims, Plaintiffs must establish that the "political process leading to the nomination or election in" Louisiana is "not equally open to participation by members" of a minority group "on account of race." 52 U.S.C. § 10301(a) and (b). To that end, under the current understanding of claims under Section 2, Plaintiffs must meet the standard announced by *Thornburg v. Gingles* and its progeny.[2] 478 U.S. 30 (1986). The U.S. Supreme Court has signaled, however, that it will be reviewing vote dilution claims under Section 2 and the *Gingles* standard in the coming term in. *See*

[2] In the next term, the Supreme Court will hear a case on vote dilution claims under the Voting Rights Act. *Merrill, et al. v. Milligan, et al.*, No. 21-1086 (Mar. 21, 2022) (granting motion to amend the question presented to "Whether the State of Alabama's 2021 redistricting plan for its seven seats in the United States House of Representatives violated section 2 of the Voting Rights Act, 52 U. S. C. §10301.").

Merrill v. Milligan, 142 S. Ct. 879 (Feb. 7, 2022) (granting stay of a find of vote dilution under Section 2 and treating stay motion as a jurisdictional statement); *Merrill, et al. v. Milligan, et al.*, No. 21-1086 (2022) (consolidated with *Merrill, et al. v. Caster*, *et al.*, No. 21-1087 (2022)).

Assuming for now that *Gingles* controls, it requires that each of the following three preconditions to be met for any claim of vote dilution in districting to succeed: (1) "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) "the minority group must be able to show that it is politically cohesive"; and (3) "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." *Gingles*, 478 U.S. at 50-51. Failure to establish all three of the *Gingles* preconditions dooms a claim under Section 2. *Clark v. Calhoun County*, 21 F.3d 92, 94 (5th Cir. 1994). Once each of the three preconditions are met, Plaintiffs must then show, "under the totality of the circumstances," they do not possess the same opportunities to participate in the political process and elect representatives of their choice" as set forth in the so-called senate factors that accompanied the passage of Section 2. *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 849 (5th Cir. 1993) (hereinafter *LULAC, Council*); *see also id*. at 849 n.22 (listing the senate factors).

Plaintiffs here cannot meet at least two of the three preconditions, or, at the very least, they are not "substantially likely" to succeed on the merits of their claims

as to the first and third *Gingles* preconditions. As such, the Court should not grant a preliminary injunction.

A. No sufficiently numerous and geographically compact second majority-minority district can be drawn in Louisiana.

In order to prevail on their argument that a second majority-Black congressional district is required under Section 2 of the VRA, under the first *Gingles* precondition, Plaintiffs must show that it is possible to "creat[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (plurality opinion). Under *Bartlett v. Strickland*, the districts must contain a majority of minority citizens of voting age population. 556 U.S. 1, 19-20 (2009). Here, despite Plaintiffs' emphatic statements to the contrary, Plaintiffs do not meet the required burden under a reasonable understanding of census race categories.

Through statistical manipulation, Plaintiffs' experts claim their illustrative plans showing two majority-minority congressional districts with Black voting age populations over ("BVAP") 50%, appear to have met the + 50% BVAP burden. In these illustrative plans, their proposed districts are over 50% BVAP by a razor's edge. *Robinson* Plaintiffs' expert BVAP percentages are as follows: 50.16%, 50.04%, 50.65%, 50.04%, 50.16%, and 51.63%. ECF No. 43 at 24-48. *Galmon* Plaintiffs' expert BVAP percentages are 50.96% and 52.05%. ECF No. 41-2 at 23. Plaintiffs' experts

state that they used "Any Part Black" to define the term "Black". ECF No. 43 at 6; and ECF No. 41-2 at 11.[3]

Why would Plaintiffs' experts use "Any Part Black" when forming their illustrative maps as opposed to "DOJ Black"? The answer is simple: if they used the "DOJ Black" then the BVAP numbers do not rise above 50%, which is required to justify the creation of two majority-minority congressional districts. For example, when looking at the three Cooper illustrative maps and using "DOJ Black" as the racial metric, the BVAP percentages are as follows: 48.41%, 49.22%, 48.92%, 49.25%, 48.41%, and 50.81%. Expert Report of Thomas Bryan (attached hereto as "Exhibit A") at 19-21. The only "DOJ Black" BVAP number above 50% was in CD5 in "Illustrative 3" at 50.81% where the "DOJ Black" BVAP in CD2 was at 48.41%—well below any required metric and proving that drawing two legally sufficient "DOJ Black" BVAP districts is not possible. *Id.* The *Galmon's* illustrative map possesses the same insufficiencies as *Robinson's* "Illustrative 3" map with "DOJ Black" percentages at 49.39% and 51.25%—again, showing that you cannot create two legally sufficient BVAP congressional districts. *Id.* at 19.[4]

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[3] "Any Part Black" is a broader census category that includes anyone that is "Black", as well as "Black" combined with any other race. "DOJ Black" is a narrower the category that includes those who are "Black" and those who are "Black and White". *See Pope v. Cty. of Albany*, No., 2014 U.S. Dist. LEXIS 10023, at *7-8 n.3 (N.D.N.Y. 2014). As Tom Bryan notes in his report, "any part" Black may include a person who had one Black grandparent. Or this may include a citizen who is Black and Hispanic and whose family might have immigrated from Haiti, and whose family may speak French at home. *See* Ex. A at ¶¶ 21-26.

[4] While using "Any Part Black" to define "Black", Plaintiffs fail to use the analogous racially expansive category to define "White". Therefore, if someone were to identify as Black and Hispanic, they would be included in Plaintiffs' "Black" number, but if someone were to identify as White and Hispanic, they would not be included in Plaintiffs' "White" number. *See* ECF No. 41-2 at 29.

To get to even those bare minimum totals, Plaintiffs had to ignore any conception of communities of interest. "All four plans are based on the presumption that African American Louisiana residents all share the same interest because of their race, regardless of where they geographically reside." Expert Report of Michael Hefner at 14 (attached hereto as "Exhibit C"). While the enacted HB1 plan generally keeps communities of interest intact, "the Plaintiffs' plans do not." Ex. C at 22. "The fact that so many communities of interest were either divided among the Congressional districts or paired with unlikely and dissimilar larger cities begs the question of whether the distribution of African Americans are truly compact enough to create a second majority-minority Congressional district." *Id.*

Though not lawyers, Plaintiffs' experts cite to a dicta footnote in *Georgia v. Ashcroft*, 539 U.S. 461 (2003), as justification for their use of "Any Part Black" as opposed to "DOJ Black". *See* ECF No. 41-2 at 11; ECF No. 43 at 6. However, a proper understanding of context surrounding *Georgia v. Ashcroft* will show that Plaintiffs' non-lawyer experts' opinions are misguided. In 2003, when *Georgia v. Ashcroft* was decided, the Secretary of State for Georgia did not have a race category that corresponded with "DOJ Black" when classifying race for the purposes of map drawing. *See Georgia*, 539 U.S. at 473 n.1. As such, when drawing proposed maps, Georgia was permitted to use "Any Part Black" because it corresponded better with the racial definitions in Georgia's voter data. *Id.* The fact the United States Supreme Court felt it needed to add a footnote to explain why it was allowing the use of "Any Part Black" as opposed to "DOJ Black" only shows how big of an exception this was.

With Louisiana, the *Georgia v. Ashcroft* exception is not applicable because Louisiana, when voluntarily providing race information, only allows voters to register as White, Black, Asian, Hispanic, American Indian, or Other.[5] *See* La. R.S. 18:104(B) (providing race information is optional). Long story short: because Georgia used racial categories that were similar to "Any Part Black" when drawing the maps at issue in *Georgia v. Ashcroft*, it made sense to use a similar racial metric when comparing proposed maps—however, this distinction does not create a reason to stray from "DOJ Black" in Louisiana. The dicta footnote in *Georgia v. Ashcroft* does not call for a *one size fits all* approach, but allows for the use of racial classifications that correspond most directly with the racial data linked to voter files in a particular state.

Often, courts have examined the question of whether a map drawer should use "DOJ Black" or "Any Part Black" contain +50% BVAP under either measure, meaning it was unnecessary for the court to make a legal determination to that regard. *See Pope v. Cty. of Albany*, 687 F.3d 565, 577 n.11 (2d Cir. 2012) ("Because plaintiffs satisfy the first *Gingles* factor for DOJ Non-Hispanic Blacks, we need not here consider whether the relevant minority group might more appropriately be identified as "Any Part Black," for which the minority VAP percentages are even higher."). However, here, the specific mix of census responses used to meet the *Bartlett* numerosity test matters because Plaintiffs are struggling to draw a second district that meets the numerosity requirements under either measure, and certainly under

[5] *See* Application to Register to Vote, *available at* https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ApplicationToRegisterToVote.pdf (last visited April 29, 2022).

"DOJ Black" numbers. As a result, this Court must resolve the difficult question of "who counts as black" for the purposes of Section 2 analysis. Where this court draws the demographic lines or definitions is a crucial step in determining whether Plaintiffs have any case at all—let alone one that would allow them to prevail at the preliminary injunction stage.

Additionally, as we are currently at the preliminary injunction stage, Plaintiffs must show that there is a "substantial likelihood of success on the merits" of their claims. *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006). The fact that Plaintiffs' only arguable path to victory in this matter comes from the statistical manipulation of racial data shows the absurdity of this exercise. This Court should not permit a rushed analysis and map drawing process to trump the detailed legislative process that that led to the enactment of the challenged maps. After all, legislative enactments are presumed to be in good faith. *Abbott v. Perez*, 138 S. Ct. 2305, 2325 (2018).

Finally, while Plaintiffs do not directly make the claim that they are entitled to a proportional number of Black candidates elected in numbers equal to their population, both Plaintiffs, in their complaints and in their preliminary injunction motions, highlight the discrepancy in the number of elected Black candidates in proportion to the Black population in Louisiana. *See, e.g, Robinson*, ECF No. 1 at ¶ 1; *see Galmon,* ECF No. 1, at ¶ 2; *see* ECF No. 41-1 at 4; *see* ECF No. 42-1 at 2-3. However, it is well established that when a plaintiff brings a claim under Section 2, there is "nothing in [Section 2 that] establishes a right to have members of a protected

class elected in numbers equal to their proportion in the population." 52 U.S.C. § 10301(b); *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986) ("[I]n evaluating an alleged violation, § 2(b) cautions that 'nothing in [§ 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.'"). As such, Plaintiffs' excessive reliance on these facts is misguided.

B. The minority population in Louisiana is not compact.

In their motions for preliminary injunction, both sets of Plaintiffs only bring claims under Section 2 of the VRA. ECF No. 41 at 2; ECF No. 42 at 2. In addition to showing that the allegedly injured racial group is "sufficiently large," Plaintiffs must also show that the minority group is "geographically compact." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). A compactness analysis under Section 2 is different than that of an equal protection claim. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (hereinafter *LULAC v. Perry*). "In the equal protection context, compactness focuses on the contours of district lines to determine whether race was the predominant factor in drawing those lines." *Id.* (citing *Miller v. Johnson*, 515 U.S. 900, 916-917 (1995)). However, "[u]nder § 2, by contrast, the injury is vote dilution, so the compactness inquiry embraces different considerations. 'The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district.'" *Id.* (citing *Bush v. Vera*, 517 U.S. 952, 997 (1996) (Kennedy, J., concurring); *Abrams v. Johnson*, 521 U.S. 74, 111 (1997) (Breyer, J., dissenting)).

"While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining

communities of interest and traditional boundaries." *Id.* (cleaned up). For example, a district that "reaches out to grab small and apparently isolated minority communities" is not reasonably compact. *Id.* (quoting *Vera*, 517 U.S. at 979). "[T]here is no basis to believe a district that combines two far-flung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates." *Id.* Plaintiffs' plans do just that. Ex. C at 14, 22-23.

Here, Plaintiffs districts are not compact as they do exactly what the Supreme Court prohibited in *LULAC v. Perry*—combining "far-flung segments of a racial group" in hopes to create a second majority minority district. 548 U.S. at 433. Louisiana's spatial analytics expert, Dr. Murray, specifically shows just how non-compact Blacks are in Plaintiffs' illustrative maps. Below is the milage chart created by Dr. Murray that shows the distance between the center of the Black populations in communities across Louisiana:

	Alexandria	Baton Rouge	New Orleans	Lafayette	Monroe	Shreveport
Alexandria	0	98	169	77	86	112
Baton Rouge	98	0	72	56	152	209
New Orleans	169	72	0	119	211	279
Lafayette	77	56	119	0	157	186
Monroe	86	152	211	157	0	99
Shreveport	112	209	279	186	99	0

Every map proposed by Plaintiffs combines Monroe's Black population with the Black population of Baton Rouge and Lafayette—despite the populations being 152 and 157 miles apart, respectively. Expert Report of Dr. Alan Murray (attached hereto as "Exhibit B") at 24. To combine Black communities from far-flung parts of Louisiana in the same district is to discount the different experiences and make-up of those communities—such as countries of origin and primary languages spoken. *See*

Ex. C at 7-23. And, in so doing, "do a disservice" to these diverse minority populations "by failing to account for the differences between people of the same race." *LULAC v. Perry*, 548 U.S. at 434. For this reason, along with many others, Plaintiffs' arguments must fail.

C. Plaintiffs' proposed exemplar maps show that no constitutional second majority-minority congressional district is possible in Louisiana.

"A federal judge cannot command what the Constitution condemns." *Thomas v. Bryant*, 938 F. 3d 134, 184 (5th Cir. 2019) (Willet, J. dissenting). The Equal Protection Clause of the Fourteenth Amendment's "central mandate is racial neutrality in governmental decisionmaking," including "a State's drawing of congressional districts." *Miller v. Johnson*, 515 U.S. 900, 904-05 (1995). This is true even when the purported purpose of the racial gerrymander is in seeking to comply with the dictates of the Voting Rights Act. "Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Shaw v. Reno*, 509 U.S. 630, 657 (1993) (cleaned up). To put it even more simply, "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *C.f. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007). Because Plaintiffs' exemplar maps are racial gerrymanders of the type that would make the authors of the infamous *Gomillion v. Lightfoot* plan blush, their motion for preliminary injunction should be denied.

Compare Gomillion v. Lightfoot, 364 U.S. 339, 348 app. 1 (1960) *with E.g.,* Ex. A at 82-101 (showing how Plaintiffs' maps carefully included as much urban Black voting age population in their districts as possible while avoiding urban majority white populations).

Initially, it is acknowledged that the Supreme Court has long "assumed" that the Voting Rights Act is "a compelling interest" sufficient to satisfy strict scrutiny. *Cooper v. Harris*, 137 S. Ct. 1455, 1469 (2017). That "assumption" cannot give Plaintiffs and the courts license to seek out every Black majority census block it can find in order to cobble together a *bare* majority for *Gingles* purposes. The relevant test for a racial gerrymander is that there first must be proof "that 'race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district[6] [and then] *[s]econd*, if racial considerations predominated over others, the design of the district must withstand strict scrutiny."[7] *Cooper*, 137 S. Ct. at 1463-64.

Here, Plaintiffs' illustrative maps go block by block through towns and cities as diverse as Monroe, Lafayette, and Baton Rouge, attempting to pick out only those census blocks over 50% population and excluding to the extent possible blocks of less than 50% Black population. *E.g.*, Ex. A at ¶¶ 40-44 (analyzing the splits of Lafayette in the illustrative plans and showing how race was distributed unequally among the

[6] Proof of predominance is found by demonstrating that traditional districting factors were subordinated to "racial considerations." *Cooper*, 137 S. Ct. at 1463-64.

[7] The test for racial gerrymandering claims in *Cooper* presumes that plaintiffs are seeking to prove the government acted with racial motivations. However, the test is just as valuable in determining *plaintiffs'* motives for drawing a racial gerrymander for illustrative purposes.

splits). This is the exact type of evidence of racial intent that dooms legislative action. *Bethune-Hill v. Va. State Bd. Of Elections*, 137 S. Ct. 788, 799 (2017) (noting that a finding of racial predominance is usually accompanied by a showing the traditional redistricting criteria were subordinated to race based considerations). This Court cannot condone this overt use of race simply because it is under the guise of a mere "illustrative map." More to the point, if it is impossible for Plaintiffs to demonstrate that a second majority-minority district can be drawn without impermissibly resorting to mere race as a factor, as Plaintiffs did here, then Plaintiffs have not carried their burden "of showing *clear entitlement* to the relief under the facts and the law." *Justin Industries, Inc. v. Choctaw Secur., L.P.*, 920 F.2d 262, 268 (5th Cir. 1990) (per curiam) (emphasis added).

The Fifth Circuit's holding in *Clark v. Calhoun County* does not necessitate a different result. In *Clark* the Fifth Circuit found after a trial on the merits that the Supreme Court's holding in *Miller v. Johnson* does not limit the scope of the first *Gingles* precondition. *Clark v. Calhoun County*, 88 F.3d 1393, 1406 (5th Cir. 1996). The posture of this case is demonstrably different as this case is in the preliminary injunction stage of the proceedings. The issue with Plaintiffs' proposed illustrative maps is that they cannot demonstrate to the Court that a remedy is even possible, let alone make the required showing of a clear entitlement to relief. Put another way, if the only relief that can be afforded Plaintiffs is itself unconstitutional, there can be no relief at all. Therefore, Plaintiffs' request for a preliminary injunction should be denied.

D. Politics, not race, is responsible for Louisiana's voting patterns.

When "partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens" in the relevant jurisdiction then there is no "legally significant" racially polarized voting under the third *Gingles* precondition. *LULAC, Council*, 999 F.2d at 850. "'The Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party's candidates.' Rather, § 2 is implicated only where Democrats lose *because they are black*, not where blacks lose because they are Democrats." *Id.* at 854 (emphasis added) (quoting *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992). This tracks closely to the text of the Voting Rights Act, as amended, that requires that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which 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). Therefore "evidence that divergent voting patterns are attributable to partisan affiliation or perceived interests rather than race [is] quite probative" to the question of racial bloc voting.[8] *LULAC, Council*, 999 F.2d at 858 n.26.

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[8] There is significant disagreement within this Circuit on the burdens imposed by this evidentiary question. *Compare LULAC, Council*, 999 F.2d at 859-861 (noting that there is "a powerful argument supporting a rule that plaintiffs, to establish legally significant racial bloc voting, must prove that their failure to elect representatives of their choice cannot be characterized as a 'mere euphemism for political defeat at the polls,' or the 'result' of 'partisan politics.'") (citations omitted) *with Teague v. Attala County*, 92 F.3d 283, 290 (5th Cir. 1996) (holding that defendants may rebut evidence of racial bloc voting) *and Lopez v. Abbott*, 339 F. Supp. 3d 589, 604 (S.D. Tex. 2018) (holding that "Plaintiffs have the duty, in the first instance, to demonstrate some evidence of racial bias through the factors used in the preconditions and the totality of the circumstances test. Upon doing so, the burden shifts

Here it is clear that it is *politics and not race* which is the determining factor in the electoral chances of Black Louisianans. Or, at the very least, the facts with respect to racial bloc voting do not "clearly favor" Plaintiffs. *See Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). Dr. Alford, professor of political science from Rice University, conducted an analysis of the reports submitted by Plaintiffs' experts Drs. Handley and Palmer. Dr. Alford found that while "voting may be correlated with race . . . the differential response of voters of different races to the race of the candidate is not the cause." Expert Report of Dr. Alford at 9 (attached hereto as Exhibit D). Instead, he found that the polarization seen in the data is a result of Democratic party allegiance and not race. *Id.* at 6, 8.

To come to this conclusion, Dr. Alford replicated the Ecological Inference ("EI") analysis done by Drs. Handley and Palmer to assess any quantitative differences in the data. *Id.* at 2. Dr. Alford observed that there were only slight variations that are expected when conducting these sorts of analysis. *Id.* at 2. As the numbers he achieved were similar, and thus do not impact his expert opinions, he relied on the EI estimates that Drs. Hanley and Palmer produced. *Id.* at 3.

First, Dr. Alford analyzed the Presidential election results and found that political polarization and not politics is the likely cause of Black and white voting trends. *Id.* at 3-5. Unlike the conclusions of Drs. Hanley and Palmer, the three presidential elections analyzed show that support amongst Black voters does not track with the race of the candidate, but rather the *party* of the candidate. *Id.* at Table

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to the State to demonstrate some evidence of partisan politics (or some other issue) influencing voting patterns.").

1 p. 3. Dr. Alford analyzed the 2012, 2016, and 2020 presidential elections. These three elections are interesting because the 2012 election had a Black Democrat (President Obama) against a white republican (Mitt Romney) who both had white Vice-Presidential running mates (then-Vice-President Biden and Paul Ryan). *Id.* at 5. The 2016 election had two all-white tickets—Hillary Clinton and Tim Kaine (D) and President Trump and Vice President Pence (R). *Id.* The 2018 election pitted two white presidential candidates—President Biden (D) and President Trump (R)—against each other but the Vice-Presidential candidates were a Black candidate in Vice President Harris against white candidate Vice President Pence. *Id*. If race were the driving factor, one would expect that voters would vote in a pattern with President Obama securing the highest Black support and the lowest white support with Clinton earning the lowest Black support and highest white support, with President Biden joined by Vice President Harris in the middle. *Id*. What actually happened is that the all-white Clinton/Kaine campaign received the most support amongst Black voters and the least support amongst white voters. *Id*.

Turning now to contests in which there were no Democratic candidates, the data shows that any "pattern of racial differences in voting largely disappears." *Id*. at 6. There are three recent Louisiana elections in which two Republican candidates went head-to-head: (1) Attorney General in 2015; (2) State Treasurer in 2015; and (3) Commissioner of Insurance in 2019. *Id*. In these contests, Black and white support for the candidates is nearly identical in the 2015 and 2019 Treasurer and Commissioner of Insurance elections. *Id*. The one minor outlier is the election for

Attorney General in 2015. However, this election only serves to reinforce the point that politics, not race, is the primary motivator of racial differences in voting. In 2015, Republican General Landry ran against General Caldwell. What distinguishes the modest differences in this race is the fact that Caldwell was first elected to office as a Democrat, only changing his party affiliation in 2011. *Id*. Other statewide elections reinforce the broader point that:

> Black voters' [tendency] to vote at high levels for Democratic candidates is not dependent on those Democratic candidates themselves being Black or white, only that they are Democrats. Similarly, the tendency of white voters to vote at low levels for Democratic candidates is not dependent on those Democratic candidates themselves being Black or white, only that they are Democrats.

Id. at 8. Therefore, it is clear that while "voting may be correlated with race . . . the differential response of voters of different races to the race of the candidate is not the cause." *Id*. at 9. As such, Plaintiffs have not shown there is "legally significant" bloc voting, *see LULAC, Council*, 999 F.2d at 850, and, consequently, they are not entitled to the "extraordinary remedy" of a preliminary injunction. *See PCI Transp. Inc.*, 418 F.3d at 545.

E. There is no private right of action under Section 2 of the Voting Rights Act.

This Court should dismiss Plaintiffs claims because there is no private right of action under Section 2 of the Voting Rights Act. Never has the Supreme Court held that a private cause of action exists under Section 2 of the Voting Rights Act, and recently two members of the Court "flag[ged]" the issue for future litigation. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring)

("Our cases have assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under §2. . . . this Court need not and does not address that issue today."). The Fifth Circuit has even recently acknowledged that it is an open question as to whether a private right of action exists under Section 2 of the Voting Rights Act. *Thomas v. Reeves*, 961 F.3d 800, 808 (2020) (Costa, J. concurring); *see also id*. at 818 (Willett, J. concurring). That said, the Eastern District of Arkansas has recently held that "[i]t is undisputed that Congress did not include in the text of the Voting Rights Act a private right of action to enforce Section 2." *Arkansas State Conference of the NAACP v. Arkansas Board of Apportionment*, 2022 U.S. Dist. LEXIS 29037, *21 (E.D. Ark Feb. 17, 2022).

To determine if an implied right of action exists, a court must first assess whether the statute demonstrates "a congressional intent to create new rights;" and, if so, the court must then determine whether the statute "manifest[s] an intent to create a private remedy[.]" *Alexander v. Sandoval*, 532 U.S. 275, 288-89 (2001). Like many things involving a statute, courts must look at "the text and structure of" the statute when making its determination. *Id*. Any alternative sources of congressional intent are irrelevant. *Id*. It is apparent when looking at the face of Section 2, both in isolation and in the context of the Voting Rights Act as a whole, that it fails the test articulated in *Sandoval*.

Section 12 of the Voting Rights Act is the only section of the statute that provides a remedy for Section 2. However, that provision only identifies the Attorney General of the United States as the party who can enforce the statute. 52 U.S.C. §

10308(d). Section 12(d) provides that *the Attorney General* may institute proceedings on behalf of the United States "[w]henever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by" Section 2 of the VRA. 52 U.S.C. § 10308(d). As *only* the Attorney General is identified as the individual who may enforce Section 2, Plaintiffs here have no right to step into his shoes. As such, Plaintiffs lack a private cause of action under Section 2.

II. The threatened injury to the State as well as the Public Interest Weigh in Favor of *Not* Granting Plaintiffs' Requested Relief.

The Fifth Circuit's analysis with respect to whether an injunction is in the public interest "begins with the staunch admonition that a federal court should jealously guard and sparingly use its awesome powers to ignore or brush aside long-standing state constitutional provisions, statutes, and practices." *Chisom v. Roemer*, 853 F.2d 1186, 1189 (5th Cir. 1988). When analyzing the public interest, the courts should also consider the proximity of forthcoming elections. *See id.*

A. The Supreme Court's holding in *Purcell* dictates that preliminary relief be denied.

"A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) (quoting *Eu v. San Francisco County Democratic Central Comm.,* 489 U.S. 214, 231 (1989)). "Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. These concerns are heightened "in the apportionment context" where "'a court is entitled to

and *should* consider the proximity of a forthcoming election and the mechanics and complexities of state election laws'" when determining whether to "'award or withhold immediate relief.'" *Veasey v. Perry*, 769 F.3d 890, 893 (5th Cir. 2014) (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). Injunctions close in time to elections are thus disfavored in federal court. *Purcell*, 549 U.S. at 4-6.

Here there are looming candidate deadlines that must be met.[9] As Justice Kavanaugh recently explained concurring in a stay of a similar case out of Alabama "state and local election officials need substantial time to plan for elections. Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges." *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring). A similar issue is present here. The State through its executive officers, such as the Secretary of State, are currently in the process of implementing the existing districts. Any hinderance or reversal of that work will result, at minimum, in the requisite risk of confusion sufficient to trigger *Purcell*. This is because "[c]hanges that require complex or disruptive implementation must be ordered earlier than changes that are easy to implement." *Id.* Implementation of new redistricting maps are among the most disruptive changes a court can order, not just because of the complexities involved, but also the downstream effects that it can have on numerous aspects of state election administration and the electoral system

[9] *See* Louisiana Secretary of State, "2022 Elections," available at https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2022.pdf (last visited April 6, 2022).

overall. Indeed, "[s]hifting district and precinct lines can leave candidates wondering, voters confused, and election officials with a tremendous burden to implement maps in a timely manner with very limited resources." *Perez v. Texas*, 970 F. Supp. 2d 593, 606 (W.D. Tex. 2013).

Therefore, under Purcell immediate injunctive relief should be denied irrespective of the underlying merits of Plaintiffs' claims. *Veasey v. Perry*, 769 F.3d 890, 893 (5th Cir. 2014) (holding that relief can be denied under *Purcell* even if an "'apportionment scheme was found to be invalid'") (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)).

B. The accelerated scheduling order denies the people of Louisiana an adequate defense.[10]

The State of Louisiana respectfully objects—in the most strenuous terms—to this Court's preliminary injunction schedule in theses consolidated matters. While the State's motions to intervene were pending in the now consolidated matters, the Court implemented a schedule that works a material injustice on the State and, thereby, the people of Louisiana.[11] The actions of this Court are prejudicial to the defense and, as such, are prejudicial to both Defendants and the public interest.

While the extent of the prejudice, and the attendant evidence of that prejudice, must wait for the State's forthcoming motion, it is sufficient to note here that it cannot

[10] Thus, the State of Louisiana will be filing an emergency motion to stay these proceedings and a motion to reset deadlines so that a proper and robust defense to Plaintiffs' claims can be mounted.

[11] This objection is notwithstanding the fact that the current schedule is less catastrophic than the previous one. On April 13th the Court implemented a schedule that gave Defendants (which did not yet include either of the Intervenors) a mere four days—*over the Easter weekend*—to respond. *See Robinson* (ECF No. 33). The mere fact that the Court granted Defendants two weeks to respond to briefing and expert reports, *see Robinson* (ECF No. 35), that Plaintiffs had *months* to draft and prepare is no better than a band-aid on a broken leg.

be in the public interest to disallow a robust defense of a law where "the good faith of the legislature is presumed." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). A motion prior to the State filing its response was impossible as both the counsel and the experts necessarily had to devote all their attention to responding to the preliminary injunction motions. As will be fully detailed in the future motion, the following are just some of the issues that are prejudicial to the Defendants because of the current schedule: (1) Defendants' experts had insufficient time to fully analyze and respond to Plaintiffs' experts; (2) there was insufficient time to retrieve and review documents and other factual information residing within the State's agencies; and (3) certain fact witnesses have had limited availability. The State looks forward to providing evidence as to why a new schedule should issue,[12] but for now it ought to be sufficient to say that a rushed proceeding does nothing but harm the public.

CONCLUSION

For the aforementioned reasons, the Court should deny Plaintiffs' motion for preliminary injunction.

Dated: April 29, 2022,

Respectfully Submitted,

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Louisiana Attorney General

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[12] "[A] party arguing that time limits are unfair must show prejudice." *Laster v. District of Columbia*, 499 F. Supp. 2d 93, 100-01 (D.D.C. 2006).

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CERTIFICATE OF SERVICE

I CERTIFY I have served the foregoing was served on counsel for the parties via electronic means on April 29, 2022.

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EXHIBIT H

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.

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CITATION GLOSSARY

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

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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.

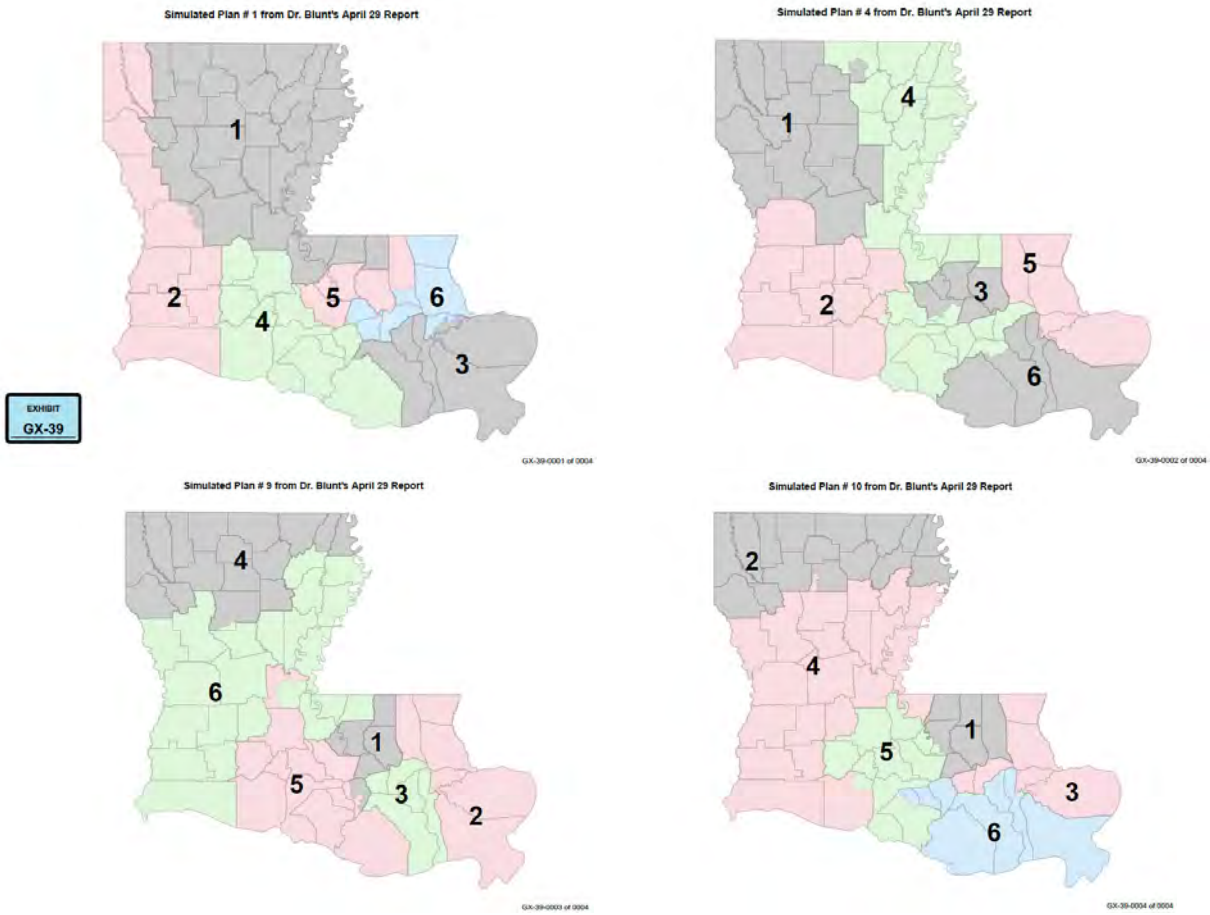
219. Dr. Blunt's simulations did not take into account incumbency protection, even though he acknowledged that this "is often a consideration" in redistricting, May 12 Tr. 69:18-70:18, or fracking, *id.* at 72:24-73:21.

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,

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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

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF LOUISIANA

3

4 PRESS ROBINSON, et al, CASE NO.
Plaintiffs,
5 3:22-cv-00211-SDD-SDJ
v
6
KYLE ARDOIN, in his
7 official capacity as c/w
Secretary of State for
8 Louisiana,
Defendant.
9 _____
EDWARD GALMON, SR., et
10 al, CASE NO.
Plaintiffs,
11 3:22-cv-00214-SDD-SDJ
v
12
R. KYLE ARDOIN, in his
13 official capacity as
Louisiana Secretary of
14 State,
Defendant.
15

16 PROCEEDINGS

17 INJUNCTION HEARING

18 Held on Tuesday, May 10, 2022

19 Before The

20 HONORABLE SHELLY DICK

21 Judge Presiding

22 Baton Rouge, Louisiana

23

24 REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
25 CERTIFIED COURT REPORTER

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P R O C E E D I N G S

THE COURT:

Good morning. Be seated. Welcome back to day two. Hopefully, we won't have a situation of fire and ice like we had yesterday, and I'm referring to the temperature in the courtroom.

Okay. Do we know what the clock -- how the clock remains? Do you-all want to put that on the record so we are on the same page?

Ms. Khanna?

MS. KHANNA:

Yes, Your Honor. Plaintiffs have taken up 190 minutes and the defendants have taken up 140 minutes.

THE COURT:

Plaintiffs, 190 and defendants, 140?

MS. KHANNA:

Yes, Your Honor.

THE COURT:

Okay. All right. Next witness?

MS. BRANNON:

I have to because I haven't entered an appearance yet. Sarah Brannon,

B-R-A-N-N-O-N. And plaintiffs call Dr. Lisa Handley.

DR. LISA HANDLEY, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

MS. BRANNON:

We have agreed to stipulate to the expertise of the witnesses, so I would like to ask for a stipulation that Dr. Handley is an expert in -- an expert witness in district -- in redistricting with an emphasis on racially polarized voting. Is there an agreement?

THE COURT:

Is there a stipulation?

MR. FARR:

Good morning, Your Honor. Tom Farr from the law firm of Nelson Mullins. I'm here representing the Secretary of State, and we have no objection to that stipulation, Your Honor.

THE COURT:

Thank you, sir.

MS. BRANNON:

Your Honor, may I approach the witness?

THE COURT:

Yes. And the court will accept Dr. Handley and allow opinion testimony in the area of expert witness experience in racially polarized voting.

You may approach.

MS. BRANNON:

Your Honor, I just somehow have realized that I cut my foot.

THE COURT:

Are you bleeding all over?

MS. BRANNON:

I am. Can we take a five-minute recess?

THE COURT:

We can take a recess while you call EMS. Okay. We will take five minutes.

(A short recess was taken at 9:37 a.m.)

THE COURT:

Okay. Be seated.

MS. BRANNON:

I'm recovered.

THE COURT:

Good. And if you feel lightheaded from the loss of blood, we will take another recess. Maybe somebody brought cookies.

MS. BRANNON:

Okay. So we are going to return. For the record, I have given Dr. Handley a binder with a copy of her expert materials in this case, and we are going to walk through all of those and introduce them as we discuss them.

THE COURT:

Okay. Proceed.

DIRECT EXAMINATION BY MS. BRANNON:

Q. Dr. Handley, did you prepare a report in this case?

A. Several, yes.

Q. Can you turn to the first page of your binder?

A. (Witness complied.)

Q. Is that a copy of the preliminary report you prepared?

A. It is.

MS. BRANNON:

For the record, Dr. Handley's

preliminary report is Exhibit PR-12.

THE COURT:

Record Document 41, dash, 3, right?

MS. BRANNON:

Yes.

BY MS. BRANNON:

Q. Dr. Handley, is your CV attached to your preliminary report?

A. It is.

Q. Is this a complete and accurate summary of your background and professional experience?

A. It is.

Q. Dr. Handley, what do you do for a living?

A. I am a consultant.

THE COURT:

Ma'am, I think you might need to adjust your mic. Yeah, right there. Your mic, just adjust it.

THE WITNESS:

Just put it closer to my pad?

THE COURT:

Okay. Now we can hear better.

BY MS. BRANNON:

Q. I'll re-ask. Dr. Handley, what did you do for a living?

A. I am a consultant here in the United States and overseas. I also am a part-time academic in the U.K.

Q. Can you provide us some examples of some of your clients for your consulting business?

A. I have worked, as I mentioned, the UM. I worked for scores of states and local jurisdictions. I worked for the redistricting for the Department of Justice for several civil rights organizations, including the ACLU.

Q. Can you briefly describe some of your academic work you have done on the topic of redistricting and minority vote dilution?

A. Almost all of the articles that you'll see listed in my CV, that includes books, articles, peer-review journals, law review articles, chapters in books deal with minority representation, voting redistricting with the subjects of this case.

Q. All right. And have you testified before as an expert witness?

A. I have.

Q. Approximately how many times have you performed a racial block voting analysis as an expert witness?

A. As an expert witness, scores of times.

Q. Okay. And have you been -- have you been accepted as an expert witness before to testify about redistricting and racially polarized voting?

A. I have.

Q. Approximately how many times?

A. Scores.

Q. Dr. Handley, what were you asked to do in this case?

A. I was asked to conduct an analysis of the voting patterns by race in Louisiana and to evaluate proposed districts; that is, the enacted plan and several illustrative plans to ascertain the opportunity for black voters to elect the candidates of their choice.

Q. And were you asked to analyze voting patterns in the State of Louisiana specifically?

A. Yes. I analyzed voting patterns statewide, I analyzed voting patterns in 16 congressional districts and in the enacted

congressional districts.

Q. And can you provide us a general summary of the opinions that you reached with respect to your analysis as to whether there's racially polarized voting in Louisiana?

A. Yes, there is racially polarized voting in Louisiana. There is quite stark racially polarized voting in Louisiana.

Q. What is your definition of racially polarized voting?

A. Thornburg versus Gingles tells us that voting is polarized in black voters and white voters vote differently. In other words, if black voters voting alone elected different candidates than white voters, then the contest is racially polarized.

Q. What statistical techniques did you use to analyze whether voting in Louisiana is racially polarized?

A. I used three standard techniques: Homogeneous precinct analysis, ecological regression, and ecological inference. Technically I used four because there are two variants of ecological inference.

Q. We heard details yesterday about

ecological inference, but can you provide a brief summary of homogeneous precinct analysis and ecological regression.

A. Homogeneous precinct analysis simply compares the voting patterns of precincts that are overwhelmingly one race compared to precincts that are overwhelmingly in another race.

So in this case, you are comparing precincts that are overwhelming white to precincts that are overwhelming black. It's not actually a statistical technique. It's simply comparing these two precincts. We call it an estimate because, of course, not all voters live in homogeneous precincts and might vote differently than the voters who live in more diverse precincts.

Q. Why do you use all three methods?

A. Two of the methods have been around for a very long time. When Thornburg v Gingles was decided, homogeneous precinct analysis and ecological regression was used by the plaintiffs' experts and the court approved those methods. Since then, ecological inference was developed by a professor at Harvard by the name of Gary King and courts have accepted that.

Now, this is three different techniques to arrive at estimates. If you -- if the estimates are more or less the same, despite using three different techniques, we are certain that we have grasped what the voting patterns are.

Q. Have courts accepted your expert testimony using these different statistical methodologies in voting cases before?

A. Yes. Now, again, ecological inference is more common. I've only been using that for maybe 20 years, but the others for 40 years, a long time.

Q. Okay. Let's look at your analysis a little bit more in detail.

MS. BRANNON:

Can we see demonstrative Exhibit 1.2?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Did you analyze statewide elections?

A. I did analyze statewide elections.

Q. How many statewide elections did you analyze?

A. Fifteen statewide elections.

Q. Are you familiar with this table that is demonstrative Exhibit 1.2?

A. Yes. These are the 15 contests that I analyzed.

Q. Why did you choose these elections?

A. These are all recent elections from 2015 on. They all include black candidates.

Q. Let's walk through your analysis of a statewide election.

MS. BRANNON:

Can we see demonstrative Exhibit 1.3?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Dr. Handley, do you recognize this spreadsheet?

A. I do.

Q. Is this spreadsheet part of your preliminary report as appendix A?

A. It is.

Q. Can you explain what this spreadsheet shows by walking us through the portion that has been highlighted?

A. Yes. So this is a particular contest. In this case, it's the attorney general in 2019, October 2019. You can see the two candidates, Jackson and Jeff Landry. You can see their party, you can see their race, and the next column is the actual votes they received.

Below that is the black turnout and the white turnout figures. And then the next set of four columns are the estimates derived by the four different techniques of the percentage of black voters who voted for each of these candidates.

So, for example, C 90.6 is the EIR times C estimate, 91.2 is the EI 2 times 2, 94 percent is the ER, and 87.7 is the homogeneous precinct estimate of percentage of the black voters who supported Ike Jackson. And then you see the same information for the white voters. So like EIR times 29.4 percent of the white voters that supported Ike Jackson by EI 2.2, it's 10.1 by ER, it's 9.2; and by HB, it's 12.2. So all of them are quite comparable.

For example, the estimate that the percentage of black voters who voted for Jackson was similar between 87.7 percent and 94 percent.

THE COURT:

Dr. Handley, one second. Will you help her with her mic? See if maybe we can adjust it.

THE WITNESS:

The problem is I'm leaning forward.

THE COURT:

Right. What we will do is she will -- she will just see if we -- Mr. IT is here too, so we are well. We are over prepared.

THE WITNESS:

This is going to be too far away. You can still hear?

THE COURT:

No. That's better and you can certainly adjust it. I'll stop. We may be give you some assistance, okay? Please carry on. I'm sorry I interrupted you.

BY MS. BRANNON:

Q. Dr. Handley, what are confidence intervals?

A. So the EIR times C estimates, the column next to that, we have confidence intervals. You can think of those as sort of the

margins of error that you see in a survey that we're 95 percent certain that the true estimate, the estimate being 90.6, that the true estimate is somewhere between 90.3 and 90.9.

Q. And why do you include confidence intervals only for your EIR times C calculation?

A. Those are the only confidence intervals that are generally accepted by experts in my area for -- for these kinds of estimates.

Q. Does the -- this appendix A also provide information about voter turnout?

A. It does. The italicized lines in the attorney general race, it says black turnout, slash, black VAP. That's the percentage of black voting age population that actually turned out for that particular office; and the same for white turnout of white VAP. So 35.2 percent of black voting age, of the eligible black voting age population turned out to vote and 45.2 percent of the whites.

Q. Would you characterize this 2019 attorney general election as a polarized contest?

A. I would.

Q. Why?

A. The vast majority of black voters

voted Jackson. If they had voted alone, Jackson would have one overwhelmingly. The vast majority of white voters supported Landry, and if they alone would have voted, he would have one overwhelmingly. In fact, he did win.

Q. Does the race of the candidates need to be different to determine if there's racially polarized voting?

A. No. The point is that black and white voters are for different candidates. No. It so happens in the contest that I looked at with at least one or two exceptions, the black candidate was the black preferred candidate; that is, the candidate preferred by black voters, but there are exceptions to that in the elections that I looked at.

Q. Does appendix A show the same type of data for the rest of the 14 statewide elections that you analyzed?

A. Yes. So all 15 are in this and I just described one. They are all read the same.

Q. What, if any, conclusions did you reach about racially polarized voting in Louisiana in statewide elections based on your analysis with these 15 elections?

A. All 15 contests were polarized. In every instance, black voters and white voters would have elected different candidates had they voted separately.

Q. You already explained how you looked at voting patterns in congressional elections. Why?

A. Of course, it indicated that endogenous elections; that is, elections for the office at issue, are more probative than exogenous elections.

Now, in this case, you are looking at proposed plans. There were no elections under it, but congressional elections in general would still be more probative and would be particularly so in Louisiana where the districts didn't change that much from the enacted plan from the current plan.

MS. BRANNON:

Can we see demonstrative Exhibit 1.4?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Do you recognize this table?

A. This -- yes. This is a list of the congressional election contests that I looked at. Again, this is from 2016 to the most recent contest, and it was the contest that included black candidates. There were no contests in District 1 that included black candidates.

Q. And is the analysis of these congressional districts described in your reports?

A. Yes.

MS. BRANNON:

Can we see demonstrative Exhibit 1.5?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Dr. Handley, do you recognize this table?

A. Yes.

Q. Was there a version of appendix B attached to your preliminary report?

A. Yes.

Q. Did you make any corrections?

A. I updated it by adding three elections that occurred in 2021. There were two

congressional elections in District 2 to replace Cedric Richmond and there was an election in District 5, and so this has been updated to include those elections. I also changed the date of the elections from October to the correct date, which is November, and I had to correct one of the confidence intervals because of a typo.

Q. Was revised Appendix B included with your rebuttal report?

A. Yes.

MS. BRANNON:

For the record, Dr. Handley's rebuttal report is Exhibit PR-87.

BY MS. BRANNON:

Q. Did any of these changes impact any of your opinions in this case?

A. No.

Q. Is the data as reflected in revised Appendix B that's on the screen similar to the data that is reflected in Appendix A we were just discussing?

A. If by "data" you mean precinct information, that is both the demographic information and the election returns. It's the same. If you mean reading the charts, it's read

the same as well.

Q. Yeah. Reading the charts?

A. Reading the charts.

Q. Reading the chart is the same. This chart would be read the same as Appendix A that we have walked through?

A. That's correct.

Q. Okay. What, if any, conclusions did you reach about voting patterns and congressional elections in Louisiana based on your analysis?

A. The elections in Districts 3, 4, 5 and 6 were all white polarized. The elections in District 2 less so. In fact, most of them were not polarized in District 2.

Q. All right.

MS. BRANNON:

Can we see demonstrative Exhibit 1.6?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Dr. Handley, did you conduct any analysis of the voting patterns in the newly enacted congressional map related to HB-1?

A. I did. Of course, no election has

occurred. So this reflects recompiled results using the precincts that the old elections occurred in and sort of re-running the elections as they would have occurred -- they would have occurred in the enacted congressional districts.

Q. Do you recognize the tables on this demonstrative?

A. Yes.

Q. Is there a version of Appendix C attached to your preliminary report?

A. Yes.

Q. Did you make any changes?

A. Yes. So it turns out that we had an old version of what's called a block two district equivalency file for the enacted plan, and when we discovered that it was old and we needed to fix it, I then, in a burst of caution, re-ran all of the analyses for the enacted districts using the new block to district equivalency.

Q. Does this demonstrative demonstrate your original Appendix C and your updated Appendix C?

A. That's correct.

Q. Did your new analysis of congressional districts in the enacted plan of

1 congressional district -- this is Congressional
2 District 2, correct?
3 A. Yes.
4 Q. Did any of your opinions change?
5 A. No. The -- the block equivalency
6 file was only off by about 2 percent of the
7 population. So we moved the 2 percentage into
8 the correct districts and it changed the
9 estimates barely, maybe by a percentage point, if
10 it changed them at all. As you can see, voting
11 is still quite polarized.
12 MS. BRANNON:
13 And, for the record, the updated
14 Appendix Cs are provided with plaintiffs'
15 Exhibit PR-92.
16 Can we see PX-1.7?
17 TRIAL TECH:
18 (Complied.)
19 BY MS. BRANNON:
20 Q. Did you do an analysis of the
21 enacted plan for congressional districts other
22 than Congressional District 2?
23 A. Yes. I did look at voting patterns
24 in all of the enacted districts that overlaid
25 Illustrative District 5; that is, the additional

1 black opportunity district offered by the
2 illustrative plan. And as you can see, it
3 overlaps Districts 2, 3, 4, 5 and 6.
4 Q. So --
5 A. So those were the -- those were the
6 congressional districts that I looked at. It
7 does not overlap 1, so I did not look at 1.
8 Q. And you recognize this map?
9 A. Yes.
10 Q. And it shows the overlay you were
11 just describing?
12 A. That's correct.
13 Q. All right. Did you make any further
14 changes to your analysis for the other
15 congressional districts besides CD2?
16 A. Do you mean because of the block
17 equivalent, I did it?
18 Q. Yes.
19 A. Yes. I re-ran all of the analyses.
20 Q. And those are all included in the
21 corrected materials report that we filed in this
22 case?
23 A. That's correct.
24 MS. BRANNON:
25 Which, for the record, is PR --

Exhibit PR-92.

BY MS. BRANNON:

Q. Did any of your opinions change as a result of redoing this analysis for all five of the congressional districts you looked at?

A. No. As I said, the changes were mostly less than a percentage point and voting still very polarized in these congressional districts.

MS. BRANNON:

We can take this one down.

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. What -- when conducting your analysis of these congressional districts in the enacted plan, what conclusions did you reach?

A. If voting was polarized in all of the districts that I looked at, there was some variation in that there was more white crossover vote in enacted District 2 than there was in 3, 4, 5 and 6, which were quite starkly polarized.

Q. What do you mean when you say "white crossover voting"?

A. I'm talking about white voters who

are voting for the black preferred candidate.

Q. Let's turn now to your analysis of black voters opportunities to elect candidates of their choice in the illustrative maps and the enacted congressional map.

Did you evaluate the opportunity of black voters to elect their candidate of choice in the enacted map?

A. I did.

Q. And what methodology did you use?

A. Of course, no elections have actually occurred in either the illustrative or the enacted plan, so I used -- I relied on what I called recompiled election results looking at how previous elections would have faired, how the candidates of choice in previous elections would have faired under the proposed districts.

Q. Have you used this method of recompiling election results when providing other expert opinions that have been accepted by courts before?

A. Yes.

Q. Why do you think it is useful to form this evaluation?

A. The only way to know if a proposed

plan will provide black voters with an opportunity to elect their candidates of choice since no elections have occurred is to do something like this, to look at recompiled election results, determine if the black preferred candidates would win, and how many elections they would win.

Q. Did you also perform this recompiled election results analysis on Illustrative Map 2A that was drawn by plaintiffs' expert Tony Fairfax?

A. I did.

MS. BRANNON:

Can we see demonstrative Exhibit 1.8?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. Do you recognize these tables?

A. Yes.

Q. Can you explain the information provided on these tables starting with the enacted plan on the right side of the screen?

A. Yes. Now, when you are trying to figure out if a district is going to provide

black voters with an opportunity to elect, the elections that you want to look at are elections in which black voters and white voters agreed on who they would elect. And that happens to be the case in all 15 elections that I looked at.

So here what I did was was I determined how many of those 15 elections with a black preferred candidate either win the majority vote or win enough votes to go on to the runoff, so that's my effectiveness score one. It's just the percentage times the black preferred candidate would win or lose if there were a runoff.

The second column, the effectiveness score two is what would happen if they made it to the runoff and there were now just two candidates, would they win the runoff, and this is the percentage of times they would win the runoff.

So, for example, in District 2, the black preferred candidate in all 15 contests would have either won or proceeded to the runoff; and in the two -- two candidate contest if they had gone to the runoff, they would have won 100 percent of the time.

Now, in the other districts in the enacted plan, although the black preferred candidates in some of these districts would have proceeded to the runoff in about 25 percent of these elections, none of them would have actually won the runoff. So in the other districts, the black preferred candidate would have not ultimately prevailed in any of the elections.

Q. So can you just please explain how that works in Louisiana's voting system?

A. All right. So this is a little different than how I usually do this because you have a system that is -- well, it used to be unique. I think maybe some other states are adopting it, but you have a primary system and it includes both Democrats and Republicans; and the election might actually end there without a general election, while in most states you have the -- you go on and you have a general election with two candidates, a Democrat and Republican. Sometimes here you go on and you have an election with two Republicans, so that makes it a little bit different, and that's why I -- that's why you see these two columns.

Q. Would you characterize any of the

congressional districts an enacted plan other than Congressional District 2 as an opportunity district?

A. I would not.

Q. And then can you just briefly explain the analysis that is reflected in Table 2 on the left side of the map about Illustrative District -- Illustrative Map 2A?

A. So, again, I used exactly the same methodology, did exactly the same thing, but this time you can see that District 2 is also 100 percent of the time the black preferred candidate wins.

In District 5, 86.7 percent of the contest produced the black preferred candidate as winning or proceeding to the runoff, and in 77.8 percent of the runoffs, also two candidate contests, the black preferred candidate prevails in District 5.

Q. Would you characterize any of the congressional districts in Illustrative Map 2A as opportunity districts?

A. Yes. Districts 2 and District -- and District 5 both provide black voters with an opportunity to elect their candidates of choice.

The other districts, 1, 3, 4 and 6 do not.

Q. Is the information in Table 2 reflected in your reports in this case?

A. Yes.

Q. What conclusions, if any, did you draw about the ability of black voters to elect their candidates of choice in this illustrative plan versus the enacted plan?

A. There is one black opportunity district in the enacted plan and there are two in the illustrative plan marked map 2A.

Q. Bringing together your racial polarization analysis and your effectiveness analysis of the enacted plan and the illustrative maps, how does the racially black voting in Louisiana effect voters' opportunities to elect their candidates of choice?

A. Because voting is racially polarized, black voters can only elect their candidate of choice if the district is drawn that gives them this opportunity.

MS. BRANNON:

I also move for admission of all of Dr. Handley's materials that have been in this case, but for the record, it's PR-12,

PR-87, PR-91 and PR-92.

THE COURT:

Any objection?

MR. FARR:

No objection, Your Honor.

THE COURT:

So admitted.

BY MS. BRANNON:

Q. Dr. Handley, did you also look at the expert report of defendant's expert, Dr. Solanky? I think I'm saying that correctly, Solanky.

MR. FARR:

That's correct.

THE WITNESS:

I did.

BY MS. BRANNON:

Q. Do you think it was appropriate for Dr. Solanky to offer voting opinions about the voting patterns in East Baton Rouge from the analysis of just one election?

A. Certainly, you would look at a pattern of voting over more than one election. You would look at as many as you could.

MS. BRANNON:

Can we see demonstrative 1.10?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. And Dr. Solanky did an evaluation of East Baton Rouge Parish, correct?

A. Yes.

Q. Do you recognize this map?

A. Yes.

Q. Do you think it was appropriate that Dr. Solanky looked just at East Baton Rouge Parish?

A. No, for two reasons: No. 1, East Baton Rouge Parish is not large enough to be its own congressional district, that the population is too small. You would have to add neighboring parishes to it, thus he pointed out the voting patterns in neighboring parishes is different.

And, No. 2, you can see from this map that, in any case, East Baton Rouge is not wholly contained within any congressional districts, either in the enacted or the illustrative maps. It is divided between two districts.

Q. Would it be possible to draw a

congressional district just with East Baton Rouge Parish?

A. No. The population is too small.

Q. So even if Dr. Solanky's conclusion was correct that the voting patterns in East Baton Rouge -- about the voting patterns in East Baton Rouge, do you think that that analysis is relevant to questions about performance in an Illustrative District 5?

A. No. Again, you have to add population. As he himself points out the population, the voting patterns in the parishes neighboring East Baton Rouge Parish is different.

Q. Did you also look at the report of Dr. Alford?

A. I did.

Q. Did Dr. Alford offer any criticism of the methodology in your report?

A. No.

Q. Dr. Alford's report -- Dr. Alford in his report in addressing the cause of voting patterns in Louisiana does an evaluation as to whether there is racial --

MS. BRANNON:

Excuse me, Your Honor. Can I start

again?

BY MS. BRANNON:

Q. Does any evaluation of whether there is actual racially polarized voting involve an evaluation of the causes of the voting patterns that have been analyzed?

A. No. The Voting Rights Act, I believe the Voting Rights Act was specifically amended to focus the inquiry on the electoral consequences of different voting patterns and to not -- the reason for those. Intent was specifically taken out of the equation, the intent of the legislators as well as the intent of the voters.

Q. Do you agree with Dr. Alford's suggestion in his report that the fact that black voters support Democrats and white voters support Republicans in Louisiana means that voting is not racially polarized?

A. When you determine voting is racially polarized, you do it the way that I have done it. This is the way that experts have done it for over 50 years. You look at the voting patterns of blacks and whites and you compare to see if they are voting the same candidates or

different candidates. This is how it is done. This is how you determine if voting is racially polarized.

MS. BRANNON:

Nothing further, Your Honor.

THE COURT:

Cross?

MR. FARR:

Thank you, Your Honor. Can everyone hear me?

THE COURT:

Yes, sir. Did you need to -- did you need to remain seated? I can't remember --

MR. FARR:

I just want to tell Dr. Handley nice to meet you. And through the graciousness of Your Honor, I've got a back condition, so she's agreed that I can examine you from counsel's table, and I'm grateful to her for doing that. Please let me know if you can't hear my questions and I'll try to rephrase them.

THE WITNESS:

Okay.

THE COURT:

Let me ask this. Would it be helpful -- you may be seated, sir.

Would it be helpful to be able to make eye contact? I mean, is there somebody that I can move, either counsel table move out of the way or does it matter?

MR. FARR:

I can see Dr. Handley, if she can see me.

THE COURT:

Can you see her -- him?

THE WITNESS:

I can see, yes. I don't have my glasses on, but other than that --

THE COURT:

All right. Well, then that's fine. We just want to make sure that you-all communicate well.

THE WITNESS:

Okay.

THE COURT:

Go ahead, sir.

CROSS-EXAMINATION BY MR. FARR:

Q. Dr. Handley, we haven't met before, but I've reviewed some of your prior testimony in some cases that involved our firm; and it's an honor to meet you here today.

THE COURT:

And state your name for the reporter. You may have already done that, but I just need it.

MR. FARR:

Yes, ma'am. I'm Tom Farr, and I'm from the law firm of Nelson Mullins and I'm here representing the Secretary of State.

BY MR. FARR:

Q. So, Dr. Handley, when were you first contacted about Louisiana redistricting in this cycle?

A. It's difficult to say. I was working with the ACLU in another couple of states before we started talking about Louisiana.

Q. It's not a memory test, Dr. Handley.

A. Okay. I'm sorry. I don't remember exactly when. Certainly, less than a year ago.

Q. Okay. Well, let's see if we can clarify that a little bit with some questions

I'll ask.

Do you remember who called you about working on Louisiana redistricting?

A. No.

Q. When were you actually engaged to work on Louisiana redistricting?

A. Oh, that's also a tough question because I am not even sure that I have a contract with the ACLU with Louisiana, so I can't actually answer that question.

Q. And do you know who engaged you?

A. No.

Q. Okay. You don't know the person that engaged you?

A. Well, I suppose ultimately it would have been Dale Hope, and I had conversations with him earlier; and this is the head of the voting rank division -- the voting section of the ACLU.

Q. Yes, ma'am. I know Mr. Dale Hope. I think very highly of him, so thank you for that answer.

Did you do any work on Louisiana prior to the Louisiana legislative process?

MS. BRANNON:

Your Honor, I'm just going to -- she

can answer that question, but I want to put an objection on the record to the extent it's seeking what we would consider being work product leading up to litigation, but anything that relates to not leading up to litigation, you can answer.

THE COURT:

Your objection is noted. It may be a little premature, but you-all know that she thinks you are going in the wrong direction, so there you go.

MR. FARR:

Your Honor, I'm not going to ask her about work product. I just want to know when she started working on this, and if it's -- we are all interested in other issues in the case, so --

THE COURT:

Okay. There's no objection to your current question, so if you want to restate it?

MR. FARR:

Yes, ma'am.

THE COURT:

Go ahead.

MR. FARR:

Thank you, Your Honor.

BY MR. FARR:

Q. Ms. Handley, do you remember when you started working on matters related to Louisiana congressional redistricting in this cycle? Let me try -- let me try it off a little bit.

A. I'm sorry. I -- I can't remember.

Q. That's all right. I understand. Do you think you began working before the legislative process started?

A. I have no idea. I don't know when the legislative process started.

Q. Okay. I heard you mention something. Could it have been that you were working on Louisiana redistricting sometime within the last year?

A. Yes.

Q. Okay. And you just didn't start when the plan was enacted?

A. That's correct.

Q. Did you give any input on your theories and calculations to the legislature

during the legislative process?

A. Did I? The legislature never contacted me or asked me to do any work, no.

Q. But you didn't voluntarily give any of your research to the Louisiana legislature while they were considering congressional plans?

A. I personally?

Q. Yes.

A. No.

Q. Did you talk to anybody who gave information about your plans or any advice that you may have transmitted? Did you talk to anyone who may have provided that information to the Louisiana legislature?

A. Possibly.

Q. Do you know who that would have been?

A. No.

Q. And did you perform your polarization studies that we talked about today before the plan was enacted?

A. It depends on what you mean by "enacted."

Q. Why don't you --

A. So my understanding was it passed,

but then it was vetoed and then the veto was overridden. I analyzed the plan after it was passed by the legislature.

Q. Okay. And your report's got analysis of statewide polarization rates?

A. I'm sorry. Could you repeat that?

Q. Yes, ma'am. In reading your report, it appears that you have -- you've done polarization studies on statewide elections?

A. That's correct.

Q. Did you do those before the congressional plan was enacted?

A. I don't remember in time. I'm not exactly sure what you mean by "enacted." I did it most likely before the veto was overridden.

Q. Okay. So before the initial plan was ever written, you think sometime before then you did your statewide polarization studies?

A. I probably had started them.

Q. Okay. All right. Thanks.

Now, I want to ask you some questions about what you mean by "polarization," and we can go to your report if that will help you, but when I read your report on page 1 --

MR. FARR:

Well, let me pull up PR-12 on the screen.

TRIAL TECH:

(Complied.)

BY MR. FARR:

Q. Are you there?

A. Yes.

Q. So during your testimony, you said several times that voting in Louisiana is racially polarized. Is that a fair recitation?

A. Yes.

Q. And then on page 1 of your report, you make a statement that voting in the State of Louisiana is racially polarized. You see that?

A. Yes.

Q. Now, turn to page 8. It looks like it's the second full paragraph where it says "congressional elections." Do you see that? You see that paragraph?

A. Yes, I do.

Q. Okay. And is it fair to say that your report that elections in the 2011 version of Congressional District 2 were probably not racially polarized?

A. Although the statewide elections

were polarized, the congressional elections, I think it was most of them, not all of them, were not polarized.

Q. Okay. So that's -- that's where I want to ask you some questions, Dr. Handley.

You've been doing this for a long time and you know way more than I do. Is there a difference between legally significant racially polarized voting and just simple polarized voting?

A. Now, I've written on this, but I'm not a lawyer, so I don't really know that you want me to answer this.

Q. Well, I'd like you to because I think you've explained it before. Is there a difference between significant racially polarized voting and substantial racially polarized voting?

MS. BRANNON:

I'm just going to object. I'm going to object to the extent that calls for a legal conclusion.

MR. FARR:

Your Honor, I'm just asking her for her opinion as an expert in the area of racial polarization. She understands the

two different types of racial polarization.

THE COURT:

Well, the question on the floor right now, is there a difference between significant racial polarization and substantial racial polarization, you did rephrase your question. You removed the words "legally sufficient," so I'm going to overrule the objection.

So the question is, is there a difference between significant racial polarization and substantial racial polarization, if you have an opinion on that.

THE WITNESS:

Between significant and substantial?

THE COURT:

Is -- that's -- isn't that your question, sir?

MR. FARR:

Yes, it is.

THE COURT:

Okay.

THE WITNESS:

I can't think of one.

MR. FARR:

Okay. Let me pull up a deposition that Dr. Handley gave in the Ohio Randolph Institute case on December 12th, 2018.

TRIAL TECH:

(Complied.)

BY MR. FARR:

Q. Can you see that on your screen, Dr. Handley?

A. I can.

Q. And were you an expert witness in that case?

THE COURT:

You need to know the case again?

THE WITNESS:

I need to know which case this is.

BY MR. FARR:

Q. Well, it says it's your deposition on the front page, correct?

A. Yes. I believe this is my deposition and I believe I know what case it is.

Q. Yes. And you remember being cross-examined by my law partner, Phil Strach, in that case?

A. I do not.

Q. Okay. Well, let's turn to page 104 of that exhibit. And I'll represent to you, Dr. Handley, this is a series of questions that my partner, Phil Strach, asked you in this deposition. I'm going to read the question and I'd like for you to read the answer. Would that be all right?

THE COURT:

Give us a line reference.

BY MR. FARR:

Q. I'm going to start with line 21. Are you ready?

A. Yes.

Q. So the question is "All right. Thank you. Are you aware of the difference between statistically significant racially polarized voting and legally significant racially polarized voting," and your answer is --

MS. BRANNON:

Your Honor, I'd like to object. I think this is improper impeachment. I don't think he's laid the foundation.

THE COURT:

Sir, you want to respond? Did you

hear her objection?

MR. FARR:

I think I did and I don't know really what the substance of the objection is. I'm impeaching the witness on a previous deposition that she gave to significant racial polarization versus substantial racial polarization.

THE COURT:

She's correct. It's improper foundation. It is not -- it's improper impeachment. It is not a prior consistent statement. The questions are different and you made them different. Objection sustained.

MR. FARR:

Your Honor, may I try again?

THE COURT:

You may, but take the deposition down.

TRIAL TECH:

(Complied.)

BY MR. FARR:

Q. Dr. Handley, do you agree that substantively significant racial polarization

means that the minority and the whites are voting for different candidates?

A. Yes. Yes.

Q. Do you agree that it would rise to the level of legal significance if the minority preferred candidate usually lost?

MS. BRANNON:

Again, Your Honor, I'm going to object. That calls for a legal conclusion.

MR. FARR:

I'm not asking for a legal conclusion. I'm asking for her -- the way she understands racial polarization.

THE COURT:

The question is legally significant. That is a legal question. That is a question of a legal opinion. The objection's sustained.

MR. FARR:

Well, may I ask the question again, Your Honor? I'll take the word "legal" out.

THE COURT:

And you did that and you are going

to receive the same result. You are going to have improper impeachment. You can try again, but if the word legally is in the prior question, it's -- you're not -- it's not a prior inconsistent statement.

MR. FARR:

I'm sorry, Your Honor. I apologize.

THE COURT:

Okay. No worries. Go ahead.

BY MR. FARR:

Q. So my question is would polarization rise to the level of significant polarization if the minority for a candidate usually lost?

A. Polarization is -- let's see. Let's see how -- I suppose you could say that one contest being polarized is less significant than more contests being polarized.

Q. Which if the -- if the white candidates did not vote in sufficient numbers to defeat the black candidate, preferred candidate of choice, would you consider that to be significant racial polarization?

A. I think it would depend on the circumstances. So if you had a district that -- I can't really answer that as a hypothetical.

Could you give me --

Q. Let me try again. Explain why you concluded that voting in the State of Louisiana was racially polarized while also saying that the voting in Congressional District 2 was not racially polarized?

A. So in the 15 contests that I looked at statewide, in every case the black and white voters would have elected different candidates.

In Congressional District 2, in many cases the white voters supported the incumbent black candidate, Cedric Richmond.

Q. So the white voters in Congressional District 2 did not vote as a block and defeat the black voter, the preferred candidate?

A. In Congressional District 2 when Cedric Richmond was the candidate, that's correct.

Q. Okay. And whites are the majority in Congressional District 2?

A. I beg your pardon?

Q. Are whites the majority in Congressional District 2?

A. They are not.

Q. Okay. Are there areas in Louisiana

where the level of polarization is higher and lower?

A. That the what -- I'm sorry. Repeat the question.

Q. Yes, ma'am. You reported on statewide polarization rates for statewide elections; is that correct?

A. Yes.

Q. Are there some areas of the state where the polarization rate is higher than in other areas of the state?

A. It depends on what you mean by "polarization rates." You mean the number of contests that --

Q. No.

A. -- are polarized; is that what you mean?

Q. I mean the difference between the number of whites and blacks who vote for the black preferred candidate of choice.

A. It is the case that there is more white crossover vote in Congressional District 2 than anywhere else that I looked in the state.

Q. Okay. And could there be other areas of the state where the crossover vote is

higher than the -- than the average?
A. Not at the congressional level or statewide. There may be pockets.
Q. Okay. When you did your study on racial polarization, you did not do a parish-by-parish study on polarization rates?
A. That's correct.
Q. Okay. I'll move on to another subject now, Dr. Handley.
When you talk in your report about voting age population for African-Americans, are you referring to any part black voting age?
A. It depends. I report of any part black and the DOJ definition of voting age population in my rebuttal report and in the supplemental report.
Q. Okay. So let's turn to PR-12.
A. I'm sorry. To what?
Q. I'm sorry, ma'am. Your initial report, which I think is labeled PR-12?
A. Oh, okay.
Q. And -- and can you turn to Table 3, which is on page 10?
A. (Complied.)
Q. Are you there?

A. I am.

Q. And you see on footnote 14 you say, "Black voting age population has been calculated by counting all persons who checked black or African-American on their census form"; is that correct?

A. Yes.

Q. And in making that footnote, were you referring to any part black?

A. Yes.

Q. Okay. Thank you. And using the census category part black, did that result in a higher black percentage in the districts you are looking at than if you used a single race black?

A. Yes.

Q. Now, I want to move to some questions about your appendices. And I think this is kind of a refresh or review of Appendix A which is your study of statewide elections; is that correct?

A. Yes.

Q. Appendix B was your study of percentage of black and white voters for each candidate in congressional elections from 2016 to 2020?

A. Ultimately, 2021.
Q. Okay. That was in your report you just gave us; is that correct?
A. Yeah.
Q. All right. Fair enough. And that was under the plan that was enacted in 2011?
A. The congressional elections were, yes.
Q. Okay. And then in Appendix C through G, you do a polarization study on all of the districts in the plan that was enacted in 2022; is that correct?
A. Almost. I didn't look at District 1.
Q. Oh, you didn't look at Congressional District 1?
A. That's correct.
Q. I was going to ask you just out of curiosity, why didn't you look at that?
A. Because it doesn't overlap. It supplies no voters to Illustrative District 5.
Q. Okay. And you didn't report a similar analysis for Mr. Fairfax's illustrative -- illustrative plans, did you?
A. I'm sorry. Repeat that.

Q. Did you do a similar report for the illustrative plans that Mr. Fairfax has proposed in this case?

A. A similar report? I'm sorry.

Q. Yeah. As to what you did for the 2011 congressional districts, did you do something like that for the districts in Mr. Fairfax's illustrative plans?

A. No.

Q. You didn't report that. Did you ever do that and not report it?

A. No.

Q. Okay. Now, I want to go through some terms to get the question I want to ask you, Dr. Handley.

Is it fair to say a majority black district, as the U.S. Supreme Court has defined it, means a district where the black voting age population is an actual majority?

MS. BRANNON:

Objection. Again, Your Honor, isn't that a legal conclusion?

THE COURT:

Sir?

MR. FARR:

1 May I rephrase it?
2 THE COURT:
3 You may.
4 BY MR. FARR:
5 Q. Dr. Handley, have you read the
6 Supreme Court's decision?
7 A. Many years ago.
8 Q. Do you recall how the court defined
9 the majority black district in that case?
10 A. I believe so.
11 Q. And how did they define it?
12 A. A majority black district would be a
13 black district in which the voting age population
14 was majority black at least 50 percent plus
15 1 percent.
16 Q. Okay. And a crossover district is
17 a -- is what?
18 A. A crossover district, you'll have to
19 tell me.
20 Q. Okay. Is it fair to say a crossover
21 district is a district where the black population
22 is not in the majority, but they can elect their
23 preferred candidate with the help of white
24 crossover voters?
25 A. I don't use that term. I think it

might have come out of some recent case. If you want to define it that way, you can.

Q. Okay. Well, are there districts where black voters are able to elect their candidate of choice, even if they are not a majority?

A. Yes.

Q. And in those instances, do they -- is the candidate of choice selected because there are white voters crossing over to help elect the black candidates preferred -- the black minority group preferred candidate?

A. Yes.

Q. All right. Now, have you -- have you written about something called an effective district?

THE COURT:

I'm sorry. I missed that. The what district?

MR. FARR:

I'm sorry, Your Honor.

BY MR. FARR:

Q. Have you written or described some districts as being effective districts?

A. Yes.

Q. And can an effective district be a district that has less than 50 percent black voting age population?

A. Yes.

Q. And an effective district means that the -- that the district provides the black community an opportunity to elect their candidate of choice; is that correct?

A. Yes.

Q. And that said, even when they are not a majority of the district, it could be?

A. It could be the case, yes.

Q. Now, in other cases, Dr. Handley, have you ever done something called a functional analysis to determine whether a district could provide African-Americans with the opportunity to elect their candidate of choice with a black percent that's under 50 percent?

A. Yes.

Q. And did you do such a study in this case?

A. I did not.

Q. All right. I want to turn now to some questions about your rebuttal report. Please feel free, ma'am, to pull that up in front

of you if it will be helpful. I don't know that I'll be quoting any pages, but feel free to respond to that if that helps your testimony, all right?

A. Yes.

Q. Now, you are familiar with the report Dr. Lewis submitted for the defendants analyzing crossover voting in the illustrative plans?

A. I read Dr. Lewis's report.

MR. FARR:

Okay. And, just for the record, I believe that's Exhibit LEG 2 is the report I'm referring to.

BY MR. FARR:

Q. So you had an opportunity to review Dr. Lewis's report?

A. I read Dr. Lewis's report, yes.

Q. And in your rebuttal reports, correct me if I'm wrong, the only experts you provided rebuttal testimony to are Dr. Solanky and Dr. Alford; is that correct?

A. Yes.

Q. And more specifically, you did not submit a reply to Dr. Lewis's report?

A. Correct.
Q. So if someone in this case asserted that districts with the black voting age population below 50 percent was -- will give the black community an equal opportunity to elect their preferred candidates of choice, you have no basis to disagree with that statement, do you?
A. If you mean Dr. Lewis convinced me of that, I would have to disagree with you. No, he did not convince me that a district with less than 50 percent was equal.
Q. But you yourself have not done a study to see if a district which was less than 50 percent would provide an equal opportunity to elect a black for a candidate; is that right?
A. In this case, that's correct.
Q. So you've testified about Mr. Fairfax's illustrative plans; is that right?
A. Yes.
Q. Have you studied the plans drawn by Mr. Cooper?
A. No.
Q. Okay. I'll -- let's turn. I just have a few more questions, Dr. Handley, and I'll be done.

Could you turn back to your original report, which is PR-12, and I'd like you to look at Table 1 on page 6.

A. (Complied.)

Q. Are you there?

A. Yes.

Q. And you selected the statewide races that you would study in your report and there's 15 races that are listed there; is that correct?

A. The 15 races listed there are the contests that I analyzed, that's correct.

Q. Okay. And you didn't include Governor Edwards' election in 2015 or 2019; is that a fair statement?

A. That's correct. There were no black candidates in those contests.

Q. But -- but do you think that Governor Edwards was the preferred black candidate of choice for the black community?

A. Yes. I saw Dr. Alford's report that produced Dr. Palmer's numbers, so yes.

Q. Okay. And then also, you didn't include in one of the races you studied the 2016 presidential election involving Secretary Clinton and Senator Cain; is that correct?

A. That's correct.
Q. Please bear with me, Dr. Handley. I'm trying to find one of your charts. I think we can look at Table 4 on page 11. Are you there?
A. Yes.
Q. You say, Dr. Handley, in order to determine the effectiveness of congressional districts in the enacted plan -- and then I think moving over, you did the same thing on page 13 for the illustrative plan; is that a fair statement?
A. Yes.
Q. And so all your report is who won or lost the election?
A. No, not exactly. The percentage of cases that -- the percentage of elections are in the first column in which the black preferred candidate either outright or would have proceeded to a runoff.
Q. Okay. And then what was the second column?
A. The percentage of two candidate contests in which the black preferred candidate won obviously with more than 50 percent of the

vote.

Q. And you didn't report the vote totals or the margins of victory in any of those elections; is that a fair statement?

A. No. It's not -- it's not listed in these tables, but it's certainly listed in my appendix.

Q. Okay. I'm sorry. I missed that. I apologize.

Did you report the relative fundraising by the candidates in the elections that you selected?

A. Did you say fundraising?

Q. Yes.

A. No.

Q. All right. Have you ever talked more about it's better to use a more highly visible race to calculate racially polarized voting than one that's not visible?

A. I probably have. I agree with that statement.

Q. Okay. So what would be more visible to judge racially polarized voting, the governor's elections or the Secretary of State election?

A. I would use both.
Q. Excuse me?
A. I would use both. If they had a black candidate, why would I have to choose one or the other?
Q. Would you have an opinion on which is more visible to the voters of Louisiana?
A. I would not, not if one, for example, included a black candidate and the other did not.
MR. FARR:
Okay. That's all, Your Honor. Thank you.
THE COURT:
Any redirect?
MS. BRANNON:
Yeah, just some brief redirect, Your Honor.
REDIRECT EXAMINATION BY MS. BRANNON:
Q. First, can we call up demonstrative Exhibit 1.11? Dr. Handley, are you familiar with this table?
A. Yes.
Q. Does this show the voting age population for all parts black and then also the

voting age population under the DOJ definition in Illustrative District 2?

A. Yes.

Q. Was your analysis any different about the effectiveness of Illustrative District 2, depending on the definition used for the black population?

A. No.

Q. Was your analysis any different about the effectiveness of the congressional districts enacted -- the enacted map, depending on what definition of black is used?

A. No.

Q. Okay. And counsel asked you about performing a functional analysis.

Why didn't you perform a functional analysis at this time in this case for your report?

A. I did perform a functional analysis. A functional analysis is simply looking at how black preferred candidates would -- whether they would have an opportunity -- whether black voters would have an opportunity to elect candidates of choice, depending on the voting patterns of blacks and whites, as opposed to just the voting

age population. That's what this is. Not this chart, what the effectiveness tables were.

Q. You can take that down.

A. I'm sorry.

Q. And did you do that for an analysis of the illustrative plans?

A. I did a functional analysis of several illustrative plans as well as the enacted plan.

Q. Correct. And we have already discussed that that information is in your chart -- in your report, correct?

A. Yes.

Q. And as part of the -- your analysis of the enacted plan, do any of the populations in the enacted plan have a voting age population of over 50 percent besides Congressional District 2?

A. In the enacted plan?

Q. Yes, in the enacted plan.

A. No.

THE COURT:

Under either definition or which definition?

MS. BRANNON:

Under either definition.

THE WITNESS:

No.

BY MS. BRANNON:

Q. Do any of the congressional districts in the enacted plan conform to allow black voters to elect their candidate of choice besides Congressional District 2?

A. No.

Q. Can we turn back to the Appendix C? Not Appendix C, revised Appendix C.

MS. BRANNON:

Just bear with me a minute, Your Honor. It is Illustrative District 1. -- Exhibit 1.6. And actually, can you turn to revised Appendix C in your report, which is in your binder? We can take this down.

TRIAL TECH:

(Complied.)

MS. BRANNON:

And, for the record, that's exhibit PR-92.

BY MS. BRANNON:

Q. In looking at Appendix C that's in the report, can you just refresh your

recollection as to exactly what is contained in that document?

A. You mean corrected Appendix C?

Q. Yes.

A. So this is statewide elections recompiled, reconfigured to conform with the enacted district boundaries and racial black voting analysis of the five districts that would contribute voters to the Illustrative District 2, illustrative -- additional opportunity district in Illustrative Plan 2 or Plan 2A?

Q. Is it an evaluation of the enacted plan?

A. Yes.

Q. Okay. Can you go through that, the review of that document?

MS. BRANNON:

And maybe we can pull it up on the screen, Appendix C from Exhibit R-92, PR-92. Keep going, and then keep going.

TRIAL TECH:

(Complied.)

MS. BRANNON:

Okay. Yeah, Appendix C. There.

TRIAL TECH:

(Complied.)

MS. BRANNON:

That's the right thing.

BY MS. BRANNON:

Q. This is from your report, correct?

A. Yes.

Q. Okay. Can you explain whether all of these elections are polarized or not in your analysis of the enacted plan?

A. They are all polarized for all of the districts, I believe, including District 2. If you could turn that, they are all polarized for all enacted districts, including District 2.

Q. And would a BVAP of less than 50 percent allow black voters to elect their candidate of choice in Congressional District 2 in the enacted plan, or not the enacted plan, or just based on your analysis, would --

MS. BRANNON:

Let me rephrase the question, Your Honor.

BY MS. BRANNON:

Q. Would a BVAP of less than 50 percent allow black voters to elect their candidate of choice in Congressional District 2?

A. I don't know. The -- the district was 58 percent. Oh, in Enacted District 2, it's still 58 percent, so I can't answer that for that, but in the illustrative plan, it's 50 percent and it still allows the black voters to elect their candidate of choice.

Q. Do you think a BVAP of less than 50 percent in Congressional District 2 would allow black voters to elect their candidate of choice?

A. It's possible.

Q. Okay. And in looking at this analysis --

MS. BRANNON:

Maybe can we go back to Appendix B, revised Appendix B, which is in 92 -- 91? I'm sorry, Your Honor. No. Can we go to Exhibit PR-87, and then could we go to revised Appendix B at the end of this document?

TRIAL TECH:

(Complied.)

MS. BRANNON:

Maybe we don't have it. This is just -- and can we go down to look at the

next page?

TRIAL TECH:

(Complied.)

BY MS. BRANNON:

Q. And just looking at -- for example, at Congressional District 3, can you just briefly describe the white crossover voting that you found in -- when looking at Congressional District 3?

A. So the black preferred candidate in 2020 was Ryland Harris. He received somewhere between 64 and 69 percent of the black vote and he received somewhere in the neighborhood of 1.7 to 6 percent of the white vote.

Q. So that's a low amount of white crossover vote?

A. That's a very low amount of white crossover vote, yes.

MS. BRANNON:

Your Honor, I have no further questions.

THE COURT:

Okay, Dr. Handley. Thank you, ma'am.

Okay. We are going to stay on the

record until 11:30. The court has a pretrial conference at 11:30, so let's plow through. If somebody needs to use the restroom, you can certainly -- you are not going to bother me.

MS. OSAKI:

Good morning, Your Honor. I'd like to also enter an appearance. My name is Samantha Osaki, that's O-S-A-K-I, for the American Civil Liberties Union for the Robinson plaintiffs.

The Robinson plaintiffs will now call Dr. Dorothy Nairne.

DOROTHY NAIRNE, Ph.D, after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE COURT:

Good morning, ma'am. You'll need to adjust the mic.

THE WITNESS:

Good morning. Good morning, can you hear me?

THE COURT:

Yes, ma'am.

EXAMINATION BY MS. OSAKI:

Q. Good morning, Dr. Nairne.

A. Good morning.

Q. To start, could you please state your name for the court?

A. My name is Dorothy Nairne.

Q. And how do you identify racially, Dr. Nairne?

A. I am black. I am African-American.

Q. What town and parish do you live in, Dr. Nairne?

A. I live in Napoleonville, Assumption Parish.

Q. And how long have you lived at your current address?

A. It's a family home that I've visited all my life and I've been there full-time since 2017.

Q. And before 2017, how long have -- have you and your family traced your roots in Louisiana?

A. For generations. My mother's, mother's, mother's mothers and fathers were enslaved here in Louisiana in Assumption Parish.

Q. Could you please tell us briefly

about your education and career history, Dr. Nairne?

A. I had the benefit of going to the University of Wisconsin -- go Badgers -- and then I went to -- I studied journalism and African-American studies, then I lived in Atlanta and went to Clark Atlanta University where I got a master's in African-American studies and a PhD in economic affairs and development.

Q. And could you please describe what you currently do for a living?

A. I have a start-up business here in Louisiana that is focusing on glass recycling and taking the glass, turning it into sand and doing stormwater management and Mardi Gras beads so that we can create jobs for people coming out of prison.

Q. Thank you, Dr. Nairne. Do you belong to any civic, nonprofit or political groups?

A. I'm very active with the NAACP, with the Urban League, with Climate -- Weather For Climate and also with other start-up organizations like Fund 17 and there's one called Flight and together Louisiana and together

New Orleans.

Q. So do you consider yourself to be active in your community?

A. I am very active.

Q. Dr. Nairne, could you please describe the role that race has played in your family since your family has lived in Louisiana?

A. So first, my grandparents were on -- they were sharecroppers on different plantations in Assumption Parish, and so my grandfather could read, so he used to read to all of the other sharecroppers who couldn't read and also help them with their money.

So my grandmother used to tell stories about how on the plantations they were paid with jitney, so they would try to pay people different money so you could never get off the plantation.

So I've got that long background where my grandmother always wanted to get off the plantation and my mother did. My family, her family poured into her where she was able to go to school beyond the 6th grade all the way in New Orleans because there was no school in Assumption Parish for black children. So they

had to walk from grades one until six probably five miles each way. And the white children who were in school had the bus, all of these public schools. So my mother would tell gross stories of being spit on from the school bus and then having to go all the way to New Orleans to go to school beyond the 6th grade.

Q. Are you a registered voter, Dr. Nairne?

A. I am a registered voter.

Q. Are you registered to vote at your current address?

A. Yes, I am.

Q. Do you regularly vote in congressional elections?

A. I vote, yes.

Q. Do you plan on voting in future congressional elections?

A. Yes, I do.

Q. Thank you. I'd next like to discuss your involvement with this case. What motivated you to be a plaintiff and a witness today?

A. I grew up with the notion that where much is given, more is expected. I have been completely privileged in having an education and

knowing people in Assumption Parish, in Napoleonville who haven't had those opportunities. So for me, it's a moral imperative to give as much as I can for the people who live around me who want justice, who want racial equality and who want opportunities.

Q. Thank you, Dr. Nairne.

Let's talk a little bit about your current congressional district. Do you know what your current Congressional District is?

A. I am in District 6.

Q. And who is your current representative?

A. Graves, Garrett Graves.

Q. What is your understanding of your Congressman Graves?

A. He is a white man.

Q. In general, do you follow your congressman's actions?

A. I follow him and I have contacted his office on several occasions.

Q. In your affidavit, you note that you believe that your congressmen does not advocate for your community's needs. What did you mean by that?

A. I'm very active, as I stated, in my community and also participating widely on Zoom or for policy conferences; and I haven't seen him at any events, whether for King day, Juneteenth day or just to discuss the plight of the black community.

Q. Have you seen him campaigning in your community?

A. No. No. No. I have not seen him campaigning during the several elections that I've been around for.

Q. Thank you, Dr. Nairne. I'd now like to discuss the Enacted Maps.

MS. OSAKI:

May we please pull up the enacted -- the enacted map under HC-1, which has been moved as Plaintiffs Exhibit PR-15 on page 48.

TRIAL TECH:

(Complied.)

BY MS. OSAKI:

Q. Dr. Nairne, are you familiar with this map?

A. Yes, I am.

Q. Do you know which district you

reside in under this map?

A. It's still unclear, so there's one election where I went from school to school to school looking for, you know, am I voting, can I vote, where am I voting and they turned me away, so I learned that I was in District 6 and I'm right there on the cusp; so some of my neighbors vote in District 2 and some in District 6, so it's confusing, it's chaotic, and it doesn't help us to organize or plan.

Q. What do you mean by "on the cusp"?

A. So my house is like literally where my neighbors across the street are in District 2, so they were able to vote, but I wasn't.

MS. OSAKI:

May we please zoom in on that area?

It's Assumption Parish in Congressional District 6.

TRIAL TECH:

(Complied.)

MS. OSAKI:

Thank you.

BY MS. OSAKI:

Q. Dr. Nairne, based on your living experiences looking at this map, what is your

impression of your district, Congressional District 6?

A. So as small as Assumption Parish is, it's a big land mass but small community. We are not able to organize or able to mobilize or able to voice our -- and organize our voice in Assumption Parish.

Q. And could you describe geographically what areas your community in Assumption Parish convenes with in Congressional District 6 of this enacted map?

A. Sure. So a lot of the work that I do is with people of the river parishes: St. John, St. James, St. Charles and Jefferson and Orleans Parish. And so when it comes time to discuss candidates and voting, I'm -- I'm silent, I have nothing to say because they are in one district and I'm in another.

Q. So under Congressional District 6, you're the -- can you describe some of the parishes that you would be linked with here?

A. So St. Mary's, Iberville. I -- I have absolutely no alliance there, no community members there in those parishes.

Q. I'd like to talk a little bit more

about that. Based on your living experiences, how would you describe some of those communities that are -- that are included on circling here?

A. So a lot of the communities' work that I do is with the river parishes where we do a lot of work around environmental justice and racial justice and looking at cancer alley and looking at just what's happening with people's living experiences as well as with HIV, with crime and with how we improve each other's lives.

So I don't work with people within Terrebonne or the other parishes, so I'm kind of a sore thumb standing out there because we work together, but then we don't vote together.

Q. I see. So it sounds like you are saying you are not as familiar with these that you are included with?

A. Yes.

Q. Okay. Now, under this enacted plan and based on your living experiences as a resident of Congressional District 6, do you believe your interests would be fairly represented?

A. I do not believe that my interests are represented.

Q. And why is that?

A. I feel like I'm alienated, that I don't have associations and groups that I would work with. I would have to start over really to see who's where and doing what given this map that I'm looking at right now.

Q. Thank you, Dr. Nairne. I'd now like to discuss one of plaintiffs' illustrative maps.

MS. OSAKI:

Could we please pull up one of plaintiffs' illustrative maps which has been moved into evidence as PR-15 on page 47?

TRIAL TECH:

(Complied.)

BY MS. OSAKI:

Q. Dr. Nairne, are you familiar with this map?

A. Yes, I am.

Q. Under this Illustrative map, are you aware of what district you live in?

A. I would know -- I know where I live, but I would know what district that I am in. Sure enough, me and all my neighbors would be in District 2 according to this map.

MS. OSAKI:

May we please zoom in to Congressional District 2 on this illustrative map?

TRIAL TECH:

(Complied.)

MS. OSAKI:

Thank you.

BY MS. OSAKI:

Q. Dr. Nairne, geographically, what areas would -- would you be linked with in this Congressional District 2 of this illustrative map?

A. In this map, I would be with the people that I'm working with currently along with the river parishes all the way into Orleans and Jefferson Parishes. This maps makes sense to me.

Q. Do you have any personal connections with any of those other parishes?

A. I have personal connections, family, friends, colleagues in all of this -- this entire area.

Q. How would you describe communities in these areas, these river parish areas based on your personal knowledge?

A. 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.

Q. What did you mean by that, "trying to improve your health"?

A. This area is known as cancer alley, and just so I work somewhat with the cancer index and looking at just neighbors across the street, next to me, even my own mother who had a tumor the size of a soccer ball in her belly; and so, you know, just cancer is everywhere and, you know, if it's in my own house, then is it in me too, so it really requires us to do quite a bit of work together.

Q. Can you describe some of the health -- health inequities that are similar along the river parishes? What about industries, are there industries that are similar along these communities?

A. Well, the sugar cane industry defined this area, this region, but now the sugar cane is mechanized so people don't have those

jobs anymore, so there's a lot of not much to do going on in Assumption, St. James, St. John and St. Charles.

Q. Now, under this new -- under this illustrative plan and based on your living experiences, do you believe that your community's interest would be fairly represented?

A. Under this map, yes.

Q. Why is that?

A. It would give us a base so that we can mobilize and so that we can organize and so that we have one collective voice so that we would have action together so we can move forward and improve, but not our communities, our households, our entire state.

Q. Based on your living experiences in Louisiana, does it make sense culturally, socioeconomically, historically or otherwise, for your community to settle under this illustrative map Congressional District 2 alongside these other river parish communities?

A. To me, it makes complete sense that we are in this district.

Q. Thank you. Finally, Dr. Nairne, how would you feel if a map like this illustrative

plan that is a map that enacts a second majority black congressional district were to be enacted into law?

A. I know exactly the households that I'm going to knock on their doors should this happen. There were a number of people -- so during the census and leading up to the elections for 2020, I was a block captain for Together Louisiana. So there were a couple of households that I knocked on their doors and they were like oh, good, you mean change is coming for us. So then when they see that changes are not real, their hopes are dashed. They are feeling like yet again you lied, some bad sense; no, I didn't lie to you. This process just takes a while.

So I know I would go to his home. This is somebody I've known all my life and just to see -- he's weathered and worn out and just to have him have a little bit of hope, wow, that would make my year, my day, my hour. So that's where I would go and say look, change is coming here to Assumption Parish, so we have some happy people who would have hope again in Louisiana.

MS. OSAKI:

Thank you, Dr. Nairne. No further

1 questions, Your Honor.
2 THE COURT:
3 Cross?
4 CROSS-EXAMINATION BY MR. WALE:
5 Q. Hi -- excuse me. Hi, Dr. Nairne.
6 Jeff Wales. I'm an attorney for the state, and
7 I'll be asking you a few questions today.
8 Dr. Nairne, you said you moved to
9 Louisiana in 2017; is that correct?
10 A. Yes, it is.
11 Q. So where did you live before that?
12 A. Well, I lived in South Africa.
13 Q. And -- and so where did you grow up?
14 Is that where you grew up, in South Africa?
15 A. No. I grew up between Milwaukee and
16 also between Louisiana where I would come in the
17 summer.
18 Q. So you would visit in Louisiana, but
19 you wouldn't come here full-time?
20 A. Correct.
21 Q. So when did you register to vote?
22 A. I registered to vote I think in
23 2017.
24 Q. And you are a registered Democrat,
25 correct?

A. Yes.
Q. And earlier you said something about being confused about where to vote. Did you find out where to go vote?
A. I did.
Q. So you are aware that the Geaux Vote App is where the Secretary of State lets people know where to vote?
A. Yes, I am.
Q. All right. And you live in Congressional District 6 currently, correct?
A. That's correct.
Q. And that your current congressmen is Garrett Graves?
A. Yes.
Q. And he is a Republican, correct?
A. Yes.
Q. And you testified earlier in your declaration that you are highly engaged, so you attend redistricting workshops around the state?
A. Yes, I do.
Q. And you've written letters to your congressmen, to Congressman Graves; is that correct?
A. I went to him regarding the

environment, so yes.

Q. And you've spoken about your advocacy and your work in the community.

Irrespective of the results of this litigation, will you continue to be engaged with the elected representatives who represent you?

A. Yes, I will.

Q. And regardless of what the map looks like now or will look like, you'll continue to advocate for things you care deeply about, correct?

A. Yes.

Q. In paragraph 11 of your declaration, you've stated that you have donated to congressional candidates. Can you tell me which candidates you donated to?

A. I donated to several candidates $5 here and $10 there.

Q. All right. And what is the affiliation of those candidates, the political affiliation?

A. Some are independent, a couple of green party, and a few Democratic candidates.

Q. Do you recall have you ever donated to the Democratic Congressional Campaign campaign

committee?

A. I'm not sure. Help me understand.

Q. Sure, sure. If I may, I'm going to use this system.

THE COURT:

You can use the document camera.

Mr. Wells, tell us what you are going to put up there before you just throw it up there.

MR. WALE:

Okay. Yes, ma'am. I'm going to show a document from the official government website from the Baton Rouge Federal Actions Commission, if I can get the -- did you turn it on?

BY MR. WALE:

Q. All right. Let me try again. Dr. Nairne, do you remember donating to a group called Act Blue?

A. I think I did donate to them, yes.

Q. Okay. So you would believe me if I said you had donated to Act Blue and that contained an earmark for the DCC, also known as the Democratic Congressional Campaign Committee?

A. Okay.

Q. Going back to your voting registration, you said that you are a regular voter, correct?

A. Yes.

Q. Did you ever miss an election?

A. There are so many, but I try to vote, especially locally.

Q. So it's possible that you have missed a few elections?

A. I'm pretty good at voting.

Q. Okay. And so, again, we still don't have a --

THE DEPUTY:

I'm texting them now.

BY MR. WALE:

Q. Okay. And I'm going to ask you, Dr. Nairne -- Dr. Nairne, if you remember voting in the December 2018 election that was for the Louisiana Secretary of State. It was an election between Secretary of State Kyle Ardoin and Gwen Collins-Greenup?

A. I don't remember, honestly.

Q. You don't -- you don't recall voting in that election?

A. No. I don't recall not voting

because that was a statewide election, correct?

Q. Correct.

A. Yeah. So I would not have been turned away from voting during that election.

THE COURT:

Just give us a second, Mr. Wale. She's contacted IT so they can troubleshoot it for us. Do you have any other questions you can go to?

MR. WELLS:

No. No, Your Honor.

BY MR. WALE:

Q. All right. It looks like there is light. Excuse me. Dr. Nairne, I'm going to show you a document from the Louisiana Secretary of State's office and I'm going to see if -- all right.

MR. WALE:

Well, zoom.

TRIAL TECH:

(Complied.)

THE COURT:

If you quit your day job --

BY MR. WALE:

Q. Thank you. So Dr. Nairne, I realize

the -- the first line over here is a little bit difficult to read. It's in script, but can -- can you read that for us, please?

A. Sure. As Secretary of State of the State of Louisiana, I do hereby certify that the annex hereto is true and correct voter registration information for the state of Dorothy Evelyn Nairne, and that's me.

Q. Thank you so much.

A. Uh-huh (affirmatively).

Q. And so I'm going to show you another page in here. And can you tell me what the top two lines say?

A. Did not vote 2021.

Q. Oh, I'm sorry. At the very top of the page?

A. Oh, okay. Assumption Parish.

Q. And even prior to that?

A. Louisiana Secretary of State voter election history report for Parish of Assumption.

Q. Okay. And you see about -- about eight election dates there?

A. Uh-huh (affirmatively).

Q. And do you see how many where it says you did not vote?

A. I see.
Q. All right. And how many elections did you not vote in?
A. So I voted in one, two, three, four, five, I did not vote in November 2021, July 2020, so I did not vote in three elections.
Q. Okay. And then the election I was asking you about in -- I'm sorry, in December of 2018, that was the election that was discussed earlier -- earlier by the expert. It was for Secretary of State between Kyle Ardoin and Gwen Greenup; you did not vote in that election, correct?
A. Well, I see now.
Q. Yes. And Kyle Ardoin, who won that election, is the defendant in this suit, correct?
A. Yes.
Q. So you did not participate in the election in which the defendant of this suit was elected?
A. Okay.
MR. WALE:
All right. That's all the questions I have. Thank you very much.
THE COURT:

Any redirect?

MS. OSAKI:

No redirect, Your Honor. Thank you.

THE COURT:

Okay. You may step down. Thank you for your help today, ma'am. Okay. We are going to be in recess until 1:30.

THE DEPUTY:

The court is now in recess.

(A short recess was taken at 11:23 a.m.)

THE COURT:

Okay. Please be seated. Good afternoon everyone.

Why don't we say who we are calling as our next witness because it needs to be put on the record.

Go ahead. Put it on the record who your next witness is and who you are, sir.

MR. CHAKRABORTY:

Good afternoon, Your Honor. Our next witness is Traci Burch, and I'm making my first appearance today.

I am Amitav Chakraborty on behalf of the plaintiffs.

THE COURT:

Okay. And we are waiting on the Zoom. Dr. Burch, can you hear us?

THE WITNESS:

Not yet.

THE COURT:

Can you hear me now?

THE WITNESS:

Yes.

THE COURT:

Your witness, sir.

MR. CHAKRABORTY:

Thank you.

THE COURT:

Wait. We need to swear her in. Sorry.

TRACI BURCH,

after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE COURT:

Now, your witness.

DIRECT EXAMINATION BY MR. CHAKRABORTY:

Q. Thank you. Good afternoon. Can you please state --

A. Good afternoon.

Q. Can you please state your full name for the record?

A. Dr. Traci Burch.

Q. And what is your educational background, Dr. Burch?

A. I am -- I first completed by undergraduate work at Princeton where I majored in politics and got a certificate in African-American studies, and I finished my PhD at Harvard in the Ph.D degree program in government policy.

Q. And what is your current occupation?

A. Currently, I am an associate professor of political science at Northwestern as well as a regents professor at the American Bar Foundation.

Q. And how long have you been a professor, Dr. Burch?

A. Since 2007.

Q. What are your principle areas of research?

A. Sorry. My principle areas of research include political behavior, political participation, barriers to voting and race ethnic politics, and I also focus on the ways that

interaction with the government can effect all those things such as participation, and I specifically have focused on how the federal justice system can effect various things.

Q. Thank you. And have you been published on any or all of these subjects?

A. Yes, I have been.

Q. Have you previously served as an expert witness?

A. Yes. I have testified at -- at trial in four cases and in -- at a deposition in an additional -- additional case.

Q. Did any of those cases in which you testified involve claims brought under the Voting Rights Act?

A. Yes.

Q. And was your testimony credited or accepted by the court in each of those cases in which you testified?

A. Yes.

MR. CHAKRABORTY:

Your Honor, pursuant to the Federal Rule 702 and the state Secretary of State parties, the Robinson plaintiffs would like to proffer Dr. Burch as an expert in

political behavior, political
participation and barriers to voting.
THE COURT:
Is there any objections?
MS. KHANNA:
No objections, Your Honor.
THE COURT:
Okay. Dr. Burch will be accepted
and be able to give testimony in the areas
of political behavior, political
participation and barriers to voting,
correct?
MR. CHAKRABORTY:
Yes, Your Honor.
THE COURT:
You may proceed.
BY MR. CHAKRABORTY:
Q. Mr. Burch, did you submit an expert
report as part of your work in this case?
A. I did. And could you excuse me for
a few minutes? I just need to close my door.
Sorry. Thank you. Yes, I did.
MR. CHAKRABORTY:
No worries at all. I'd like to
bring up on the screen, and just let us

1 know if you are not able to see it, what
2 has been premarked as PR-14.
3 THE COURT:
4 I don't know that you can screen
5 share.
6 THE DEPUTY:
7 We are supposed to be able to.
8 THE COURT:
9 Okay. I'm going to let you
10 disregard my technical input.
11 BY MR. CHAKRABORTY:
12 Q. Sorry, Dr. Burch. Just give us one
13 second.
14 Dr. Burch, are you able to see any
15 report on your screen?
16 A. Not yet.
17 THE DEPUTY:
18 Okay. Wait. Let's see.
19 THE COURT:
20 IT is coming. Is there any way you
21 can do a little bit with Dr. Burch until
22 IT gets here?
23 MR. CHAKRABORTY:
24 I can do a couple of questions.
25 THE COURT:

Okay. Great.

BY MR. CHAKRABORTY:

Q. Dr. Burch, just jumping into it a brief bit before we tackle the technical difficulties, did you submit a report for your work in this case?

A. I did.

Q. I'll show you briefly what has been premarked as PR-14, and it will be your expert report.

What did you set out to evaluate in your expert report?

A. So in my expert report, I was asked to evaluate the set factors of -- relevant to this case in Louisiana, particularly Senate factors five, six, seven, eight and nine.

Q. Thank you. And what materials did you rely on to reach your conclusions about those factors?

A. A wide variety of materials including my own analysis of the census data such as the data from the plaintiff census and the American Civil Liberties communities, various agencies of the court, demography literature, the legislative record including hearings, videos,

hearing of testimonies and road shows, other documents such as amendments and bills that were submitted, various news reports and -- and other public speeches by public officials.

Q. Thank you, Dr. Burch. I'd just like to pause there until we fix the issues.

THE COURT:

Do you think she's got a copy of her report that she could look at while you examine her? Because I have her report here. I can follow along.

MR. CHAKRABORTY:

We do, and I believe Dr. Burch does, but we were going to bring up a demonstrative.

THE COURT:

Oh. Help is on the way, Dr. Burch. Give us a minute.

MS. MCKNIGHT:

I'm sorry, Your Honor. We are going to try to log into the Zoom. We are going to try to log into Zoom at the same time to avoid a delay later on. Thank you.

THE WITNESS:

All right. I've got it.

BY MR. CHAKRABORTY:

Q. Thank you for your patience, Dr. Burch. So I'd like to jump back and -- and I know you were just talking a minute ago about the Senate factors that you examined. Are those factors displayed for you on the screen?

A. Yes, they are.

Q. And just as a reminder to the court and everybody here, which factors were those?

A. So I reviewed Senate Factor 5, the extent to which members of the minority group are suffering from the effect of different discrimination in areas such as employment, education and health that effect participation; Senate Factor 6, which revealed political campaigns; Factor 7, which is minority group representation in public office; Factor 8, which is about whether there's lack of responsiveness of the elected officials to the procedural needs of the group; and Factor 9, which is whether the state of the policy or practice is to take the position in that and is that the same.

Q. Thank you, Dr. Burch. I'd like to start with Senate Factor 5. Which specific areas of disparity did you evaluate as part of this

factor?

A. I examined education and other aspects of socioeconomic status such as employment and income. I looked at health, I looked at residents in housing, and I also examined the criminal justice system.

Q. Thank you, Dr. Burch. I'd like to begin by talking about education.

MR. CHAKRABORTY:

Matthew, can you please turn to the next slide?

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what does this slide display?

A. So this -- this slide displays a -- a couple of the charts from my report in which I am documenting contemporary disparities in education. And on the left, this slide shows the difference in scores on standardized tests for Louisianians who are in 8th grade over time.

And for each map, for each graph, I'm sorry, the top one is for mathematics and the bottom is for English, and the white students are

at the top and the red dots and the blue dots -- blue crosses are black students. And, as you can see, there's a persistent gap over time and that determines the students' scores on these achievement tests, and that gap is pretty persistent and consistent over time.

Q. And what's displayed on the right here?

A. And so on the right, as you can see here, I -- this is just part of one of the charts that I have that shows educational attainment by race scores 25 and older, and white Louisianians are much more likely to have earned a bachelor's degree or higher than black Louisianians.

Q. Thank you, Dr. Burch. Based on these selected examples and other citings in your report, what were your conclusions about the existence and extent of educational disparities that exist in Louisiana between black and white populations?

A. Yes. So I concluded that there were still great disparities in education and educational attainment between black and white Louisianians, not only related to these factors that I state here, but also with respect to

1 persistent segregation in education as well; and
2 those factors, those disparities are given by
3 both historical and contemporary discrimination
4 in the education realm.
5 Q. Thank you.
6 MR. CHAKRABORTY:
7 Next slide please, Matthew.
8 TRIAL TECH:
9 (Complied.)
10 BY MR. CHAKRABORTY:
11 Q. Dr. Burch, what does this slide
12 show?
13 A. So this slide shows more evidence of
14 disparity with respect to socioeconomic status
15 between black and white men. And consistent with
16 the prior set of graphs, white Louisianians are
17 shown here in the print and black Louisianians
18 are shown here in the teal.
19 And as you can see on all of these
20 factors, black Louisianians are worse off than
21 white Louisianians. Unemployment rates, the
22 unemployment rate is nearly double from black
23 Louisianians. Family poverty is nearly three
24 times as high for black Louisianians than for
25 white Louisianians. White house -- Louisiana

households on average, median household income is tens of thousands of dollars higher than that of black Louisianians' households, and there's definitely disparity in terms as to ethnicity, vehicles, there is -- black households are more than four times or three times as likely, sorry, almost four times as likely in black households than white households.

Q. And based on these conclusions in your report, what was your conclusions about socioeconomic disparity between white and black Louisianians?

A. Again, I concluded that there are socioeconomic disparities that exist today and that those disparities relate to both contemporary and historical disparities between black and white Louisianians.

MR. CHAKRABORTY:

Next slide, please.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what information is displayed on this slide?

A. So this slide shows some of the

information that I wrote about with respect to disparity in housing.

Q. And what types of examples or disparity did you examine in your analysis of this factor or this -- this issue?

A. So in particular, I looked at disparity in -- in residents and where people live because it's so important to policies and -- and political participants.

And so here, you can see in the map on the left, I had a historical map that was used by the Homeowners Loan Corporation dated since the 1930s and 1940s. And several cities of Louisiana that -- and this map was used to determine lending and the risk of lending. Red areas typically are those that were high risk and -- and not suitable for lending and happen to be neighborhoods where black people lived.

And so looking at these maps and -- and these areas of segregation and -- and these historical maps as continues to present day, as you see on the left where it shows that there is still metro areas and cities in Louisiana that are highly -- marked by high segregated by race; and that includes New Orleans, the New Orleans,

Metairie metro area, Baton Rouge, the Shreveport/Bossier cities and Lake Charles, and those cities are -- are highly segregated by race as well.

Q. Thank you, Dr. Burch. Can policies effect -- I know you -- I just wanted to know, can government policies effect the -- the level and placement of segregation between black and white Louisianians in housing?

A. Yes. Even present contemporary policies or just voting decisions on where and how to build, especially as I give an example in my report about decisions about how to rebuild after Katrina. That coupled with other issues such as seeing the pace at which disaster relief was given effect the ability of black people to rebuild in areas that have been hurt by natural disasters, for example. So these areas -- so housing is effected in several areas.

Q. Thank you.

MR. CHAKRABORTY:

Please turn to the next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what's on this slide?

A. So these -- this slide discusses several of the disparities in health that I talked about in my report. And, in particular, we can see here in the left report -- chart that mortality for black Louisianians from diseases such as cancer, cardiovascular disease and diabetes is higher than that of those mortality rates for white Louisianians. Overall, as in the second slide, the disparities in health translate into a disparity in life expectancy.

So on average, white Louisianians -- white Louisiana men are about -- expected to live about seven years longer than black Louisiana men; and with respect to women, there's a large gap as well. White Louisiana women are expected to live about five years longer than black Louisiana women. Infant and child mortality for blacks versus white Louisiana children is higher as well.

Q. And can environmental factors contribute to racial health disparities such as these?

A. Yes. So in my report, I talk a lot

about both the fact that natural disasters can have differential effects and have had differential effects in terms of mortality on black versus white Louisianians, and I also talk about disparity related to exposure to pollution particularly in the area of Louisiana known as cancer alley which is between Baton Rouge and New Orleans.

And research has shown that for black residents in those areas that higher exposure to environmental pollution and the like is related to higher rates of COVID-19, asthma and -- and cancer.

Q. Thank you. So on this topic, would you say that black Louisianians have worse outcomes overall than white Louisianians?

A. Yes.

MR. CHAKRABORTY:

Next slide.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, what does this slide display information regarding?

A. So this slide discusses disparities

with respect to the criminal justice system in Louisiana. And as you can see from this graph on the left, black Louisianians are about -- about a third of Louisiana's overall population but are over represented among prison, probation and parole populations. In fact, black representation in Louisiana's prison and parole population is double their representation in the overall population.

Q. And so what are your conclusions about the kinds of disparities that exist between black and white Louisianians in the realm of criminal justice?

A. 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 factors, these -- these disparities can't be explained by just crime rates alone and, in fact, are related to those that they are both historical and contemporary discrimination in the criminal justice system.

Q. And just to confirm. I know you just mentioned for criminal justice there, but would you say that all of the disparities that

you talked about today, you know, education, health, socioeconomic status and -- and criminal justice, all are tied to historical trends but also are exhibited currently and are existing disparities?

A. Yes. So -- so for all of the disparities that I mentioned, the research shows that both historical discrimination as well as contemporary discrimination by the state and other factors feeds and contributes to those areas.

Q. And finally, last question on this topic, Dr. Burch. All of these disparities, how do they effect political participation in black Louisianians in the state?

A. So, and I've done it for each factor that was in my report, but overall if you think about the fact that political science -- think about the decision to participate in politics to effect a rationale choice, we think that voters weigh cost and benefits of these disparities, the disparities of these factors tend to make voting much more costly. So it would effect the education, for instance, it's much more difficult for someone to -- 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 or a -- or a household that has access.

The criminal justice system effects political participation because of loans and franchise laws. 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.

Q. Thank you, Dr. Burch.

MR. CHAKRABORTY:

I'd like to move on to the next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. I'd like to move on to -- ask you about your analysis of racial appeals and political campaigns. And before we get to this slide, what is a racial appeal?

A. So a -- a racial appeal in a

political campaign is an aspect of either a speech or a -- a campaign ad, for instance, that would prime voters to think about racial concerns when making decisions about candidates in policy. And those can be either implicit, which means that race isn't mentioned, but you could see code words or black exemplars, for example, that would prime or still prime words to think about race to make political decisions or they can be explicit, which means they refer for specifics for the race.

Q. And based on your experience and review of the relevant literature, are appeals effective or do they effect voting behavior?

A. Yes. Racial appeals are both explicit and implicit and have been shown to heighten the way voters pay attention to or think about race and -- and it also effects how voters think about candidates when they think about this issue.

Q. Did you examine the racial appeals in Louisiana?

A. Yes. I looked at a recent statewide campaign, which is the 2019 gubernatorial election.

Q. And what did you conclude about this race?

A. I found evidence of several of -- sorry. I'm getting feedback. I -- I found evidence of several campaign ads and statements that could be characterized as a racial appeal.

Q. Can you give us some of those examples?

A. Yes. So a prominent one has still -- and here is from a campaign ad that was run by the Eddie Rispone running for governor campaign. And in it there's several aspects that calls for (inaudible) they characterize racial appeal.

So, for instance, you have there in the middle a picture of a mugshot, a black that infers, activates on your particular serial type such as black commonality. You have an image of a candidate with all white constituents, and also you have the use of language such as sanctuary city and crimes that have been shown in particular to crime racial ads, among others.

Q. Thank you, Dr. Burch. What were your conclusions about the existence of racial appeals as it exists in Louisiana?

A. Based on the several examples that I

found from that political campaign, that racial appeals -- that there are still racial appeals that characterize these things in a political campaign.

Q. Thank you.

MR. CHAKRABORTY:

Next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. I'd like to ask you about your examination of Senate Factor 7, which is the extent to which black Louisianians have been elected to public office.

Which elected offices did you evaluate in reaching your conclusions?

A. I evaluated several -- several offices as well as offices at the state and local levels as well.

Q. Let's start at the federal level. What did you find with respect to federal positions and black representation in those?

A. As shown up here, I -- I found that there's been associated destruction; no black senators and only four black Louisianians elected

to Congress at the -- at the federal level.

Q. And what about state and municipal positions?

A. Similarly, there have been no black governors or lieutenant governors in Louisiana, and as with respect to the state legislature, currently about a quarter of state legislative seats are held by black members. Louisiana mayor is less than a -- a quarter of all black -- black mayors are less than a quarter of all Louisiana mayors. State court judges are about 20.1 percent of all state court judges and a quarter of the elected court members are black as well.

Q. Thank you. What were your conclusions from the analysis of this factor of the intended representation of black Louisianians in office?

A. Given the fact that they're about a third of the population and it seems to be there is no -- none of the offices that I examined has there been a black representation of Louisianians. It's measured a third of that body or that group.

Q. Thank you.

MR. CHAKRABORTY:

Next slide, please.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, did you look at the responsiveness of elected officials to the needs of black Louisianians?

A. I did.

Q. And which sources of evidence did you look to as part of that analysis?

A. I looked at my examination of -- of -- that I conducted for Senate Factor 5 as well as really the voices of black Louisianians themselves as represented in the road shows.

Q. I know we already covered your -- your Senate Factor 5 evidence. What have you learned from the latter that you reviewed the testimony of these road shows?

A. Consistently across different areas of the state, black Louisianians stood up at these road shows and discussed their concerns about race representation in their state and talked about how they felt like things haven't been improving. I have some examples here that

have been pulled from my -- my report that comes from the road shows where -- where people stood up and talked about how they felt as though they weren't -- they were overlooked, they weren't represented fairly and they were concerned about the lack of representation and concern for, in effect, the government policies that would help them throughout the state.

Q. Thank you. And so what were your conclusions based on these sources that you reviewed in response to the elected officials to the needs of the black Louisianians?

A. Based on the policies and the persistent gaps that I found with respect to Senate Factor 5 as well as based on voices of black Louisianians themselves, that -- that black Louisianians (inaudible) publicly elected officials were not responsive.

Q. Thank you, Dr. Burch.

MR. CHAKRABORTY:

Next slide, Matthew.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, did you look at Senate

Factor 9?

A. I did.

Q. And what is Senate Factor 9?

A. Senate Factor 9 examines whether the legislature had proper justification listed for HB-1 and SB-5.

Q. And what source of evidence that you knew then did you examine to draw conclusions on this factor?

A. I looked at the legislative record, the hearings, the (inaudible) dates, the road shows, the bills, the amendments, amendments themselves, and I also examined some other public statements by legislators.

Q. And have you conducted an analysis for state records, either in your academic work or in other cases?

A. Yes, both.

Q. So based on your review of legislature statements, what are your conclusions about the -- this factor?

A. So I concluded that there were several factors that I laid out in my report that were advanced in various points that were important for justification that the legislature

was considering when discussing HB-1 and SB-5. Those would be the -- the minimizing the population deviation across districts, such as keeping parishes -- parishes and precincts together and getting no -- no -- not splitting previews when splitting a parish's compactness.

They did say at first that they were interested in these traditional legislative principals; however, when they were presented as maps, that performed better on the traditional legislative principles, that did not have -- that contained few majority-minority districts. They either, for the record, backed off from some of those traditional legislative principles or said that they were left.

Q. Thank you. I think you briefly touched on it. Can you provide just one example of such a shifting justification perhaps on the slide?

A. Yes. So, for instance, with respect to the population deviation, to hear Chairman Sklefani do one of several examples that write about making the population down to as close to the nearest person as possible to the possible district when -- later in the process, when

presented, I believe by -- in Amendment 88 as well as in Amendment 91 with maps that were actually lower population deviations but contain two majority-minority districts, for instance, made the statements backing away from those a commitment, saying that well, it's not -- you know, yes, this map is lower in terms of population, but that's not -- that's not as important as -- that's not the thing that matters like just difference is as important.

Q. Thank you.

MR. CHAKRABORTY:

You can take the demonstrative down and put up what has been premarked as PR-89.

TRIAL TECH:

(Complied.)

BY MR. CHAKRABORTY:

Q. Dr. Burch, I'd like to close by asking you a couple of questions about your supplemental report. Do you recognize this document?

A. Yes.

Q. And what is it?

A. It is the supplemental report that I

submitted.

Q. What does your supplemental report examine?

A. I was asked to examine the relationship between race partisanship.

Q. And what did you review in order to reach your conclusions on this topic?

A. The scholars, the scholars and literature as well as some -- as -- as well as an examination of registration of patterns, registration by race.

Q. And based on your review, did you reach any conclusions about the historical length between race and party and/or the contemporary relationship between the two?

A. Yes. So the literature itself tends to locate the link that there is -- that there is a link between race, racial attitudes and partisanship, and then the contemporary or the current, the substantiation of that starts with the assignment, real lineup of parties beginning in The New Deal and solidifying in the 1960s and resulting bill of rights. And over time, that realignment, particularly the realignment of white southerns away from the Democratic party

1 into the Republican party is a hallmark of
2 politics, obviously the civil rights throughout.
3 Moreover, I conclude that there's
4 growing strong evidence in the literature that
5 that relationship between partisanship and race
6 and racial attitudes is getting stronger and has
7 been getting stronger since 2008. Any phenomena
8 or the data show as well as the road shows that
9 trends are happening in Louisiana as well.
10 Q. Thank you, Dr. Burch.
11 MR. CHAKRABORTY:
12 Your Honor, at this time, I'd like
13 to introduce PR-14 and PR-89 into
14 evidence. They are Dr. Burch's main and
15 supplemental expert reports.
16 THE COURT:
17 Any objection?
18 MS. MCKNIGHT:
19 No objection.
20 MR. CHAKRABORTY:
21 And no further questions,
22 Your Honor.
23 THE COURT:
24 Cross-examination?
25 MR. CHAKRABORTY:

Thank you, Dr. Burch.

CROSS-EXAMINATION BY MS. MCKNIGHT:

Q. Good afternoon, Dr. Burch. I'm not sure if you can see me.

A. Yes, I can see you.

Q. I'm sorry. This is a bit awkward. It's an honor to meet you. I'll have a few questions for you this afternoon. I'm sorry, I can't look you in your face.

A. Okay. And I'm just grateful you guys were able to accommodate me.

Q. Absolutely. So Dr. Burch, I'd like to start with something you've written in the past which is that voters in a given racial or ethnic group cannot be assumed to share policy preferences. You wrote that, didn't you?

A. You'll have to show it to me.

MS. MCKNIGHT:

Okay. Let's bring up. This would be Burch 1, Mr. Williamson.

TRIAL TECH:

(Complied.)

BY MS. MCKNIGHT:

Q. Do you recall writing a book entitled Creating a New Racial Order?

A. Yes. I -- that was my co-authors book.

Q. Okay. And that -- I think I'll wait for him to bring up the cover of the book for you, Dr. Burch.

A. Uh-huh (affirmatively).

Q. I think Mr. Williamson just needs to share his screen.

THE COURT:

Can you give me the quote again? It's voters?

MS. MCKNIGHT:

Sure. Voters in a given racial or ethnic group cannot be assumed to share policy preferences.

THE COURT:

Thank you.

MS. MCKNIGHT:

Burch 1. Hold on one moment, Your Honor.

THE COURT:

That's okay. We are going to be patient today.

MS. MCKNIGHT:

Thank you, Your Honor.

BY MS. MCKNIGHT:

Q. Dr. Burch, we have before you an electronic version of your book entitled Creating a New Racial Order. Do you see that?

A. I do.

Q. And if we can flip to the next page, here's a copyright page for that book. Does this look right to you, Dr. Burch, copyright 2012 by Princeton University Press?

A. Yes.

Q. Okay. Now, Dr. Burch, this is an electronic version so you can see at the bottom there are a number of pages because it's electronic, but if we turn to the next page, find the quote, page with your quote on it, I'm not -- I've highlighted the section for you to see. Are you able to read that Dr. Burch?

A. Yes.

Q. Okay. So Dr. Burch, thank you for your patience. In the highlighted section, it's three lines down. Voters in a given racial or ethnic group cannot be assumed to share policy preferences. Do you see that?

A. Oh, wait. I'm sorry. You were -- I'm sorry. You put something over the whole

quote that -- if you could, just remove that bottom line so I can see it.

Q. Sure.

A. Okay. That is -- that is definitely not a (inaudible).

Q. You can take that down. Does that refresh your recollection that you thought in the past voters in a racial or ethnic group cannot be assumed to share policy preferences?

A. Yes, I agree with that.

Q. Okay. And now, your report in this case, does not examine whether a plaque voter in rural Louisiana will vote the same way as a black voter in urban Baton Rouge, for example, correct?

A. No. I examined research that looked at voting patterns by race.

Q. Okay. And your report does not examine white crossover voting that is white voters who vote for the candidates of choice of black voters, correct?

A. No. I'm looking at both party registration as well as the other people readers as to those kind of questions.

MS. MCKNIGHT:

Okay. Now, turning to your report,

this is PR-14 at page 25 through 28.
Mr. Williamson, we can just go to page 25, the header of the section.
Pardon me. I think you need to go PR-14, page 25, but unfortunately the numbers -- there you go.
TRIAL TECH:
(Complied.)
BY MS. MCKNIGHT:
Q. So, Dr. Burch, I heard you testify on direct that you believe there are still racial appeals that characterize elections in Louisiana. Did I hear you right?
A. Yes.
Q. Okay. So in reviewing the section Senate Factor 6, racial appeals and campaigns, over the past 30 years you identified only one candidate who made a racial appeal in an election, correct? And that candidate --
A. No. Could you switch to -- could you go to the next page, please?
Q. Sure.
A. So I have both during this gubernatorial campaign in the middle. I'm talking about Eddie Rispone here, but also, if

you go to the next page, I also have here, racial appeals that targeted -- that were run by the Louisiana Republican party and for -- for instance, the quotation at the bottom of that page that's from the -- the party not from Eddie Rispone and the next page is another racial appeal that was made by a different candidate.

Q. Okay. Let's turn to the next page so I can understand what you meant by that third example?

A. Uh-huh (affirmatively).

Q. And so the third example was which other candidate, Dr. Burch?

A. So here you have Conrad Apple was talking about -- that making the appeal that African-Americans should support Republicans better than Democrats because of issues regarding racial -- concerns about racial.

Q. Okay. And going back a page, those racials appeals had to do with a candidate for Eddie Rispone; is that right?

A. I think that the one for -- the second one was probably more general, but it probably referred in general to support of black people for (inaudible) Democratic parties.

Q. So I just want to make sure I understand, that the second one here, I'm seeing reference to candidate Rispone here and then 2019 gubernatorial race, are you referring to something else?

A. No. What I'm saying here is that in the RNC, the -- the Republican -- the Louisiana GOP coalition is with respect to John Bel Edwards. But the quote on the next page is more general.

Q. I see. And so are you aware whether candidate Rispone won or lost his election?

A. I believe he lost.

Q. And do you know whether the last two elections for governor, whether the candidate of choice for black voters won?

A. Yes. John Bel Edwards did win.

Q. Now, let's turn to another Senate Factor, Senate Factor 9. Now, I understand that Senate Factor 9, you studied whether the legislatures rationale for drawing its congressional plan was supported by the evidence or if it was quote, unquote, tenuous; is that right?

A. Is that an exact quotation from

somewhere?

Q. Well, the word tenuous is a quote from Senate Factor 9; is that right?

A. Yes.

Q. Okay. And so in doing your work on this report for Senate Factor 9, you developed an opinion that the legislature's rationale for drawing its congressional plan was tenuous, correct?

A. I don't know if I used those exact words. Can you show me where I said that exactly?

Q. Well -- well, let me step back. Is it your position that their rationale was not tenuous?

A. My position is that the rational was not supported by evidence or they would back off certain rationals, but I don't believe I ever said that whether it was tenuous or not.

Q. Okay. Okay. Well, I think -- I think it may make sense to just get to Factor 9, so you can understand my questions, you've written a very thorough report. I just want to make sure we are understanding each other.

So if we would turn to PR-14,

page 32. And so here, you begin your section on Senate Factor 9, tenuousness. Do you see that?

A. I do.

Q. Okay. In here, you write that the sponsors and advocates of two bills provided several justifications and you go onto show that you believe that they are proper justifications lack support; is that right?

A. Empirical support, yes.

Q. Okay. And now, in preparing your report you studied the legislative record related to redistricting this year in order to develop your conclusions, right?

A. I did.

Q. In fact, studying legislative history is part of your research practice. You've identified it in another part of your report in your background, correct?

A. Yes.

Q. Okay. And let me step back. When studying a legislative record to understand legislative intent, you don't want to cherry pick certain pieces of the record and ignore legislative priorities that have been repeatedly stated because you want to get a full picture of

the record; would you agree with that?
A. Yes.
Q. And your report quotes from the legislative record, correct?
A. Yes.
Q. You reviewed the state government affairs committee hearings, correct?
A. Yes.
Q. And you reviewed the Florida Bates, correct?
A. I did.
Q. And during the committee hearings and Florida Bates, the legislature repeatedly described the plan as a continuity of representation plan; isn't that right?
A. Not repeatedly. That actually started to enter the record at the end, and I believe I do have quotations to that effect in the report.
Q. Okay. Let's start with where you have quotations that effect in the report and then we will get to repeatedly so can you identify in your report where you have those quotations?
A. So I'm going to refer. I have my --

I have my report here so I'm going to flip through it and look.

Q. Take your time.

A. So on page 39, I have some information to that effect.

MS. MCKNIGHT:

Mr. Williamson, would you mind turning to page 39 so we can all follow along.

BY MS. MCKNIGHT:

Q. Is this the page 39 you are referring to or is it the exhibit number below?

A. It's the page yes, this is 39.

Q. Okay. Great.

A. So I write here, during the -- I believe it's the Florida debate which might be the one -- which I think might be the final transcript or close to it or represented that he was presenting the bill that day. He said that the primary criterion for drawing the congressional districts have become, quote, they honor traditions as best as possible, and this did create massive disapproval and so he -- and then later on in that moment he said that 1, HB-1 was designed to, quote, maintain traditional

boundaries. So yes, I do talk about the fact that has become a part of the (inaudible).

Q. Okay. So you quote -- you quote Representative Mickey, but where do you talk about that as becoming a priority?

A. So on page 39 I said, by the end of the process, a quarter of HB-1 in particular had shifted their legislative priorities. Instead of compactness or other measures, Representative Mickey stated a primary criteria for drawing congressional districts to come was to honor (inaudible) as best as possible to create this message was equal with the people. Representatives (inaudible) records of PB-1 prioritized the traditional ballots after looking at all the other criterias.

Q. Okay. And do you know when the legislative redistricting session began in Louisiana?

A. You mean with the road shows and everything else?

Q. The legislative redistricting session?

A. So they started holding road shows and hearings back in 2021, but did you mean such

as when the (inaudible) started?

Q. Correct.

A. That was in February.

Q. Would -- would you have any reason to disagree with me if I told you it was February 2nd?

A. I accept that. That's fine.

Q. Okay. So just to tie this up. Is this the only place where you reference traditional boundaries on page 39 of your report?

A. Let me see. There may be some other areas in which I talk about reference to traditional boundaries, but that's the one that comes to mind.

Q. Okay. None others come to your mind at this moment?

A. In the report --

Q. Yes.

A. -- as far as that -- that being a priority? No. Again, they had in each place they started out with a list of priorities up until the end, No. 1, was always the engagement of communities of interest and other kinds of -- and the other traditional redistricting format.

Q. Okay.

A. Again, the priorities (inaudible) and here the priorities by the end of this legislative -- legislative session shifted to when they were then emphasizing the appearance to the primary -- the primary criteria was now honoring traditional boundaries so yes, that's priority.

Q. I see. So since you -- you were concerned about the end of the process. Let's go to the beginning of the legislative session on redistricting and bring up PR -- well, before I do that, let me share with you. The parties have stipulated to transcripts of certain hearings, committee hearings and floor sessions, and so what I'm about to bring up for you is an exhibit that is a transcript that has been prepared by plaintiffs of the special session SGA committee transcript dated February 2, 2022. We are going to pull up PR-52 at page 7. And now, Dr. Burch, I'm looking at lines 9 through 16.

A. Uh-huh (affirmatively).

Q. And I'll offer for you that the speaker during this hearing is president of the Senate Page Cortez. In here he states, the third tenant or principle was as best possible to

maintain the continuity of representation. What do I mean by that, if means that if your district elected you and you've done a good job they also have a right to re-elect you. Conversely, you don't get to choose who your population is they choose you. If you didn't do a good job. They have the right to un-elect you. Do you see that?

A. I do.

Q. And does that refresh your recollection about whether the legislature identified continuity on representation on the first day of legislation?

A. Yes. I said I could recall that, but again, if you see here in the -- the quotation he cited it's not the top priority it's third so as I said before, those priorities shifted.

Q. I see. Well, let's go down to lines 23 through 25 on this same page. So this reads by President Cortez, so the next principle that I tried to adhere to was with something you-all heard on the road show many times called compactness. So does this refresh your recollection about whether President Cortez and the legislature discussed continuity of

representation before they even addressed compactness on the first day of the legislative session on redistricting?

A. Yes. They did.

Q. Okay. Thank you. I'm going pull up another exhibit for you. This exhibit is a transcript stipulated by both parties to the special session SGA committee transcript dated February 3rd, 2022. It's Exhibit PR-54 at page 4. And here, I'm starting at line 13 and going down into the next page, the Line 1.

Dr. Burch, we will highlight it for you and then let us know if you need us to zoom in at all. I'm going to read the first line and then paraphrase the rest. I -- I will stop so you can have a chance to review it, but here, I'll represent to you that the speaker is chairwoman of the Senate redistricting first Senator Hewitt and she said on the floor or in this committee at that time, we talked about continuity representation a lot in these hearings and we heard again at the road show one of the kind of talking points was elected officials should not choose their voters, voters should choose their elected officials and to that again,

I would respond by saying I respect the voters in this state and know that they are in the best position to vote an elected official in or out of office based on their performance. Dr. Burch, does this refresh your recollection about whether the legislature considered notion of continuity of representation early in the legislative session?

A. I never said they that didn't consider it early, I said it wasn't the top priority so if you look at it again you didn't show me what -- like before, you didn't show me what came before that and what order it talked about continuity in the legislative session so I don't really know -- so I can't really -- so I don't really know if I could agree like I said, before that, they prioritized what they had done and then they shifted priority.

Q. I see. And so, let me do one more example, Dr. Burch, and then we can -- we can start moving on. If we could bring up PR-71. Dr. Burch, this is a special session Senate full-floor debate dated February 8, 2022. And again, this is a Senate full-floor debate and I'm looking at line 16 through the next page on -- on

line 4, but we can just start on page -- sorry. On page 88, at line 16. And so here, I'll just read the first few lines. The next principle preserve the core of the prior districts to ensure continuity of representation. You know, we heard many times on the road show and the president spoke to this a little bit earlier on the bill and then it goes on to reiterate points about voters being able to vote in or out their elected officials. Do you see that, Dr. Burch?

A. I do.

Q. Okay. And would it surprise you to know that the phrase continuity appears more than 35 times in 13 days of transcripts in this case?

A. No.

Q. Okay. So in reviewing these hearing transcripts that are dated February 2nd, February 3rd, February 8th, and that you are not surprised that continuity was references more than 35 times in 13 days of legislative transcripts, does that refresh your recollection about the fact that the legislature repeatedly described the plan as a continuity of representation plan?

A. Again, it's not -- I never said that

I didn't recall that they talked about continuity representation, what I said is that that priority shifted across time. Even the last quote -- quotation you showed me. It began with the next as if that wasn't the first thing they talked about. And as I said, hereby the time we get to the end, that traditional redistricting principle aspect was -- what they arrived on as the -- as the top priority, but that was only after all the other ones such as compactness and even the example that I gave that are correct. There was the absolutely deviation was again, supplanted by or plans that had two majority, minority districts actually performed better on the metric, so I stand by what I wrote in my report that again, that -- those priorities shifted and by the end, that had to come and those quotations you showed me those were early on they were talking about other principles before they actually got continuity of representation.

Q. I see. And -- and even if it was a third principle on the very first day of the redistricting session, you did not examine continuity of representation and whether or not the legislature fulfilled their goal of

continuity representation, correct?

A. I looked at both the plan that was there as well as the -- the full plan and of course, the boundaries had to change a little bit, but as far as whether or not they got as close as possible to the old boundaries no, I didn't look at that. And I don't believe there was any discussion as far as whether that was the plan that brings change -- these changed the boundaries of all the plans that were available. So it wasn't -- so it's not in my report is a recollection of is an issue it's that they didn't really compare bills based on you know, whether that was a -- that was a statement that in terms of like how closely that -- that plan came than say, a different bill the computer might have observed.

Q. I see. So I'll represent to you that we have experts in this case who have submitted reports that the core retention score in this plan has been calculated to be 96 percent. I'll also represent to you that that is a higher score than any of plaintiff's illustrative plans. My question to you relates to the Senate factor of tenuousness. I

understand from your earlier testimony that you were trying to understand the legislature's priority in drawing it its plan and trying to study whether those priorities played out in the ultimate plan in the at past. I understand from your testimony just now, that you did no examination of continuity of the representation in your report, correct?

A. Right. That's not those figures aren't in the record.

Q. Okay. And you did not conclude in your report that the legislature's rational to draw a continuity of representation plan was quote, unquote, anyway, right?

A. No. I said that those plans lack empirical support and that the references you just made are in the record.

Q. Okay. But you would agree with me that the references I just made to the legislature describing continuity of representation as a goal those are in the records, correct?

A. Yes. In the way that I described.

Q. And I'm going to share a fact with you. Tell me if you agree or disagree or have

knowledge about it priority plan drawn in 2011 was pre-cleared by president's Obama's Department of Justice, correct?

A. That was in the record.

Q. So you would agree with me that that's a fact?

A. Yes.

Q. Now, in this case, you did not study whether the so-called tenuous was due to political as opposed to racial choices, correct?

A. The only references that I have in this section with respect to race are I do have a discussion about the extent to which there was a new census redrawing of two majority, minority districts also I reference race when I talk about dispersions that the Senators and members of the house made with respect to what they thought about minority voting or different parts of minority positions.

Q. Okay. So I -- I think you answered a different question and so pardon me for repeating. I believe it is just a yes or no question. You did not study whether the so-called tenuous that you found was due to political as opposed to racial choices, correct?

A. Yes. I believe I talked about ways in which they were discussing race.

Q. Okay. We will move on. Dr. Burch, you believe that the legislature should have drawn maps identifying black voters as a community of interest, correct?

A. I believe what I wrote is that black voters and other people themselves said that they constituted a community of interest.

Q. Okay. Is it your position that the legislature could use race as a proxy for a traditional districting criterion?

A. It's my understanding that based on the need to ensure representation that the legislature had to consider race.

Q. Okay. But you don't have an understanding about whether race can be used as a proxy for traditional districting criterion?

A. I never made that point. The only point that I'm making is that on the record, that was brought up on the record and actually, I believe I had some point to which the legislators agreed, so my -- my point really was to just put on the record that that was discussed.

MS. MCKNIGHT:

Okay. Thank you very much,
Dr. Burch. I have no further questions.
THE COURT:
Any redirect?
MR. CHAKRABORTY:
Yes, Your Honor.
REDIRECT EXAMINATION BY MR. CHAKRABORTY:
Q. Dr. Burch, just a couple of brief questions.
MR. CHAKRABORTY:
Can we pull up PR-52, Matthew? And can we please turn to page 7?
TRIAL TECH:
(Complied.)
BY MR. CHAKRABORTY:
Q. Dr. Burch, that middle area there, the third tender principle, do you recognize that as the portion that Ms. McKnight was representing earlier with you?
A. Yes.
Q. Great. Thank you. Can we please turn to page 5? And do you see, Dr. Burch, at the very top of this page where it reads let's start with Senate bill offered by President Cortez?

A. I do.

Q. And then you see President Cortez, the Senate president start his remarks that ultimately lead onto the portions that Ms. McKnight read out to you?

A. Yes, I do.

Q. And do you have any reason to doubt that Senate Bill 1, actually deals with state legislative redistricting?

A. I -- well, yes. That's S HB-5.

Q. Right. It doesn't deal with congressional redistricting such as SB-5 or HB-1?

A. That's right.

Q. Did any of those change your basic conclusion on Senate Factor 9, that the justifications afforded by legislators were tenuous?

A. No. Nothing that I put forward here changes what I wrote.

MR. CHAKRABORTY:

Thank you. No more questions.

THE COURT:

Okay. Thank you, Dr. Burch, let's take a 15-minute recess.

(A short recess was taken.)

THE COURT:

Okay. Be seated. Next witness.

MR. HAWLEY:

Good afternoon, Your Honor. Making my first appearance, I'm Jonathan Hawley. H-A-W-L-E-Y. I represent the Galmon plaintiffs, and the plaintiffs next call, Dr. Allan Lichtman will be joining us via Zoom. Good afternoon, Dr. Lichtman.

THE WITNESS:

Good afternoon.

DR. ALLAN LICHTMAN,

after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

DIRECT EXAMINATION BY MR. HAWLEY:

Q. Can you hear me okay, Dr. Lichtman?

A. I hear you fine. I'm a little deaf, so I speak slowly and clearly.

Q. I will do that.

MR. HAWLEY:

Your Honor, the Glamon plaintiffs wish to tender Dr. Lichtman as an expert in American politics, American political history, voting rights and qualitative and

quantitative social science analysis.

THE COURT:

Any objection?

MR. BRADEN:

My name is Mark Braden, defendant intervenors for the legislature, and we have no objections.

THE COURT:

Okay. Dr. Lichtman will be accepted by the court in the fields of American politics, American political history, voting rights and qualitative and quantitative social sciences and Dr. Lichtman may provide opinion testimony in those fields.

BY MR. HAWLEY:

Q. Thank you, Your Honor. Dr. Lichtman, will you please state your full name for the record?

A. Allan J. Lichtman. That's A-L-L-A-N, J, period, L-I-C-H-TM-A-N. I'm getting an echo.

Q. We are okay on our end, Dr. Lichtman. Can you hear me?

THE COURT:

Mr. Hawley, would you like to turn the podium.

BY MR. HAWLEY:

Q. No. Can you -- can you still hear me okay, Dr. Lichtman?

A. I hear you fine. I'm still getting an echo. Maybe if I turn my --

THE COURT:

Turn your speaker down.

THE WITNESS:

-- my computer volume down a little, that might help. Let me try it. All right. Let's try it now.

BY MR. HAWLEY:

Q. Okay. Dr. Lichtman, how about now?

A. Much better.

Q. Okay. Thank you. Dr. Lichtman, you've been retained as an expert for the Glamon plaintiffs; is that correct?

A. Yes. Yes.

Q. And you prepared -- thank you. And you prepared a report in this case?

A. Yes.

MR. HAWLEY:

For the record, that is Exhibit

GX-03, which is Record Docket No. 48.

BY MR. HAWLEY:

Q. Dr. Lichtman, do you have a copy of your initial report in front of you now?

A. I do.

Q. And you also prepared a rebuttal report in this case, correct?

A. Correct.

MR. HAWLEY:

And, for the record, that is Exhibit GX-31, Record Document 120-4.

BY MR. HAWLEY:

Q. Dr. Lichtman, do you have a copy of your rebuttal report with you as well?

A. Yes.

Q. And Dr. Lichtman, is your CV included in your report?

A. Yes.

MR. HAWLEY:

And I'll say for the record that is at page 99, of GX-3, Record Document 48.

BY MR. HAWLEY:

Q. And, Dr. Lichtman, is your CV a complete and accurate summary of your background and professional experience?

A. Yes.
Q. I'd like to ask you a few brief question about that. Can you please summarize your professional background?
A. I graduated in 1967 with a BA from Brandeis University in history, but I've been a science major for three years before turning to history my senior year which may explain my interest in social science and qualitative methodology. I then got my PhD from Harvard University in 1973 with a specialty in American political history and quantitative methods.
Q. Where are you currently employed?
A. I am employed at American University in Washington, D.C. and I'm not sure if I'm pleased or embarrassed to say next year will be my 50th year of science.
Q. And I assume that means you are tenured?
A. I have been tenured since about 1980. In 2011, I was appointed distinguished professor so I made office of university rank. It's a rank above full professor there are only a handful of us out of many hundreds of faculty members at the university.

Q. And what are your principles areas of research?

A. I would say American politics, American political history, voting rights, quantitative methods, qualitative methods, political prediction.

Q. Have you previously served as an expert witness in voting rights cases?

A. Probably close to a hundred and if you count civil rights cases in general north of 110.

Q. And do those include redistricting cases?

A. Yes.

Q. Have you served as an expert in redistricting cases in Louisiana?

A. Yes.

Q. And does that include the Terrebonne Parish litigation?

A. Yes.

Q. In that case, did you undertake a Senate factor's analysis?

A. I did.

Q. And did the court in that case credit your Senate factors analysis?

A. It did.

Q. And did other courts previously credited and relied on your analysis?

A. Not every time, of course, there have been over a 110, but most of the time including the United States Supreme Court in its landmark 2006 decision in the Texas Congressional Redistricting Case, Lulac versus Perry, the court relied on my work, my analysis and doing something quite unusual and that is it invalidated a district, a congressional district in southwest Texas, based on my work on the grounds that it polluted the votes of Hispanics.

Q. Dr. Lichtman, what were you asked to do in this case?

A. I was asked to examine the 9 Senate factors that relate to totality of circumstances in the State of Louisiana facing the opportunities for African-American voters who participate fully in the political process and to elect candidates of their choice and I was also asked to respond to any material presented by defendants.

Q. And what methodology did you employ as part of that analysis?

A. I employed standard methodologies in my fields of research over these many decades. I analyze sources like surveys, scholarly articles, books, journalistic articles, governmental reports, demographic information, election returns and similar data to reach my conclusions, and I applied quantitative methods in this case mostly fairly simple quantitative methods, for example, just looking at percentage differences to gauge racially polarized voting in Louisiana or just looking at percentage and differences to engage socioeconomic disparities between African-Americans and whites in Louisiana and then, of course, like any historian, I analyzed documentary materials, I've written a book on historical methodologies.

Q. And what are your overall conclusions?

A. My overall conclusions are that essentially all of the 9 Senate factors apply in the State of Louisiana contemporarily to impede the opportunities for African-American voters to participate fully in the political process and to elect the candidates of their choice, and I also find that these are not isolated factors

separated into watertight compartments, but that one factor synergistically influences the other to expand the impediments that I discuss.

Q. Did you read the expert report submitted by the defendants in these consolidated cases?

A. I did.

Q. And did anything in those reports change your conclusions about the Senate factors in Louisiana?

A. Not only did nothing in those reports change my conclusions, they strengthened my conclusions. None of the reports directly address the Senate factors or even mention my report by name. None of the information presented in my report was refuted by any of the expert reports submitted on behalf of defendants. Two of the expert reports, one by Dr. Alford and one by Mr. Hefner and -- and one by Mr. -- I hope I get his name right, Solanky, indirectly address some of my two Senate factors, 2 and 9, and to the extent there was information in those reports, he falls to that.

Q. Dr. Lichtman, I'd like to cover the history of your two reports and some key points

and cover the key areas of your analysis and conclusions, and we will start with Senate Factor 1.

Does the State of Louisiana have a history of voting discrimination against its black citizens?

A. It not only has a history, it has an ongoing history; and that history relates not just to direct voter discrimination, for example, the use of at-large elections with the availability of polling places for African-Americans, but it also relates right up to the present of discrimination in three areas that significantly effected the impact of voting; that is, law enforcement, discrimination in law enforcement, significantly impacted voting for a couple of reasons. No. 1, Louisiana has some pretty strict felony disenfranchise laws. You can't vote while you were incarcerated, you can't vote while you were on parole or probation and there's no automatic restoration of your voting rights after five years. You have to go through a process.

Secondly, as I point out in my report, once you've been incarcerated your

integration into a fully functioning member of society including a voting member in political participation becoming all that much more difficult, second area would be the area of education. And all this scholarly research indicates that education is a prime determinant of political participation and of course, levels and proficiency in education effect almost everything in the course of the lifestyle of proficient education, in proficiency. In addition, in education, it contributes to other socioeconomic factors which have an impact on voting.

Finally, there is racial segregation and the literature I cite in my report indicates that segregation perpetuates circle of the poverty. It expands it multiplies socioeconomic disparities that have a direct impact on the ability of African-Americans in Louisiana to participate in the political process and to elect candidates of their choice.

Q. On the topic of discriminatory voting practices, in particular you mentioned just now at-large judicial elections and closing of polling places. Are those examples of efforts

that have continued into the present day?

A. That's correct. Those are examples that continue into the 20th century, and we can also talk about as actually good in the context of another factor, what I believe to be the discriminatory redistricting plan in the post 2011.

Q. Let's move on to Senate Factor 2. Dr. Lichtman, does Louisiana have racially polarized voting?

A. Louisiana, as I point out in my report, has extreme racially polarized voting; that is, African-Americans vote almost unanimously for Democratic candidates and Republican candidates choice of African-American voters, and this racial divide between blacks and whites voting Democratic and Republican is inextricably tied to race. Party labels by themselves are meaningless. They are just labels. What matters is what those labels represent.

We know for the 19th century and well into the 20th century blacks in the south are voting Republican, the party of Lincoln, and whites were voting Democratic, the party of

redemption. That changed particularly after the Voting Rights Act of 1965. It wasn't an immediate process, but over time and certainly up to our own time the party images and representations shifted. Democrats came to represent the party of civil rights and black interests and Republicans, the opposite. I document this change in many ways in my report.

First of all, I cite scholarly literature on what they call the co-joining of race and party in recent years. Secondly, I look at political leadership and I look at two advocacies; NAACP, the oldest advocacy group in the country and the ladder conference on civil and human rights. And they have legislative score cards to what extent the legislators represent black and minority interests; and they both show the same thing: That there is extreme polarization between the positions taken by Republican leaders, legislators in the Congress and the position taken by Democrats.

It's extreme polarization, as I document in my report, that matches the extreme polarization of the voting -- voting of blacks and whites.

Second -- a third area I look at is the rank and file; that is, what are the attitudes with respect to race of Louisianians who are Republicans and Democrats. Again, I find extreme polarization on issues squarely related to race and I document this in two respected studies, the cooperative congressional election study, a standard source. And here in Louisiana, the Riley Center study, they ask different questions, but they come to the same answer again. It's the polarization reflecting the polarization in the vote.

Finally, and this is important, I look at the actual results of elections. Republicans are quite dominant in Louisiana winning almost all statewide elections. Winning essentially all legislative elections in white districts, and what is consistent in my findings is that Republicans in all of these areas have not sponsored any winning black Republican candidates.

All of the statewide executive offices are owned by whites, both U. S. Senate Offices that are voted statewide are held by whites. Whites win in the white majority

1 districts in the state, House of Representatives
2 and in the state Senate. I even drilled down for
3 more fine grain level, the level that mayoral
4 elections; that is, I looked at mayoral elections
5 in municipalities that were in Louisiana and no
6 blacks are elected in any majority white
7 municipality. Only blacks are elected in
8 majority black municipalities and there are no
9 black Republicans. So I document this at the
10 level of scholarship, at the leadership level, at
11 the rank and file level, at the level of the
12 actual results of elections.
13 Q. Ultimately, Dr. Lichtman, as between
14 race and party, which do you consider to be the
15 driving causal mechanism of Louisiana's polarized
16 voting?
17 A. The driving mechanism is clearly
18 race, as I explained. Party by itself doesn't
19 explain anything. As I said at one time, if
20 racially voting patterns were reversed, it is
21 because of what the parties represent that I
22 document in so many ways that's driving voting.
23 In other words, blacks are voting Democrat in
24 Louisiana, whites are voting Republican and this
25 is not related to Louisiana, by the way, not in

spite of race but because of race. Race is at the center of all of this.

I also cite scholarship by Dr. Bromage claiming how race is at the center of Republican political strategy. That comes down to the reading of this.

Q. You mentioned that you've read the reports written by Dr. Alford in this case, correct?

A. Correct.

Q. Did anything in Dr. Alford's report change your conclusions about racially polarized voting in Louisiana?

A. No. It strengthens it. Let me explain. All of the analyses that Dr. Alford performed show the same thing my report showed. Extreme polarization of between African-Americans and whites in terms of blacks voting Democratic, whites voting Republican in very large majorities.

Now, Dr. Alford states or at least implies that the driving force is party not race, but he stops cold there. He never explains or attempts to justify that conclusion. He doesn't look at my analysis history, doesn't look at my

analysis of leaders, doesn't look at my analysis of rank and file, doesn't look at my analysis or any analysis in these areas of the actual results of elections.

In fact, what's interesting and telling is Dr. Alford looks at, I believe, something like 28 Republican candidacies in his analysis and not one of those Republican candidacies involved a black candidate.

Dr. Alford also ignores that part of my initial report that looks at whether or not race can influence voting when the poll party is not an issue. I looked at the 2008 primary, Democratic primary where overwhelmingly blacks participate; and that involved Barack Obama, the African-American, and Mrs. Clinton, the white candidate, and a few other white candidates; and what I found is that African-Americans voted 86 percent for Obama and only 30 percent of whites voted for Obama, so within the same party, it was a sharp difference there.

I also looked at the subsequent 2008 general elections and found that black Democrats voted 98 percent for Obama, but white Democrats only voted 38 percent for Obama, so there isn't

critically and inextricably a poll party you can see voters responding on race. Again, Dr. Alford does not consider those results or present any comparable results of his own.

Q. Moving to Senate Factor 3, Dr. Lichtman, does Louisiana employ any voting practices that enhance the opportunity for discrimination?

A. It does. It employs one of them that's explicitly listed under Senate Factor 3, and that is the use of the majority vote requirement and subsequent runoff elections.

Q. What effect does the majority voter requirement have on black and black preferred candidates?

A. Well, it means even if a black candidate gets a plurality in the first round as a result of a split among more than one ambitious white candidate, that does not elect that black candidate, but rather that black candidate has to face off one -- one-on-one against a white candidate. And clearly statewide in Louisiana, the white voters dominate in that kind of contest. The African-American candidate has little chance of winning, and I gave three

examples of that in my report.

Q. You -- what are those three recent examples?

A. Yeah. We have the 2015 election for lieutenant governor. The black candidate won the first round by three percentage points, so it was close, but not eyelash, and the candidate lost 55-45 in the runoff.

We had a 2017 election for treasurer. Black candidate won the first round even more decisively by seven points and was defeated even more decisively in the runoff 56 to 44.

And, finally, we have the 2017 election, the Secretary of State. The black candidate didn't win the first round, but came really close, came within 10,000 votes or so, but got shrouds in the runoff, 59 percent.

Q. When was the majority vote adopted in Louisiana?

A. It was first adopted in 1975. And the most famous runoff, of course, was in 1991 between the Ku Klux Klan candidate David Duke, and I think it was Edwin Edwards who was against him.

Q. So was the majority vote requirement adopted in response to the U.S. Supreme Court's Foster decision?

A. No. It was adopted more than two decades before; and, as I said, kind of a highlight runoff election that got major national attention occurred several years before that in 1991.

Q. Moving to Senate Factor 4, Dr. Lichtman, what are your findings on candidate slating in Louisiana's congressional elections?

A. Well, I 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 2, which is overwhelmingly packed with blacks and Democrats slating is irrelevant. It's going to elect a black Democrat; whereas in the five other districts that are overwhelmingly white and have a Republican, slighting is equally irrelevant because a black candidate has no chance essentially to win in districts that are -- R plus 20 or more according to standard political analysis type. That's the partisan voting index

that measures the partisan strength of the district, and it's in my report.

Q. Next is Senate Factor 5. Dr. Lichtman, what effect does the history of discrimination you described before have on black Louisianians today?

A. It has profound effects on black Louisianians today. I document in my report that there are major today socioeconomic disparities between African-Americans and whites in Louisiana, and that extends to almost every area of significance of peoples' lives and political participation and voting. It extends to income, to unemployment, to poverty, to dependence upon welfare, to homeownership, to the availability of vehicles, the availability for broadband internet. It extends to educational attainment and educational proficiency, all these between African-Americans and whites in Louisiana in the present day, and it extends to various measures of health as well.

Q. And do these inequities impact black political participation?

A. Yes. As I explain in my report, first of all, they -- this isn't the only one,

but, first of all, and the most obvious is that they impact the participation rates of blacks versus whites in terms of turnout, and I present data in my report showing differentials between black and white turnout in recent elections in Louisiana that can extend into the double digits and that hadn't really ameliorated itself in recent elections. Other information presented by one of the experts for defendants bolsters that.

Q. Are you referring to the report Dr. Solanky and his voter turnout statistics?

A. I am. Dr. Solanky presents two tables on voter turnout. I think they are Tables 2 and 4 in his report. One of the tables looks at statewide turnout and finds substantial disparities I did between blacks and whites in their turnout rates. Similarly, he wrote that every congressional district, all six of them, and found that invariably in every one of those six congressional districts, black turnout lagged white turnout sometimes up into the double digits.

Q. Is reduced political participation demonstrated in other ways?

A. Yes. As I explain in my reports, a

lack of sources, lack of educational proficiency, attainment impedes participation in other ways. I give two examples: One is lobbying of public officials, very important for participating in the political process and influencing the outcomes, which, as we see, you know, quite different whites and blacks in Louisiana; and I present survey data showing that whites are substantially more likely in Louisiana to contact public officials. Again, a reflection of all of these many socioeconomic differences.

The second area is political contributions. Not surprisingly, the disparity in resources evident between blacks and whites in Louisiana manifests itself; and, again, I present survey data, recent survey data on this, that whites are far more likely than blacks to make political contributions. And, of course, I didn't actually present tables on this, but it certainly makes sense that groups that have lower levels of education, fewer resources makes it more difficult to find candidates to run and to run political campaigns. So while turnout is the most obvious, there are other very important ways in which these disparities reflected

discrimination impact, the ability of African-Americans in Louisiana to participate fully in the political process and elect candidates of their choice.

MR. HAWLEY:

Mr. Martinson, will you please pull up page 85 of GX-3?

TRIAL TECH:

(Complied.)

THE WITNESS:

Wow, I actually see it.

BY MR. HAWLEY:

Q. Excellent. Dr. Lichtman, does this table look familiar to you?

A. It does. It's right from the appendix of my report.

Q. And what does it show?

A. It shows that in critical areas, according to the U.S. news state rankings, these are not outlines, but in other rankings, you have similar answers; and critical areas are very important to a group that's vulnerable like African-Americans and has the burden of very significant socioeconomic disparities. Not only are they facing these present day disparities,

1 but they are dealing with a state that ranks at
2 or near the bottom in critical areas, 45th in
3 health care, 48th in education, 49th in economy,
4 50th in opportunity, 48th in infrastructure, 50th
5 in crime and corrections, 43rd in fiscal
6 stability, 50 in quality of life, 50 overall.
7 This shows the impediments faced by
8 African-Americans in Louisiana and it also
9 documents the present day ramifications of
10 historical and ongoing discrimination in
11 Louisiana.
12 MR. HAWLEY:
13 Thank you, Mr. Martinson. We can
14 pull down GX-3.
15 BY MR. HAWLEY:
16 Q. Moving to Senate Factor 6,
17 Dr. Lichtman, have Louisiana's campaigns been
18 marked been racial appeals?
19 A. Yes. They have been marked by both
20 subtle and overt racial appeal, and almost all my
21 examples except for maybe one are 21st century
22 examples. I'm not going back to the old year of
23 Jim Crow, the old ones from the 1990s. And these
24 examples go all the way up to 2022, and they
25 don't just involve French candidates. You

talking about some of the leading Republican politicians in the State of Louisiana: David Vitter, Mike Foster, Steve Scalise, one of the members of the Republican leadership, U.S. representative Mike Johnson, U.S. Senator John Kennedy as well as important Republican affiliated organizations in the State of Louisiana.

Q. Is it safe to say then racial appeals have been employed by winning campaigns in Louisiana?

A. Absolutely. David Vitter employed this in 2010, and he certainly had a lengthy campaign. Steve Scalise has consistently been winning in Louisiana. Mike Johnson is a sitting U.S. Representative, John Kennedy is a sitting U.S. Senator.

Q. Moving down to Senate Factor 7. Have black Louisianians historically been elected to public office?

A. Not historically and --

Q. Dr. Lichtman?

A. I'm sorry. I lost your question there. You -- somehow the technology failed and you blacked out.

Q. Perhaps, it was me and not the technology, so I'll go ahead and ask it again.

Have black Louisianians historically been elected to public office?

A. Not historically, really since reconstruction, and not at present.

Q. Is there a disparity between the black share of Louisiana's population and their representation in Congress and the state legislature?

A. Yes. When you look at the -- the voting representation of blacks in Louisiana, it's a little bit north of 31 percent, and there's a wide disparity in terms of black representation.

Now, I want to be clear. I'm not making a legal conclusion here. In fact, throughout my testimony in the report, I'm never making legal conclusions to the extent I look at things like briefs or court decisions, so substantive, not to draw a conclusion.

So I'm not legally saying at all that any group, including African-Americans, must have proportional representation. I am simply responding to the impact of this query which is

to consider the extent to which black representatives have been elected to public office in Louisiana.

And there is a vast discrepancy between black voting age population and black representation. No black is elected to any statewide executive office in the State of Louisiana. That's a zero percentage. No black is elected statewide to a U. S. Senate position. That is a zero percentage.

When you look at the state legislature, blacks are underrepresented by something like four to nine in Senate and house seats are only being elected in majority black districts, which really shut them off and limits their ability to expand their representation.

And in terms of the supreme court and other judicial positions in Louisiana, blacks are also substantially underrepresented. And as I mentioned and same thing in -- as I mentioned previously, these are not black Republican. Despite the political strength of Republicans, they are not electing a black Republican.

Q. Dr. Lichtman, have any black candidates been elected to office since

reconstruction?

A. Not that I'm aware of.

Q. Moving down --

A. I think there were five during reconstruction and none since.

Q. Thank you. Moving to Senate Factor 8. Based on your analysis, has the State of Louisiana been responsive to the needs of its black citizens?

A. Well, I looked at responsiveness in five areas that are fundamental and especially important to a group like African-Americans that already bears the burden of socioeconomic disparities, things like income, poverty, education, homeownership. So I looked at education, healthcare, I looked at economic opportunity, and I looked at environmental pollution and found that in all of those five areas, the state has not been responsive to the particular rights and needs of its African-American residents.

Q. And are these inequities in some cases caused by official government policy?

A. Absolutely. As I point out in many of these areas, all of these disparities, all of

these issues are part and parcel of government policies and government policy with regard to polluting industries in heavily black areas or the long delay in adopting Medicaid expansion, something critical to the health of African-Americans, and so many failures in criminal justice.

Q. Dr. Lichtman, would you consider these findings to be either limited or subjective?

A. It's certainly not limited. These are areas of fundamental importance to a vulnerable group like African-Americans and they are the kinds of things social scientists would look at. The well-being and life chances of African-Americans are fundamentally effected by criminal justice, healthcare, education, economic opportunity, and all the problems I document for health with environmental pollution, and they are not subjective; that is, for each of these five areas, I provide specific information. I just don't throw out opinion; and it is relevant, I think, that as with the rest of my report. No expert for defendants challenge any of the information that I provided under Factor 8 in my

initial report.

Q. Lastly, Dr. Lichtman, Senate Factor 9. Can the absence of a second black opportunity congressional district be justified by core retention?

A. Core retention is a criteria, criteria of choice. It's not legally required. It's not like one person, one vote conformity with the voting rights.

As a general matter, states certainly could adopt that as one of their redistricting criteria, but here's the problem: Here in Louisiana, by adopting that the district is heard as fundamental criterion redistricting, that freezes in the existing packing and cracking under the previous plan. That is the previous plan, as I explained at length in my report, packs African-Americans into Congressional District 2 far beyond what is necessary for African-Americans to elect Congress persons of their choice and then cracks African-Americans into overwhelmingly white Republican districts where they have no chance whatsoever, no matter how unhappy they might be with their white Republican representatives, they have no chance

to vote them out of office. 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.

Q. Dr. Lichtman, are you aware that the previous 2011 congressional plan was pre-cleared by the U.S. Department of Justice?

A. Absolutely. But all that means is that the plan was not retro-aggressive. That means that it did not go to zero African-American opportunity districts. As objection letters in this department make it crystal clear or letters not interposing an objection, a preclearance does not mean that a plan is free of violating the Voting Rights Act. It simply means that the plan was not retro-aggressive with respect to the previous plan.

Q. Can the current congressional plan be justified by an interest in compactness?

A. Absolutely not. As I point out in my original report, by freezing in essentially the same district that you had in the post 2010 redistricting plan, you are freezing in place a district that cannot be justified on the traditional ground of compactness. In fact, the district is highly non-compact, as I explain in my report. It reaches out a long finger. It is -- has areas of intrusions that are not smooth or symmetrical. And, in fact, it closely represents from way back when the Elbridge Gerry Salamander that brought on the term gerrymandering in the first place.

It was nothing about this district that's frozen in place that could be justified by creating a compact district. That's not surprising when you are packing African-Americans into a district and then cracking them elsewhere. It's not surprising that the district does not conform to compactness. Conceivably in other states and other circumstances you can have a compact district that would pack that, but not here. That's not what was done and the plan cannot be justified on that basis.

Q. And just to clarify, the district

you are referring to there is the Second Congressional District, the mass majority black congressional district?

A. That's correct. It's overwhelmingly black, overwhelmingly Democratic. It's the packed district and all the other districts are the crackers.

Q. Is the current black voting age population of that district needed for black voters there to elect their preferred candidate?

A. Absolutely not. It's way beyond what is necessary for blacks to elect candidates of choice. I think the analysis that I present in my report represents the fourth highest black population in the country. African-Americans are winning that district by an average of 80 percent or more. No chance that an African-American candidate of choice would not win that district. As I said, the Cook political reforms in terms of their partisan voter index that measures partisan strength, that's that district, about the D plus 25. That means it's 25 percent more, 25 percentage points more than the average Democratic vote in the last two presidential elections, both of which were majority Democrat.

And so -- and if you look also nationwide, as I point out in my report, black candidates of choice almost invariably win even in districts below 50 percent, 40 percent to 50 percent. And it's very simple that in the 40 percent range, blacks dominate the Democratic primary, get to nominate a candidate of their choice, they then vote overwhelmingly for that candidate. In a general election, you don't need much in the way of white crossover for that candidate to win in a district that's within the 40 percent range.

Q. Dr. Lichtman, did you review the report prepared by Mr. Hefner in this case?

A. I did.

Q. And how does Mr. Hefner attempt to analyses communities of interest?

A. Yeah. Mr. Hefner indicates in his report that he can't give us a hard and fast objective, specific definition of what constitutes a community of interest. In fact, he says to a great extent up to the perceptions of the people that we are looking at in a given area. He just ticks off some general boxes like politics, economy, culture, residence,

occupation. Then in order to analyze communities of interest in the existing plan, I presume, though, he doesn't address my report to say that it wasn't tenuous because of the respective he looks at five broad regions. These regions are much too broad to analyze what's going on within a congressional district, which, of course, cuts across these regions.

In addition, it's not good enough to look at regions as compared to one another because they are so big, five of them to the whole state. You've got to look within. This is the standard social science within differences as compared to between differences.

So I took, for example, one of his regions anchored in the City of New Orleans and I looked at the extent to which blacks and whites in the City of New Orleans, according to his criteria, basically comes to a community of interest. And, of course, they don't share a common history of discrimination, they don't share a common ancestor, they don't share common politics or political values, they don't -- let me see. They don't have the same occupations. And I drilled further, I looked at do they share

the same residence and do they go to the same schools beyond all of these other factors. In other words, to what extent are they really integrated within the City of New Orleans as a community, and I looked at the measures of segregation and found that the measures of segregation were quite extreme in New Orleans. More than 60 percent of blacks would have to relocate during integration, and that there was also similar lack of integration for the schools.

So we look at the City of New Orleans as an anchor of one of the five regions. We see blacks and whites have very little in common to constitute within that region a community of interest.

Q. And did Mr. Hefner show that black and white Louisianians in the five majority white districts in the congressional map share commonalities?

A. No. His analysis couldn't possibly show that because, again, it's based upon these broad regional -- these regional areas which congressional districts cut across and what he doesn't analyze within as opposed to between.

So I looked at the commonality

between whites and blacks across the regions; and, again, they don't have common ancestry, they don't have common politics, they don't have common experience in the history discrimination, they don't have commonality in terms of the failure of states to meet their particularized needs. I also looked at residential and school segregation across Louisiana and found that blacks and whites don't live together. They don't go to the same schools.

I also looked at a variety of other indicators highlighted by Mr. Hefner. I found that across Louisiana blacks and whites don't have the same family structure, they don't have the same levels of income or poverty or dependence upon welfare programs or unemployment. They don't live in the same kinds of homes with African-Americans far more likely to be renters than homeowners. There aren't the same access to vehicles or broadband internet. They don't have the same educational attainment and they don't have the same educational proficiency and they don't work in the same jobs and occupations, so there is no basis for -- Dr. Alford doesn't analyze it and look any deeper. There is no

basis for claiming that in these five white Republican dominated districts that the African-Americans in those districts share a community of interest with whites.

Q. At the end of the day, Dr. Lichtman, how many of the Senate factors support a finding of vote dilution in the Louisiana?

A. Essentially all of them, when I look at the slating factor; and it's important to understand the thing I alluded to earlier in my testimony, that these factors do not operate in isolation. They are suited just -- they combine to impede the opportunities for African-Americans to participate in the process and elect candidates of their choice. So this horrible and ongoing discrimination leads to socioeconomic disparities which in turn lead to impediments for African-Americans to participate in the voting process and elect candidates of their choice, some to the majority vote runoff. Requirement contributes to that and in turn that contributes to a lack of representation in a government dominated by whites at every level in Louisiana which in turn leads to the failure of the states to meet the particularized needs of

African-Americans and in turn leads to the adoption of a redistricting plan that freezes in place a plan that packs African-Americans into a non-compact district and then cracks African-Americans into other districts where they have no chance to elect candidates of their choice, standard vote dilution packing and cracking. So you can't just look at these factors in isolation you have to see how that one impacts another.

Q. Thank you, Dr. Lichtman.

MR. HAWLEY:

Your Honor, I'd like to move exhibits GX-3 and GX-31 into evidence. Those are Dr. Lichtman's initial report and his rebuttal expert report.

THE COURT:

Is there any objection?

MR. FARR:

No objections, Your Honor.

MR. HAWLEY:

I have no other questions at this time, Your Honor.

THE COURT:

Cross-examination?

MR. BRADEN:

My name is Mark Braden.

THE WITNESS:

I lost you.

THE COURT:

We still have you.

THE WITNESS:

I don't see you for some reason.

Our camera may be -- just give us a

second.

THE COURT:

Is that better?

THE WITNESS:

Much better. Thank you.

THE COURT:

Spell your last name counsel.

MR. BRADEN:

Mark Braden, B-R-A-D-E-N, and I

represent the defendant intervenor

legislature groups.

CROSS-EXAMINATION BY MR. BRADEN:

Q. Dr. Lichtman, good to see you again.

A. Good to see you again. Always a

pleasure.

Q. Thank you. I'm sorry that you were

not able to attend in person. We certainly would have enjoyed your testimony in person here rather than remote. I try not to take up --

A. Thank you.

Q. -- too much of the rest of your afternoon, but I do have some specific questions.

MR. BRADEN:

If we could go to your report, in page 28 of your report, if we could bring that up. That's GX-3 or GX-3 or 003, and if we could go to page 28.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay.

BY MR. BRADEN:

Q. So, and I believe you just testified to this, but let me just simply confirm. It's -- you testified as to white crossover voting earlier I believe?

A. I testified both to black cohesion and white crossover voting, that's correct.

Q. So on your report here, you're projecting in some races white crossover in excess of 25 percent, more than a quarter?

A. I'm not projecting. These are exit poll results subsequent to the election. They are not a projection on these elections.

Q. Okay. That's correct. And you have a chart showing this too, I believe, this would be chart one?

A. Sure. You want to go to that?

Q. You should absolutely go to that. If we could bring that up.

A. What page?

Q. I believe that is 0068, chart one. So --

A. Got it.

Q. So it's your -- it's your view that the record shows white crossover voting ranging from 20 percent to 26 percent in the three elections on the chart?

A. That's correct.

Q. Okay. So, and you also believe -- if you go to page 62 of your report, and I also believe you just testified to this, but let me just confirm it, that the black candidate of choice can win in a district as low as 40 percent minority population?

A. In the 40 percent range. You know,

maybe not quite at 40, but certainly in -- below 50 percent, in a 40 percent range, absolutely; and the crossover and cohesion numbers bear that out, so you would have 45 percent African-American voters in a district. I could do the math for you --

Q. Uh-huh (affirmatively).

A. -- as soon as I get on my --

Q. Please do.

A. Yeah. Okay. So we got 45 percent times 95, that's 42.75, then we can round that off to 43 to make it easy, okay. And then we have 55 percent non-black. And, by the way, the non-black would include not just blacks. You got to understand that it would also include Hispanics and others, but let's just assume it's just blacks and it's 25 percent. So that's 13.75 and round it off to make it simple, an even 13. That's 56 percent for the black candidate of choice.

Q. Okay. So if I understand those numbers right, there would be no compelling need for the State of Louisiana to create districts of more than 50 percent to elect a black candidate of choice in congressional analysis?

A. Well, you would have to do the district specific analysis. This is just generic, but if you could -- in my view, and this is generic, I haven't done the detail district-specific analysis, but, for example, in my North Carolina testimony in the Covington case where the court accepted it, I pointed out indeed African-American candidates could win in the 40 percent range, and that was particularized analysis of each district.

But I certainly wouldn't rule out if the state could create two districts about 45 percent in African-American in their voting age population given that there's going to be Hispanics and others in that district who do tend to vote Democratic. But, again, depending on the district-specific analysis, that could give African-Americans an opportunity to elect candidates of choice again. I'm speaking in narrative.

Q. Thank you. Doctor, when were you first contacted about working on Louisiana congressional redistricting this cycle?

A. I really don't remember. I've been involved in maybe ten cases in this post 2020 or

so, several months ago at least.

Q. Okay. Do you know if you were working on this prior to the legislative session that resulted in the passage of the first plan and second plans, the veto-override plan, do you know?

A. Refresh me. Is this February 2022?

Q. Yeah, February. Were you working in February on it?

A. I'm sure I was working in February.

Q. Okay. And do you know who contacted you in regards to that?

A. The alliance attorneys.

Q. Okay. And did you play any role or provide any information to the legislature during the process?

A. No.

Q. So is this a little like déjà vu with you? Weren't you the expert witness in 1990 on the Louisiana congressional redistricting?

A. I don't remember it very well, but that was one of those short cases when working for the United States Department of Justice, and I think it was a very different -- and I think...it was very different. I don't remember

that specific case, but I'm pretty sure I working for Justice and I don't think it was 30 years ago, but I don't remember.

THE COURT:

Just a minute. Okay. We -- she wasn't able to take any of that testimony. Dr. Lichtman, is there a possibility that you are interfering maybe with your microphone or something? Because we -- the court reporter, none of us could make out any of that, any of your last answer.

THE WITNESS:

Oh. I didn't hear anything. I can turn it down more if you want.

THE COURT:

No, I don't think it's --

THE WITNESS:

I'm 75 and technologically challenged. Is it better, Your Honor?

THE COURT:

Yes, it seems better.

THE WITNESS:

I'll try it again. Let me know if it works. I'll try to replicate it.

THE COURT:

If you have --

THE WITNESS:

So, as I said, I don't remember -- I don't remember it well, but I do remember I was hired I believe by the United States Department of Justice to defend their policies, and I don't believe that we were plaintiffs in that case. We might have been defendants and, you know, like that whole round of those short cases --

BY MR. BRADEN:

Q. You don't --

A. Defendants had very little chance.

Q. Might you have been hired by the Democratic leadership of the state, let's say the governor, the legislature, the defendants in the case?

A. Anything is possible. I know for some of those cases I was hired by justice. I don't remember, because it was 30 years ago, who I was hired by in this case. I kind of assumed it was justice, but I don't recall.

Q. I would represent to you and to the court, my understanding is that you were an expert for the defendants, which was the State of

Louisiana, at least that's the way --

A. I know I represented the defendants. I don't know if I was hired by the State of Louisiana or by justice. I won't argue with you because I don't have a recollection.

Q. Yeah.

A. So whatever you say, I'm not going to disagree.

Q. Do you remember that you were arguing on behalf of a plan, a 1990s plan that had seven districts of which two were black and five white?

A. I don't remember. I don't remember that detail; but, again, if you want to represent that --

Q. Okay.

A. -- I'm not going to argue, but I don't recall the specific composition. When you say two are black, would that be majority black --

Q. Yes, two.

A. -- or 40 percent black? I don't remember.

Q. Yes. Two black majority. There were more congressional districts, one more in

that cycle, so at that time, my understanding of reading the record and -- is that you were working as an expert for the defendants trying to defend the two black districts in the 7th District plan and that the court held that the plan was an institutional gerrymander. Does that ring any bells with you?

A. Not all of this, but definitely I treated that case like all the other cases.

Q. And now you are in the court here with the plaintiffs who are arguing for two black seats in a six member district plan, correct?

A. I have not examined any plans presented by plaintiffs, but I presume that's what we are doing.

Q. Okay. And you don't remember whether or not the court in the Hayes case versus the State of Louisiana in 1993, you don't remember whether or not the court credited your testimony?

A. I'm sure they didn't. We lost the case.

Q. Yeah.

A. Normally when you lose a case, work was not credited, your testimony, but that's all

I remember.

Q. Yes.

MR. BRADEN:

If we could -- I think maybe I can refresh your recollection. If you go to -- we can bring up a copy of the Hays versus State of Louisiana. It's at 839 FED SUP 1188. I wish I could hand you a copy of it, but I believe we can bring it up on the screen.

TRIAL TECH:

(Complied.)

BY MR. BRADEN:

Q. And just really quickly, I believe there's a Footnote 48 at page 1203, if I've got it right. So if you could take a minute and look at paragraph 48 -- Footnote 48 and see whether or not that refreshes your recollection as to the court's view on your testimony.

A. I don't see it. I'm sorry. I don't see the heading.

Q. Okay. There's a Footnote 48 either on I believe it's -- bring up page 46 of 50. I'm sorry. I'm looking at this item in my hand and it doesn't do you any good. I printed a copy out

here for you, but it doesn't do you much good to try to hand you a printed copy I presume.

MR. BRADEN:

There we are. That's Footnote 48. Could you just highlight it for him and bring it up and make it larger? He has probably the same eyesight I do.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay. Now, I can see it.

BY MR. BRADEN:

Q. Okay. Great. And it's easy to pick out, there's a couple of references to you which have been italicized.

A. Let me read it.

Q. Yeah.

A. Because I don't remember it.

Q. Great.

A. But I'm sure this will help refresh my memory, but I need a minute or two.

Q. Oh, absolutely.

A. I'm old and slow.

Q. Absolutely.

A. Got it.

Q. Okay.
A. It doesn't refresh my memory particularly, but I understand it the same, so you can ask me questions.
Q. So --
A. It's pretty self explanatory.
Q. And it should be. I believe here that the court rejected your expert testimony in support of a plan with two black seats; am I correct?
A. (Witness nodded head affirmatively.)
THE COURT:
You have to --
THE WITNESS:
That's correct. But that's the exact opposite of what we have here where the defendants have packed blacks into a single district far beyond what was necessary to elect black candidates of choice, so I don't see how this criticism -- I'm not disputing what the court says relates to the current situation in Louisiana.
THE COURT:
Counsel, Mr. Hawley is about to

internally combust.

MR. HAWLEY:

I'm sorry. Mr. Braden, do you have another copy of the --

THE COURT:

Mr. Hawley, we can't hear you.

MR. HAWLEY:

I'm sorry. I was just asking Mr. Braden for a copy of the demonstrative.

MR. BRADEN:

My apologies. I actually should have given it to you upfront.

MR. HAWLEY:

Thank you.

THE COURT:

Okay. Emergency averted. You may continue.

BY MR. BRADEN:

Q. And so you don't remember holding this case rejecting the plan as a racial gerrymander, had two black seats; you just don't have any recollection of that?

A. I do remember the state lost the case. I don't remember the details of the

finding, but it probably was racial gerrymandering. I think it's the same case as what the state is doing now.

Q. If you can't remember, we will just move on from there.

In -- in your report in this case, do you provide any geographic analysis showing whether or not the black population has become more compact in the case or geographically concentrated since the 1990 geography?

A. I've not analyzed plans --

Q. Okay.

A. -- in this case, so --

Q. It's really more --

A. -- I can't answer that question --

Q. Okay.

A. -- one way or the other. You have to ask the plan drawers.

Q. I really wasn't asking you about the plans. I was asking you about the dispersion of the black population in the State of Louisiana. Do you have any familiarity with that?

A. I didn't look at that.

Q. Okay. And I just -- let me use Maryland as an example. So maybe this will

enable you to answer the question as to whether there's been a change in that.

In Maryland, the black population is essentially concentrated in -- in one or two urban areas, depending how you define urban areas, the Washington Baltimore corridor and the rest is predominantly white.

A. Washington, although it's not quite the corridor because you have in the Washington suburbs two very large counties, Prince George's County and Montgomery County, so not necessarily the corridor. And Prince George's County is very heavily back; and while Montgomery County is not majority black, it has a very substantial black population as well and it's very big. It's got over a million persons in-large geographically, so it's certainly not true that in my home state the African-American population is very narrowly concentrated in confined geographical areas.

Q. So you wouldn't -- you don't believe that a majority of the black population in Maryland lives in -- in what would be considered to be urban or suburban areas?

A. It's -- you know, Montgomery, you can call urban. It's really suburban. Certainly

there is a correlation between geographic area and black population, absolutely. There certainly is a degree of concentration there that can effect the drawing of districts.

Q. So --

A. But it's not just confined to a very narrowly circumscribed city.

Q. And so you don't understand -- I'm going to waste your time here for just a second. You don't understand or not -- you didn't opine in any way that the -- that Louisiana is different than many other states in the sense that it has large urban black populations in a couple locations but very dispersed rural black populations in virtually every parish in the state?

A. I can't answer your question. As I told you, that's beyond the scope --

Q. Beyond the scope?

A. -- of my expertise.

Q. So do you happen to know how many black elected officials there are in the state?

A. Not for every jurisdiction, but I can tell you there is none statewide, none in the U. S. Senate, one in Congress and something like

34 maybe in the legislature and something like 7 in the -- I forget how many, but over 20, close to 30 mayoral situations and municipalities that are comfortable overall.

THE COURT:

Mr. Braden, I'm going to ask that you speak up or use the microphone. I'm having trouble hearing you and I know Dr. Lichtman has already said that he has a -- a little bit challenge in determining his ability in hearing.

MR. BRADEN:

My apologies.

THE COURT:

Thank you.

BY MR. BRADEN:

Q. Now, as to gubernatorial elections in Louisiana, did the candidate of black choice win?

A. In which elections?

Q. The last two gubernatorial races.

A. In the majority races?

Q. Last two races for governor in the State of Louisiana.

A. Oh, yes, of course.

John Bel Edwards, you know, one swallow does not make a sprig, and he's not black.

Q. Okay. And you talked about racial -- from the 1990s, the runoff race between the Klan candidate and Edwin Edwards; and I guess we could come up with some colorful descriptions of that race, but we won't go that way. But my understanding is you testified that it showed the impact of slating, but didn't the black preferred candidate win in that race too?

A. I did not testify at all about that race as an example of slating. I simply said in a different factor, factor relating to runoff and at-large elections. And it's Factor 3 not Factor 4 that that was an example of a runoff election that caught nationwide attention. That was well before the Foster decision. I didn't put it in the context of slating at all.

Q. And so I heard you say that -- that black candidates don't win at-large elections.

Do you know whether the mayor -- I don't think I can see it. I don't think we are in East Baton Rouge. I think we are in Baton Rouge parish. I could be wrong about that, but my understanding is that the mayor of East

Baton Rouge is black. Do you know that?

A. Let me check. I might have that information. I'm not sure.

THE COURT:

We are in -- we are in East Baton Rouge Parish, and the Mayor Broome, over greater Baton Rouge --

THE WITNESS:

Yes, ma'am.

THE COURT:

-- is African-American.

THE WITNESS:

You are talking about the mayor of Baton Rouge city?

MR. BRADEN:

I don't know. The judge graciously answered the question for us.

THE COURT:

No, I didn't answer. I just was correcting you that we are not in Baton Rouge Parish. There's an East Baton Rouge Parish and there's a West Baton Rouge Parish and the Mississippi River, and one bridge connects those. Actually, it's two bridges I guess.

BY MR. BRADEN:

Q. And I understood from you that the mayor of East Baton Rouge is black?

A. I can answer you. Yeah, Baton Rouge is a black city and likely a black mayor. That's exactly my point. Blacks can win in black jurisdictions and they are getting shut out in white districts, statewide in white jurisdictions, and none of the blacks are Republicans.

Q. Is it your position that it's a majority black parish?

A. I didn't look at the parish. I looked at the city.

MR. BRADEN:

Okay. No further questions, Your Honor.

THE COURT:

Okay. Is there any redirect?

MR. HAWLEY:

It's brief, Your Honor. Thank you.

REDIRECT EXAMINATION BY MR. HAWLEY:

Q. Dr. Lichtman, just a few moments ago Mr. Braden asked you about some of the particulars of your expert testimony in the Hays

case in the '90s. Do you recall that?

A. I recall the questions, yeah.

Q. Yes?

A. And it did help me refresh a bit on Hays, which I didn't remember in detail.

Q. Here I will represent to you, since we no longer have it on the screen, that the court characterized the defendants' objective in that case as to, quote, prove that factors other than race could explain District 4."

My question is, is that the inquiry you were asked to undertake in this case, to explain what factors explain a challenged district?

A. If you correctly -- and I don't remember, but I assume you correctly characterized that my query here is quite different.

Q. And what is your inquiry here?

A. Well, my inquiry here is to look at the Senate factors and with respect to the tenuousness of the plan to determine whether or not the five white majority districts established communities of interest between blacks and whites to assess the rationale of maintaining continuity

of districts and to assess the rationale with respect to the traditional redistricting requirement of the factors, all eight or the Senate factors related to different matters.

Q. And ultimately the Senate factor inquires assist in considerations; that is to say, no matter what the particular legal claim or a particular district at issue; is that fair to say?

A. I don't want to give you a legal opinion. I can say I have done Senate factor analyses under very different cases and situations.

MR. HAWLEY:

Thank you, Dr. Lichtman. No further questions. Thank you.

THE COURT:

Okay. Thank you, Dr. Lichtman. We are going to let you go for the afternoon. Okay. It's --

THE WITNESS:

Thank you, Your Honor.

THE COURT:

Thank you, sir. It's quarter to 5:00. Have we got any other witnesses

that we can go until 5:30?

MR. RIZZUTO:

Yes, Your Honor. My name is Ryan Rizzuto, and I represent the Robinson plaintiffs. This is my first appearance before the court.

THE COURT:

Give me the last name, spell it for me.

MR. RIZZUTO:

R-I-Z-Z-U-T-O.

THE COURT:

Okay. Mr. Rizzuto, your witness.

MR. RIZZUTO:

Plaintiffs call Dr. R. Blakeslee Gilpin, G-I-L-P-I-N.

ROBERT BLAKESLEE GILPIN, Ph.D, after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

DIRECT EXAMINATION BY MR. RIZZUTO:

Q. Could you please state your full name for the record?

A. Yep. My name is Robert Blakeslee Gilpin. The standard spelling of Robert,

B-L-A-K-E-S-L-E-E, G-I-L-P-I-N.

THE COURT:

Go ahead, counsel.

DIRECT EXAMINATION BY MR.

Q. Good afternoon, Dr. Gilpin. Could you please introduce yourself to the court?

A. Yes. My name is Dr. Robert Blakeslee Gilpin. I am an associate professor of history at Tulane University and the director of graduate studies at the history department there.

Q. Can you tell us about your educational background?

A. Yes. I received my BA and MA simultaneously from Yale University in 2001 in American history, M fill from Cambridge University in 2002 in British history, and then an M fill and a PhD from Yale University in 2009 in American History.

Q. And you mentioned that you were at Tulane. Could you speak to your role there?

A. Yes. So I teach a variety of classes on American history, U.S. history and the laws, civil War reconstruction, southern intellectual and cultural history and mentor and advise undergraduate and graduate students.

Q. And do any of those courses you just mentioned cover Louisiana's history of official discrimination against black voters?

A. Yes. All of the courses that I just mentioned touch directly on that subject.

Q. Have you ever written anything that has covered the history of voters registration in Louisiana?

A. Yes. I've written chapters and volumes about the reconstruction period moving into the 20th century that deal directly with that subject matter.

Q. Professor Gilpin, is this your first time testifying as an expert witness in a case?

A. It is indeed.

MR. RIZZUTO:

Your Honor, we tender Professor Gilpin as an expert in southern history.

THE COURT:

Any objection?

MS. MCKNIGHT:

We have no objection.

THE COURT:

Okay. Dr. Gilpin will be admitted without any objection on that matter.

MR. RIZZUTO:

Your Honor, if it please the court, may I approach the witness to hand him what we marked as PR-13 and 88?

THE COURT:

You may.

BY MR. RIZZUTO:

Q. Now, Professor Gilpin, I just handed you what is marked as PR-13 and PR-88. Do you recognize those?

A. Yes, I do.

Q. What's PR-13?

A. PR-13 is the main report I was asked to produce for this case.

Q. And PR-88?

A. Is the supplemental report I was asked to produce.

Q. Now, let's start with your first report, PR-13. Can you speak to its purpose?

A. The purpose of the report was to talk about the State of Louisiana's long history of discrimination against its black citizens and specifically how that history fed into voter discrimination, particularly after the franchise was granted in the late 1860s.

Q. And what was the scope of your inquiry in that report?

A. So my report began in pre-American Louisiana, which is really when the racial categories that are going to later be used by the State of Louisiana both pre-suffrage and post-suffrage were created and sort of honed by the state and are used up until the present day.

Q. Broadly speaking, what were your conclusions?

A. So from the very beginning, the state has been quite seriously invested in categorizing its citizens by race and specifically to use those categories to discriminate against black freedoms and after the 1860s, particularly or specifically against the right to vote. So that was really the target of a huge number of efforts by the State of Louisiana throughout the post 1868 period.

Q. I'd like to start at the beginning of that history. Dr. Gilpin, can you speak to the historical roots of racial discrimination in Louisiana?

A. Yeah. So, as I was just mentioning, that process began with categorizing its

citizens; and there was a period of fluidity before the state became much more rigid about defining who was black and who was white and there was a middle category that basically began to be erased in the 1840s and '50s when the state became very concerned with the influx of immigrants that didn't really fit any of the categories they had.

And that was when the State of Louisiana created a lot of methods and tools that they would use to disenfranchise black voters, so property requirements, poll taxes, and things like this, literacy tests were actually developed in the 1840s and '50s and then repurposed later on. So that's really the antebellum roots of modern voter discrimination in the State of Louisiana.

Q. What's the purpose within your report of letting out this antebellum history?

A. Well, as I was just mentioning, the sort of connection between these things is often quite concrete. So literally the white elites in the post-bellum period simply just sort of went back into their own history to find these tools and repurpose them, but basically that the -- the

1 foundation of both racial categorization and
2 voter discrimination itself is really firmly
3 established in the antebellum period and then
4 carried through very kind of unintentionally into
5 the post-bellum period.
6 Q. Now, moving forward in history to
7 efforts of before, how did voter discrimination
8 against black Louisianans evolve after the Civil
9 War?
10 A. So in the first constitutional
11 regression, which had actually happened in the
12 middle of the Civil War, was the first effort by
13 white Louisianans to kind of refashion old laws
14 and maintain some of the racial hierarchies that
15 they established in the antebellum period.
16 The black codes that were written in
17 1865 are the first examples of that and are
18 really quite explicitly understood as a way of
19 commonly bringing together as much of the slavery
20 rules that they could. It's not until the 1890s
21 that those had kind of taken a much more
22 explicitly political form, and that is most
23 notably with the adoption of the grandfather
24 clause, which was created by white Louisianians
25 in 1898 that establishes a rule where black

voters have to be able to trace their ancestry of either a father or a grandfather that had to have voted before January 1st of 1867, which was an illogical impossibility because black people can't -- could not vote before that date. So it was an effective way of taking black Louisianans out of politics.

At the time of the grandfather clause, they represented about 44 percent of the electorate in Louisiana, which has never been reached ever since then. Within two years, that was below 1 percent because of the effectiveness of the grandfather clause, so it took black voters from about 130,000 down to about 5,000 in two -- just two years.

Q. And did tactics like the grandfather clause and the other tactics you mentioned continue into the 20th century?

A. Yes. The grandfather clause was struck down by the Supreme Court in 1915, but the variety of total conventions that Louisianians had developed in the 1840s and '50s, there were some tests, poll taxes. Understanding clauses and really investing a lot more power in white registrars of voters was something that was --

really the weight of the state was putting behind that, so to the degree where you could have a white registrar reject a voter if they could not count the number of jelly beans in a jar that was at the polling station.

Q. Now, moving a bit farther into the 20th century, how did voting discrimination in Louisiana change after the Voting Rights Act was passed in 1965?

A. So it's not so much the discrimination change, especially in terms of magnitude or the determination by the State of Louisiana to disenfranchise its black voters. What the Voting Rights Act really did was make both citizens in Louisiana in both the state and federal government aware of these attempts to disenfranchise black voters. And this is particularly through the pre-clearance clause that made it possible for the -- where sort of the kind of dizzying extent of these efforts were kind of brought to light, and then also it gave a possibility for those efforts to disenfranchise black voters, to actually contest it in court.

Q. Can you speak about any of these Section 2 violations that you note in your

report?

A. Yeah. So I think the one that I find most compelling is the -- is the Chisom versus Roemer case of 1991, because it bears such a strong resemblance to things that have happened in the last calendar year in the State of Louisiana, whether up in West Monroe or in Baldwin.

So these are the exact same themes 30 years apart. The first one we were made aware of because of pre-clearance. The second one is just through the doggedness of -- I'm sure some of the people in this room could actually bring those kinds of things to light because the determination of the state has remained inexplicably unaltered. The mechanism of making us aware of them has drastically changed after 2013.

Q. Now, turning to your second report, PR-88, what was the purpose of that report?

A. So that report is -- the purpose was to talk about the history of racial classification by the State of Louisiana, again, stretching back to the pre-American Louisiana, which is when these racial categories sort of

1 started to be formulated; but particularly after
2 the Treadaway case of 1910, which is when the
3 State of Louisiana adopted this one-drop rule.
4 If anyone could be proven to have 1 percent
5 ancestry, they were going to be considered black
6 by the State of Louisiana.
7 Q. Now, how long was this one-drop rule
8 on analog and in place in Louisiana?
9 A. So that remained in place until 1970
10 when it was replaced by the 132nd law. That was
11 very vigorously contested in the 1970s actually
12 by white Louisianians or people who considered
13 themselves white who sued the state to try and be
14 reclassified. That law was changed in 1983 to
15 try to lower the standard by which -- what the
16 state would accept, although during that case I
17 think quite interestingly the state was citing
18 ancestry going back to Mobile, Alabama in 1760 to
19 prove that the citizen in question was black, at
20 least by the standards of the state.
21 So, again, it's really interesting
22 how invested the State of Louisiana is in those
23 categories and how they were used quite
24 explicitly then to disenfranchise voters.
25 Q. Stepping back a moment to something

more generally, what was your conclusion in your report?

A. Most particularly that those categories have been used over -- certainly over the course of the 20th and 21st centuries to disenfranchise black voters, but overall that there is just such a basic absurdity to racial categorization because there's no real science behind it, but the state remains very invested in making those distinguishing categories so that they then can be used in cases like this.

Q. Did you find anything related to how the history may effect the ways that multiracial Louisianians might identify today?

A. Yeah. Well, I think one of the things you have to take into consideration, we are talking about over 300 years of history and Louisianians of all colors are keenly aware of the consequences of what their category is both in terms of their self identification and how the state identifies them. And so there's just -- there is an enormous amount at stake in terms of what they identify as and what the state identifies them, and they are very aware of that and that sort of guides a lot of the idea going

forward.

Q. And just to be clear, this history timeline is the history you discussed in your original report?

A. Yes. I mean, I think it is -- it's pretty much -- it's a real cornerstone of everything that's discussed in the first report is what I'm discussing in the second report.

Q. Dr. Gilpin, how would you respond to the critique that your reports don't include enough examples of race discrimination?

A. Well, I disagree pretty fundamentally with that premise most particularly because after the Voting Rights Act was renewed in 1982, to me, everything that's come since then -- and we are talking about the last four decades -- I recall in recent history and also particularly I recall that because of the remarkable consistency with which white Louisianians have attempted to disenfranchise black voters. This is not something that sort of stopped at any given point, but it's really been a through line in the entire history of Louisiana even if we are talking about pre-suffrage, but particularly when we are talking about post 1982

where the state has just displayed a remarkable degree of continuity, doggedness, determination to stop black people from voting.

Q. Could you please outline for the court one of the examples of recent discrimination that you outline in your report?

A. Sure. I mean, I mentioned a few minutes ago the West Monroe Baldwin case which I think is probably the most scrutinized thing that's been used by the Louisiana politicians to try and disenfranchise black voters. That is the method of elections in the state and in West Monroe. The Hardy versus Edwards case is also a very, very recent example. We are talking about in the last calendar year of these, of a variety of schemes, basically whatever people can come up with in order to disenfranchise black voters. That's always the goal and it's really whatever tools are at their disposal to do that they will try to utilize.

Q. Dr. Gilpin, in your view, are similar practices made by -- made against black voters a thing of the past?

A. I would say they are very much the defining characteristics of Louisiana politics

past, present and certainly it looks like in the future.

MR. RIZZUTO:

Thank you, Dr. Gilpin. At this time, we move PR-13 and PR-88 into evidence.

THE COURT:

Any objections?

MS. MCKNIGHT:

No objection, Your Honor.

THE COURT:

PR-13 and PR-88 admitted.

MR. RIZZUTO:

Thank you, Your Honor.

THE COURT:

Any cross?

MS. MCKNIGHT:

Yes, ma'am.

CROSS-EXAMINATION BY MS. MCKNIGHT:

Q. Good afternoon, Dr. Gilpin. I'm Kate McKnight with legislative intervenors, and I have a few questions for you this afternoon or this evening.

A. Okay.

Q. Let's start with PR-13, your report

in this case. We are going to start on page 39.

MS. MCKNIGHT:

He needs to be switched.

TRIAL TECH:

(Complied.)

MS. MCKNIGHT:

Thank you.

BY MS. MCKNIGHT:

Q. So, Dr. Gilpin, you include in your report a section titled Voting Rights in Louisiana, 1982 to 2013. Do you see that?

A. I do.

Q. Okay. And in this section, you study case law developments related to the Voting Rights Act, right?

A. Yeah. I think that's one of the things that are examined in this section.

Q. Okay. Now, during this time period following the 1990 census, Louisiana tried to comply with a Voting Rights Act by drawing two majority-minority congressional districts, correct?

A. I mean, I am aware of this. I'm not sure it's discussed at any length in the report.

Q. Okay. And Louisiana's effort to

draw a second congressional district after the 1990 census was struck down by courts as a racial gerrymander, correct?

A. Again, I'm not sure if that's in the scope of this report. I'm dimly aware of this, otherwise.

Q. Okay. So a Voting Rights Act case in the early 1990s would not be within the scope of your report, which includes a section titled Voting Rights in Louisiana, 1982 to 2013?

A. No. I mean, it would fall under that heading perfectly comfortably, but it may not have been included for whatever reason.

Q. And what might that reason be?

A. Possibly that I overlooked it; possibly that the report was getting quite long. I'm not entirely sure.

Q. Okay. So I understand that in your report you do not address Louisiana's effort to comply with the Voting Rights Act by creating a second majority-minority district following the 1990 census, correct?

A. I mean, if you didn't find it, I'm not sure that it's in there.

Q. Okay. And, in fact, you do not even

-- you cite a lot of case law, but you did not even cite one of the Hays cases in the Hays line of cases, correct?

A. No. I don't believe that I did cite any of the Hays cases.

Q. Okay. Thank you. Let's move on to page 45 in your report.

A. (Complied.)

Q. Dr. Gilpin, you note toward the end of the fourth paragraph, the one that starts "The hotly contested," you note, quote, the changes to the VRA in the wake of Shelby County meant that states were no longer under the burden of proving their laws to be nondiscriminatory." Do you see that?

A. Yes, I do.

Q. Okay. So before Shelby County, which was a 2013 Supreme Court opinion, Louisiana was under a burden of proving its voting laws to be nondiscriminatory, correct?

A. Yeah. That's my understanding of the Section 5 pre-clearance.

Q. Okay. And in 2011, so before Shelby County, Louisiana's Congressional Map was pre-clear, correct?

A. I'm not sure that I discuss that in this report. I mean, I heard it in the courtroom today.

Q. Okay. So you understand that to be true?

A. Sure.

MS. MCKNIGHT:

Okay. Thank you. No further questions, Dr. Gilpin.

THE COURT:

Any redirect?

MR. RIZZUTO:

No redirect, Your Honor.

THE COURT:

Okay. Thank you. Dr. Gilpin, you may go or you are released. Next witness?

MR. SAVITT:

Good afternoon, Your Honor. I'm making my first appearance. I'm Adam Savitt. That's S-A-V-I-T-T, on behalf of the Robinson plaintiffs, and we would like to call Ashley Shelton.

ASHLEY SHELTON,

after having first been duly sworn by the above-mentioned Court Reporter did testify as

1 follows:
2 THE DEPUTY:
3 And would you please state your name
4 and spell it for the record, please?
5 THE WITNESS:
6 Sure. My name is Ashley,
7 A-S-H-L-E-Y, Shelton, S-H-E-L-T-O-N.
8 DIRECT EXAMINATION BY MR. SAVITT:
9 Q. Good afternoon, Ms. Shelton.
10 A. Good afternoon.
11 MR. SAVITT:
12 Could we please pull up PR
13 Exhibit 11?
14 TRIAL TECH:
15 (Complied.)
16 BY MR. SAVITT:
17 Q. And do you recognize this document,
18 Ms. Shelton?
19 A. I do.
20 Q. And what is it?
21 A. It is my declaration.
22 Q. Okay. Thank you very much. We can
23 put that down. Ms. Shelton, where do you live?
24 A. In Baton Rouge.
25 Q. And how long have you lived in

Baton Rouge?

A. My whole life.

Q. Okay. And thank you. And what is your current job title?

A. I am the president and CEO for the Power Coalition of Equity and Justice.

Q. And what does the Power Coalition do?

A. We are a voting educational organization. We work with historically disenfranchised communities throughout Louisiana engaging, helping connect them back to their voice, their vote and their power.

Q. Thank you. And would you say you focus on communities of color in your Power Coalition?

A. Yes.

Q. And, Ms. Shelton, why are you -- are you here today?

A. I am here today because we did a ton of work working across communities in the State of Louisiana. I participated in redistricting last cycle, and I probably could have shot a cannon through the capital and not hit one person. And this particular Power Coalition

engaged over a thousand citizens across the state that participated in this process from census all the way to the road show and then the special session, and so I am here today to represent the folks that consistently asked for a fair and equitable redistricting process and did not receive that.

Q. Thank you, Ms. Shelton. And you mentioned that the Power Coalition works predominantly with communities of color.

Based on your experience working with Power Coalition, do black voters face discrimination related to voting?

A. Yes.

Q. And could you describe that discrimination?

A. Sure. I mean, you know, Gosh. So for, you know, just in our own experiences, we -- during COVID, so 70 percent of the deaths from COVID early on were African-American people, so disproportionately black people were dying from COVID; and in that -- you know, in that process of, you know, the then -- the Secretary of State then put into place during the primary several reasons that votes could -- you know, could

1 request an absentee ballot especially if they
2 have underlying conditions, but when we got to
3 the general election, they did not want those
4 reasons to stand and so we ended up having to
5 organize and sued the Secretary of State.
6 And the governor did stand with us,
7 even though we had to name him in that lawsuit,
8 that at the end of the day with so many
9 African-American votes dying early on, had COVID
10 continued -- this was before vaccines, before we
11 understood how it was going to continue to grow
12 and change. We were able to ensure that black
13 voters that disproportionately had underlying
14 conditions had access to their vote.
15 Also, there is an example in Baker,
16 where Baker is right outside. It's one of the
17 many unincorporated areas of Baton Rouge right
18 outside. And during the 2020 election, there was
19 a white man who sat in his chair with a very
20 large gun outside of a black precinct. He was,
21 you know, 600 yards away or feet away, which is
22 the law, but clearly sitting there with a large
23 gun in proximity to a black -- black precinct,
24 you know, was alarming. And very squarely the
25 police were called, FBI, State Troopers. I mean,

everyone was there, but no one, you know, took action because it clearly was, you know, voter intimidation, but nobody took action on that. And so basically multiple -- you know, multiple, you know, police groups just kind of sat and watched him instead of removing him which black voters were comfortable making their vote.

Q. Thank you. And was Power Coalition and its constituents present at that Baker roll eight poll?

A. Yes. We were there, had two staff members and several mens of the community and we had to move them back so they could be in a safe distance as the police kind of worked out what was going on, but, again, he was able to sit there for a good bit of the day.

Q. And so is it fair to say that you didn't feel like your needs were adequately responded to by the Louisiana officials?

A. They were not.

Q. Thank you. In your experience, are there greater obstacles for black voters than for white voters?

A. Yes.

Q. Could you describe some of them?

A. So in -- you know, in Louisiana, we have transportation issues, you know, if you -- like even New Orleans, which probably has our best transit system, is still lacking, you know, in many ways. Baton Rouge has a system that is not -- you know, that works, but is not meeting the needs of our entire city, and Shreveport has even less of an transit system. Those are our three largest metros with Jefferson, but -- you know, but Jefferson has none either. And so the idea that black voters have to -- like we provide rides to the polls so that we can ensure that black voters can actually vote in elections.

But, again, black voters disproportionately experience poll closures and poll changes. They -- also too, whenever they have a polling location, they also experience that their polling locations also have issues with disability accessibility; and so for us, the ability to be able to engage black voters ensure black voters and ensure that they have access to their voice and their vote is really critical for us.

And one of the things that I love in New Orleans is we get to work with a funeral home

that they have old vehicles that they donate to the process, not the hearse. So people understand the importance of getting people to vote. And in the rural communities, it's even harder, but we do work with partners and churches across the state to make sure that people can access their right to vote.

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.

Q. And, Ms. Shelton, does Power Coalition work to contact Louisianians about voting?

A. Yes.

Q. Can you describe some of Power Coalition's efforts in that front?

A. Absolutely. So we work -- we basically build what we call a universe; and usually for statewide elections, it's about 500,000 people. And we do text messages, phone, phone banking, phone calls as well as canvasing where we are door knocking and talking to communities. We also do candidate surveys and

candidate forums. We also do candidate surveys and candidate forums.

Q. And, Ms. Shelton, do black voters need this extra out each in your experience?

A. Yes.

Q. And why is that?

A. One of the things that we found in our work is that nobody was talking to black voters or brown voters or indigenous or ABI and that the work that -- you know, we know that of our universe of voters that we are reaching, we are sure, you know, historically disenfranchised communities, that we can get up to about 55 percent of our universe to turn out to vote, which proves to me that no one was talking to them, no one was addressing them, no one was including them in the process. And, you know, a lot of our work is reconnecting people to their agency as a voter.

Q. Thank you. In your experience working with Power Coalition, are there technology barriers that make it difficult to reach black voters?

A. Yes. We -- I mean, many folks have talked about and it's no secret that broadband is

an issue throughout our rural communities, but it's also an issue in our urban communities.

You know, we work with the voter files. Phone numbers change, you know, constantly. You know, folks are dealing with housing, security and other issues, and so, again, it certainly is an issue of access and whether or not -- you know, whether or not they can afford a cell phone, a house phone or whatever, rent, so those are some other ways that we would try and contact them.

Q. Thank you, Ms. Shelton. And you mentioned the impact of poll closures on the communities you served. Are you aware of poll closures that resulted from precinct consolidation?

A. Yes.

Q. Could you speak to that issue?

A. So, I mean, we have one, you know, instance, you know, that kind of comes to -- clearly to mind in New Orleans east. They were closing and consolidating a polling location that was predominantly African-American; and in that polling location, you know, we tried to work with the Secretary of State to make it -- make sense

for those voters that were chronic voters, many of them in that area. And what -- ultimately, you know, their argument was well, we are just moving it a couple of miles, but in moving it a couple of miles meant that the community would have to, you know, cross a dangerous highway.

And so, again, on paper, it doesn't look like it is this big deal, but to those voters that are -- are trying to access their vote and used to walk to the polls, can no longer do that in a safe way if they have got to cross a major interstate to access their vote.

Q. Thank you, Ms. Shelton. I'd like to shift gears. Could you please provide a brief overview of Power Coalition activities relating to the 2020 redistricting process?

A. Yes. We started our process and worked all over the state to engage rural communities in the Power census, in being counted, try to address some of the fear and fear monitoring that was happening about what did it mean to take the census; and we did that work throughout the census process and then shifted gears, you know, shortly thereafter to start teaching people what redistricting was. So we

had -- we held redistricting academies where we taught folks the language, cracking, packing or other definitions.

And we also, you know, worked with them to actually learn the map system. They learned how to draw their own maps. We also have three redistricting fellows that also did trainings across the -- you know, across the state. I think they did like 43 trainings in individual small clusters, different parts of the state.

And I think most importantly we supported, you know, people to participate in the road shows. And so, I mean, again, there were -- at almost every road show, there were at least a hundred people that came and testified at each stop; and overwhelmingly, the majority of the testimony at every single road show, white and black, old and young, was they wanted a fair and equitable plan and they wanted a second majority district. It was clear. It was real that people said this all over the State of Louisiana, and they were ignored by House governmental affairs and Senate governmental affairs.

Q. Thank you, Ms. Shelton. As part of

Power Coalition's efforts, did it submit districting maps to the legislature that contained more than one majority black district?

A. We did.

Q. And why was it important to provide those maps to the legislature?

A. It was important for us to prove that it could be done, that -- that, you know, again, we lost 5 percent in white population, we gained almost 3 percent in black and other, you know, populations; so for us, this was about honoring the fact that we have the second largest black population in the country and that actually that it could be drawn in many different ways to prove that it wasn't just an idea or something that -- you know, that I wanted, but that it actually was something that was possible and necessary for fair and equitable maps in Louisiana.

Q. Thank you, Ms. Shelton. How did Louisiana state officials treat Power Coalition and its constituents during the road shows in the legislative sessions?

A. We were treated -- it was unfortunate, because I think for many of the road

shows, you could see how the House governmental affairs, Senate governmental affairs members, they were, you know, doodling, not looking up and these people are telling their story of generations of voting rights work, the work that they had to ensure that they had a right to vote; and, you know, folks are looking down and not paying attention.

And then when we went to the capital and we -- also, you know, we had over -- you know, for the opening of the redistricting session, there were over 250, you know, people of color, white allies that showed up to say we are here, we are watching you, and this is what we said we wanted and we are going to continue to say what we want. And even in the legislative commute rooms, legislators walking around, not paying attention, basically waiting to see when all of the testimony would be done so they could vote.

Not one map that included a second majority-minority district came out of that committee. They wouldn't even allow it to be discussed on the floor.

Q. And, Ms. Shelton, were there any

other instances that you felt that you were not heard by the legislature during this -- during that time?

A. Yes. So on the day when they were overriding the veto, we were all at the Capitol. We were in -- the House voted before the Senate. You know, the House voted -- I mean, it came down to a couple of votes, right. And at the end of the day, we didn't -- you know, the veto was overturned.

Basically, they knew in the house that it was overturned because they hadn't voted on the Senate side. And once that happened, once the vote was made, they cheered, they celebrated. The vote was a long racial line.

And then you walk across the hallway to the Senate chamber and it is like a funeral; it is somber, it is quiet. The black Senators testified and said, you know, we can't change their mind, but this is the historical nature of what we are trying to do here. And, again, the vote, of course, the governor's veto was overturned.

Q. And just, for the record, who cheered?

A. The conservative members of the House and -- and members of the Senate because they both came to both sides.

Q. And could you please describe what it felt like to you and Power Coalition's constituents when the legislature overrode the veto?

A. I mean, I think it's, you know, deflating and it's also, again, like a true sign of disenfranchisement. And so how is it thousands of people participate and they say specifically two very key messages, and that message is that -- I gave them the messages that were on their card that were messages that had -- you know, again, like a familial fight for them around having their voice -- their voice and their vote.

And to then, you know, one, get a community outcry for the governor to veto and then to have that -- that veto overturned, it just basically tells voters that we have worked so hard to give agency to as a voter and remind them that their vote and voice actually has power, it just basically says to them it's politics as usual, it doesn't matter, you know,

and so they disengage and so it makes our work doubly hard.

Q. And following up on that, Ms. Shelton, how did the legislature's enacted congressional map impact the Power Coalition's work?

A. So the Power Coalition, again, you know, we have got midterms coming up in the fall, and so this current -- you know, like so we do a lot of education work with our communities, the historically disenfranchised communities in Louisiana. And in the process of doing that work, right, like we've got to -- you know, like we've got to educate them on like what district do they live in, what changes have happened, and then also too, engage them in, you know, the process of understanding, you know, what and when they are going to vote.

And I think that specifically for Power Coalition, again, we are -- we are doing touches, right. Like, you know, last -- last year we did over -- I want to say over a million touches. And when you talk about a million touches, that means that, you know, we are touching voters at least three times, so a phone

call, a door knock, you know, a text message or a whole bunch of other things.

And so the difference is me having to do double work because I'm dealing with disenfranchised voters: You told me that if we engage and we provided our voice that it would be okay, and so they are deflated and disconnected. And so, again, double work, right, versus working with a population and -- and group of voters who don't feel disenfranchised, who feel like they do have a voice and power and that they are going to be able to elect a candidate of choice. And we know that being able to elect a candidate of choice drives voter interest and voter excitement in these processes. And so on -- you know, so, again, this map that is enacted, I've got both a disenfranchised and deflated group of people who feel the system does not work.

Q. Thank you, Ms. Shelton. Shifting gears, you said you lived in Baton Rouge your whole life?

A. Yes.

Q. Are there differences between north Baton Rouge and south Baton Rouge?

A. Yes. I think it's -- Baton Rouge is

a tale of two cities. Here we basically have the worst and the best quality of life within a few square miles of each other in that, you know, north Baton Rouge being predominately African-American, south Baton Rouge being predominately white. You know, and the income matching, you know, certainly with north Baton Rouge's community poor and moderate income and south Baton Rouge is a much more wealthy community.

And then, you know, also too politically it's been interesting because basically voters in the State of Louisiana and in the City of Baton Rouge, basically they have voted to secede from north Baton Rouge is the best way I could put it. It is currently in court, but -- but, I mean, it gives you an idea of how powerful that difference is or that -- or this division between communities in Baton Rouge Parish.

Q. Thank you. And you mentioned that north Baton Rouge was predominantly people of color.

Would you say that north Baton Rouge or the people of north Baton Rouge have common

needs that go beyond race?

A. Yes.

Q. And could you speak to those, please?

A. Yeah. I mean, I think that, you know, we've -- again, you know, second, we are the second poorest state. I think maybe some of the data we saw today, maybe we beat Mississippi, unfortunately, to be the poorest state. You know, in north Baton Rouge, we have got housing insecurity, we have got food insecurity, we have absolutely, you know, food desserts as well as, you know, just not -- no opportunities for economic -- you know, economic growth and, you know -- and yeah.

Q. Thank you, Ms. Shelton. Shifting gears again, the defendants argue that political party rather than race is responsible for voting patterns in Louisiana.

In your experience as president and CEO of Power Coalition, do you find that black voters vote for Democrats just because they are Democrats?

A. No. I think they vote for -- I mean, I think they vote for who is going to care

about their self interest. Does that happen to be democrats? Most -- most of the time, more than likely. However, I think it is also true that I don't think the black community is served well by either side.

Q. Thank you, Ms. Shelton. Just one more topic. Why is it important to Power Coalition's constituent to be an additional black majority district?

A. Because, again, I think that one of the things that was so beautiful was that when we started the redistricting journey as an organization and trying to engage people in very dense content, it's not like anything that we have been talking about. It's not easy to understand and multiple definitions.

And so to be able to engage that many people in the process, to have them show up at the Capitol every day and have them engaged and feel like they are empowered and like that this was what was right, I mean, the way that --

Again, there was several different ways that they could have gotten a second district, and then to have the legislature tell them no at every turn from the road show to the

redistricting special session to the veto override.

And so the Power Coalition, this is about voice and power and, you know, about black people being able to have -- to elect their candidates of choice. And by packing us all into one district, we basically minimize the ability of black voters to elect candidates of choice.

MR. SAVITT:

Thank you, Ms. Shelton. No further questions, Your Honor.

THE COURT:

Yeah. I have two just before cross, if you don't mind. One is you mentioned the precinct consolidation in New Orleans east. You said it moved a few miles but across a dangerous highway. Can you tell me what highway that was?

THE WITNESS:

I'm pretty sure it was -- it's I-10. I think it's still I-10.

THE COURT:

It's I-10.

THE WITNESS:

Yeah.

THE COURT:

You said a highway and I didn't know if it was actually the interstate or a highway.

THE WITNESS:

Yeah.

THE COURT:

My other question was: You said that two messages came through in these road shows from various people that Power Coalition encouraged to participate in the political process. You didn't say what those two messages were.

THE WITNESS:

Oh, sorry. That they wanted a fair and equitable redistricting process, and that they wanted a second majority-minority district to honor the change in population and shift in population.

THE COURT:

Okay. Thanks. That may have provoked additional questions, which I'm certainly going to allow counsel to have. Cross?

MR. WALE:

Thank you, Your Honor.

CROSS-EXAMINATION BY MR. WALE:

Q. Hi, Ms. Shelton. My name is Jeffrey Wale. I'm an attorney for the state, and I'll be asking you a few questions this afternoon.

A. Hi.

Q. Hi. How long has the Power Coalition -- the full name is Power Coalition for Equity and Justice, correct?

A. Yes.

Q. But you just call it Power Coalition?

A. Yes.

Q. That's what everybody refers to it as, Power Coalition?

A. Right.

Q. How long has Power Coalition existed in the state?

A. Gosh, since so about 2015.

Q. 2015. Okay.

A. And I think there's a little bit of gray because we did spin out of another nonprofit organization onto our own and so -- and so -- and also too, we are physically sponsored by another

nonprofit. And so, again, probably within the, you know, Secretary of State's registry, that date might be different.

Q. What are that -- what is that nonprofit that you-all split from?

A. It's called One Voice.

Q. One Voice?

A. Uh-huh (affirmatively).

Q. And what's the nonprofit that you are financially sponsored by?

A. Public Allies.

Q. Public Allies. And so from that, is that the sole source of your funding or do you have other contributors and donors and things of that nature?

A. No. They are our individual sponsor and we raise own like through foundations, donors and individuals.

Q. Okay. Do you disclose or publicly release your foundation's donors?

A. It is -- it is released within Public Allies within their 990, and, I mean, they have to still report our -- our grants and our information because we are a fiscally responsible project.

Q. Okay. And -- and I've been looking at your website, and so I know you partner with several organizations. What are some of those organizations that you primarily partner with?

A. Yes. Power Coalition is a voting educational organization. It is our belief that in order to serve people and to -- to address policy advocacy issues you have to actually work with directly impacted people. So voice of experience holds, you know, they all have specific content area expertise. So Vote Works around criminal justice, the Louisiana Alliance around housing, the -- I'm trying to think, go around the table. Basically it networks within the Vietnamese community in New Orleans east. And so, again, you know, it's a broad spectrum of groups that have specific issues, area of content, expertise.

Q. And was the Louisiana Budget Project mentioned as one?

A. Oh, yes. Yes. And Louisiana Partnership For Children and Families as well as Louisiana Policy Institute and women with a vision, so yes, there are several -- several different groups. And the budget project,

1 although not a base building group, does provide
2 foundational expertise on budget and fiscal
3 issues that impact poverty stricken communities
4 across Louisiana.
5 Q. So in paragraph 15 of your
6 declaration that you made in this case, you state
7 that your member organization was directly
8 impacted by vote dilution.
9 And so my question for you, are
10 organizations voters? In other words, do
11 organizations have a right to vote?
12 A. Organizations do not have a right to
13 vote. I think what we are specifically talking
14 about is that these organizations represent a
15 base, which means that they have a membership.
16 And so, for example, Vote has several hundred
17 members in New Orleans, they have about a hundred
18 members here in Baton Rouge, they have got
19 members in Shreveport and all over the state.
20 And so, again, it's not -- the
21 individual organization is the people that they
22 represent and the people that they work with.
23 Q. So you had testified that you were
24 engaged in the redistricting process and Power
25 Coalition was engaged in the redistricting

process -- in the most recent --
A. Yes.
Q. -- redistricting session, correct?
A. Right.
Q. And so at the road show and at the Capitol, every member of the Power Coalition who attended could turn in a card in support or opposition to any bill proposed, correct?
A. Correct.
Q. And everyone had the opportunity to provide public comment at those events?
A. Most of the time. I mean, there were a lot of people some days and so we couldn't. They had to break and we couldn't get to everybody, especially on the first day, but for the most part.
Q. Okay. And does the Power Coalition typically engage in the legislative process?
A. We do.
Q. On many different issues?
A. Yes.
Q. And as far as legislative activity, would that include encouraging the governor to veto bills that you were in opposition to?
A. Yes. I mean, it's advocacy. I

mean, you have the power. We are the Power Coalition, so we look for the path that will get -- get people what they deserve and what they need.

Q. And, in the future, you would continue to fight for laws or bills that you support or oppose, either support or oppose at the legislature, correct?

A. Restate.

Q. So in the future -- let me restate that. If this enact -- the enacted map goes forward, the enacted map is allowed, you will continue to fight for issues that the Power Coalition cares about, correct?

A. We will. And I think the difference, though, that's very important that I want to continue to make is that I am working to, you know, move people that are excited and feel like they are living in a state that's listening to them and giving them equal voice or are they living or -- you know, or are they actually living in a state that, again, like does not do that.

So it's about moving disenfranchised folks, which is the work we have done for years,

and so it makes us compromise and forces us to have to do double work because we have got to reconnect to their agency as a voter.

Q. So for the -- the past decade you've had the previous congressional map that only had one majority maritime district, correct?

A. Correct.

Q. And the Power Coalition was able to encourage individuals to register to vote under that map?

A. Yes.

Q. All right. And you had attempted -- as you had stated earlier, you reached out and did text messages, phone calls encouraging both registration and turnout, correct?

A. Uh-huh (affirmatively).

Q. All right. And you had said something earlier about candidates of choice. Are -- so the Power Coalition members does have candidates of choice?

A. I mean, the members that live in District 2.

Q. All right. In District 2, they do?

A. I mean, in that district, yes. That's a majority African-American district,

Congressional District 2. But I currently live in Congressional District 6, and I do not actually have the opportunity to pick a candidate of choice.

Q. So you don't have an opportunity to elect a candidate of choice in District 6; that's your testimony?

A. Yes.

Q. And is your candidate of choice, is that limited to any particular political party? Can your -- stated across the way, can your candidate of choice be a conservative Republican?

A. My candidate of choice is anybody that is going to center around the issues that I care about. I mean, I am a black mother. I have a beautiful, goofy 6'4 son that's 200 pounds. I mean, anybody that's going to care about those issues.

If you look at Garrett Graves, my current congressman, if you look at his record, his voting record does not vote for anything that I care about, including the fact that the infrastructure bill that just passed, he voted against that. And our city is crumbling -- I mean, our state is crumbling in terms of

infrastructure; and so even when it makes sense, even when it made sense to vote for that bill, he voted against it.

Q. But you would say a candidate of choice could be conservative and could be Republican?

A. Yes.

Q. And they could be white?

A. I mean, it's not been my experience to date, but, I mean, I guess it's possible.

Q. All right. I just have one more question for you. On December 14th, you wrote a letter to the legislature stating "We conducted an analysis of recompiled election results and determined that the two repetitive majority white community districts in the coalition maps CD2 and CD5 were reliably performed to provide an opportunity for a candidate preferred by a black voter to prevail." Do you recall this letter?

A. Yes. But, I mean, I don't -- I mean, if you want to put it up.

Q. Yeah, we can. We can go to Exhibit 9, if that helps at all.

But my question was basically there's a mentioned analysis in there which is on

page 2 of the letter, there's an analysis mentioned. Why was this analysis never provided to the legislature?

A. So as we sat in committee day after day throughout the redistricting process, you know, Representative Sklefani, you know, asked that question; and I think that's part of what -- even in that space, you know, like I think it is -- the work is there, right.

Like maps were drawn by a nationally-recognized demographer whom this court has had the opportunity to talk to. The -- you know, it's like at the end of the day, like why did we have to do the state's work for them. I mean, at the end of the day, we were able to show what was necessary for the record and what was necessary for them to make a decision about whether or not -- you know, whether or not these seven maps that met all of the traditional redistricting principles that showed a second majority-minority district, all of those things were met, and so --

Q. But you didn't feel the need to show that to the legislature?

A. Again, I mean, we worked with lots

of partners and so I don't want to -- you know, I mean, it wasn't my decision, but I do think that at the end of the day, I do agree it's not our job to -- to do every single part.

I mean, like we have done every single part of this process for the state to fight for African-American communities to have voice. And the idea that like I got to also show you my math and show you my homework, even though I do in the sense that there were seven maps submitted with that letter that show that it's possible for African-Americans, for a second majority-minority district, to honor the growth in the black population, which is the purpose of redistricting, which is to honor changes in population.

Q. You said the court had heard from that demographer who drew that for you. Which one was that?

A. Well, I mean, one of the two that's -- but either one of the two that spoke today. I want to say it was Tony Fairfax, but I -- but one of the two that were here today, well, yesterday.

Q. And just short, just some -- just a couple more really quick questions. How long

have you lived in Baton Rouge?

A. All my life. I'm 46.

Q. All your life?

A. I'm 46.

Q. So you were here when Kip Holden was elected?

A. Yes.

Q. And Sharon Broome was elected, obviously?

A. Yes.

Q. And they were elected parish wide, correct?

A. Yes.

Q. And was Kip Holden elected when East Baton Rouge Parish was majority white?

A. I'm not sure.

MR. WALE:

Okay. Thank you very much. That's all the questions I have.

THE COURT:

Any redirect?

MR. SAVITT:

No, Your Honor.

THE COURT:

All right. You are free to go.

Thank you for your help, ma'am.

Okay. We will adjourn. It's almost 5:40. We will reconvene at 9:30, but before that, can you give the court a sense on whereabouts you are? It's looking like that you are going to be able to close this thing out on Friday? I have -- I haven't counted heads, so I don't have a sense in my mind how many -- how many -- how many witnesses we are into on your witness lists.

MS. KHANNA:

I believe we will be fine to close out on Friday, Your Honor. Tomorrow the plaintiffs will have, I would say, no more than one to two relatively short witnesses, and I imagine the defendants will be able to put on their case in chief in the morning.

THE COURT:

The plan tomorrow is we will convene at 9:30. Yeah, that's correct. We will be able to convene at 9:30. We will break early tomorrow. There's a court-wide function that I'm really -- really need to

go to, but I'll play it by ear. I can go late. I mean, my goal would be to break around 3:30, but if we are in a spot where we need to go until 4:00 or a little after 4:00, we can -- we can do that, okay, but we do need to plan to break a few minutes early tomorrow. All right. Rest well. See you in the morning at 9:30 a.m.

* * *

REPORTER'S PAGE

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(B) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the record;

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CHERIE' E. WHITE, CCR (LA NO. 96002)
CSR (TX NO. 10720)
CSR (MS NO. 1514)
RPR (NATIONAL NO. 839452)

EXHIBIT I

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al., *Plaintiffs,* v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Civil Action No. 3:22-cv-00211-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson
EDWARD GALMON, SR., et al., *Plaintiffs,* v. R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Consolidated with Civil Action No. 3:22-cv-00214-SDD-SDJ

DEFENDANTS' AMENDED JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

[1] Defendants submit this Amended Joint Proposed Findings of Fact and Conclusions of Law that has been updated and corrected with citations to the final transcripts for the preliminary-injunction proceedings.

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SUMMARY OF THE CASE

These consolidated cases come before the Court on motions for a preliminary injunction. This is a challenge to Louisiana's congressional districts under Section 2 of the Voting Rights Act (VRA). The plaintiffs are two sets of Louisiana voters and public-advocacy organizations (respectively, *Robinson* Plaintiffs and *Galmon* Plaintiffs; collectively, Plaintiffs). They contend that Section 2 requires Louisiana to conduct its congressional elections under a plan containing two majority-Black districts out of six total. The plan the Legislature recently enacted includes one majority-Black district of six. Plaintiffs sued R. Kyle Ardoin in his official capacity as Secretary of State. The State of Louisiana, represented by its Attorney General, and the Speaker of the Louisiana House of Representatives and President of the Louisiana Senate subsequently intervened as defendants. Plaintiffs moved for a preliminary injunction, asking the Court to prohibit the State from utilizing the enacted congressional plan in the upcoming 2022 congressional elections, which federal law dictates must occur on November 8, 2022. Plaintiffs also seek an injunction to command the State to use a new plan for that election containing two majority-Black districts. The Court received briefing and exhibits on the motions and held a five day hearing, after which it received further briefing and proposed findings from the parties. The motions are now ripe for adjudication.

Plaintiffs' request is not new to Louisiana. In the 1990s, advocates with similar goals succeeded legislatively in obtaining a congressional plan with two majority-Black districts out of seven (as the State was then apportioned). A three-judge federal court invalidated that plan as an unconstitutional racial gerrymander. The Legislature again enacted a plan with two majority-minority districts, and it saw the same fate: a federal injunction on equal-protection grounds. The evidence shows that the Black percentage of Louisiana's population has not materially grown since the 1990s. It was then and has been since about one third of the population. And there is no

evidence that the dispersion of Black population differs materially now from what it was then. Plaintiffs' call for one third of the seats for one third of the population is difficult to square with that litigation history. And it is impossible to square with the text of Section 2, which does not "establish[] a right to have members of a protected class elected in numbers equal to their proportion in the population," 52 U.S.C. § 10301(b).

Plaintiffs' motion must be denied for the reasons set forth in the findings below. Plaintiffs begin from the wrong starting point. They looked to total-population figures and determined that a group with thirty percent of the population is entitled to majorities in thirty percent of the seats. Plaintiffs have given little heed to *where* that population lies and *who* composes it. But Section 2 approaches the problem of minority representation from the opposite perspective. It asks first whether a discrete group of individuals belonging to a protected class have experienced cognizable vote dilution and looks to concepts like proportionality at the back end. In this case, Plaintiffs' experts were able to achieve two majority-minority districts only through a configuration joining territory in what their own lay witness called "south Louisiana" with delta parishes in northeast Louisiana—parishes afforded the thinnest of mentions in Plaintiffs' complaints. Two sets of 40,000 computer-generated congressional plans did not arrive at that configuration (or an other configuration with even one majority-minority district), and the only precedent it has in Louisiana history is the 1990s districts found to be racial gerrymanders.

The illustrative districts, too, are racial gerrymanders. The hearing evidence established, virtually as a matter of law, that race was the predominant factor in their construction. It can hardly be emphasized enough that Plaintiffs, their lawyers, and their experts went looking for Black population. Where it was, and who those people were was an afterthought. This is precisely the type of districting scheme the Supreme Court has repeatedly invalidated as equal-protection

violations, and it bears uncanny similarity to a Texas district the Supreme Court found not to satisfy Section 2. Plaintiffs argue that their showing of polarized voting justifies the discriminatory features of their plans, but the Court cannot invalidate a plan Plaintiffs have stipulated they are not challenging as unconstitutional on the ground that it does not bear features of plans that are presumptively unconstitutional.

Moreover, Plaintiffs have not established legally significant polarized voting, so there is no arguable justification for the racially predominant redistricting they demand. Their experts established at best that Black and white voters in Louisiana tend to prefer different candidates. But the relevant question under Section 2 is whether the degree of white bloc voting is sufficient that only with a 50 percent majority Black voting-age population (BVAP) can the Black preferred candidate reliable prevail. Plaintiffs' own experts testified that this is *not the case*. Supreme Court precedent could not be clearer that, in such circumstances, "majority-minority districts would not be required in the first place." *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion).

The equitable factors governing preliminary injunctive relief also compel the denial of the instant motions. The risk to the public in conducting the 2022 congressional elections under unconstitutional districts is unacceptable and decidedly against the public interest. So too is the risk of election administration error, even an election meltdown, as a court injunction in an election year after the enacted plan has been implemented would "require heroic efforts" to achieve. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). In Alabama, a federal court issued a materially identical injunction to that requested by Plaintiffs here, and under similar electoral conditions. The Supreme Court promptly stayed that injunction. There is no reason for this Court to follow in that court's footsteps, especially where this case is thoroughly deficient on the merits.

[PROPOSED] FINDINGS OF FACT

I. 2020 Decennial Census

1. The U.S. Census Bureau releases data to the states after each census for use in redistricting. This data includes population and demographic information for each census block. Joint Stip. ¶ 50, Doc. 143.

2. The Census Bureau delivered apportionment counts on April 26, 2021, and the redistricting data file was released to Louisiana in legacy format (P.L. 94-171) on August 12, 2021, and in easier-to-use formats on September 16, 2021. Joint Stip. ¶ 51, Doc. 143.

3. Louisiana was apportioned six seats in the U.S. House of Representatives, the same number it was apportioned following the 2010 census. Joint Stip. ¶ 52, Doc. 143.

4. The 2020 census reported that Louisiana's resident population was 4,657,757 as of April 2020. Joint Stip. ¶ 53, Doc. 143.

II. Louisiana's 2020 Redistricting Process

5. Population shifts within the State of Louisiana resulted in each of the congressional districts deviating from the ideal population, requiring the existing districts to be modified to achieve "constitutionally required equal population." PR-56, 3:17–4:12.

6. The Legislature began the redistricting process in June 2021 by adopting criteria mandating that proposed plans comply with all legal requirements (including "the Equal Protection Clause"), "contain whole election precincts," "maintain[] . . . communities of interest," and "respect the established boundaries of parishes, municipalities, and other political subdivisions and natural geography of this state to the extent practicable." LEG_7, HCR 90(B), (E)(2), (G)(1); *see also* Joint Stip. ¶ 54, Doc. 143.

7. From October 2021 to January 2022, the Legislature held public hearings across the State to present information and solicit public feedback. *See, e.g.*, PR-38 to PR-46.

8. The Legislature convened an Extraordinary Session beginning February 1, 2022, to enact redistricting plans for Congress and other offices. Joint Stip. ¶ 55, Doc. 143.

9. The congressional plan ultimately enacted, House Bill 1 and Senate Bill 5, satisfies the adopted criteria. *See* PR-54, 1:8–17:2; PR-71, 86:11–92:10; PR-72, 17:13–16, 86:3–87:9;[2] *see also* Joint Stip. ¶¶ 56–58, Doc. 143.

10. The plan maintains the "core districts as they [were] configured" to "ensure continuity of representation." PR-54, 4:11–5:1; PR-57, 22:13–20; PR-68, 30:22–31:4, 31:22–32:8; PR-71, 88:16–89:4, 128:24–129:6. Although population shifts rendered some changes necessary, the plan preserves "the traditional boundaries as best as possible" and "keeps the status quo." PR-72, 12:13–17; PR-72, 6:19–7:4; PR-74, 4:19–5:4.

11. Senator Hewitt and Speaker Schexnayder explained how the existing districts were under and overpopulated, and walked through the changes made to the existing districts by House Bill 1 and Senate Bill 5 in order to achieve the ideal population. PR-54, 6:15–17:2; PR-71, 90:4–92:10; PR-56, 4:21–9:5.

12. On average, the plan maintains more than 96 percent of constituents per district in the same district as the 2011 benchmark plan. LEG_1-4; *see also* 5/12 Tr. 212:21–213:6.

13. The plan respects political-subdivision boundaries and natural geography, and it splits just one precinct. PR-54, 3:23–4:2; PR-71, 88:9–13.

14. The plan accounts for communities of interest identified in committee hearings, including by grouping major military installations and military communities in CD4, preserving the Acadiana region in CD3, and joining major cities and their suburbs as much as possible. PR-54, 5:2–6:15; PR-71, 89:4–90:2; PR-72, 15:7–9, 17:13–16. For example, Barksdale Air Force Base

[2] *See also* Sen. Hewitt, Mar. 30, 2022, Senate Session at 53:38 to 55:06, https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2022/03/033022SCHAMB.

and Fort Polk remain in CD4 in the enacted plan, which is currently represented by a member who serves on the House Armed Services Committee. PR-54, 7:19–8:3. Keeping these districts together in the same district and providing for continuity of representation allows the state to have more influence in Washington and "compete for vital funding that's essential to [Louisiana's] economy." PR-54, 7:19–8:9.

15. Of particular relevance to this case are CD5, CD6, and CD2.

16. CD5, which was underpopulated by about 37,000 residents, is a rural district that accounts for nearly half of Louisiana's agricultural sales and borders a long stretch of the Mississippi River. PR-54, 8:23–9:14. Its incumbent serves on the House Agriculture Committee. PR-54, 9:17–20. The plan maintains rural communities as the "backbone" of CD5 by preserving the delta region and adding Point Coupee and rural parts of the Florida Parishes. PR-54, 9:14–11:3.

17. The enacted plan retains over 89 percent of the constituents of CD5 in the 2011 Plan. LEG_1-4.

18. CD6, which was overpopulated by about 40,000 residents, is anchored in the Greater Baton Rouge area and joins its suburbs, including West Baton Rouge, Ascension, and Livingston—the residences of innumerable people who work, attend church, and send their children to school in Baton Rouge. PR-54, 14:16–15:2. The enacted plan improves CD6 by curing precinct splits from the prior plan. PR-54, 15:6–9.

19. The plan retains nearly 99 percent of the constituents of CD6 in the 2011 plan. LEG_1-4.

20. CD2 was the closest of any district to the ideal population, being under the ideal by 1,000 residents. PR-54, 15:19–24. The district joins the State's two largest urban areas, New

Orleans and portions of Baton Rouge, which share interests in the tourism industry, affordable housing, safe neighborhoods, and accessible healthcare. PR-54, 15:25–16:4. CD2 brings together ports along the Mississippi River, which is the "gateway to commerce." PR-54, 16:4–7. The "general makeup of this district remains the same" from the 2010 plan, though some precincts were shifted between District 2 and others to equalize population. PR-56, 5:25–6:9.

21. The enacted version retains nearly 99 percent of the constituents of the 2011 version of CD2. LEG_1-4.

22. CD2 remains a majority-Black district, with a Black Voting Age Population of over 57 percent. PR-54, 16:11–16; LEG_1-8.[3]

23. There is no allegation that race predominated in the creation of CD2.

24. The Legislature faced demands to engage in race-based redistricting.

25. Some public commenters contended that, "[b]ecause over 1/3 of Louisiana's population is minority . . . at least 2 of the 6 districts should have a fair chance of electing a member of a minority." *Robinson* Compl. ¶ 48.

26. Some legislators, too, argued for proportionality, contending "one third of six is two." PR-42, 63:16 (former Representative Ted James); *see also* PR-72, 87:12–88:34 (Representative Jenkins), 73:20–24 (Representative Marcelle).

27. Legislators and members of the public proposed alternative plans containing two majority-Black districts representing that they were drawn with the specific intent to reach at least 50 percent Black voting-age population (or BVAP). *See, e.g.*, PR-71, 98:4–13 (Senator Fields explaining that the purpose of his Amendment 91 to Senate Bill 5 was to "add a second minority district" so that Black voters would not be "pack[ed]" into one district); PR-53, 2:24–3:3 (Senator

[3] As Dr. Hood explained, this 57.0 percent figure is based on the Black Voting Age Population as defined by the U.S. Department of Justice. LEG_1-6; 5/12 Tr. 221:8–19; LEG_1-8 (Table 4).

Luneau testifying he offered Senate Bill 16 because "with the changes in our population, it's pretty clear, that the Census [has] shown about a third of the population is minority" and that the plan "adds an additional majority-minority district."); PR-69, 9:20–22 (Senator Price explaining that the purpose of Amendment 153 to House Bill 1 was to "provide two minority district[s] – District 2 and District 5."); PR-68, 40:25–41:1 (Representative Duplessis stating he offered Amendment 116 to Senate Bill 5 to "creat[e] a second majority-minority district.").

28. Senator Fields, for example, asserted that, "if you wish to create a majority-minority district, you can." PR-71, 101:5–6.

29. The proposals transferred Black residents from CD2 to CD5, reducing CD2's BVAP. *See, e.g.*, LEG_34 (Senate Bill 9 showing BVAPs of 52.254 percent and 51.597 percent for CD2 and CD5, respectively).

30. Some contained z-shaped districts that zigged and zagged across the state without regard to important communities of interest. *See* LEG_38 (Senate Bill 16); *see also* PR-53, 4:22–5:19 (Senator Hewitt commenting on the similarities between Senate Bill 16 and "the famous Z-Map that we had back in the day" and identifying communities disrupted in the plan: "You've got Lafayette in a district with New Orleans. You've got neighborhoods in Baton Rouge [that] would share a member of congress with Shreveport and Lake Charles is joined with parts of Monroe, it divides up some of the Barksdale community.").

31. No one advocating a second majority-minority district presented a strong basis in evidence to conclude that § 2 demands such race-based steps.

32. Plaintiffs Louisiana NAACP and Power Coalition for Equity and Justice claimed to have conducted racially polarized voting and performance analyses on various proposed congressional plans. LEG_8-6–7; LEG_9-4–5; LEG_11-4; *see also* PR-47, 133:11–135:7; PR-56,

106:5–13. But none of their submissions to the Legislature contained such an analysis or underlying data.

33. Legislators repeatedly requested that Plaintiffs share these analyses with the committees tasked with redistricting. PR-47, 137:1–5, 141:2–14; PR-55, 22:11–23:15. Plaintiffs and their counsel refused, and did not answer questions about the elections purportedly analyzed. PR-47, 137:1–5, 141:2–14; PR-55, 22:11–23:15.

34. For example, during the January 20, 2022, Joint Committee hearing, the Redistricting Counsel for the NAACP Legal Defense Fund (the same organization that is counsel to Plaintiffs in this litigation) testified regarding the maps submitted by Plaintiffs and the analyses performed on these maps. PR-47, 133:11–135:7. Senator Hewitt asked if Plaintiffs could provide these analyses because that information could be "very useful" to the committees. PR-47, 137:1–7. That counsel replied that he needed to consult with his colleagues and get back to Senator Hewitt. PR-47, 137:4–5.

35. That information was never provided, despite the same counsel testifying again before the Legislature and providing additional submissions on behalf of Plaintiffs. During his testimony on February 3, 2022, before the Senate and Governmental Affairs Committee, where he referenced these analyses again, Senator Hewitt repeated the request that the analyses be shared. PR-55, 22:11–23:15. He refused, and promised to provide another submission with additional information. PR-55, 22:11–23:15. That submission, however, again failed to include any underlying analysis or data on which the Legislature could rely. *See* LEG_11.

36. The only meaningful information that could be gleaned from any of the submissions was a summary of an analysis of a single 2018 run-off election, and it suggested that alternative configurations of CD5, rendering it a bare-majority-Black district, would not meaningfully

improve the Black community's opportunity to elect its preferred candidate. *See* LEG_9-4–5; PR-47, 134:14–136:6 (acknowledging the analysis showed that the margins "weren't quite so high" for CD5).

37. Meanwhile, legislators continued to express concern that drawing two majority-minority districts with slim BVAP majorities would compromise Black opportunity in both. PR-56, 117:7–118:4; PR-54, 18:21–22:8; PR-76, 22:21–23:25; PR-71, 104:2–105:3.

38. Legislators expressed similar concerns in connection with state legislative and judicial redistricting plans, calling districts with Black Voting Age Population in the 50.9 percent range "toss-ups," and still "kind of close" at 53 percent. PR-70, 61:1–10; PR-71, 43:12–17. Legislators proposed plans with higher levels of Black Voting Age Population in order to make districts "more securely minority" and ensure they continued to be presented by Black members. PR-70, 61:1–10; PR-71, 44:1–17.

39. The Legislature resisted these calls to engage in race-based redistricting. House Bill 1 and Senate Bill 5 (amended to incorporate the identical congressional plans) were passed by the Legislature on February 18, 2022. *See* LEG_69; LEG_5; PR-76, 2:24–5:4; *see also* Joint Stip. ¶¶ 56–58, Doc. 143.

40. As promised, the Governor vetoed both bills for failing to achieve his predetermined racial target. *See* LEG_6 (claiming that because the Black voting age population makes up "almost one-third of the State's population," the Legislature should have enacted a bill with two majority-minority districts); *see also* Joint Stip. ¶ 59, Doc. 143.

41. The Legislature overrode the veto of House Bill 1 on March 30, 2022. *See* Joint Stip. ¶¶ 61–62, Doc. 143.[4]

[4] *See also* Sen. Hewitt, Mar. 30, 2022, Senate Session at 1:38:43 to 1:42:35.

42. HB 1 was enrolled, became Act No. 5 of the 2022 First Extraordinary Session, and became effective on March 31, 2022. Joint Stip. ¶ 63, Doc. 143.

43. Act 5 of the 2022 First Extraordinary Session is codified at La. R.S. 18:1276. Joint Stip. ¶ 64, Doc. 143.

44. La. R.S. 18:1276 divides Louisiana into six congressional districts, and qualifies that electors of each district shall elect one representative to the Unites States House of Representatives. Joint Stip. ¶ 65, Doc. 143.

III. <u>The State of Louisiana</u>

45. The State of Louisiana has made significant strides in addressing its inequitable past as part of its recent history. *See generally* State Ex. 5–29 (information regarding various equity initiatives within the State of Louisiana); *see also e.g.*, 5/9 Tr. 41:13–42:12 (testimony by the President of the Louisiana NAACP that he is on a number of statewide committees and that he believes "the state values the opinion of the NAACP.").

46. The Louisiana Department of Health's Bureau of Minority Health Access and Promotions ("BMHA") sponsored and cosponsored minority health activities to help address the impact COVID-19 is having on minority communities. State Ex. 5.

47. In January 2019, the Louisiana Department of Health ("LDH") created the Office of Community Partnerships & Health Equity. This office is focused on health and equity and ensuring LDH's services are equitably accessible and informed by the people, populations and communities it serves. State Ex. 6.

48. The Louisiana Department of Insurance created the Division of Diversity and Opportunity that assists small, minority, and disadvantaged insurance agencies, producers and individuals by providing educational and informational services to foster a greater awareness of the opportunities available in the insurance industry. State Ex. 12.

49. During the 2021 Regular Session of the Louisiana Legislature, the Legislature unanimously passed HCR-19 which created a task force to study issues relative to a lack of racial minority and female candidates for athletic director and head coach positions at public postsecondary institutions. State Ex. 13 & 14. The Louisiana Minority Sports Initiative Task Force will devise a plan to develop a more diverse group of candidates for head coach of athletic director positions. *Id.*

50. Local governments also are making strides in bridging the gap between Louisiana's past and its present and future. On June 12, 2020, Baton Rouge Mayor-President Sharon Weston Broome enacted the Mayor's Commission on Racial Equity and Inclusion. The commission is focused on the creation of measurable outcomes, promotion of greater accountability, and coordination of community-wide efforts to achieve racial equality in the community. State Ex. 7. The City of Alexandria, Louisiana enacted the "Small and Emerging Business Development Program" that mandated inclusionary procedures in the bidding, and awarding of bids, process to better include minority business owners. State Ex. 10.

51. Louisiana's universities are taking steps to address issues of diversity and inclusion. In 2019, Louisiana's flagship university, Louisiana State University ("LSU"), elected Stewart Lockett, its first Black student body president in nearly 30 years. State Ex. 8; State Ex. 8 at 1. LSU's student government is about half white, with a mix of Black, Latino, and Asian students making up the additional 50 percent. *Id.* Regarding the more diverse student government, Mr. Lockett said, "It's pretty cool. It's been a huge shift, and we're really proud of it." State Ex. 8 at 3. LSU created the Office of Diversity, Equity, and Inclusion, which has a staff that includes over 50 percent members of minority communities. State Ex. 11. One of LSU's "core principles includes fostering a culture of inclusivity and respect for every member of the community." State

Ex. 24 at 1. The LSU African American Diversity Organization hosts many programs throughout the year, including: (1) "Umoja", which is a welcome event for freshman and transfer students; (2) the Black Women's Empowerment Initiative; (3) Black History Month Celebration; (4) Robing Ceremony; (5) Juneteenth Celebration; and (6) Pre-Kwanzaa. State Ex. 19. In May 2021, LSU chose William F. Tate, IV to head the University. He is the first Black president and chancellor of LSU and in fact, the first to lead any Southeastern Conference College. He was appointed by unanimous vote of the LSU Board of Supervisors. As chancellor, Tate will be responsible for the flagship campus's academic, financial and administrative matters. As LSU president, he will be the chief executive officer of the colleges and universities associated with the system, which includes two four-year universities, one two-year institution, two medical schools, a law school, an agricultural center, research facilities and the Baton Rouge flagship educating roughly 50,000 students. State Ex. 28.

52. The University of Louisiana Lafayette's "deliberate tradition of inclusion . . . is one of the pillars on which the institution rests. . . ." State Ex. 23 at 3. Toward that end, this past fall ULL began "a professional development curriculum as part of a research-based initiative to examine diversity, equity and inclusion challenges in online and traditional learning." State Ex. 22 at 2). The results of this research will be "disseminated, enabling other institutions in the University of Louisiana System and across the state and nation to adopt best practices . . . ." State Ex. 22 at 2.

53. The LSU System Diversity Task Force was established to serve as an advisory group to LSU System Administration and LSU Board of Supervisors. State Ex. 15. The task force will develop policy recommendations on best practices to increase cultural diversity and community engagement. *Id.*

54. Louisiana State University Health Shreveport has the Office of Diversity Affairs that is dedicated to providing equal opportunity and assisting members of minority communities. State Ex. 20.

55. McNeese University has an Office of Inclusive Excellence with the purpose to establish a strategic plan of operation for cultivating a campus culture that embraces diversity, enables inclusion, and provides equality to all campus constituents. State Ex. 21.

56. Several professional organizations also are making diversity and inclusion a focus. On January 27 and 28, 2022, the Louisiana Society for Human Resource Management held its Diversity and Inclusion Summit in New Orleans. State Ex. 9.

57. On October 1, 2021, Louisiana Economic Development announced the launch of the Diversity in Business initiative to accelerate growth in second-stage minority and women owned businesses. State Ex. 16.

58. The Louisiana State Bar Association's Diversity ("LSBA") Statement states that the LSBA is committed to diversity in its membership, Board of Governors, staff, House of Delegates, committees and all leadership positions. State Ex. 17. The LSBA also issued a Statement of Diversity Principles that many of its members have agreed to abide by. (State Ex. 18).

59. The Urban Land Institute ("ULI") – Louisiana's "mission" "is to promote responsible land use and support sustainable communities for all, regardless of race . . . ." State Ex. 26 at 1. ULI Louisiana understands that Louisiana "has an extensive history of racial inequity, and the real estate industry has played a significant role in maintaining that inequity and systemic racism." State Ex. 26 at 1-2.

IV. Parties

60. Two sets of Plaintiffs filed the instant consolidated Section 2 actions based on what they call "critical facts," including that "Louisiana has six congressional districts and a Black population of over 33 percent," that "[a]ctivists, community leaders, and ordinary Louisianans petitions lawmakers" to create a second majority-minority district," that the Governor "pledged to veto any new map that failed to" create such a race-based district, and that a district could be drawn including "the Baton Rouge area and the delta parishes" to achieve a 50 percent racial quota. Galmon Br., Doc. 42-1 at 1.

61. On April 14, the two cases were consolidated into the instant case.

A. *Robinson* Plaintiffs

62. Plaintiffs in the first-filed case, *Robinson, et al. v. Ardoin*, Case No. 3:22-cv-211, are nine individuals, the Louisiana State Conference of the National Association for the Advancement of Colored People (the "Louisiana NAACP"), and the Power Coalition for Equity and Justice ("Power Coalition"). *See* Joint Stip. ¶¶ 13-44, Doc. 143.

B. *Galmon* Plaintiffs

63. Plaintiffs in the second-filed case, *Galmon, et al. v. Ardoin*, Case No. 3:22-cv-214, are four individuals. *See* Joint Stip. ¶¶ 1-12, Doc. 143.

C. Defendant R. Kyle Ardoin

64. Defendant R. Kyle Ardoin is the Louisiana Secretary of State and is named in his official capacity. Joint Stip. ¶ 45, Doc. 143.

65. Defendant R. Kyle Ardoin is the "chief election officer of the state," La. R.S. 18:421(A). Joint Stip. ¶ 46, Doc. 143.

D. Legislative Intervenor-Defendants

66. Legislative Intervenor-Defendant Clay Schexnayder is the Speaker of the Louisiana House of Representatives. Joint Stip. ¶ 47, Doc. 143.

67. Legislative Intervenor-Defendant Patrick Page Cortez is President of the Louisiana Senate. Joint Stip. ¶ 48, Doc. 143.

E. State Intervenor-Defendant

68. The State of Louisiana is represented by Attorney General Jeff Landry, Chief Legal Office of the State of Louisiana. Joint Stip. ¶ 49, Doc. 143.

V. Procedural Posture

69. Plaintiffs waited 16 days to file preliminary-injunction motions (and nine days to request a status conference concerning provisional relief). Docs. 16, 41, 42.

70. They ask the Court to order the Legislature to redistrict and, if it does not, order the State to utilize one of their illustrative plans. Their core retention numbers fall far below those of the enacted plans, especial in CD2, CD5, and CD6. LEG_1-4. The plans do not even purport to be status quo plans.

71. The Court held a hearing on Plaintiffs' motions beginning on May 9, 2022, and concluding on May 13, 2022. *See*, e.g., Doc. 152.

VI. Plaintiffs' Witnesses

A. Michael McClanahan

72. Mr. Michael McClanahan ("McClanahan") was offered as a fact witness. 5/9 Tr. 15:20–22. Mr. McClanahan was not called in his individual capacity, but as the state president of the Louisiana NAACP. 5/9 Tr. 21:14–17. Mr. McClanahan has been president of the Louisiana NAACP for about 5 years and is also a life member of the NAACP. 5/9 Tr. 23:4–24. The Louisiana NAACP has about 40 local branches. 5/9 Tr. 25:4–8.

73. Mr. McClanahan testified that he knows people in Louisiana who have one Black grandparent and three white grandparents—he said this type of racial make-up is "Louisiana"--and he "consider[s] these people Black." 5/9 Tr. 26:17–23. McClanahan said he grew up in northwest Louisiana where he was taught "if we had one drop of Black blood, no matter what you look like on the outside, you considered Black." 5/9 Tr. 26:21–27:3.

74. Mr. McClanahan stated that he testified at public meetings regarding redistricting and that he told the legislature he was in favor of proportional representation since Black Louisianians "make up at least a third of the population" the legislature "should take careful consideration as to the make up of the State of Louisiana so they could adequately reflect what it looks like in Louisiana." 5/9 Tr. 27:13–28:25. Mr. McClanahan said, "[m]y thought process is since Louisiana's made up of a third of African-Americans, that all maps should reflect that[.]" 5/9 Tr. 46:5–8.

75. Mr. McClanahan undercut his credibility when he testified under oath that even though he was familiar with the legislative process in Louisiana and even though the NAACP was active in the last gubernatorial election, he did not know what political party the Governor is. *See* 5/9 Tr. 40:14–41:12; 5/9 Tr. 59:9–11.

76. Mr. McClanahan serves on a number of committees and task forces for the State of Louisiana. 5/9 Tr. 41:13–17. McClanahan testified that he believes "the state values the opinion of the NAACP." 5/9 Tr. 42:9–12.

77. Mr. McClanahan testified that he agrees "that at least some Black voters in Louisiana cannot be in a majority Black district." 5/9 Tr. 49:8–11. However, Mr. McClanahan still believed that any Black Louisianian who was not in a majority Black district was "cracked." 5/9 Tr. 49:8–50:19.

78. Mr. McClanahan testified that the NAACP did not perform any studies relative to the performance of a second majority minority congressional district. 5/9 Tr. 51:2–5. He then testified that NAACP did perform studies, however he did not know when they were performed or where they were. 5/9 Tr. 52:23–54:6.

79. Notwithstanding the ongoing redistricting litigation, the Louisiana NAACP has been able to still encourage people to vote and to register to vote. The NAACP has also continued to hold events across the State, including the "souls to the polls" program for the April 30, 2022, election. McClanahan testified that the NAACP's efforts to increase turnout via "souls to the polls" was "successful." 5/9 Tr. 56:18–60:3.

80. The Louisiana NAACP does not endorse any candidates at any level. 5/9 Tr. 66:16–69:10.

81. Mr. McClanahan testified that all Congressional districts have cities that are very distinct from each other and have distinct needs. 5/9 Tr. 63:17–23.

82. Some people work in New Orleans and live in Baton Rouge and vice versa. 5/9 Tr. 65:12

83. There's no record of the NAACP supporting or opposing candidates at the state levels since Mr. McClanahan has been state president. 5/9 Tr. 69:12–16.

B. Charles Cravins

84. Mr. Charles Cravins was offered as a fact witness. 5/9 Tr. 258:2. Mr. Cravins is a lawyer in Saint Landry Parish, Louisiana and he ran for district attorney as a democratic candidate in the 2020 election cycle. 5/9 Tr. 258:8–13; 259:17-19. Mr. Cravins appeared on the same ballot as the 2020 presidential election. 5/9 Tr. 259:20–22. However, Mr. Cravins testified that he did not pay attention to the margin of votes President Trump carried in Saint Landry Parish during that election cycle. 5/9 Tr. 259:23–260:3. Mr. Cravins testified that he lost the election, where he, as a

Democrat, received 48 percent of the votes and the opposing candidate, a Republican, received "51 point something" percent of the votes. 5/9 Tr. 260:8–13. Mr. Cravins believed that he received some crossover voters where people voted for both President Trump, a Republican, and himself, a Democrat. 5/9 Tr. 260:14–22.

85. As part of his testimony, Mr. Cravins opined that it is critically important for Saint Landry Parish to maintain a connection with at least one of the three "centers of influence," which he identified as Baton Rouge, Lafayette, and Lake Charles because that connection allows Saint Landry Parish to have some political voice because Saint Landry Parish has a large African American population. 5/9 Tr. 266:25–267:17. However, while Mr. Cravins testified that Saint Landry Parish's connection to Baton Rouge, Lafayette, and Lake Charles would magnify Saint Landry's influence, he could not state whether or not those were the ***only*** three "centers of influence." 5/9 Tr. 267:25–268:16. Additionally, Mr. Cravins testified that "my focus is about politics" and clarified that he is looking at things "from a political standpoint." 5/9 Tr. 268:6–9.

86. St. Landry Parish is not part of the defined media market of Baton Rouge. 5/9 Tr. 257:9–23.

87. Baton Rouge is not currently in the same Congressional district as St. Landry Parish. 5/9 Tr. 266:17–267:9.

88. St. Landry Parish has a lot of similarities with Evangeline Parish. 5/9 Tr. 272:16–24.

C. Christopher Tyson

89. Mr. Christopher Jordan Tyson ("Tyson") was offered as a fact witness. Mr. Tyson, who is Black and currently a law professor, ran as the Democratic candidate for the Louisiana Secretary of State in 2015. 5/9 Tr. 276:6; 276:15–277:20.

90. Mr. Tyson opined that the parishes in the delta region of Louisiana have a "unique connection" to East Baton Rouge Parish. 5/9 Tr. 291:13–17. However, Mr. Tyson could not explain in detail why Louisiana never had a congressional district from Baton Rouge running up into the delta with the exception of the 1992 *Hays* map, which was ultimately struck down. 5/9 Tr. 291:18–292:3. He also was not aware of any other congressional maps that would have run Baton Rouge up into the Louisiana delta prior to 1992. 5/9 Tr. 292:4-7. The only reason he could provide as to why the previous maps were drawn that way was because "politics I think play[ed] a role in that." 5/9 Tr. 291:23–292:3.

91. When Mr. Tyson ran for Louisiana Secretary of State he ran against the Republican incumbent, Tom Schedler. 5/9 Tr. 294:19–24. Mr. Tyson testified that it can be easier to run for office as an incumbent as opposed to running as the challenger, and that the race for the Secretary of State position is particularly a hard race to run in. 5/9 Tr. 295:7–19. Particularly, it is a difficult race because it is hard to raise the funds that are necessary to campaign and so Tyson needed to take out a loan to finance the campaign. 5/9 Tr. 295:5–296:5. Mr. Tyson's campaign was considered more of a grass roots-style campaign and therefore he did not have the tremendous resources that are needed to fund a substantial media campaign. 5/9 Tr. 296:6–11. As such, he was not able to broadcast any campaign advertisements on television nor in any of the seven major media markets in Louisiana. 5/9 Tr. 296:12–16.

92. When Mr. Tyson ran for the State Secretary of State position in 2015 as a Democrat, the seats for the governor, lieutenant governor, senator, mayor, and were all on the ballot as well. 5/9 Tr. 298:19–299:11. Former Mayor Kip Holden and Governor Edwards won East Baton Rouge Parish as Democratic candidates. 5/9 Tr. 299:24–300:10. Tyson received about 48 percent to 52 percent of the votes in East Baton Rouge during the 2015 election cycle. 5/9 Tr. 299:12–18.

93. His father was one of the first Black graduates of the LSU Law Center. 5/9 Tr. 280:7–10.

94. Black population in Louisiana is still centered around the Mississippi River. 5/9 Tr. 281:17–23.

95. It could take about 4 hours and 20 minutes to get from Baton Rouge to Lake Providence, Louisiana. 5/9 Tr. 294:5–18.

D. Dr. Dorothy Nairne

96. Dr. Dorothy Nairne has resided in Congressional District 6 since 2017. 5/10 Tr. 82:8–11, 78:14–18. She is a registered Democrat. 5/10 Tr. 92:24-93:1. While Dr. Nairne testified that her house is "on the cusp" of District 2 and therefore it is "confusing" and "chaotic" to know where to vote, 5/10 Tr. 83:25–84:14, she also admitted that she did find out where to vote and she is aware of the Geaux Vote app that the Secretary of State uses to let people know where to vote. 5/10 Tr. 93:2–9.

97. While Dr. Nairne agreed that she is a regular voter and that she is "pretty good at voting," 5/10 Tr. 96:1–10, she also admitted she did not vote in November 2021 or July 2020, nor did she vote in December 2018 for the secretary of state race between Kyle Ardoin and Gwen Collins. 5/10 Tr. 99:2–21.

98. Dr. Nairne stated that regardless of who is elected in her congressional district and the outcome of this litigation she will "continue to be engaged with the elected representatives who represent" her. 5/10 Tr. 94:2–12.

99. Dr. Nairne has only been a Louisiana resident for 5 years, moving here in 2017. 5/10 Tr. 92:8–10.

100. Dr. Nairne has donated to independent, Green Party, and a few Democratic candidates. 5/10 Tr. 94:13-23.

101. Dr. Nairne donated to a group called ActBlue. 5/10 Tr. 95:17–25.

E. Ashley Shelton

102. Ashley Shelton ("Shelton") worked in communities across the state of Louisiana in redistricting efforts during the last election cycle. 5/10 Tr. 239:18–240:7. She testified that she worked in a power coalition representing those who have asked for a fair and equitable redistricting process and did not receive it. 5/10 Tr. 239:18–240:7. The power coalition existed in Louisiana since about 2015. 5/10 Tr. 260:18–21.

103. Shelton testified that the power coalition members who live in Congressional District 2 have candidates of choice. 5/10 Tr. 265:17–267:4. However, Shelton lives in congressional District 6 and she does not have the opportunity to elect a candidate of choice. 5/10 Tr. 267:5–8. She said her candidate of choice is not limited to any particular political party, but instead her candidate of choice is going to prioritize issues she cares about. 5/10 Tr. 267:9–268:8. Therefore, her candidate of choice could be conservative and could be Republican. 5/10 Tr. 268:4–7. She also said it is possible that her candidate of choice could be white, although that has not been her personal experience to date. 5/10 Tr. 268:8–10.

104. Though Shelton lived in Baton Rouge her entire life, she was not sure if East Baton Rouge Parish was majority white when Kip Holden was elected. 5/10 Tr. 271:1-16.

105. Regardless of the outcome of this litigation, and if the enacted map goes forward, the Power Coalition still will continue to fight for issues that it cares about. 5/10 Tr. 265:10–23. Over the past decade when there was only one majority minority congressional district in Louisiana, Power Coalition was still able to encourage individuals to register to vote. 5/10 Tr. 266:4-11.

106. Every member of the Power Coalition who attended the legislative roadshows could turn in a card in support or opposition to any bill proposed. 5/10 Tr. 264:5–9.

107. For the most part, everyone had an opportunity to provide public comment at the legislative roadshows. 5/10 Tr. 264:10–16.

F. Matthew Block

108. Mr. Matthew Block was added to Plaintiffs' witness list on May 9, 2022, after the hearing on Plaintiffs' motions for preliminary injunction had begun. 5/11 Tr. 13:14–21. The court's deadline to list witnesses was April 29, 2022. 5/11 Tr. 13:14–16. Defendants objected to the untimely addition of Mr. Block, as the untimeliness prevented Defendants from conducting any discovery regarding Mr. Block. 5/11 Tr. 13:10–14:8.

109. Plaintiffs' counsel stated at the hearing that "we informed defendants as soon as we could once we knew Mr. Block would be testifying," 5/11 Tr. 15:5–8, and "[w]e disclosed his participation as soon as we could," 5/11 Tr. 15:13–14, but in fact, Mr. Block testified that he was contacted the week before the hearing—after the witness lists were due—about testifying as a witness in the case. 5/11 Tr. 27:4–28:4.

110. Mr. Block is executive counsel to Governor John Bel Edwards. 5/11 Tr. 17:4–20. Mr. Block testified that based on polling data, Governor Edwards was overwhelmingly supported by Black voters. 5/11 29:20–22.

111. The executive branch of Louisiana government has been responsive to the needs of the Black community. 5/11 Tr. 29:23–30:5.

112. The Governor expanded the Medicaid program to the benefit of many of the State's lower income residents, including Black citizens and residents. 5/11 Tr. 30:6–21.

113. As a proponent of criminal justice reform the Governor signed a bill enacted by the Legislature (with a GOP House) that restored the voting rights to citizens with felony convictions. 5/11 Tr. 30:22–31:14.

114. A number of African-Americans have been appointed to high ranking positions in state government in recent years. 5/11 Tr. 32:15–18.

115. The head of the Louisiana Department of Health is a Black female by the name of Courtney Phillips. She administers the largest budget in the State. 5/11 Tr. 32:20–33:9.

116. Kimberly Robinson, also a Black female, served as Secretary of the State Department of Revenue. She had a large role in state government for a number of years and now holds a position of authority at LSU. 5/11 Tr. 33:16–34:22.

117. Lamar Davis, a Black male, was appointed as Superintendent of State Police and was the Governor's choice for that role. 5/11 Tr. 34:23–35:6.

118. The Governor appointed Ava Cates, a Black female, to head the Louisiana Workforce Commission. 5/11 Tr. 35:10–35:16.

119. The Louisiana Department of Health has implemented programs to improve the health of African-Americans. 5/11 Tr. 35:17–35:25.

120. The State, through the Governor's office, made Juneteenth a state holiday. 5/11 Tr. 36:1–3.

121. The Governor created a task force to track racial inequities in health care and took a number of COVID related measures to ensure free and available COVID testing and prevention. 5/11 Tr. 36:5–38:14.

122. The Governor has worked with the Legislative Black Caucus on legislative matters. 5/11 Tr. 39:4–40:9.

123. Mr. Block has never served as an election commissioner, nor an election commissioner in charge. 5/11 Tr. 28:5–11. He has never served on the parish board election supervisors, nor served on the state board of supervisors. 5/11 Tr. 28:12–17. He did work for the

clerk of court when he was in high school in Lafourche Parish, but he was never involved with elections. 5/11 Tr. 28:25–29:6. Mr. Block has not worked for a registrars office during any elections. 5/11 Tr. 29:7–9.

124. Mr. Block testified that since the governor has been in office, elections have been moved nine times due to an emergency or natural disaster, and the last time this was done was to move November elections to December because of Hurricane Ida. 5/11 Tr. 18:6–21:6. Mr. Block testified that he was unable to speak about whether the Secretary of State's office has been able to successfully implement such special elections that have resulted due to emergencies or natural disasters. 5/11 Tr. 23:12–15.

125. While Mr. Block thinks the Secretary of State's office was able to inform voters of any changes to elections, he personally did not know and could not give any assurances. 5/11 Tr. 23:16–23.

126. Mr. Block admitted that the Secretary of State has not spoken to him about moving the upcoming elections happening this fall. 5/11 Tr. 43:14–21. Mr. Block gave no testimony as to what impact changing electoral maps or districts would have on the Louisiana elections process.

G. Mr. William Cooper

127. Mr. Cooper testified as an expert witness and was asked "to determine whether the Black population in Louisiana is sufficiently large and geographically compact to allow for the creation of two majority Black congressional districts out of the sixth district plan" and "to examine socioeconomic data to determine whether or not there are disparities between the races with respect to socioeconomic well-being statewide as well as at the state level." 5/9 Tr. 80:25–81:10.

128. It took Mr. Cooper nearly two months to prepare his analysis, as he was hired "in early March or February of 2022," and he worked on his "illustrative maps" and other analyses until his expert report was submitted in April 2022. 5/9 Tr. 121:15–24.

129. In an effort to "demonstrate to the court that plaintiffs have met the first *Gingles* 1 prong," Mr. Cooper also prepared "illustrative maps." 5/9 Tr. 90:14–22. Mr. Cooper claimed he applied traditional redistricting principles in drawing his maps, which he argues includes considering racial data. 5/9 Tr. 91:4–92:3. However, Mr. Cooper's testimony made clear that he did not evenly apply traditional redistricting criteria, and instead aimed to allow race to predominate over other traditional redistricting principles.

130. Essentially admitting that racial considerations predominated over traditional districting criteria in drawing the illustrative maps, Mr. Cooper testified that he did not attempt to draw any maps with one majority-minority district instead of two because he "was specifically asked to draw two by the plaintiffs." 5/9 Tr. 123:3–4.

131. The illustrative maps do not contain any districts with BVAP greater than or equal to 52 percent, even though he admits he could have drawn a district with a higher BVAP, suggesting that Mr. Cooper was targeting districts with a bare 50 percent majority. 5/9 Tr. 123:1–10; 114:6–21. For example, in his illustrative plan two, Districts 2 and 5 contain BVAP of 50.65 percent and 50.04 percent. 5/9 Tr. 124:16–125:1. He argued that the districts did not contain more BVAP because he was "attempting to balance out the [district's] population so it was perfect," but when he "hit zero [population deviation], [he] stopped because it was still above 50 percent BVAP." *Id*. Yet in his illustrative plan four, District 2 contains 50.06 percent BVAP even though he was not attempting to reach zero population deviation. 5/9 Tr. 125:21–126:6. Mr. Cooper offered no explanation for why he still reaches only a bare 50 percent majority BVAP in these

maps when he is not adjusting for zero population deviation, and admits that he was "confident" he could have drawn a district with a higher BVAP. 5/9 Tr. 126:7–12. Later, in the same sentence that he attempted to deny drawing his plans to a racial target, Mr. Cooper acknowledged achieving *Bartlett v. Strickland*'s "rule that basically acknowledges that 50 percent plus 1 is the voting age majority," 5/9 Tr. 155:11–14.

132. Mr. Cooper does not know whether the majority-minority districts in his illustrative plans would be likely to elect the preferred congressional candidates of Black voters. 5/9 Tr. 125:21–126:20.

133. Each of Mr. Cooper's illustrative maps contains a District 5 that includes East Baton Rouge, East Carroll, West Carroll, Madison, Tensas, Concordia, and portions of Ouachita Parishes. 5/9 Tr. 126:21–128:17. However, in a prior redistricting cycle, a district combining East Baton Rouge Parish with East Carroll Parish was struck down as an unlawful racial gerrymander. 5/9 Tr. 139:13–142:23. Yet Mr. Cooper admits that you cannot draw a second majority-minority district in Louisiana without combining these parishes. 5/9 Tr. 130:1–9; 131:19–23.

134. The extent to which Mr. Cooper subordinated traditional redistricting criteria to his goal of creating two majority-minority districts is apparent in his split of the Monroe MSA in each of the illustrative maps, which in every case resulted in Mr. Cooper placing heavily Black neighborhoods in District 5. 5/9 Tr. 133:6–137:21. In particular, Mr. Cooper did not dispute that he assigned 88.45 percent of the Ouachita Parish's Black population into his illustrative District 5, and 72.78 percent of East Baton Rouge's Black population into that same District 4. *Id.* 136:1–19.

135. Mr. Cooper admits that his socioeconomic analysis only compares the differences between the socioeconomic status of whites and Blacks in Louisiana, but does not compare the

differences between the socioeconomic statuses of Blacks or whites in different areas of the state that are combined in his illustrative maps. 5/9 Tr. 142:17–144:17.

136. Mr. Cooper's failure to compare the socioeconomic status of the Black communities that he combined in his illustrative maps is a glaring error in his analysis. The differences between Black residents in East Baton Rouge Parish, East Carroll Parish, and Ouachita Parish—which he combined in one district in his illustrative maps—are stark:

a. 50.6 percent of Black residents in East Baton Rouge Parish have post-high school education (some college, associates degree, or bachelor's degree or beyond), 5/9 Tr. 145:22–147:3, compared to only slightly over 27 percent of Black residents in East Carroll Parish 5/9 Tr. 146:2-6 and 40.7 percent[5] of Black residents in Ouachita Parish 5/9 Tr. 154:8–14.

b. The median income of Black households in East Baton Rouge Parish is $42,643 5/9 Tr. 149:1–4, compared to only $14,800 for Black households in East Carroll Parish 5/9 Tr. 151:6–11 and $25,644 for Black households in Ouachita Parish 5/9 Tr. 153:24–154:2.

c. 16.6 percent of Black households were below the poverty line in the last year in East Baton Rouge Parish 5/9 Tr. 149:12–16, compared to 58 percent of Black households in East Carroll Parish, 5/9 Tr. 150:18-25, and 38.7 percent of Black households in Ouachita Parish 5/9 Tr. 153:10–16.

137. Mr. Cooper claims that race was not a predominant factor in his illustrative plans, yet he contradicts himself by claiming that one of his goals was to avoid minority voting dilution.

[5] The transcript reports 47.7 percent, but the correct percentage is 40.7 percent. *See* William Cooper, Select Socio-Economic Data, Ouachita Parish, June 20, 2021, p. 21, *http://www.fairdata2000.com/ACS_2015_19/Louisiana/22_Ouachita%20Parish,%20Louisiana_ACS_Black_and_Latino_5YR.pdf.*

5/9 Tr. 154:15–23. And he did not deny that race was an important factor that he considered. 5/9 Tr. 156:8–15.

138. Mr. Cooper also admitted that he was aware of the racial breakdown of VTDs and used that data in drawing his maps. 5/9 Tr. 155:15–156:15.

139. Though Mr. Cooper claimed to have considered the stated legislative goals in preparing his illustrative maps, he apparently chose not to follow those stated goals, making his illustrative maps an unhelpful comparator and calling into question whether those maps could have passed through the Louisiana legislature. 5/7 Tr. 157:19–158:18. For example, Mr. Cooper drew Vernon Parish, home of Fort Polk, and Shreveport, home of Barksdale Air Force Base, into different districts in his illustrative plans even though they were joined in the enacted plan. 5/9 Tr. 157:25–158:18.

140. Furthermore, while Mr. Cooper claimed to have focused on preserving communities of interest, he only focused on certain "core-based statistical areas," rather than on various other communities of interest that may have motivated the districts in the enacted plan. 5/9 Tr. 157:16–157:6; 158:19–22. And moreover, Mr. Cooper admitted there was no "universal definition of community of interest" in this field. 5/9 Tr. 158:19–22.

H. Mr. Anthony Fairfax

141. Plaintiffs asked Mr. Fairfax to analyze whether he could draw an illustrative congressional plan that satisfied the first *Gingles* precondition. 5/9 Tr. 206:14–207:22.

142. Mr. Fairfax did not address the other two *Gingles* factors when drawing his illustrative congressional plans. *Id.* at 207:7–208:4. He did not know if the Black population he placed in his two majority-Black congressional districts would elect a Black candidate of choice. *Id.* He did not study whether the Black population he placed into his second majority district was

subject to or engaged in legally significant racially polarized voting. *Id.* Mr. Fairfax did not know how the Black population in his illustrative districts would vote in a real election. *Id.*

143. Before drawing the illustrative plans, Mr. Fairfax turned on the dataview function of the mapdrawing software Maptitude and viewed the BVAP of each precinct in order to "get an idea where the Black population is inside the state in order to begin drawing." *Id.* at 209:2–10. Initially viewing the BVAP allowed Mr. Fairfax to determine where a second majority-Black district "could exist." *Id.* at 210:3–8.

144. Though Mr. Fairfax claimed that race did not predominate in his drawing, he did not turn off the BVAP function when drawing his illustrative congressional plans. *Id.* at 210:16–211:9. In fact, Mr. Fairfax testified that he would look at the BVAP to see if he was approaching 50 percent BVAP. *Id.* at 211:22–212:18.

145. Mr. Fairfax admitted that he used 50 percent BVAP as a "threshold" to comply with *Gingles*, *id.* at 208:2–4, and that he purposefully drew CD2 and CD5 above 50 percent BVAP for that reason. *Id.* at 206:25-207:4; *see also id.* at 206:18–22.

146. As to District 5, Mr. Fairfax started in the northern delta region of the existing plan and added population in order to get to 50 percent BVAP, but at one point he reached 60 percent BVAP and decreased the BVAP down to closer to 50 percent. *Id.* at 212:19–215:15. Thus, the AP BVAP in District 5 of his illustrative plan was 52.05 percent, and the DOJ BVAP was 50.96 percent. *Id.* at 215:24–216:19. The DOJ BVAP for District 2 in his illustrative plan was 50.02 percent. *Id.* at 216:14–17. Though the BVAP could have been higher, Mr. Fairfax drew District 5 closer to 50 percent in order to satisfy the first *Gingles* precondition. *Id.* at 216:20–217:23.

147. In both of Mr. Fairfax's illustrative plans, District 5 was his second majority-Black district. *Id.* at 218:4–6. Both illustrative plans also include some or all of the northern delta

parishes in District 5. *Id.* at 217:24–218:3. Mr. Fairfax admitted that East Baton Rouge and West Baton Rouge Parishes are not part of the northern delta region, which Mr. Fairfax characterized as a unique community of interest. *Id.* at 219:3–21.

148. Mr. Fairfax combined East Baton Rouge, which he characterized as having a significant Black population, with the northern delta region in his District 5. *Id.* at 219:22–220:22. When asked if he needed to include East Baton Rouge in his District 5 in order to reach a 50 percent BVAP district, Mr. Fairfax admitted it would be very difficult for him to draw a majority Black district without using East Baton Rouge as it is "the second largest metropolitan area in the state, [and] has a significant amount of Black population. It's understandable that that's going to have to be part of that second Black district." *Id.* Mr. Fairfax could not recall attempting to draw any plans that did not include East Baton Rouge. *Id.* at 220:23–221:6.

149. Mr. Fairfax testified that to his understanding, compactness legally relates to geography, not population and geography. *Id.* at 224:17–22. But he agreed he only used mathematical tests to measure compactness of district lines, not tests that would examine population dispersion. *Id.* at 222:25–223:18.

150. Figure 5 in Mr. Fairfax's first supplemental report overlays his illustrative congressional districts with populations that have no high school education. *See* PR-86 at p 13. The darker the shading, the more concentrated number of people with no high school education. 5/9 Tr. at 225:16–227:2. Mr. Fairfax admitted that the northern delta region is heavily shaded in Figure 5, while East Baton Rouge and West Baton Rouge are not heavily shaded. *Id.* at 227:3–13, 228:8–15.

151. Figure 6 of Mr. Fairfax's first supplemental report overlays his illustrative congressional districts with median household income data. *See* PR-86 at p 15. The darker the

shading, the lower the income. 5/9 Tr. at 229:11–21. Mr. Fairfax admitted that the northern delta region is heavily shaded in Figure 6, while East Baton Rouge and West Baton Rouge are not heavily shaded. *Id.* at 229:22–230:11.

152. The Figure on page 16[6] in Mr. Fairfax's first supplemental report overlays his illustrative congressional districts with socioeconomic risk factors. *See* PR-86 at p 16. The darker the shading, the higher the socioeconomic risk. 5/9 Tr. at 232:1–6. Mr. Fairfax admitted that the northern delta region is heavily shaded in the Figure on page 16, while East Baton Rouge and West Baton Rouge are not heavily shaded. 5/9 Tr. 232:7–233:1. Despite this, Mr. Fairfax admitted he included all of West Baton Rouge in his District 5. *Id.* at 233:2–7.

I. Dr. Maxwell Palmer

153. Dr. Maxwell Palmer ("Dr. Palmer") was tendered as an expert in racially polarized voting data analysis. 5/9 Tr. 305:11–15.

154. Dr. Palmer testified that he did not perform a regional specific analysis of racially polarized voting in the state of Louisiana. 5/9 Tr. 336:3–337:2.

155. Dr. Palmer admitted that there can be meaningful white crossover voting, even when there is strong evidence of racially polarized voting. 5/9 Tr. 337:3–8.

156. Dr. Palmer only looked at racially polarized voting at the Congressional district level. 5/9 Tr. 337:18–19.

157. Dr. Palmer inaccurately noted in his report that he examined statewide and Congressional elections in Louisiana from 2012 to 2020. 5/9 Tr. 337:20–25.

158. Dr. Palmer did not analyze any actual Congressional elections in Louisiana when performing a racially polarized voting analysis on Congressional districts. 5/9 Tr. 338:10–15. He

[6] Mr. Fairfax's first supplemental report contains two Figure 6s, one on page 15 and another on page 16. For clarity, we refer to the first as "Figure 6" and the later as "the Figure on page 16." *See* PR-86.

also admitted that he did not provide the voter turnout data that he is relying on in his report. 5/9 Tr. 339:9–11.

159. The average candidate of choice for Black voters garnered 20.8 percent of the vote from white voters, 5/9 Tr. 339:18–22, with even higher levels of support for Black-preferred candidates in Congressional District 2 ("CD 2"). 5/9 Tr. 340:17–22.

160. On average, one fifth of white voters in Louisiana vote for the Black-preferred candidate. 5/9 Tr. 340:23–341:1.

161. Dr. Palmer's report demonstrated that voters in Congressional District 5 ("CD 5") vote for Black-preferred candidates. 5/9 Tr. 341:3–6.

162. Galmon Illustrative Plan 1 demonstrated winning vote percentages for Black-preferred candidates in CD 2 and CD 5 between 50.9 percent and 79.1 percent. 5/9 Tr. 343:22–344:7. The any part Black voting age population (referred to as "BVAP" in Dr. Palmer's report) for CD 5 in Galmon Illustrative Plan 1 was 50.04 percent. 5/9 Tr. 345:11–13. Dr. Palmer could not testify to what amount of the winning vote percentage in CD 5 could be attributed to white crossover voting. 5/9 Tr. 346:14–17.

163. Dr. Palmer agreed that CD 2 and CD 5 could likely be drawn at below 50 percent BVAP and still elect Black-preferred candidates. 5/9 Tr. 346:18–21.

164. Dr. Palmer admitted that the methodology and package Dr. Blunt used is a commonly used, reliable method utilized by scholars and testifying experts to simulate redistricting plans. Indeed, Dr. Palmer admitted that the package Dr. Blunt used is reliable and that Dr. Palmer has used the package in his own academic research. 5/9 Tr. 346:22–347:13.

J. Dr. Lisa Handley

165. Dr. Lisa Handley is a consultant and a part-time academic in the United Kingdom. 5/10 Tr. 11:1–11:5. Dr. Handley has been hired "scores" of times to conduct racial block voting

analysis as an expert witness and to testify about redistricting and racially polarized voting. 5/10 Tr. 12:1–12:12. Dr. Handley has worked with the ACLU in other states, but began discussing Louisiana with the ACLU within the past year. 5/10 Tr. 41:15–41:23.

166. Dr. Handley estimated that she did polarization studies on the statewide elections before the initial plan was written. 5/10 Tr. 46:7–46:19. Dr. Handley did not provide any of her theories or calculations to the Louisiana legislature while it was preparing its congressional plans. 5/10 Tr. 44:24–45:9.

167. Dr. Handley was asked by Plaintiffs to analyze the voting patterns by race in the State of Louisiana and to evaluate the opportunity for Black voters to elect their candidates of choice. 5/10 Tr. 12:13–12:20. This work included evaluating the enacted plan, as well as "several illustrative plans." 5/10 Tr. 12:15–12:20.

168. Dr. Handley bases her definition of "racially polarized voting" on the Supreme Court's opinion in *Thornburg v. Gingles*, and contends that "if Black voters voting alone elected different candidates than white voters, then the contest is racially polarized." 5/10 Tr. 13:9–13:16. Dr. Handley also relied on *Gingles* in her report stating that "an analysis of voting patterns by race serves as the foundation of two of the three elements of the 'results test' as outlined in *Thornburg v. Gingles*." PR-12 at 4. Dr. Handley further stated in her report that "a racial block voting analysis is needed to determine whether the minority group is politically cohesive; and the analysis is required to determine whether if whites are voting sufficiently as a bloc to usually defeat the candidates preferred by the Black voters." *Id*.

169. Dr. Handley testified that she was asked by Plaintiffs "to conduct an analysis of the voting patterns by race in Louisiana and to evaluate proposed districts that is in the enacted plan and several illustrative plans to ascertain the opportunity for Black voters to elect candidates of

choice." 5/10 Tr. 12:13–12:20. Dr. Handley used three statistical techniques in her analysis: homogeneous precinct analysis, ecological regression, and ecological inference. 5/10 Tr. 13:17–13:24. The ecological inference technique was developed after Supreme Court's opinion in *Thornburg v. Gingles*. 5/10 Tr. 14:17–14:25.

170. Dr. Handley analyzed 15 statewide elections, which she selected because they were recent elections from 2015 on and because the contests included Black candidates. 5/10 Tr. 15:24–16:8. Dr. Handley claims that all 15 contests were polarized because Black voters and white voters would have elected different candidates if they voted separately. 5/10 Tr. 20:22–21:4. Dr. Handley testified that she relied upon a simple definition of polarization that she claims is based on *Thornburg v. Gingles,* namely that "*Thornburg v. Gingles* tells us that voting is polarized in [sic] Black voters and white voters vote differently. In other words, if Black voters voting alone elect different candidates than white voters, then the contest is racially polarized." 5/10 Tr. 13:9–13:16.

171. With respect to congressional elections, Dr. Handley concluded that the elections in Districts 3, 4, 5, and 6 were all polarized, whereas most of the elections in District 2 were not polarized. 5/10 Tr. 24:8–24:14.

172. Dr. Handley acknowledged that not all congressional elections are racially polarized. 5/10 Tr. 47:21–48:3.

173. Dr. Handley agrees that "substantively significant racial polarization" means that minority and white voters are voting for different candidates. 5/10 Tr. 52:24–53:3.

174. Dr. Handley acknowledged that there may be "pockets" of Louisiana where the crossover vote is higher than the average. 5/10 Tr. 56:24–57:3. However, Dr. Handley did not conduct a parish-by-parish study of polarization rates. 5/10 Tr. 57:4–57:7.

175. Dr. Handley determined the "Black voting age population" by counting all persons who checked that they were any part Black or African-American on their census form. This resulted in a higher Black percentage in the districts that she reviewed than if she had used a single race Black measurement. 5/10 Tr. 58:2–58:15.

176. Dr. Handley did not conduct a polarization study of all congressional districts in the plan that was enacted in 2022. 5/10 Tr. 59:9–59:17 (noting that Handley did not evaluate Congressional District 1). Similarly, Dr. Handley did not prepare a polarization analysis for the illustrative plans prepared by Plaintiffs' expert, Anthony Fairfax. 5/10 Tr. 59:22–60:12. Rather, Dr. Handley generally testified that "because voting is racially polarized Black voters can only elect their candidates of choice if the district is drawn that gives them this opportunity." 5/10 Tr. 34:12–34:21.

177. The definition of polarized voting used by Dr. Handley in her report mirrors the Supreme Court's explanation for racial polarization that is legally significant. *See* PR-12 at 4 ("racial bloc voting analysis is required to determine if whites are voting sufficiently as a block to usually defeat the candidate preferred by minority voters").

178. In contrast, during her testimony, Dr. Handley defined polarized voting in a manner that mirrors the Supreme Court's definition of legally *insufficient* polarized voting. ("*Thornburg v Gingles* tells us that voting is polarized in [sic] Black voters and white voters vote differently…"). 5/10 Tr. 13:9-13:16.

179. Dr. Handley's report and her trial testimony demonstrate that she understands and is familiar with the two definitions given by the Supreme Court in *Gingles* for polarized voting versus legally significant polarized voting.

180. In light of the two different definitions for racially polarized voting used by Dr. Handley, it is significant that she failed to claim that she was not hired to determine whether a majority Black district was needed for Blacks to have an opportunity to elect their candidates of choice.

181. Nor did Dr. Handley testify that a district must be drawn with a Black voting age population in excess of 50 percent to provide Black voters anywhere in Louisiana with an opportunity to elect their preferred candidates.

182. Dr. Handley recognized that there are districts where Black voters are able to elect their candidate of choice even if they are not the majority, and that this involved white voters crossing over to help elect the Black candidate of choice. 5/10 Tr. 62:3–62:13.

183. Dr. Handley acknowledged that an effective district could be a district that has less than a 50 percent voting age population, meaning that the district could still provide the Black community an opportunity to elect their candidate of choice. 5/10 Tr. 63:1–63:12.

184. Dr. Handley has conducted functional analyses in other cases to determine whether a district could provide African-Americans with the opportunity to elect their candidate of choice with a Black population percent that is below 50 percent; however, she did not conduct a functional analysis in this case. 5/10 Tr. 63:13–63:22. Similarly, Dr. Handley did not conduct a study to determine whether a district with a Black percent that is below 50 percent would provide an equal opportunity to elect a Black candidate. 5/10 Tr. 65:12–65:16.

185. Although Dr. Handley did not include Governor Edwards' election in 2015 and 2019 in her report, she acknowledged that Governor Edwards was the preferred candidate of choice for the Black community. 5/10 Tr. 66:12–66:21.

186. Dr. Handley agreed that it is better to use more highly visible political races to calculate racially polarized voting. 5/10 Tr. 68:16–68:21. Despite this, she relied on the 2018 Special Election for Secretary of State, where voter turnout was a quarter of that in a presidential election. PR-12 at 6; 5/11 Tr. 189:12–19.

187. Dr. Handley contends that all elections under the enacted plan were polarized for all districts, including District 2. 5/10 Tr. 74:7–74:13.

K. Dr. Traci Burch

188. Dr. Traci Burch "was asked to evaluate the set of factors relevant to this case in Louisiana, particularly Senate factors five, six, seven, eight and nine." 5/10 Tr. 106:11–16. Dr. Burch's analysis of these factors is flawed, as she cherry-picks anecdotes that support her ultimate conclusions, while ignoring facts that countermand those opinions.

189. In her analysis of Senate Factor 6, examining the extent to which racial appeals are used in campaigns, Dr. Burch identified only three examples of use of racial appeals in Louisiana in the past 30 years, none of which are probative to courts examining this issue. 5/10 Tr. 121:9–21; 135:15–136:10.

190. First, she identified an exchange between gubernatorial candidates Edwards and Rispone in 2019 with each trading accusations that the other was racist. 5/10 Tr. 135:10–136:7); PR-14 at 24.

191. Second, she identified a political advertisement by the Louisiana GOP in 2019 related to the Edwards-Rispone exchange and arguing that Edwards was racist. *Id.* Dr. Burch testified that Rispone lost the gubernatorial contest with now-Governor Edwards. 5/10 Tr. 137:11–13.

192. Third, Dr. Burch identified a Facebook post by a State Senator about immigration policy and questioning whether the Democratic Party represents the interests of Black voters. 5/10

Tr. 135:15–136:7; PR-14 at 24-25. Dr. Burch conceded at the hearing that this "was probably more general, but it probably referred in general to support of Black people for Democratic parties." 5/10 Tr. 136:19–137:10.

193. Plaintiffs' own witness Ashley Shelton, the founder, president and CEO of Plaintiff Power Coalition for Equity & Justice, echoed the same sentiment that she did not think the Black community was represented well by the Democratic Party. 5/10 Tr. 256:16–257:5.

194. Dr. Burch's analysis of Factor 9—whether the policy underlying the enacted plan was tenuous, or whether there was a "proper justification," as Dr. Burch phrased it—was exposed as tenuous itself in her testimony. 5/10 Tr. 126:3–6. Dr. Burch did not take a position as to whether the rationale offered by the legislature in adopting the enacted plan was tenuous. 5/10 Tr. 138:18–19. Dr. Burch claims to have reviewed the legislative record to support her conclusion that the justifications offered by the legislature lacked "empirical support." 5/10 Tr. 139:4–14. Despite admitting that a proper review of the legislative record would avoid cherry picking from the record and ignoring legislative priorities that were stated repeatedly, that is exactly what Dr. Burch did. 5/10 Tr. 139:20–140:2.

195. Dr. Burch testified that the enacted plan being a continuity of representation plan "actually started to enter the record at the end" of the legislative process. 5/10 Tr. 140:12–142:16; 143:8–20. However, Dr. Burch either ignored, cherry-picked, or completely missed the statements in the legislative record that were consistently made from the outset of the legislative session that identified the goal of the legislature to achieve continuity of representation in the enacted plan. 5/10 Tr. 144:8–148:15.

196. Dr. Burch conceded at the hearing that she never examined whether the Legislature's policy of drawing a least change "continuity of representation" map was tenuous.

5/10 Tr. 149:21–150:17 ("of course, the boundaries had to change a little bit, but as far as whether they got as close as possible to the old boundaries, no, I didn't look at that."); 5/10 Tr. 151:5–10 ("Q: I understand from your testimony just now that you did no examination of continuity of the representation in your report, correct?" "A: Right. That's not those figures aren't in the record.").

197. In addition to not studying whether so-called tenuousness was due to the Legislature's goal of drawing a continuity of representation plan, Dr. Burch also conducted no examination of whether so-called tenuousness was due to political as opposed to racial choices. 5/10 Tr. 152:8–153:2.

198. Dr. Burch also provided a rebuttal report in which she "was asked to examine the relationship between race [and] partisanship," 5/ 10 Tr. 129:2–5, and she concluded that there was a "link between race, racial attitudes and partisanship," 5/10 Tr. 129:17–19.

199. Dr. Burch has written that voters in a racial or ethnic group cannot be assumed to share policy preferences but she did not examine whether Black voters in rural Louisiana would vote the same way as Black voters in urban Baton Rouge, 5/10 Tr. 134:6–16, and nor does her report examine white crossover voting, i.e., white voters voting for the candidates of choice of Black voters, 5/10 Tr. 134:11–23.

L. Dr. Blakeslee Gilpin

200. Dr. Gilpin testified that while he is aware of Louisiana's effort to draw a second majority minority congressional district after the 1990 census in order to comply with the Voting Rights Act, and that such district was struck down as racially gerrymandered by the courts, he did not include the related *Hays* line of cases in his report even though they would have fallen "perfectly" under his section titled Voting Rights in Louisiana 1982 to 2013. 5/10 Tr. 234:9–235:12; 235:25–236:5.

M. Dr. Allan Lichtman

201. Dr. Allan Lichtman ("Dr. Lichtman") was offered as an expert witness by the Galmon Plaintiffs in the fields of American politics, American political history, voting rights, and qualitative and quantitative social sciences. 5/10 Tr. 156:22–157:15. Dr. Lichtman's principal areas of research include American politics, American political history, voting rights, quantitative methods, qualitative methods, and political prediction. 5/10 Tr. 161:1–6.

202. Dr. Lichtman was asked by Plaintiffs to examine the nine Senate factors that relate to the *Gingles* totality of the circumstances analysis. 5/10 Tr. 162:14–23.

203. Dr. Lichtman served as an expert witness in the 1990 *Hays* case on behalf of the then defendant state of Louisiana 5/10 Tr. 201:19–202:3. The state of Louisiana had a seven Congressional district plans with two majority-Black districts for a brief period in the early 1990s, but the plans were invalidated as racial gerrymanders in violation of the Equal Protection Clause. In Hays, the Court did not credit Dr. Lichtman's testimony in support of the seven Congressional District plans with two majority-Black districts. 5/10 Tr. 208:7–15. Finding his testimony based on "spurious correlations." *Hays v. State of La.*, 839 F. Supp. 1188, 1203 n.48 (W.D. La. 1993).

204. Dr. Lichtman included in his report evidence of white crossover voting greater than 25 percent in favor of Black-preferred candidates. 5/10 Tr. 197:23–198:3. In fact, Dr. Lichtman testified to the presence of white crossover voting ranging from 20 percent to 26 percent in the three elections analyzed. 5/10 Tr. 198:14–18.

205. Dr. Lichtman testified that he presented data in his report showing differentials between Black and white turn-out in recent elections in Louisiana that can extend into double digits. 5/10 Tr. 176:22–177:8.

206. Dr. Lichtman testified that a Black candidate of choice can win in a district as low as "in the 40 percent range." 5/10 Tr. 198:22–25. He also testified that in his "North Carolina

testimony in the Covington case" the court accepted his analysis that African American candidates could win in the 40 percent range minority population. 5/10 Tr. 200:5–10. He also testified that he would not rule out that a state could create two districts with about forty-five (45) percent in African American in their voting age population given that there's going to be Hispanics and others in that district who do tend to vote Democrat. 5/10 Tr. 200:11–16. Dr. Lichtman testified that this would all depend on the district specific analysis. 5/10 Tr. 200:16–20.

207. Dr. Lichtman testified that: "Whites win in the white majority districts in the state house of representatives and in the state senate. I even drilled down for more fine grain level, the level of mayoral elections; that is, I looked at mayoral elections in municipalities and wards in Louisiana and no Blacks are elected in any majority white municipality, only Blacks are elected in majority Black municipalities and there are no Black Republicans." 5/10 Tr. 169:25–170:9. However, Dr. Lichtman later stated that he did not know whether or not the mayor of East Baton Rouge is Black. 5/10 Tr. 214:25–215:3. He testified that in his analysis, he did not determine whether or not a parish had a majority Black population but instead analyzed cities and whether it had a majority Black population. 5/10 Tr. 216:11–14.

208. Dr. Lichtman testified that he did not examine any plans presented by Plaintiffs. 5/10 Tr. 205:13–14. He was also unable to opine as to whether or not the Black population has become more compact or geographically concentrated since 1990 because he did not analyze the plans. 5/10 Tr. 210:6–15.

209. Dr. Lichtman also testified that he did not look into the issue of dispersion of the Black population in the State of Louisiana. 5/10 Tr. 210:20–23.

210. Additionally, Dr. Lichtman testified that it was beyond his scope of his expertise to opine in any way whether Louisiana is different than many other states in the sense that it has large

urban Black populations in a couple locations but very dispersed rural Black populations in virtually every parish in the state. 5/10 Tr. 212:10–20. He also could not testify as to how many Black elected officials there are in the state of Louisiana, 5/10 Tr. 212:21–23 but did acknowledge that the Black candidate of choice did win the last two gubernatorial races. 5/10 Tr. 213:17–25.

VII. DEFENDANTS' WITNESSES

A. Ms. Sherri Hadskey

211. Sherri Hadskey is the current Louisiana Secretary of State's Commissioner of Elections. 5/13 Tr. 29:13–29:21; SOS_1 p 1. In this role, Ms. Hadskey oversees several aspects of election operations and the administration of elections for the State. 5/13 Tr. 29:22–30:17; SOS_1 pp 1-2. Her duties also include implementation and administration of new districting plans at the state and federal level. 5/13 Tr. 31:1–4.

212. Ms. Hadskey testified to her office's readiness to conduct the 2022 congressional election under the Enacted Plan. Substantial administrative work has already been completed on administration of the Enacted Plan. *Id.* at 31:5–15. In order to implement a new congressional plan Ms. Hadskey's office has to reassign voters who are in new congressional districts to their new districts in the Enacted Plan. This required her office to reassign voters in no less than fifteen Louisiana parishes. All of these parish changes have now been properly coded in the Secretary of State's ERIN system. Moreover, approximately 250,000 voting cards have been sent to voters whose parishes changed districts following reapportionment. *Id.*; *see also* SOS_1 at p 4. Those voters have been notified of the specific congressional district in which they will be voting this year. *See id.*

213. Additionally, Ms. Hadskey testified to the importance of an upcoming June 22, 2022 deadline for potential congressional candidates. By June 22, all congressional candidates who wish to qualify for the ballot by nominating petition must submit nominating petitions with a

thousand signatures from voters in their congressional district. 5/13 Tr. at 31:16–32:15; 55:4–7. In order to meet the June 22 deadline, Ms. Hadskey's office must notify voters (and potential candidates) of which districts they live in—which has already been done under the Enacted Plan. *Id.* at 32:2–15. Candidates and voters need adequate notice of these districts to ensure they have enough time to decide whether to attempt to qualify by petition or, in the case of voters, who to support. *See id.*

214. If congressional candidates do not meet the June 22 qualification deadline, the candidates will have to pay a filing fee and qualify by between July 20–22, 2022. *Id.* at 32:16–20. Between now and July 20, Ms. Hadskey's office must complete several tasks to ensure timely and accurate administration of the 2022 election in Louisiana for all offices. *Id.* at 32:21–36:5. These activities include, *inter alia*: (1) implementing complicated school board and municipal redistricting plans; (2) conducting a June 4 special election in Calcasieu Parish due to a redistricting error; (3) conducting yearly maintenance on scanners and voting equipment; (4) processing an estimated 800 legislative acts when the latest session ends; and (5) completing a statewide voter registration canvas to maintain the voter rolls.[7] *Id.*; *see* SOS_1 pp 4–5. None of these tasks is straightforward and all are under limited time constraints.

215. For example, school board and municipal redistricting requires coding of the new districts into the ERIN system and distribution of voter cards notifying voters of their school board and municipal districts. *Id.* at 33:1–7; 35:11–15.

216. Additionally, the voter canvas starting on May 23, 2022, requires comparing USPS addresses to NOCCA to determine whether a voter's address or registered name has changed. If

[7] Ms. Hadskey also testified to the nationwide ballot paper shortages and issues with timely printing of Louisiana's unique ballot envelopes. *See, e.g.*, 5/13 Tr. 39:19-40:11, 49:10-50:5; SOS_1 p 6. The paper shortages could also interfere with the printing of voter notification cards and other required items, such as the poll book pages, required by state and federal law. 5/13 Tr. 50:14-51:24.

there is a change, the voter must be sent a card with instructions to update their information. *Id.* at 34:18–35:10.

217. In sum, between now and July 20, 2022, some voters could receive three to four notices of changed districts for different election contests. *Id.* at 36:1–5.

218. Ms. Hadskey also testified to the election administration hurdles of implementing a wholly new congressional plan that could result from litigation. COVID-19 and census data delays have already strained election administration resources. SOS_1 at p 5. Specifically, if Ms. Hadskey's office were forced to implement one of Plaintiffs' illustrative plans, at a minimum the following tasks would need to be completed by July 20 at the latest: (1) undoing the coding of the fifteen parishes already completed for the Enacted plan; (2) coding the approximately twenty-five parish changes under an illustrative plan, and (3) timely notifying voters and potential candidates of those changes. 5/13 Tr. 36:6–38:2. At each stage, Ms. Hadskey testified that the process would rushed which gives her a significant concern that voters' information could be coded incorrectly, leading to incorrect information on ballots used in the election. *Id.* at 37:14–38:2.

219. Further complications arise if an illustrative map splits precincts, as the registrar of voters for each parish is responsible for moving voters in split precincts by hand. *Id.* at 38:3–12. For example, in Calcasieu Parish, late census information caused a rushed entry of voter information and led to entry of incorrect voter information, ultimately resulting in the issuance of incorrect ballots. *Id.* at 38:3–21. As a result, a judge required state and local officials to hold a special municipal election in Calcasieu Parish to remedy the issue. *Id.*; SOS_1 at pp 5–6.

220. Ms. Hadskey expressed great concern that the issues Calcasieu Parish experienced will arise again, but on a larger scale, if a new congressional plan is implemented by the Court in

June or July—especially considering the fact that there are nineteen (19) new registrars across the state who have not handled decennial redistricting before. 5/13 Tr. at 38:22–39:4.

221. In sum, Ms. Hadskey had great concern as to whether her office could administer an error-free election on a new congressional plan within the next few months:

> I'm extremely concerned. I'm very concerned because when you push – when you push people to try a and get something done quickly and especially people that have not done this process before, the worst thing you can hear from a voter is I'm -- I'm looking at my ballot and I don't think it's right, I think I'm in the wrong district or I don't feel like I have the right races.
>
> The other thing is notifying the voters. I think we all can relate to we know who our person is that we voted for for Congress or for a school board or any race; and when you get there and you realize it's not the person you are looking for, you're thinking that's who you are going to vote for and then you find out, wait, I'm in a different district. If we don't notify them in enough time and have that corrected, it causes confusion across the board, not just confusion for the voters, but also confusion for the elections administrators trying to go back and check and double check that what they have is Correct

Id. at 40:12–41:15; SOS_1 pp 4–6. In the entirety of Ms. Hadskey's thirty-year career in Louisiana election administration, she has never moved a federal election. 5/13 Tr. 56:24–57:12.

B. Dr. Jeffrey B. Lewis

222. Dr. Jeffrey B. Lewis ("Dr. Lewis") is a professor of political science at the University of California, Los Angeles ("UCLA") and past department chair of UCLA's political science department. 5/12 Tr. 168:18–169:6.

223. Dr. Lewis earned a B.A. in Political Science and Economics from Wesleyan University in 1990 and a Ph.D. in Political Science from the Massachusetts Institute of Technology ("MIT") in 1998. 5/12 Tr. 168:21–169:1.

224. Dr. Lewis's specialty is quantitative political methodology with a focus on making inferences about preferences and behavior from the analysis of voting patterns in the mass public

and in legislatures. He has been offered in this case, without objection, as an expert in political science, census data analysis, statistics, and racially polarized voting analyses. 5/12 Tr. 167:9–15.

225. Dr. Lewis has been retained as an expert in roughly a dozen cases. 5/12 Tr. 169:7–10.

226. No court has ever found Dr. Lewis unqualified to testify about racially polarized voting or to lack credibility as a witness. 5/12 Tr. 163:9–15.

227. A copy of Dr. Lewis's complete CV is contained in his report. 5/12 Tr. 168:14–17.

228. In this case, Dr. Lewis was asked to calculate the fraction of voters in the November 3, 2020, presidential election who identified as Black in the second and fifth districts of the Louisiana Congressional district plans proposed by Plaintiffs. He was also asked to estimate the support of Black and non-Black voters for the Biden-Harris ticket in the same election among voters residing in each of those illustrative districts. Finally, Dr. Lewis was asked to calculate the support for Biden-Harris among all voters residing in each illustrative district and the support that Biden-Harris would have received in those same districts in the absence of non-Black "crossover" voting. 5/12 Tr. 170:3–15. Dr. Lewis used plaintiffs' expert, Dr. Palmer's, data to conduct his analysis. 5/12 Tr. 173:10–14.

229. Dr. Lewis's calculations show that Black voters would rely on white crossover voting in Plaintiffs' illustrative CD 2 and CD 5 plans to have an opportunity to elect their candidates of choice. 5/12 Tr. 177:6–14. More specifically, Black voters relied on white crossover voting to elect candidates of choice in Plaintiffs' illustrative plans in seven of eight races. 5/12 Tr. 177:6–14. Dr. Lewis found that the majority-Black districts drawn by Plaintiffs' experts would still need to rely on white crossover voting to reach a majority vote for Black candidates of choice in all but one case. 5/12 Tr. 178:9–13.

230. Dr. Lewis evaluated whether CD 2 and CD 5 required 50 percent BVAP or greater to afford Black voters an opportunity to elect their candidate of choice and came to a conclusion consistent with Plaintiffs' experts' views that the districts could be effective at less than 50 percent BVAP. 5/12 Tr. 179:7–179:18; LEG_2 p. 6-7 ("the analysis suggests that Biden/Harris would have received over 50 percent of the vote in each of the illustrative districts considered even if the BVAP in those districts was reduced to as low as 30 percent in the second district or as low as 48 percent in the fifth district.").

C. Dr. Christopher Blunt

231. Dr. Christopher C. Blunt ("Dr. Blunt") is a professional political scientist who earned a Ph.D. in Political Science from the University of California at Los Angeles with emphases in American government, campaigns, and voting behavior. 5/12 16:13–17. He is the owner and president of Overbrook Research, a public opinion and consulting practice that he has operated since 2003. 5/12 Tr. 17:17–22.

232. Dr. Blunt's work at Overbrook Research focuses on campaign turnout modelling, public opinion studies for political campaigns or corporate communications purposes. He frequently studies voting behavior as part of his work and has conducted data analysis for campaigns for President, Senate, and other offices across the country. 5/12 Tr. 17:23–19:4.

233. Dr. Blunt is an expert in the field of political science with an emphasis in quantitative political science and data analysis. 5/12 Tr. 12:18–23.

234. Dr. Blunt prepared two reports in this case. 5/12 Tr. 14:11–13.

235. Dr. Blunt has studied and maintained familiarity with quantitative political analysis, to include the redistricting literature, since the early 1990s. 5/12 Tr. 19:20–20:22.

236. The background and expertise of Dr. Blunt includes the political science literature on the use of simulation methods for the purposes of studying redistricting, an accepted

methodology that has been accepted by courts in redistricting cases in multiple states. 5/12 Tr. 21:17–24. Dr. Blunt frequently works with census data when conducting his work. 5/12 Tr. 23:25–24:1.

237. In this case, Dr. Blunt was asked "to analyze and determine whether a race blind redistricting process following the traditional redistricting criteria would or would not be likely to produce a plan with two majority-minority districts." 5/12 Tr. 25:8–12. Dr. Blunt generated a set of 10,000 possible Louisiana Congressional districting plans that adhere to traditional redistricting criteria to conduct his analysis. 5/12 Tr. 25:24–26:4. To conduct the simulations, he used the REDIST software package, a program developed by a team at Harvard University. 5/12 Tr. 26:7–16. It is the most common and popular program, widely used by researchers and it frequently appears in literature. 5/12 Tr. 26:8–15.

238. The criteria that Dr. Blunt required the simulated maps to follow was contiguity, respecting parish boundaries, maintaining population equality (within 0.25 percent of ideal), and compactness. 5/12 Tr. 28:20–29:2. The simulations did not consider race, partisanship, or prior district boundaries. 5/12 Tr. 29:3–6. Plaintiffs' experts Mr. Cooper and Mr. Fairfax asserted that they followed those same criteria, but also asserted that they followed communities of interest. 5/12 Tr. 29:10–18.

239. Dr. Blunt did not implement an explicit constraint in his simulations for "communities of interest." He testified that to his knowledge, there is not a "generally accepted definition of a community of interest in political science," 5/12 Tr. 30:3–7, and that Messrs. Cooper and Fairfax used *different* definitions in their work. 5/12 Tr. 30:10–17. Hence, there was no reliable way to control for "communities of interest," and from a methodological perspective, Dr. Blunt was "hesitant to include something like a community of interest that doesn't have a firm, legal

definition the same way that, say, a parish would, … because … a community of interest … could have served as a – proxy for race." 5/12 Tr. 31:21–32:7. If his goal was to study the role of race in development of the plan, he did not want to "bake [a potential proxy for race] into the models if it had been, you know, baked in somehow by the way they had drawn the maps." 5/12 Tr. 32:4–7. However, because his simulated plans split very few parish boundaries, his plans did preserve communities of interest "to some extent" because communities of interest contained entirely within a parish would only infrequently be divided. 5/12 Tr. 29:19–25.

240. Dr. Blunt calculated BVAP for each of the six districts in each of the 10,000 simulated plans. 5/12 Tr. 34:16–23. In his analysis, Dr. Blunt used "Any Part Black" as his BVAP definition to match the definition used by Plaintiffs. 5/12 Tr. 25:17–20.

241. None of the 10,000 simulated plans contained *even one* majority-minority districts, let alone the *two* that appear in all of Messrs. Cooper and Fairfax's illustrative plans. 5/12 Tr. 35:25–36:6. In fact, of the 60,000 district Dr. Blunt simulated (each plan contains six districts), the highest BVAP district Dr. Blunt encountered contained a BVAP of 45.47 percent. 5/12 Tr. 36:7–11. The average, highest BVAP in the 10,000 simulations was 38.56 percent. The district with the second highest BVAP had a BVAP of 42.24 percent which an average just over 36 percent. 5/12 Tr. 36:23–37:12.

242. Only 75 out of the 10,000 simulated plans had two districts with a BVAP above 40 percent. 5/12 Tr. 32:13–21. Only 200 plans out of the 10,000 simulated plans reached 39 percent BVAP in two districts. 5/12 Tr. 37:21–22. Based on these findings, Dr. Blunt concluded that it would be "extremely unlikely" for a Louisiana Congressional redistricting plan to include two majority-minority districts following only the traditional redistricting criteria used by Dr. Blunt, 5/12 Tr. 37:23–38:6. Dr. Blunt further "found that using only these traditional criteria, … a

districting plan would be extremely unlikely to contain two MMDs. So to draw a plan in Louisiana with two such districts would almost certainly require prioritizing racial considerations[s] or some proxy for race…" 5/12 Tr. 42:2 –43:3. The Court credits this conclusion and analysis.

243. Compactness scores on Dr. Blunt's simulated plans were better on average than Plaintiffs' illustrative plans. 5/12 Tr. 38:21–40:2. The simulated plans also split fewer parishes than Plaintiffs' illustrative plans, splitting on average about half of the splits in Mr. Fairfax or Mr. Cooper's plans. 5/12 Tr. 40:17–41:17.

244. In response to Dr. Palmer's criticisms of Dr. Blunt's simulations for "splitting too few parishes", 5/12 Tr. 45:9–22, Dr. Blunt re-ran another set of 10,000 additional simulated maps without the constraint to avoid splitting parishes. 5/12 Tr. 46:9–16. In the second set of simulated maps, Dr. Blunt found that the district with the highest BVAP increased "very slightly" from 45.47 percent to just over 46 percent Black, and there were still no plans with a single majority-minority district. 5/12 Tr. 47:21–48:4. Dr. Blunt concluded that "even with the parish split constraint removed, it did not substantially change the results." 5/12 Tr. 49:9–11. However, it did result in in compactness scores dropping "quite a bit." 5/12 Tr. 49:21–22.

245. Although Dr. Palmer testified that Dr. Blunt's simulations "constrain population deviation too tightly." 5/12 Tr. 50:13–17. However, Dr. Palmer did not express that criticism anywhere in his rebuttal report, and Dr. Blunt testified that he relaxed his population deviation constraint and that, too, did not change his results. 5/12 Tr. 50:19–51:13.

246. While protecting incumbents and preservations of the cores of existing districts are considered traditional redistricting principles, 5/12 Tr. 69:18–70:22, Dr. Blunt did not control for these factors because Mr. Cooper and Mr. Fairfax did not follow those criteria in creating their

illustrative plans, 5/12 Tr. 107:4–13, and in this case, Dr. Blunt was analyzing Plaintiffs' illustrative plans. 5/12 Tr. 109:20–110:2.

D. Dr. M.V. Hood III

247. Dr. M.V. Hood III ("Dr. Hood") is a tenured professor of political science at the University of Georgia, where he has been employed since 1999. 5/12 Tr. 206:21–25, 207:8–10. He also serves as the Director of the School of Public and International Affairs Survey Research Center. 5/12 Tr. 207:3–7.

248. Dr. Hood has three degrees in political science—a Ph.D. from Texas Tech University, a M.A. from Baylor University, and a B.S. from Texas A&M University. 5/12 Tr. 206:16–20.

249. A copy of Dr. Hood's complete CV is contained in his initial report. 5/12 Tr. 205:1–10; LEG_1-10–25.

250. Dr. Hood teaches courses in American politics and policy, including courses in Southern politics that has a heavy dosage of voting rights and redistricting, at both the undergraduate and graduate levels, and has taught courses in election administration at the graduate level. 5/12 Tr. 207:11–24.

251. Dr. Hood has written two books and dozens of peer-reviewed papers and has received research grants to study election administration issues, as reflected in his CV. 5/12 Tr. 207:25–209:1. His current areas of research and publication are within the larger umbrella of American politics and policy—Southern politics and election administration, including redistricting. 5/12 Tr. 207:25–208:8.

252. Dr. Hood currently serves on the editorial boards for *Social Science Quarterly* and *Election Law Journal*, which specializes in election administration. 5/12 Tr. 209:2–8.

253. Dr. Hood regularly uses and analyzes census data in his academic work and in the courses he teaches. 5/12 Tr. 209:9–14.

254. Dr. Hood is an expert in the fields of political science, quantitative political analysis, and election administration. 5/12 Tr. 202:16–203:16. The Court accepted Dr. Hood as an expert in these fields. 5/12 Tr. 202:16–203:16.

255. Dr. Hood has testified as an expert witness in upwards of 25 cases, including in redistricting cases. 5/12 Tr. 209:21–24. Most recently, he was qualified and found to be a credible expert witness by a three-judge panel in a redistricting case in Alabama federal court. 5/12 Tr. 209:25–210:6.

256. Dr. Hood was retained as an expert by Legislative Intervenors in this case and prepared two reports. 5/12 Tr. 205:23–22, 205:8–21.

257. Dr. Hood was retained to examine two in this case—district congruity between the 2011 benchmark plan, the 2022 enacted plan, and plans proposed by Plaintiffs and amicus curiae, using both population and geography-based comparisons, and the district racial composition of those plans. 5/12 Tr205:22–206:15. In his initial report, Dr. Hood analyzed the enacted plan, the Robinson plan, and the Galmon 1, Galmon 2, and Galmon 3 plans. 5/12 216:15–20. In his supplemental report, Dr. Hood analyzed the Robinson 2A plan, the Galmon 4 plan, and the amicus curiae plan proposed by professors from LSU and Tulane. 5/12 216:21–217:2.

258. Dr. Hood's district congruity analysis concluded that the enacted plan is highly congruent with the benchmark plan, while the plans proposed by the plaintiffs are less congruent. 5/12 Tr. 211:16–212:5; LEG_1-6.

259. Dr. Hood used two metrics to perform his district congruity analysis. 5/12 Tr. 211:5–15.

260. First, he used a core retention analysis that measures the percentage of the population in a new district that is carried over from the benchmark district on a scale from 0 to 100. 5/12 Tr. 212:6–11. The higher the percentage, the more representative a district is of its former self—a score of 100 indicates the district wholly contains population from the previous district, and a score of 0 indicates there is no overlap in population between the current and previous districts. 5/12 Tr. 212:11–20; LEG_1-4.

261. The enacted plan has a mean core retention score of 96.4, meaning that it retains more than 96 percent percent of constituents in their same district from the 2011 benchmark plan. *See* 5/12 Tr. 212:21–213:6; LEG_1-4 (Table 1). The enacted plan retains over 89 percent of constituents in CD5, almost 94 percent in CD4, almost 98 percent in CD1, nearly 99 percent in CD2 and CD6, and 100 percent in CD3. LEG_1-4 (Table 1).

262. The mean core retention scores of the plans proposed by Plaintiffs and amicus curiae are significantly lower. *See* 5/12 Tr. 213:7–17; LEG_1-4 (Table 1); *see also* 5/12 Tr. 216:21–217:18; LEG_78-2 (Table 1).

263. The core retention scores were also higher for each district in the enacted plan than in their corresponding district in any of Plaintiffs' or the amicus curiae's plans. 5/12 Tr. 213:18–214:4; LEG_1-4 (Table 1); LEG_78-2 (Table 1).

264. Second, Dr. Hood used the Similarity Index, detailed in peer-reviewed literature, to measure the shared geography between districts in the 2011 benchmark plan and the other plans analyzed on a scale from 0 to 100. 5/12 Tr. 214:13–215:4; LEG_1-5. A score of 100 indicates the district is comprised wholly of geography from the previous district, while a score of 0 indicates there is no geographic overlap between the districts. 5/12 Tr. 215:4–8; LEG_1-5.

265. In terms of geography, the enacted plan is highly congruent with the benchmark plan, with a mean Similarity Index score of 88 percent. 5/12 Tr. 215:12–23; LEG_1-5–6 (Table 2).

266. Overall and on a district-by-district basis, the plans proposed by Plaintiffs and the amicus curiae are significantly less geographically congruent—none of these alternatives have a mean Similarity Index score above 50 percent, and each district in the enacted plan has a higher Similarity Index score than the corresponding district in any of the proposed alternatives. *See* 5/12 Tr. 215:12–216:14; LEG_1-6 (Table 2); 5/12 Tr. 217:19–218:6; LEG_78-3 (Table 2).

267. Dr. Hood also performed a district racial composition analysis, which compared the percentage of the Black population within each district in the 2011 benchmark plan, the enacted plan, and Plaintiff and amicus curiae-proposed plans. 5/12 Tr. 218:7–16; LEG_1-6; LEG_78-4.

268. Dr. Hood used the definition of Black provided by the U.S. Department of Justice to calculate the percentage of the total Black population and the Black voting age population in each district. 5/12 Tr. 218:17–219:8; LEG_1-6.

269. Dr. Hood explained the importance of having one metric of the percentage of the Black population in the districts in all of the plans discussed and proposed in this case to do a side-by-side comparison. 5/12 Tr. 219:14–24.

270. Using the DOJ definition of Black, the total population that was Black in Louisiana declined from 32.2 percent in 2010 to 32.1 percent in 2020. 5/12 Tr. 219:25–220:7; LEG_1-6.

271. Using the DOJ definition of Black, the voting age population that was Black in Louisiana was 30 percent in 2010 and 30.4 percent in 2020. 5/12 Tr. 220:8–14; LEG_1-6.

272. These numbers show that the Black population in Louisiana over the last decade has been "fairly stationary." 5/12 Tr. 220:15–19; LEG_1-6.

273. Both the benchmark and the enacted plans contain one majority-Black district at 57 percent, based on the DOJ Black voting age population. 5/12 Tr. 221:8–19; LEG_1-8 (Table 4).

274. Two of the plaintiff-proposed plans Dr. Hood analyzed in his initial report (Robinson and Galmon-3) contain a single majority-Black district, CD5, at 51.2 percent and 50.8 percent, respectively. 5/12 Tr. 221:20–222:3; LEG_1-8 (Table 4). The other two plans (Galmon-1 and Galmon-2) contained no majority-Black districts. 5/12 Tr. 222:3–5; LEG_1-8 (Table 4). CD 2, the majority-Black district in the benchmark and enacted plans, is not a majority-Black district in any of the four plaintiff-proposed plans analyzed in the initial report based on DOJ Black voting age population. 5/12 Tr. 222:6–9; LEG_1-8 (Table 4).

275. The additional plan proposed by the Galmon Plaintiffs, and the plan proposed by the amicus curiae, still contained no majority-Black districts using based on DOJ Black voting age population. 5/12 Tr. 222:24–223:18; LEG_78-5 (Table 4).

276. Based on 2010 Census Data, CD2 had a Black voting age population of 58.7 percent in the 2011 benchmark plan. 5/12 Tr. 222:10–18; LEG_1-8 (Table 5). But, based on 2020 Census Data, the Black voting age population in CD2 in the 2011 benchmark plan dropped by nearly 2 percent over the last decade. 5/12 Tr. 222:19–23; LEG_1-8 (Tables 4 & 5).

277. LEG_79, which was admitted under Federal Rule of Evidence 1006, is a compilation of 2010 and 2020 Census Data for the 2011 benchmark plan, the 2022 enacted plan, and the various plans proposed by Plaintiffs and amicus curiae. 5/12 Tr. 226:21–229:15; 5/13 Tr. 62:24–65:12.

278. Mr. Fairfax's May 2, 2022 supplemental report does not dispute Dr. Hood's core retention or similarity index calculations. 5/12 Tr. 224:11–15; *see also* PR-86. Dr. Hood rebutted the criticism of Mr. Fairfax that Dr. Hood should have included additional individuals in his

calculation of the Black population as defined by DOJ, clarifying that the extension of the calculation is only used in DOJ enforcement actions. 5/12 Tr. 224:19–225:4. In any event, Dr. Hood estimated that the percentage of the statewide Black population would only increase by two-tenths of a percentage point. 5/12 Tr. 225:5–21.

279. In his May 2, 2022 rebuttal report, Mr. Cooper states that he "does not disagree with" Dr. Hood's core retention calculations. GX-29-0011.

E. Mr. Thomas Bryan

280. Mr. Bryan was accepted by the Court as an expert in demographics, redistricting, and census data. 5/11 Tr. 51:5–9.

281. Mr. Bryan is the President and owner of Bryan GeoDemographics, a company that works in redistricting cases across the country. 5/11 Tr. 52:9–16. He holds a Master's Degree of Urban Studies from Portland State University in the areas of demography and statistics as well as a Master's Degree from George Washington University in the areas of management and information systems. 5/11 Tr. 52:17–53:3.

282. Mr. Bryan has studied and worked actively in demography using census data for thirty years, and he has applied that knowledge in the field of redistricting for twenty years. 5/11 Tr. 54:9–15.

283. Mr. Bryan has served as an expert witness in another redistricting case in Alabama which is currently stayed and before the Supreme Court of the United States, though his analysis in this case differs from his analysis in the Alabama case. 5/11 Tr. 54:16–56:8.

284. Mr. Bryan prepared an expert report and a supplemental report. 5/11 Tr. 56:18–22. He also prepared a supplemental report conducting the same analysis for Mr. Cooper's illustrative plan four. 5/11 Tr. 56:23–57:18.

285. Mr. Bryan was asked to measure the performance of the Enacted Plan and the Illustrative Plans in terms of numerosity as well as whether race was the prevailing factor in the design of the Illustrative Plans. 5/11 Tr. 58:16–59:5.

286. Mr. Bryan's analysis demonstrates that the Illustrative Plans only create two Black majority-minority districts using the most expansive measure of "Black," "Any Part Black." 5/11 Tr. 68:19–69:7.

287. Mr. Bryan produced several tables showing the Black voting age population ("BVAP") for each district under the Enacted Plan and the Illustrative Plans. State Ex. 2 at 18–21. Mr. Bryan explained several of the terms used in his report. The tables in his expert report and discussed at the hearing use a few different definitions of the term Black, identified and defined as follows:

288. "Black Alone" means "Black not Hispanic, not in combination with any other race population." 5/11 Tr. 62:3–7.

289. "Black DOJ" means "Black in combination with white alone, two races in combination, not Hispanic." 5/11 Tr. 62:7–13.

290. "Any Part Black" means "Black in combination with any other race whether it is in combination with Hispanic or not," and is "the most liberal or the most expansive definition you could use to define a Black population." 5/11 Tr. 62:14–22. It is also the second step of the DOJ definition of Black. 5/11 Tr. 63:16–64:12.

291. Mr. Bryan also explained that for purposes of the census, the term Hispanic is an ethnicity, which is a "separate construct" from race. 5/11 Tr. 62:23–63:15. He also explained that he used the term "white not Hispanic" to measure whites for purposes of his expert report, which is "the most exclusive of the definitions of the white population." 5/11 Tr. 63:9–15.

292. Looking at the Enacted Plan, Mr. Bryan's Table III.A.3 shows that there is one majority-minority district. 5/11 Tr. 65:13–17. This table also demonstrates the effect of the differing definitions of the term Black: as the leniency of who is included in the definition of the term Black is increased, so too is the number of people in that category and the percentage of BVAP in a district. 5/11 Tr. 66:6–11.

293. Table III.A.4 of Mr. Bryan's report shows how the Robinson Illustrative Plan ostensibly creates two majority-minority districts using the Any Part Black metric, but only creates one majority-minority districts using the Black Alone or Black DOJ metrics. 5/11 Tr. 66:12–67:18.

294. Similarly, Table III.A.5 of Mr. Bryan's report shows how the Galmon Illustrative 1 Plan creates two bare majority-minority districts using the Any Part Black metric, but fails to create any majority-minority districts using the Black Alone or Black DOJ metrics. 5/11 Tr. 67:19–68:14.

295. This pattern repeats throughout each of the remaining Illustrative Plans, leading Mr. Bryan to conclude that "[a]ll of the plans only achieve the two Black majority-minority districts with the use of the most expansive interpretation of any part [Black]." 5/11 Tr. 68:19–25. He further concluded that none of the illustrative plans had two Black majority-minority districts using the Black Alone or Black DOJ metrics. 5/11 Tr. 69:1–7.

296. Mr. Bryan concludes that the Illustrative Maps were drawn precisely with race as a prevailing factor. 5/11 Tr. 97:19–98:5.

297. In addition to measuring the BVAP under different definitions of the term Black in the Enacted Plan and the Illustrative Plans, Mr. Bryan also conducted a two-step analysis of different geographic splits. 5/11 Tr. 69:17–70:5. The first step of the splits analysis examines the number of splits of parishes, municipalities, and VTDs. 5/11 Tr. 70:6–14. The second step involves

assessing the demographic impact of those splits and preparing an index of misallocation, which is a standard demographic tool frequently used by Mr. Bryan in his work that allows a comparison of how much different plans split a population. 5/11 Tr. 70:15–71:5.

298. Mr. Bryan prepared an index of misallocation in his report comparing the Enacted Plan and the Illustrative Plans. 5/11 Tr. 70:15–20; 71:17–25.

299. The "index of misallocation" methodology allows one to "quantify[] the degree to which a plan splits administrative geography by race . . . by measuring how much of a minority population would be in" a given geography. State Ex. 2 at 23; *see also* 5/11 Tr. 71:10-25. As an example, in Tables III.B.2 and 3 of Mr. Bryan's report he explains that one calculates the index of misallocation in this context by comparing the total population in a city to the actual and expected Black populations of the, in this case, congressional districts that split that city. State Ex. 2 at 24. So, looking at Lafayette in the third Galmon Illustrative Plan, 30 percent of the total population for Lafayette is in District 5 yet 67 percent of the total Black population of Lafayette is in that same district. State Ex. 2 at 24. Therefore, according to this example, the Black population of Lafayette is "misallocated" by about 37 percent. *See id*. That is, there is 37 percent "extra" Black population in District 5 than if the population was allocated evenly. *See id.* If the district divided the Black and white populations evenly, one would expect a similar percentage of the Black population to the overall population. *Id*. That is not what you find in any of the illustrative plans. 5/11 Tr. 97:2–18 (showing that every split in each of the illustrative plans had evidence of misallocation on racial lines).

300. He developed several tables which show for each plan how many municipalities are split along with how much of the population, and the percentage white or Black, that went into

each piece. 5/11 Tr. 73:3–19; State Ex. 2 at 38–42; State 2(b). And, he conducted the same analysis for parishes. State Ex. 2 at 43–47.

301. Mr. Bryan also prepared maps of cities split in the Enacted Plan and Illustrative Plans showing the districts contained within particular cities along with shading of census blocks depending on the percentage of Black population therein in order to determine which census blocks are contributing to a majority-minority district: grey for no population, orange for under 25 percent Black, yellow for 25–50 percent Black, light green for 50–75 percent Black, and dark green for over 75 percent Black. 5/11 Tr. 80:9–82:7.

302. Reviewing the splits in the Enacted Plan in Baton Rouge, Mr. Bryan observed that out of the population of 230,000, 79,000 (or approximately one third of the population) were in District 2, including approximately 5 percent of the white population and 57 percent of the Black population of Baton Rouge, compared to 148,000 (or approximately two thirds of the population) were in District 6, including approximately 95 percent of the white population and 43 percent of the Black population of Baton Rouge. 5/11 Tr. 74:17–76:23. Also, neither Monroe nor Lafayette are split in the Enacted Plan. 5/11 Tr. 77:4–6.

303. The Robinson Illustrative Plan splits Baton Rouge, Lafayette, and Monroe to carefully separate Black and white voters. Reviewing the Robinson Illustrative Plan, Mr. Bryan observes that this plan is the only plan that splits Baton Rouge into three districts, with 15 percent of the population in District 2, and "roughly equal parts" in Districts 5 and 6. 5/11 Tr. 78:20–79:80:1. 68.64 percent of the white population of Baton Rouge is excluded from Districts 2 and 5, the majority-minority districts in this plan, and placed into District 6. 5/11 Tr. 79:5–16. Mr. Bryan opines that this is notable because the white population in District 6 should be 40 percent if it was being distributed in the same way as the total population, but instead is "over indexed as 28

percentage points more white than total and then proportionally it's lower shares in the two minority districts." 5/11 Tr. 68:13–23. Relatedly, there is "a significantly higher Black population in District 5 than is represented for the total population." 5/11 Tr. 79:17–80:1.

304. A map showing the split of Lafayette in the Robinson Illustrative Plan reveals that, "[s]imilar to what we see in the Baton Rouge illustrative plans," the city is split "precisely to the edge of where the majority Black neighborhoods are." 5/11 Tr. 83:13–84:5.

305. Mr. Bryan also observed that the Robinson Illustrative Plan similarly splits the city of Monroe with "a northwest to southeast split," separating the "almost exclusively white" population in the northwest corner of the city from the "very heavily Black part of the city" which is kept in the illustrative majority-minority District 5. 5/11 Tr. 95:6–96:10.

306. Galmon Illustrative Plan 1 splits Baton Rouge between Districts 5 (a majority-minority district) and 6, with roughly two-thirds of the population in District 5 and one third in District 6; however, the white population is flipped, with approximately one third in District 5 and two-thirds in District 6. 5/11 Tr. 84:23–85:18. Moreover, the "overwhelming majority of the Black population of Baton Rouge was put by the map drawer in District 5 . . . ." 5/11 Tr. 85:1–18. The corresponding map shows that the heavily Black census blocks are drawn into District 5 and confirms that "District 5 has a large share of the Baton Rouge Black population." 5/11 Tr. 86:13–87:1.

307. Galmon Illustrative Plan 1 splits Lafayette with 70 percent of its population in District 3 and 30 percent in District 5. In comparison, only one-third of the black population in Lafayette is in District 3 with two-thirds in District 5—"almost a 39 percentage point differential between the share of the electorate in District 5 and the Black share of the population that is in

District 5." 5/11 Tr. 87:21–88:13. Mr. Bryan observed that had the map been drawn "race blind," then the share of BVAP would be "consistent with the total population." 5/11 Tr. 88:14–22.

308. Reviewing a map showing the split of Lafayette in Galmon Illustrative Plan 1 with BVAP percentages overlaid, Mr. Bryan observed that the districts "were drawn in a way that literally were very, very precisely drawn" to place the heavily Black census blocks of Lafayette in majority-minority District 5 while placing the heavily white census blocks of Lafayette in District 3. 5/11 Tr. 89:8–20.

309. Mr. Bryan observed the same population imbalance in the split of Baton Rouge in Galmon Illustrative Plan 2 as in the other Illustrative Plans – despite a population split of 58 percent in District 5 and 42 percent in District 6, 81 percent of the Black population is in District 5. 5/11 Tr. 90:8–20. And looking at the map Mr. Bryan prepared, he observed a "jagged line" that "was drawn to the block, exactly precisely dividing the Black and white populations there." 5/11 Tr. 91:20–92:2.

310. Likewise, Galmon Illustrative Plan 2 splits the population of Lafayette approximately one-third in District 2 and two-thirds in District 3, yet "District 3 has overwhelmingly a much higher share of the white population and then the Black population has very -- significantly higher share of District 2, the -- majority-minority district in the plan." 5/11 Tr. 92:14–24. Mr. Bryan's map of Lafayette confirms that Galmon Illustrative Plan 2 places the heavily Black census blocks in majority-minority District 2. 5/11 Tr.92:14–94:8.

311. In short, Mr. Bryan concluded that while the Illustrative Plans "had just subtle differences in how they drew these boundaries," 5/11 Tr. 89:8–20, every one of the Illustrative Plans that Mr. Bryan reviewed follows the same pattern as the examples he discussed: "there is not one place that was split that was not in a way that put a disproportionate majority share of the

Black population into a majority- minority district." 5/11 Tr. 82:1–83:2; *see also* State Ex. 2 at 39–47.

312. Mr. Bryan further concluded after reviewing the tables and "the way the maps were very precisely drawn around these different levels of census geography" that "race was a prevailing factor in the design of" the Illustrative Plans. 5/11 Tr. 97:19–98:5; *see also* State Ex. 2 at 39–47; State Ex. 2(b). This is confirmed by the city split maps in Mr. Bryan's reports. State Ex. 2 at 54–101.

F. Dr. John R. Alford

313. Dr. Alford was qualified as an expert in "redistricting focusing on the *Gingles* 2 and 3 factors and racially polarized voting." 5/12 Tr. 131:9–13. Alford is a professor of political science at Rice University and has been at Rice for about 35 years. 5/12 Tr. 132:1–7. Alford holds a B.S. in Political Science and a Master's in Public Administration from the University of Houston, a Master's degree and Ph.D. in Political Science from the University of Iowa. 5/12 Tr. 132:8–14.

314. Alford has previously been qualified as an expert witness in between 30–40 cases, including in voting rights litigation. 5/12 Tr. 132:19–133:3.

315. He was asked to provide an analysis related to the evidence of racially polarized voting in the joined cases of *Robinson, et al v. Ardoin* and *Galmon, Sr., et al v. Ardoin*, with particular regard to the reports of Lisa Handley and Maxwell Palmer. State Ex. 1 at 1.

316. Alford reviewed the reports of Plaintiffs' experts Handley and Palmer as well as their data. 5/12 Tr. 133:19–24. After "spot" checking both Handley and Palmer's data and analysis, Alford concluded that it generally matched his data and calculations. 5/12 Tr. 136:24–137:6. Alford, as well as Handley and Palmer, used a technique that is standard and accepted in the political science/redistricting field called ecological inference or "EI" to study voting behavior. 5/12 Tr. 133:21–136:19.

317. Alford specifically looked at the following elections contests that were also analyzed by Drs. Handley or Palmer or both: the Presidential election contests for 2012, 2016, and 2020; three Republican versus Republican statewide elections from 2015 and 2019; and various other statewide elections from 2014-2020 to assess voter preference. State Ex. 1 at 5-8.

318. Dr. Alford found that in presidential elections Black voters vote in the low to mid 90 percent for the Democratic candidate irrespective of the race of the candidate. 5/12 Tr. 140:20–141:8.

319. In analyzing elections that pitted a Republican against another Republican, Dr. Alford concludes that when party "contestation" is removed there is not "really . . . any particular or obvious pattern in terms of a differentiation between how black and white voters vote." 5/12 Tr. 144:2–14.

320. When voters of both races have a choice between two Republicans, their selectiveness is quite similar. 5/12 Tr. 143:4–10.

321. When looking at the other statewide elections analyzed by Dr. Handley, he concludes that one sees a pattern of Black preference for Black candidates but one "can't distinguish that from saying the same thing about Democrat versus Republican candidates." 5/12 Tr. 146:5–24.

322. When looking at races that Dr. Palmer analyzed but Dr. Handley did not, Dr. Alford concludes that "it [is] pretty clear that there is a very strong preference among blacks for Democratic candidates and less strong preference among white voters for Republican candidates; but both the nature of that preference which voters prefer which candidate and the level at which they favor both candidates is remarkably similar to the table that includes racially-contested election." 5/12 Tr. 147:8–148:7.

323. Dr. Alford notes that the party of the candidate "produc[es] a strong polarization here in voter behavior." 5/12 Tr. 149:3–13. This fact is in part because the party affiliation of the candidate is readily available to all voters because it appears on every ballot. *Id*. The partisan polarization found by Dr. Alford is also evidenced by the fact that the polarization goes away once the candidates are of the same party. 5/12 Tr. 149:3-150:11.

324. Dr. Alford concludes that "[t]here's clearly partisan polarization. The black voters are voting cohesively for Democratic candidates; white voters are voting cohesively although slightly less cohesively for Republican candidates. . . . [T]hat's what the election analysis provided by" Drs. Handley and Palmer shows. 5/12 Tr. 151:10–21. In summary Dr. Alford concludes that "from the evidence that's been provided here, I don't think there's any question that the party affiliation of candidates is the driving force in [explaining divergent voting patterns between Blacks and whites in Louisiana] and not the race of the candidate. 5/12 Tr. 153:1–9.

325. However, in a Republican versus Republican contest, such as the Attorney General election in 2015, Alford concluded that when you take away the element of Democrat versus Republican, we don't see any particular or obvious pattern in terms of a differentiation between how Black and white voters vote. 5/12 Tr. 144:2–14.

326. In the final analysis, Alford concluded that the party affiliation of the candidates is the driving force for voter behavior and not the race of the candidates. 5/12 Tr. 153:1–9.

327. Ultimately, it was not the analysis that Drs. Handley and Palmer conducted but their conclusions that Dr. Alford questioned. 5/12 Tr. 162:15-164:12.

G. <u>Dr. Alan Murray</u>

328. Dr. Alan Murray was qualified as an expert in demographic analysis, spatial analytics as it relates to race, and statistics. 5/13 Tr. 6:20–7:15. Dr. Murray has a B.S. in Mathematics, an M.A. in Statistics and Applied Probability, and a Ph.D. in Geography all from

the University of California at Santa Barbara. State Ex. 4 at 2, 27. Dr. Murray has 287 publications that have been cited a total of approximately 16,590 times. State Ex. 4 at 2. In total, Dr. Murray has over 30 years of experience in spatial analytics. State Ex. 4 at 2.

329. Dr. Murray looked at the population distribution of Black and white populations in Louisiana and concluded that they "are not distributed in the same manner geographically." 5/13 Tr. 12:1–8; State Ex. 4 at 20, 25.

330. Dr. Murray also found that the distribution of white individuals living near white individuals and Black individuals living near other Black individuals is statistically significant across the state. State Ex. 4 13–22.

331. Dr. Murray confirmed the same result at the local level for New Orleans and Baton Rouge, that there is segregation in Louisiana both at the statewide and local level. State Ex. 4 at 22.

332. Dr. Murray also showed that Monroe and Baton Rouge are 152 miles away "as the crow flies." 5/13 Tr. 21:7–16; *see also* State Ex. 4 at 24.

H. Dr. Tumulesh Solanky

333. Dr. Tumulesh Solanky was accepted by the Court as an expert in mathematics and statistical analysis. 5/11 Tr. 164:24–165:1.

334. Dr. Solanky is a professor of mathematics, and the current chair of the mathematics department, at the University of New Orleans. 5/11 Tr. 166:14–167:4; SOS_4 at p 15. He is currently the chair of the mathematics department, a position he's held for fourteen years. *Id*. Dr. Solanky also serves as the University of Louisiana System Foundation and Michael and Judith Russell professor in data science. *Id.*

335. Dr. Solanky routinely serves as a qualified expert in statistics and mathematics in state and federal court for plaintiffs, and defendants, as well as by court appointment. 5/11 Tr.

167:8–168:16. Dr. Solanky has also offered his expertise to other government agencies like the FBI and NASA. *Id.* In this case, Dr. Solanky looked at the voting patterns in the State of Louisiana and illustrative plans for District 5, and in particular, East Baton Rouge Parish. 5/11 Tr. 168:17–25.

336. To conduct his initial analysis, Dr. Solanky relied on data supplied from the Secretary of State that specified the amount of registered voters in the state as of the November 2020 election, the amount of registered voters that actually voted in the 2020 presidential election, and the race, gender, and parish of the registered voters. 5/11 Tr. 169:17–170:12. With additional time, Dr. Solanky examined more elections, and found this pattern held true for additional elections. 5/11 Tr. 200:14–201:14.

337. In general, Dr. Solanky found that voting patterns in Louisiana vary. 5/11 Tr. 169:11–16. He found high voter participation in the presidential races, but in other races noted much lower turnout. SOS_5 at 3–6; 5/11 Tr. 187:2–189:11. He also concluded that East Baton Rouge Parish votes "very differently" from the other parishes that are under consideration for inclusion in Congressional District 5. 5/11 Tr. 169–8:11.

338. To do this, Dr. Solanky analyzed the total number of registered voters as of the November 2020 presidential election broken down by race for the 28 parishes that are in consideration under the various illustrative plans for Congressional District 5. 5/11 Tr. 169:25–170:9; SOS_4 at 6–8.

339. With regard to East Baton Rouge Parish, Dr. Solanky testified that there are more registered white voters in East Baton Rouge Parish than registered Black voters in East Baton Rouge Parish. 5/11 Tr. 171:21–172:22; SOS_4 at 6–8. Additionally, 113,622 white voters in East Baton Rouge Parish voted in the November 2020 presidential election, which is "significantly

larger" than the 85, 672 Black voters in East Baton Rouge Parish that voted in the same election. *Id.*

340. Dr. Solanky testified that this performance in East Baton Rouge Parish contrasted with other Parishes that would be partially or wholly included in the illustrative Fifth Congressional districts. 5/11 Tr. 173:1–174:9; 179:9–180:19. For example, Dr. Solanky testified that East Carroll Parish, Tensas Parish, Madison Parish, and St. Helena Parish all were majority Black parishes, who did not need white crossover voting to elect the minority candidate of choice in the 2020 Presidential Election. *Id*.

341. Dr. Solanky also testified that he found that Iberville Parish, which contained numbers of white voters and Black voters that are "split quite evenly" needed white crossover voting for the minority candidate of choice to be elected in the 2020 presidential election. 5/11 Tr. 177:14–178:7.

342. In order to estimate the number of votes each candidate received, broken down by Race, Dr. Solanky was able to calculate the total votes by race by first calculating the percentage of voters who voted in the November 2020 general election, but not the November 2020 presidential election, which equated to .98 percent. 5/11 Tr. 175:5–176:19. Once Dr. Solanky assigned this percentage proportionally, he was then able to estimate the total amount of voters by race, which is depicted in the three columns in table 6 of his report. *Id.*

343. Dr. Solanky read the reports of Dr. Palmer and Dr. Handley and he does not recall them mentioning how they accounted for individuals who may have voted generally in an election, but may not have voted in a particular race. 5/11 Tr. 176:20–177:5.

344. Dr. Solanky further examined the voting patterns in the 19 parishes that make up Mr. Cooper's illustrative plan 1 broken down by race and voting pattern for the 2020 Presidential election. 5/11 Tr. 178:8–179:8.

345. Out of the 19 parishes in Mr. Cooper's illustrative Plan 1, Dr. Solanky explained that President Biden carried 5 of those parishes, including East Baton Rouge, East Carroll, Madison, St. Helena, and Tensas. 5/11 Tr. 179:9–17. Of those parishes Dr. Solanky testified that East Baton Rouge Parish differs from the four other parishes in that it not a Black majority parish, while the other four parishes are Black majority parishes. 5/11 Tr. 179:18–180:19. Despite this, when examining the margin of victory in each of the 5 parishes that carried President Biden, Dr. Solanky found that East Baton Rouge Parish fell in the middle with a 13 percent margin of victory. *Id.* This means that East Baton Rouge Parish, a majority white parish, was carried by President Biden by a larger percentage than some parishes with a supermajority of minority voters. *Id.*

346. Dr. Solanky then quantified the voting patterns in the 19 parishes of Mr. Cooper's illustrative plan 1. 5/11 Tr. 181:5–18. Dr. Solanky did this through Figure 1 of his report, which he explained in detail during the hearing. *Id.* Dr. Solanky testified that Figure 1 (going from left to right) showed the percentage of white voters compared to Black voters increasing, and going from bottom to top shows the difference in votes between President Biden and Trump. *Id*. The line that runs through the figure is the regression line, which is a mathematical representation of where the letters B and T fall on the figure. 5/11 Tr. 181–182:19. The closer the dots or letters are to the line, means that the better fit of the regression line. *Id.* The regression line examining the 2020 presidential election was a good fit, and able to explain 94.71 percent of the variation of the data. SOS_4 at 13. The letter B represents parishes that were won by President Biden and T represents parishes win by Trump. 5/11 Tr. 182:17–23. Letters that appear above the regression line indicate

parishes that are more supportive of Trump than the trend, and letters that appear below the regression line indicate parishes more supportive of Biden than the trend. 5/11 Tr. 182:24–183:12.

347. Dr. Solanky testified that East Baton Rouge Parish fell significantly below the regression line in figure 1 of his report, which means there was significant voting in favor of President Biden instead of Trump compared to the observed trend from the 18 other parishes. 5/11 Tr. 183:13–184:5. Dr. Solanky opined that, in his expert opinion, this made East Baton Rouge Parish a statistical outlier in comparison to the other parishes in Mr. Cooper's illustrative plan one. *Id.* Dr. Solanky further explained that he could state that East Baton Rouge Parish was a statistical outlier with mathematical certainty, as East Baton Rouge Parish fell outside of the confidence interval, which indicated that the variation of East Baton Rouge Parish's voting patters could not be "attributed to by chance at all." 5/11 Tr. 184:4–15.

348. In response to criticism from Dr. Handley that Dr. Solanky only reached his conclusions by examining one election, Dr. Solanky looked at other elections to see if the voting patterns in East Baton Rouge Parish were a statistical outlier under those elections, too. 5/11 Tr. 185:7–24. Dr. Solanky examined an additional 7 statewide elections. 5/11 Tr. 186:1–7; SOS_5 at 13–20. In examining these elections Dr. Solanky found that voter turnout for the presidential elections was significantly higher than other elections, especially as compared to special elections like the 2018 Secretary of State Election, which had a fourth of the voters statewide, as the 2020 presidential election. 5/11 Tr. 187:2–189:11. Dr. Solanky also criticized Dr. Handley's reliance on the 2018 Secretary of State election, stating that as a mathematician, it would be improper to give a special election like the December 2018 election, with significantly lower turnout, the same weight in an analysis as other elections. 5/11 Tr. 189:12–19.

349. An analysis of the additional 7 statewide elections confirmed Dr. Solanky's previous findings. SOS_5 at 6-20; 5/11 Tr. 190:12–191:5. For example, when examining the 2019 Secretary of State election, Dr. Solanky found that when examining the parishes in Mr. Cooper's illustrative plan 1, the same 5 parishes that voted for President Biden in the 2020 presidential election, voted for the minority candidate of choice, Ms. Greenup in that election. 5/11 Tr. 191:141–193:14. As with the 2020 Presidential election, the minority candidate of choice, Ms. Greenup, could not have carried East Baton Rouge Parish without white crossover voting. *Id*. And as with the 2020 presidential election, when comparing the voter trend of the 19 parishes in Mr. Cooper's illustrative plan 1, East Baton Rouge Parish was again a statistical outlier. 5/11 Tr. 194:21–195:21. The same was true of the 2016 presidential election, which also had a high level of voter turnout. 5/11 Tr. 196:20–197:24.

350. In fact, for each of the elections Dr. Solanky examined, East Baton Rouge Parish voted significantly differently than the trend shown in the remaining 18 parishes in Mr. Cooper's illustrative plan 1. 5/11 Tr. 198:7–201:14. And in 7/8 of those elections, that difference was statistically significant, meaning the difference cannot be explained by chance alone. 5/11 Tr. 201:17–202:23. Dr. Solanky was further able to show a significant amount of white crossover voting leading to a victory in East Baton Rouge Parish of the minority candidate of choice, particularly the 2020 Presidential Election, the 2016 Presidential Election, the 2019 Secretary of State Election, the 2019 Governor Election, the 2015 Governor Election. SOS_5 at 13–20. This allowed Dr. Solanky to conclude that East Baton Rouge Parish, which makes up over 1/3 of the parish populations making up Mr. Cooper's illustrative plan 1, voted significantly different than the voter trend of the remaining 18 parishes, in favor of the democratic, or minority preferred candidate. 5/11 Tr. 205:12–206:23; SOS_4 at 13.

[PROPOSED] CONCLUSIONS OF LAW

I. The Legal Standard

351. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Preliminary injunctions "favor the status quo and seek to maintain things in their initial condition so far as possible until after a full hearing permits final relief to be fashioned." *Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997). Mandatory injunctive relief "is particularly disfavored, and should not be issued unless the facts and the law clearly favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976); *see also Miami Beach Fed. Sav. & Loan Assoc. v. Callander*, 256 F.2d 410, 415 (5th Cir. 1958) ("A mandatory injunction, especially at the preliminary stage of proceedings, should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party.").

352. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Id.* at 24. It may not be awarded unless "the party seeking it has 'clearly carried the burden of persuasion' on all four requirements." *PCI Transp. Inc. v. Fort Worth & W.R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005) (quoting *Lake Charles Diesel, Inc. v. General Motors Corp.*, 328 F.3d 192, 195 (5th Cir. 2003)).

II. Likelihood of Success on the Merits

353. The question before the Court is whether Plaintiffs are likely to succeed on their claim under Section 2 of the Voting Rights Act (VRA). 52 U.S.C. § 10301. There are two types of Section 2 claims, an intent claim, which is coterminous with a Fifteenth Amendment claim, and

an effects claim, which Congress created in 1982 in response to the Supreme Court's decision in *City of Mobile, Ala. v. Bolden*, 446 U.S. 55 (1980). *See Chisom v. Roemer*, 501 U.S. 380, 383–84 (1991). Plaintiffs have not asserted an intent-based claim. They rely solely on the effects element.

354. A Section 2 effects challenge to a redistricting plan is governed by the standard of *Thornburg v. Gingles*, 478 U.S. 30 (1986), and its progeny. Under this test, a challenger must first establish "three threshold conditions" called the *Gingles* preconditions. *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017). "First, a 'minority group' must be 'sufficiently large and geographically compact to constitute a majority' in some reasonably configured legislative district." *Id.* (quoting *Gingles*, 478 U.S. at 50). "Second, the minority group must be 'politically cohesive.'" *Id.* (quoting *Gingles*, 478 U.S. at 51). "And third, a district's white majority must 'vote sufficiently as a bloc' to usually 'defeat the minority's preferred candidate.'" *Id.* (quoting *Gingles*, 478 U.S. at 51) (edit marks omitted). "Those three showings . . . are needed to establish that 'the minority group has the potential to elect a representative of its own choice' in a possible district, but that racially polarized voting prevents it from doing so . . . ." *Id.* (quoting *Growe v. Emison*, 507 U.S. 25, 40 (1993)).

355. The *Gingles* preconditions only begin the inquiry; they do not end it. "The three Gingles preconditions are necessary but not sufficient to prove vote dilution." *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1395 (5th Cir. 1996). "The question which the court must answer in a section 2 case 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.'" *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991) (citation omitted). The inquiry "depends upon a searching practical evaluation of the past and present reality" and on a "functional view of the political process." *Id. See also Johnson v. De Grandy*, 512 U.S. 997, 1011 (1994).

356. If a plaintiff satisfies the *Gingles* preconditions, the inquiry then shifts to the totality of the circumstances test under 52 U.S.C. § 10301(b). Under that test, "the plaintiffs must further prove that under the 'totality of circumstances,' they do not possess the same opportunities to participate in the political process and elect representatives of their choice enjoyed by other voters." *Clark,* 88 F.3d at 1395 (citation and quotation marks omitted). "Although unlawful vote dilution 'may be readily imagined and unsurprising' where the three *Gingles* preconditions exist, that conclusion 'must still be addressed explicitly, and without isolating any other arguably relevant facts from the act of judgment.'" *Id.* (citation omitted). The totality-of the circumstances inquiry is guided by the so-called Senate factors, often known as the *Zimmer* factors in the Fifth Circuit, which are quoted from the 1982 amendments senate report in *Gingles*, 478 U.S. at 44–45. *Clark*, 88 F.3d at 1396.

357. The VRA must not be interpreted in a vacuum. This is because, while Section 2 sometimes requires redistricting authorities to consider race in redistricting, at the same time "federal law restrict[s] the use of race in making districting decisions." *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018). "The Equal Protection Clause forbids 'racial gerrymandering,' that is, intentionally assigning citizens to a district on the basis of race without sufficient justification." *Id.* (citing *Shaw v. Reno*, 509 U.S. 630, 641 (1993) (*Shaw I*)). Districting maps that "sort voters on the basis of race 'are by their very nature odious.'" *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (quoting *Shaw I*, 509 U.S. at 643). As a result, purposefully creating a new majority-minority district is presumptively unconstitutional. *See Cooper*, 137 S. Ct. at 1468–69.

358. In the face of these "'competing hazards of liability,'" the Supreme Court has "assumed" that "compliance with the VRA may justify the consideration of race in a way that

would not otherwise be allowed." *Abbott*, 138 S. Ct. at 2314 (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality opinion)). The Supreme Court has never held this, however. *See Miller v. Johnson*, 515 U.S. 900, 927 (1995) (observing that this assumption raises "troubling and difficult constitutional questions"). And, in any event, a state's burden to satisfy "strictest scrutiny" is demanding. *Id.* at 915. A redistricting authority has never successfully justified racially predominant redistricting in any Supreme Court case by asserting Section 2 as a defense.

359. In this case, Plaintiffs have not presented evidence showing that the Legislature had a strong basis in evidence to believe that two majority-minority districts are required in the congressional plan at the time of redistricting. All evidence presented in this case is new; none of it was before the Legislature when it drew the plans. The legislative record indicates that assertions of Section 2-compelled need to create a second majority-minority district were not backed up with evidence. Thus, it is clear that, had the Legislature adopted a configuration along the lines of what Plaintiffs seek here, it would have violated the Equal Protection Clause.

360. In all events, Plaintiffs are unlikely to succeed on the merits of their Section 2 claim, even after a generous opportunity to make the requisite showing.

A. The First *Gingles* Precondition

361. The first *Gingles* precondition requires a challenger to establish that the relevant minority group is "'sufficiently large and geographically compact to constitute a majority' in some reasonably configured legislative district." *Cooper*, 137 S. Ct. at 1470 (quoting *Gingles*, 478 U.S. at 50). A majority means just that: 50 percent of the voting-age population plus one. *See Bartlett v. Strickland*, 556 U.S. 1 (2009). This precondition "specifically contemplates the creation of hypothetical districts." *Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1151 (5th Cir. 1993).

362. In this case, the two sets of Plaintiffs hired demographic experts who presented a total of six illustrative plans, four at the initial stage of preliminary-injunction briefing and two

more in rebuttal reports—one of which had to be amended. This was a highly sophisticated effort, but sometimes sophistication does more to reveal flaws in a case than overcome them.

363. The evidence shows that it is not easy to create a Louisiana congressional districting plan with two districts crossing the 50 percent threshold. There are not many configurations that can accomplish this. That should be no surprise. In the 1990s, the Louisiana Legislature twice heeded calls to create a second majority-minority district, and these plans were twice invalidated as racial gerrymanders. *Hays v. Louisiana*, 839 F. Supp. 1188, 1195 (W.D. La. 1993) (*Hays I*); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996) (*Hays IV*).

364. As discussed in the findings of fact, the Black percentage of the population has not meaningfully grown since 1990. Plaintiffs have referenced a growth in Hispanic population, but the Hispanic group is not alleged to have suffered vote dilution, and no evidence was presented establishing that the Hispanic population is part of a legally significant coalition with the Black population. *Cf. Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989).

365. Thus, it is only through a very specific set of contortions that a second majority-minority district can be extracted from Louisiana's demographics. All of Plaintiffs' illustrative plans are similar in that they combine East Baton Rouge Parish with territory far away in northeast Louisiana, known as the delta region or delta parishes. All the illustrative plans provide variations on this theme, and there can be no serious question that the configuration was chose precisely because that configuration alone can achieve the over 50 percent BVAP target Plaintiffs must achieve to create a majority-minority district.

366. This fundamental feature of this case raises troubling questions both of racial gerrymandering and compactness. It ultimately dooms Plaintiffs' request for a preliminary injunction, which requires a clear showing that they are likely to succeed.

1. Racial Gerrymandering

367. "The Equal Protection Clause prohibits a State, without sufficient justification, from 'separat[ing] its citizens into different voting districts on the basis of race.'" *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (quoting *Miller*, 515 U.S., at 911). Race therefore must not be "the predominant factor motivating" the "decision to place a significant number of voters within or without a particular district." *Id.* (quoting *Miller*, 515 U.S. at 916).

368. Although the predominance test is typically applied where a state redistricting authority is accused of racial gerrymandering, there is no colorable argument that a federal court is permitted to violate the Constitution where a legislature would be prohibited from doing so. The Court may not impose on Louisiana a redistricting scheme that Louisianans could not obtain from their own elected representatives. *Dillard v. City of Greensboro*, 74 F.3d 230, 233–34 (11th Cir. 1996) ("Whether a redistricting plan is adopted by a court or a legislature does not affect a party's right to challenge the plan.").

369. For the same reason, Plaintiffs' alternative plans cannot be deemed "reasonably configured," *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022), when they "segregate the races for purposes of voting." *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (*Shaw I*). A plan that links "distinct locations" on the basis of race does not satisfy the first *Gingles* precondition. *Sensley v. Albritton*, 385 F.3d 591, 597 (5th Cir. 2004).

370. The hearing evidence established that race was "the predominant factor motivating the placement of voters in or out of a particular district"—namely, Plaintiffs' remedial versions of CD2 and CD5. *Wis. Legislature*, 142 S. Ct. at 1248. Although Plaintiffs' demography experts, Messrs. Fairfax and Cooper, denied that race predominated, these assertions are purely semantic. Under the legal definition of predominance, their choice to "consciously dr[a]w the district[s] right

around 50 percent [BVAP]" to "satisf[y] that first pre-condition," 5/9 Tr. 217:18–23, qualifies as suspect race-based redistricting.

371. Racial predominance occurs when (1) a mapmaker "purposefully established a racial target," such as that "African-Americans should make up no less than a majority of the voting-age population," and (2) the racial target "had a direct and significant impact" on the district's "configuration." *Cooper*, 137 S. Ct. at 1468–69. Predominance may be shown through either direct or circumstantial evidence. *Bethune-Hill*, 137 S. Ct. at 797. Here, both types of evidence clearly establish predominance.

(a) Direct Evidence

372. The direct evidence establishes both the intent to draw districts above a racial target and that target's direct and significant impact on district lines.

373. As to the first element, there is no question that Plaintiffs' experts set out to draw majority-minority districts. Mr. Fairfax admitted he was "using [a] 50 percent voting age population as" a "threshold" to comply with *Gingles*, 5/9 Tr. 208:2–4, and that he purposefully drew CD2 and CD5 above 50 percent for the same reason, 5/9 Tr. 218:18–22; *see also id.* 206:25–207:4 (Mr. Fairfax conceding that he was "focused on complying with the first *Gingles* precondition"); *id.* 206:18-22 (similar). This testimony compels a finding of predominance. *See Cooper*, 137 S. Ct. at 1469 (holding that lower court "could hardly have concluded anything but" predominance where mapmaker attested to intent to draw a majority-minority district).

374. Likewise, Mr. Cooper testified that a plan with two majority-minority districts was non-negotiable:

> Q. During your map drawing process did you ever draw a one majority minority district?

> A. I did not because I was specifically asked to draw two by the plaintiffs.

5/9 Tr. 123:1–4. This, too, qualifies as a racial target. *See Cooper*, 137 S. Ct. at 1469 ("[W]hen (as here) race furnished 'the overriding reason for choosing one map over others,'" racial predominance exists (quoting *Bethune-Hill*, 137 S. Ct. at 799); *see also Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*).

375. As to the second element, the evidence establishes "a direct and significant impact on the drawing of at least some of [CD5's and CD2's] boundaries." *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 274 (2015). Mr. Fairfax testified that he was using a 50 percent threshold for the purpose of "pulling in Black population for these [majority-minority] districts," 5/9 Tr. 207:23–208:2, which is the essence of a target's direct and significant impact, *see Cooper*, 137 S. Ct. at 1468–69. In fact, Mr. Fairfax testified that he consulted racial data at the outset of map-drawing "to get an idea where the Black population is inside the state in order to begin drawing," 5/9 Tr. 208:6–8, because "you can't draw a plan in an area where Black population doesn't exist," *id.* 209:22–23. Then, Mr. Fairfax continued assigning voters on the basis of race, to "pull the BVAP percentages back up to check [his] work." *Id.* 210:9–12; *see also id.* 211–13 (similar).

376. And Mr. Fairfax testified that drawing a least change plan was not an option because that would not produce a majority-minority district. 5 Tr. 204:21–22; *see Cooper*, 137 S. Ct. at 1468–69 (departing from prior map for race-based purpose amounted to predominance). He founded the architecture of the plan on racial data and continued moving voters throughout the process on the basis of race to achieve a 50 percent BVAP target. That is "a textbook example of race-based districting." *Cooper*, 137 S. Ct. at 1469 (citation and quotation marks omitted).

377. Mr. Cooper conceded that he only attempted districting configurations—combining East Baton Rouge Parish with "majority Black" territory in the delta—he knew would achieve two majority-minority districts. 5/9 Tr. 130:25–131:9, 131:24–132:4; *see also id.* 124:19–125:1 (conceding he "stopped" adding BVAP to CD-5 after reaching 50.04 percent because, when the district achieved the ideal population, "it was still above 50 percent BVAP"); *id.* 155:11–14 (acknowledging achievement of *Bartlett v. Strickland*'s "50 percent plus 1" rule).

(b) Circumstantial Evidence

378. The circumstantial evidence erases any lingering doubt on the question of predominance. As discussed, only one type of configuration has been shown to be available to achieve Plaintiffs' majority-minority goal, and there can be no serious factual contention that they purposefully identified that configuration and made only adjustments from that foundation that achieved the majority-minority target.

379. One piece of evidence that bears this out is the simulations method employed by Dr. Blunt. Dr. Blunt simulated 10,000 Louisiana redistricting plans according to neutral, non-racial criteria that Messrs. Cooper and Fairfax claimed to have implemented in their illustrative plans, and not *one* plan produced even *one* majority-minority district. 5/12 Tr. 35:25–36:6. In other words, a computer that was not looking for the precise configuration Plaintiffs needed to hit the 50 percent target did not find it through race-neutral means. This is powerful, if not dispositive, evidence that race was the predominant reason the configuration was chosen.

380. Plaintiffs' contrary position that simulations do not shed light on intent defies common sense. With 10,000 tries, a computer failed to achieve even *one* majority-minority district through race-neutral means. It is virtually impossible that Plaintiffs' experts stumbled upon *two* such districts without the predominant intent of finding them in Louisiana's diverse population.

381. Plaintiffs have suggested that the simulations method does not establish predominance because it does not measure degree. They reason that, because some degree of racial awareness and intent is permissible (the test being *predominance* not *awareness*), the simulations method cannot distinguish between permissible levels of race-based redistricting and predominant racial intent that is constitutionally suspect. This argument is unavailing.

382. To the extent Plaintiffs mean to argue simply that predominance is a legal conclusion for the Court to adjudicate, that is axiomatic and beside the point. Courts are always faced with discerning the legal significance of evidence, but that does not render the evidence itself relevant to the adjudication. Quite the opposite, evidence that sheds light on a legal question is highly relevant; it need not be dispositive standing alone to inform a court's legal judgement.

383. To the extent Plaintiffs mean to argue that the simulations method is not probative on the degree of racial intent, they are plainly wrong. It is certainly a matter of *degree* to reveal that not even *one* majority-minority district is created in 10,000 rolls of the redistricting dice. Plaintiffs would have a better argument if there was a closer comparison—say, if most of the simulations had at least one majority-minority district, if some had two, or if the difference between the simulations ensemble and the result of their work were otherwise closer. But the gulf between the race-neutral ensemble and the illustrative plans is so stark that, absent predominant intent, it is practically impossible to have occurred.

384. Courts have, accordingly, consistently found simulations methods highly relevant to the question of redistricting intent. *See, e.g.*, *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio), *vacated and remanded on other grounds*, *Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019); *League of Women Voters of Mich. v. Benson*, 373 F. Supp. 3d 867 (E.D. Mich.), *vacated on other grounds sub nom. Chatfield v. League of Women Voters of*

Mich., 140 S. Ct. 429 (2019); *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333 (4th Cir. 2016); *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp. 3d 935, 937 (M.D.N.C. 2017); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 2018 U.S. Dist. LEXIS 146635 (M.D.N.C. August 27, 2018); *Harper v. Hall*, 2022-NCSC-17, 868 S.E.2d 499; *Adams v. DeWine*, 2022-Ohio-89, 2022 WL 129092 (Jan. 14, 2022); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 2022-Ohio-65, 2022 WL 110261 (Jan. 12, 2022); *League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737 (2018); *Harkenrider v. Hochul*, No. 22-00506, 2022 WL 1193180 (N.Y. App. Div. Apr. 21, 2022), *aff'd as modified*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022); *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sep. 3, 2019). The Fourth Circuit reversed as clearly erroneous a district court's decision *not* to credit a simulation method in ascertaining intent. *Raleigh Wake Citizens Ass'n*, 827 F.3d at 344; *cf. Gonzalez v. City of Aurora, Ill.*, 535 F.3d 594, 600 (7th Cir. 2008).

385. Another fact bearing on this inquiry is that Plaintiffs' own expert has admitted that Dr. Blunt's method is valid. Dr. Palmer testified that Dr. Blunt used a "standard redistricting package that's widely available and one that [he's] used a lot in [his] own academic work." 5/9 Tr. 329:25–330:2. It is also telling that Plaintiffs' counsel either did not ask Dr. Palmer (or another qualified expert) to run simulations or else they did not submit the results. *Id.* 346:22–347:13. This was not for lack of sophistication or funding: Plaintiffs' presentation was otherwise a state-of-the art presentation relying on the latest technology and social-science methods. If some other method of simulations, or different parameters, undercut Dr. Blunt's conclusion, Plaintiffs surely would have figured that out and presented their findings.

386. Indeed, although Dr. Palmer criticized Dr. Blunt's simulations parameters, the evidence indicates that different parameters would not change the result. Dr. Palmer asserted that

Dr. Blunt's criteria were too restrictive, but when Dr. Blunt re-ran his simulations under far more lenient criteria, the 10,000 maps produced still contained *no* majority-minority district. 5/12 Tr. 45:4–48:4. That means, with 40,000 maps simulating 240,000 districts absent racial parameters, not a single majority-minority district emerged.

387. A careful review of the district lines themselves showed why that is and provides further evidence of racial predominance. Evidence "such as stark splits in the racial composition of populations moved into and out of disparate parts of the district" demonstrates predominance. *Bethune-Hill*, 137 S. Ct. at 800. Mr. Bryan thoroughly demonstrated that these stark splits pervade CD2 and CD5 in each of the Plaintiffs' illustrative plans, *see generally* 5/11 Tr. 61–100.

388. Mr. Bryan showed that, with nearly surgical precision, predominantly Black portions of Baton Rouge, Monroe, Lafayette, and other localities were placed into majority-minority districts, and predominantly white portions were placed elsewhere. 5/11 Tr. 86:4–88:13, 95:6–96:10. This pattern was also true at the census block level, as the lines "were very, very precisely drawn with blocks that were 50 percent or more Black population on one side of the line and less than 50 percent, sometimes less than 25 percent of the population on the other side of the line being white population." 5/11 Tr. 89:13–20. Mr. Cooper did not deny, for example, that in one of his illustrative plans, he assigned 88.45 percent of Ouachita Parish's Black population into his illustrative CD5, as well as 72.78 percent of East Baton Rouge Parish's Black population. 5/9 Tr. 136:1–19.

389. This overriding evidence of predominance is sufficient to override direct denials of predominance. *See Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 144–75 (E.D. Va. 2018) (three-judge court).

390. Moreover, the incentives brought to bear on Messrs. Fairfax and Cooper undergird the overwhelming evidence of predominance and undercut their confusing denials. Plaintiffs hired Messrs. Fairfax and Cooper and charged them with preparing plans containing two majority-minority districts. It is eminently plausible that they employed a high degree of intentionality in doing so and implausible that they did not. Experts have no incentive to produce reports undermining the claims of the parties that hire them.

391. In some cases, the districts were majority Black VAP using the most expansive definitions of race, as noted in Defendants' proposed conclusions of law, by only a couple of hundred individuals out of several hundred thousand total voting age population residents. This result does not occur without precise focus on racial targets.

392. And, here, only a limited set of configurations could achieve the majority-minority goal—i.e., configurations containing Baton Rouge, Monroe, and other parts of the delta region with large percentages of Black residents. Only by building their plans around the goal of two majority-minority districts could that goal be achieved. Plaintiffs' experts surely did not stumble upon such configurations as the mere byproduct of non-racial goals.

393. Finally, it bears emphasizing that the standard of predominance is lower here than in the numerous Supreme Court cases where racial predominance was found or affirmed. In those cases, the presumption of good faith afforded to state legislatures and the unique sensitivity in redistricting demand that courts "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Bethune-Hill*, 137 S. Ct. at 797 (citation and quotation marks omitted). No presumption of good faith or need for extraordinary caution exists when courts evaluate evidence presented by litigants' hired experts.

(c) Plaintiffs' Contrary Factual Arguments

394. Plaintiffs' experts, through their testimony and otherwise through examination by counsel at the hearing, attempted to argue that race was not predominant in their illustrative plans. These fail to persuade and are largely rejected in binding precedent.

395. First, Plaintiffs attempted to reframe the terms of the inquiry, which measures the impact of racial intent against the impact of traditional districting principles or other criteria, on the district lines. Plaintiffs asserted that "diluting minority voting strength" is among "the traditional districting factors" that exists in contradistinction to a racial goal. *See, e.g.*, 5/9 Tr. 97:17–98:5; PR-86 at 8. In other words, they tried to argue that their purposeful intent in creating majority-minority districts does not count as predominance, but rather as a traditional districting principle that can cut against a finding of predominance.

396. That is wrong as a matter of law. The Supreme Court defines traditional districting principles for the purpose of the racial-predominance test as "*race-neutral* districting principles," *Bethune-Hill*, 137 S. Ct. at 797 (quoting *Miller*, 515 U.S. at 916) (emphasis added). Creating majority-minority districts is a *race-based* goal. *Wis. Legislature*, 142 S. Ct. at 1248–51; *Cooper*, 137 S. Ct. at 1468–69. Plaintiffs' experts admitted that the so-called goal of avoiding racial vote dilution was achieved by drawing majority-minority districts. 5/9 Tr. 154:24–155:7. That is a racial goal, not a neutral goal, and Plaintiffs' misunderstanding of the difference is itself evidence that race did predominance, as their denials seem to be informed by an error of what predominance is.

397. Second, Plaintiffs appear to argue that the race-based goal of creating a majority-minority district falls short of predominance so long as the mapmaker has "followed other traditional redistricting principles." 5/9 Tr. 155:4–7; *accord id.* 222:12–19. At one time, this argument would have had some currency, as "[c]ertain language in *Shaw I* can be read to support requiring a challenger who alleges racial gerrymandering to show an actual conflict with traditional

principles." *Bethune-Hill*, 137 S. Ct. at 798. But, in *Bethune-Hill*, the Supreme Court rejected this standard and held that "a conflict or inconsistency between the enacted plan and traditional redistricting criteria is not a threshold requirement or a mandatory precondition in order for a challenger to establish a claim of racial gerrymandering." 137 S. Ct. at 799. It is only "persuasive circumstantial evidence tending to show racial predomination." *Id.* In *Cooper*, the Court reaffirmed this holding and clearly established the above-described predominance test. 137 S. Ct. at 1469 n.3 (quoting *Bethune-Hill*, 137 S. Ct. at 799). That is, predominance occurs where (1) a mapmaker "purposefully established a racial target," such as that "African-Americans should make up no less than a majority of the voting-age population," and (2) the racial target "had a direct and significant impact" on the district's "configuration." *Id.* at 1468–69.

398. As discussed, the *Cooper* test is met: Plaintiffs' experts had a majority-minority goal, and they configured their entire plans around it, making innumerable choices on the foundation of that race-based architecture. That is a racial target having a direct and significant impact on lines.

399. Third, Plaintiffs are not even correct in their assertions about what an actual conflict with traditional districting principles means. For example, they argue that compliance with the one-person, one-vote principle is among the traditional districting principles that stand in contradistinction to racial motivation. *See, e.g.*, 5/9 Tr. 97:17–98:5. But "the equal population goal is not one factor among others to be weighed against the use of race to determine whether race 'predominates.' Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator's determination as to *how* equal population objectives will be met." *Ala. Legislative Black Caucus*, 575 U.S. at 272. This criterion, then, is not a traditional principle that can be weighed against racial intent in the

predominance analysis. Their assertions, in effect, that *race* did not predominate but rather *equalization* predominated do not speak to the predominance question—why did *some* voters get moved in or out of a district, rather than *others*, for equalization to be achieved? The answer, across the board, was that the *race* of the voters dictated those choices.

400. Plaintiffs also assert that their experts' use of race is not suspect because racial identity is a facet of communities of interest. *See, e.g.*, 5/9 Tr. 289:13–22 (Cravins); 5/10 Rough Tr. 177–78 (Lichtman). But this is just another suspect use of race. "[T]he sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics." *Cooper*, 137 S. Ct. at 1473 n.7; *Miller*, 515 U.S. at 914 (stating that the "use of race as a proxy" for "political interest[s]" is "prohibit[ed]"). This is yet another admission of racial predominance.

401. At times, Plaintiffs' expert Mr. Fairfax tried to claim that he was not following racial data, but rather was looking at socio-economic data in the line-drawing. This is unavailing and lacking in credibility. As an initial matter, it ignores that Mr. Fairfax *began* his mapmaking exercise by first locating the general area of Black residents in Louisiana, making race the very foundation of his map. That he *later* looked to socio-economic information to guide marginal changes ignores that the predominant purpose had already been established.

402. Moreover, Mr. Fairfax's own data betrays his testimony. Mr. Fairfax testified, consistent with how the Census Bureau reports information, that his socio-economic data was reported at the census-tract level. *See* 5/9 Tr. 187:10–20, 226:14–16. That is a higher level of census geography than the census-block level: a census tract is an assemblage of a group ofcensus blocks, which are the smallest units of census geography. But Mr. Bryan showed that Mr. Fairfax made race-based choices at the census-block level. These choices cannot be explained by socio-

economic data because the data was not available at the census-block level to allow him to make the surgical divisions of population that he made using such data. But Mr. Fairfax certainly had the *racial* data down to the block-level. Efforts to make similar arguments have consistently been rejected in precedent. *See Bush v. Vera*, 517 U.S. 952, 970–17 (1996) (plurality opinion) (rejecting argument that political data governed decisions made at the census block level, where only racial data was available); *Bethune-Hill*, 326 F. Supp. 3d at 175 (similar).

403. Nor can Plaintiffs credibly blame housing patterns for their experts' purposeful choice to draw race-based lines. *See, e.g.*, 5/9 Tr. 114:7–115:24. The mere fact that there are racial patterns in housing—which is common in the United States, especially in the footprint of the Fifth Circuit—does not compel race-based lines. It takes close attention to race to draw lines to match segregated housing patterns. Lines tracking those patterns with precision were not inevitable, or even likely, absent racial predominance.

404. Finally, Plaintiffs' made an assertion at the hearing that majority-minority districts are racially balanced, which appeared to amount to an assertion that race could not have predominated. That is illogical. It takes racial intent to create racial balance. And that intent is invidious. "[R]acial balancing, . . . is patently unconstitutional." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). The argument contravenes the entire *Shaw* line of cases, each of which invalidated majority-minority districts that could equally have been alleged to create racial balance. The law is clear that the "assignment of voters on the basis of race" is "subject to" the "strictest scrutiny." *Miller*, 515 U.S. at 915.

(d) Plaintiffs' Legal Arguments

405. Plaintiffs also argue that racial predominance is permitted in Section 2 illustrative plans. As an initial matter, they seemed to have little if any confidence in that argument. If racial

predominance is permitted, why did Plaintiffs' devote so much time—in an expedited proceeding—to trying to persuade the Court that race did not predominate?

406. In any event, the argument is not likely to succeed on the merits. Section 2 of the VRA enforced the Civil War Amendments. *See Shelby County v. Holder*, 570 U.S. 529, 542 n.1 (2013). It is difficult to see how a statute enforcing those Amendments can be constitutional, at least as applied to a case where a state is being compelled to take action presumptively unconstitutional. Just as "Congress does not enforce a constitutional right by changing what the right is," *City of Boerne v. Flores*, 521 U.S. 507, 508 (1997), it does not enforce the Civil War Amendments by compelling states to violate them.

407. Whatever may be said of other Section 2 cases, two facts are salient here. First, Plaintiffs have stipulated that they are not arguing the challenged plan was drawn with predominant racial intent. That means the Court is obligated to presume that the challenged plan complies with the Fourteenth and Fifteenth Amendments. *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944) ("State statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared."). Second, race was clearly the predominant factor in creating Plaintiffs' illustrative plans, for reasons stated. Thus, Plaintiffs' plans are presumptively unconstitutional. The prospect that a legislature's presumptively constitutional plan can be judged deficient under Section 2 based on presumptively unconstitutional plans presents a constitutionally infirm comparison.

408. Plaintiffs have nothing to say on this topic and do not seriously dispute the points above. Their contrary positions are reliant on a Fifth Circuit case, *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393 (5th Cir. 1996), but they are not likely to succeed in this reliance, for several reasons.

409. One is that *Clark* was not the Fifth Circuit's first review of racial motive in Section 2 cases. The court had previously held on at least two occasions that race should not be the predominant motive for a Section 2 remedy. *Washington v. Tensas Par. Sch. Bd.*, 819 F.2d 609, 612 (5th Cir. 1987); *Wyche v. Madison Par. Police Jury*, 635 F.2d 1151, 1161 (5th Cir. 1981). Under the so-called rule of orderliness, "the earlier precedent controls." *United States v. Walker*, 302 F.3d 322, 325 (5th Cir. 2002). Likewise, precedent post-dating *Clark* rejected race-based Section 2 remedies. *See Sensley*, 385 F.3d at 597.

410. Another is that *Clark*'s holding regarding the predominance test was based on a legal fiction that has since been rejected in both the Supreme Court and the Fifth Circuit. *Clark* posited that what it called the *Miller* predominance test (after *Miller v. Johnson*) does not apply at the threshold liability phase, but it *does* apply to a court-ordered remedy at the end of the case. *See* 88 F.3d at 1406–08. To be precise, *Clark* held in Section III. B of the opinion that the predominance test of *Miller v. Johnson* "does not apply to the first *Gingles* precondition." 88 F.3d at 1406–07. But it distinguished that holding in the very next section, Section III.C, in addressing the distinct argument "that the County" sued in that case "did not violate § 2 because the plaintiffs' proposed remedy violates the Equal Protection Clause." *Id.* at 1407.

411. On that latter question, the Fifth Circuit did not find predominance irrelevant but, instead, remanded because "[t]here has been no finding that the plaintiffs' plans subordinate traditional race-neutral districting plans to racial considerations," and the plaintiffs had presented an illustrative plan "which allegedly made minimal changes to existing districts and precinct lines." *Id.* at 1408 (internal quotation marks omitted). The court determined that an inquiry should

be made into whether "those changes are truly 'minimal'" and whether the "predominant factor test" was satisfied.[8] *Id.* (citation omitted).

412. But that distinction no longer has any legal foundation. The Supreme Court and Fifth Circuit precedent have both since held that the remedial and liability inquiries are not separate but are one in the same. *Abbott v. Perez*, 138 S. Ct. 2305, 2333 (2018); *Harding v. Cnty. of Dallas, Tex.*, 948 F.3d 302, 309–10 (5th Cir. 2020). As the Eleventh Circuit has since explained the rule, "a district court's remedial proceedings bear directly on and are inextricably bound up in its liability findings." *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1302–03 (11th Cir. 2020). When a plaintiff proposes a Section 2 illustrative plan, the plaintiff is showing a remedy that is actually possible. This means that a remedial-phase analysis is essential at the liability phase. As explained, a remedy that is presumptively unconstitutional cannot form the basis of liability in the first instance. What the Fifth Circuit held in Section III.C now has equal applicability to Section III.B.

413. Further, the law of racial gerrymandering has advanced since *Clark*. Whereas *Clark* instructed the district court to evaluate to what degree the alternative plans "use[d] race at the expense of traditional political concerns," 88 F.3d at 1408, the Supreme Court has since clarified that "a conflict or inconsistency between the enacted plan and traditional redistricting criteria is not a threshold requirement," *Bethune-Hill*, 137 S. Ct. at 799. Before *Bethune-Hill*, the Supreme Court had "not affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional principles." *Id.* This means that, when *Clark* was decided, it was not clear that a plan meeting the *Gingles*

[8] Here, there is no argument that the illustrative plans make minimal changes as compared to the enacted plans. Plaintiffs experts admitted that they made no effort to minimize changes. *See* 5/9 Tr. 157:19–158:18. *Clark* undermines their assertions that a least-change plan cannot be a Section 2 remedy, as a least change plan was asserted to be a Section 2 remedy in that case.

preconditions—which require adherence to "traditional districting principles such as maintaining communities of interest and traditional boundaries," *Abrams v. Johnson*, 521 U.S. 74, 92 (1997) (quoting *Bush*, 517 U.S. at 977)—could be presumptively unconstitutional. Now, it is clear that this can be so and normally is so. "The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race." *LULAC v. Perry*, 548 U.S. 399, 433–34 (2006) (citation omitted). Setting racial predominance as the VRA standard is the wrong way to go about doing that.

414. A final problem with Plaintiffs' position is that the Supreme Court has now taken a case to address it and will rule next Term. *Merrill et al. v. Milligan, et al.,* No. 21-1086 (U.S. 2022); *Merrill, et al. v. Caster, et al.*, No. 21-1087 (U.S. 2022). In that litigation, the Supreme Court issued a stay of an Alabama court's preliminary injunction compelling that state to hold the 2022 elections under a plan with two-majority minority districts, rather than one majority-minority district. *See Singleton v. Merrill*, No. 2:21-CV-1291-AMM, 2022 WL 265001 (N.D. Ala. Jan. 24, 2022). The Supreme Court also took the extraordinary step of treating the stay motions, respectively, as a petition for certiorari and jurisdictional statement and scheduling argument next Term.

415. The question in that case is whether the predominance test applies to the first *Gingles* precondition. There, a plan with two majority-Black congressional districts was not created in a large set of simulations, and the state argued that a racially predominant plan is not an appropriate Section 2 baseline. The similarities between *Merrill* and this case are difficult to overstate.

416. Given the Supreme Court's consideration of this matter, and its exceptional action in issuing a stay and seizing jurisdiction for itself, it would be irresponsible for the Court to issue

a materially identical injunction on materially identical grounds. The question is whether Plaintiffs are likely to succeed. They are not likely to succeed when the very premise of their case is being considered in the Supreme Court, as this case is pending.

417. For this reason alone, the motions must be denied.

2. Plaintiffs' *Gingles* Claim Fails at the Geographic Compactness Threshold

418. A related but independent flaw in Plaintiffs' illustrative plans is that they join disparate segments of Louisiana, with little if anything in common but race, in disregard of compactness as Section 2 defines it.

419. "[T]he § 2 compactness inquiry should take into account 'traditional districting principles such as maintaining communities of interest and traditional boundaries.'" *Abrams*, 521 U.S. at 92 (citation omitted). "[T]here is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first Gingles condition contemplates." *LULAC*, 548 U.S. at 433. This is "because the right to an undiluted vote does not belong to the 'minority as a group,' but rather to 'its individual members.'" *Id.* at 437 (citation omitted).

420. Plaintiffs concede that they must prove that the Black Voting Age Population ("BVAP") is both sufficiently numerous and geographically compact to form a majority black district. Doc. 41-1 at 8. All Plaintiffs' illustrative maps have a similar design. They use portions of East Baton Rouge ("EBR") as the cornerstone for a second proposed majority Black district.

421. Plaintiffs' argument rests on the idea that simply because Louisiana has sufficient BVAP statewide to proportionally create a second district, that such a district *must* be created, regardless of how spread out across the state's Black voters are. This is another iteration of the "max Black" theory that caused two different congressional plans to be rejected as racial gerrymanders in the 1990s.

422. At that time, the United States Department of Justice ("DOJ") adopted a policy, known as the "max Black" theory, requiring the maximization of the number of majority Black districts for a covered state to obtain preclearance under Section 5 of the VRA. To achieve preclearance, the Louisiana Legislature adopted two different plans which included two majority Black districts. In both versions, the legislature used portions of EBR to anchor the second majority Black district (CD 4) found in both plans. In both instances, the federal district court found that the second majority Black district was an illegal racial gerrymander. In 1996, the district court adopted a congressional plan that was used for the rest of the decade. The court's plan reverted back to Louisiana's policy of establishing only a single majority Black district. The court's plan did not use EBR as the keystone for a second majority Black district and instead placed that parish into a majority white district (CD 6). Therefore, there is no precedent for EBR being lawfully used as the primary building block for a second majority Black district. *Hays v. Louisiana*, 839 F.Supp.1188 (W.D. La. 1993) *vacated*, 512 U.S. 1230 (1994), *order on remand*, 862 F. Supp 119 (W.D. La. 1994), *vacated sub nom.*, *United States v Hays*, 515 U.S. 737 (1995), *decision on remand*, 936 F. Supp. 360 (W.D. La. 1996), *affirmed*, 518 U.S. 1014 (1996).

423. Both the Cooper and Fairfax Illustrative Plans use EBR as an anchor for a second majority-Black district. 5/9 Tr. 130:25–132:4 (Cooper); *id.* 219:22–220:22 (Fairfax).

424. Fairfax admits that a second majority-Black district could not be drawn without incorporating EBR and the northern delta parishes. 5/9 Tr. 219:22–220:22.

425. However, even Fairfax's evidence demonstrates that the Black communities in EBR and the delta parishes are vastly different in culture and socioeconomic status. 5/9 Tr. 225:16–227 (differences in education level); *id.* 229:11–230:11 (differences in median household income); *id.* at 232:1–233:7 (differences in socioeconomic risk factors). In short, the only reason

to combine these different Black communities into a congressional district is the color of their skin.

426. As the Supreme Court explained in *Shaw I:*

> Reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls. 509 U.S. at 647.

427. Subsequently, in *Miller v. Johnson,* 115 S. Ct. 2475 (1995), the Supreme Court clarified that districts drawn for predominantly racial reasons fail the *Gingles* compactness requirement, even if they are not as obviously irregular as the North Carolina district invalidated in the *Shaw* cases. *Miller* arose from the same max-black policy addressed in *Shaw I*. In Georgia, the DOJ refused to preclear a remedial plan drawn by the Georgia General Assembly, because the General Assembly refused to create the third majority-minority district found in the "max-black" plan drafted by the ACLU for the General Assembly's Black caucus. *Id.* at 2484. "Twice spurned" by the DOJ's refusal to preclear plans with less than three majority-Black districts, the General Assembly finally relented and enacted the ACLU's "max-black" plan. *Id*. at 2484. The hallmark of the ACLU's "max-black" plan was the "Macon/Savannah trade" which moved the densely Black population of Macon into a new district, thereby creating a district that connected "black neighborhoods of metropolitan Atlanta to the poor black populace of Coastal Chatham County" near Savannah. *Id.* This new district was 260 miles long and "worlds apart in culture." *Id.* The Supreme Court found that this district was a "geographic monstrosity" that tied majority Black population centers at the periphery of Atlanta, Augusta, and Savannah with a sparsely populated

rural area called "plantation country." *Id.* In striking down this "max-black" strategy, the Supreme Court held that only "a shortsighted and unauthorized view of the Voting Rights Act…which has played a decisive role in redressing some of our worst forms of discrimination" could support "the very racial stereotyping the Fourteenth Amendment forbids." *Id.* at 2494.

428. It appears the ACLU's strategy has changed very little in the last 25 years. Mr. Cooper's plans are anywhere from 50 to 100 miles longer than the egregious racial gerrymander struck down in the *Shaw* cases. It also bears striking geographic similarities to the ACLU's 1991 "max-black" plan for Georgia. These configurations have never been seen in Louisiana before in any lawful district. Their only precedential support lies in the fact that they are similar to the district rejected in *Hays*. This is exactly the sort of line-drawing the condemned in *Miller*. Plaintiffs' illustrative plans do nothing but create convoluted lines to include in one district individuals of the same race who are otherwise "widely separated by geographical and political boundaries" which reinforces the abhorrent "perception that members of the same racial group . . . think alike." *Shaw I,* 509 U.S. at 647.

429. Plaintiffs' illustrative plans (and, by extension, their claims) are also based on a faulty legal premise, as illustrated by *Cooper*. In *Cooper* the Supreme Court struck down North Carolina's CD1, drawn as a majority-minority district, as a racial gerrymander. 137 S. Ct. at 1466–1472. The Court held that the legislature had "no evidence that a § 2 plaintiff could demonstrate the third *Gingles* prerequisite—effective white block voting." *Id.* at 1472. This was, in part, because as the lower court noted, there was "no evidence that the general assembly conducted or considered any sort of a particularized polarized voting analysis during the 2011 redistricting process for CD1." *Harris v. McCrory,* 159 F. Supp. 3d 600, 624 (M.D.N.C. 2016).

430. In 1986, the Supreme Court in *Gingles,* found that there was no racially polarized voting in Durham, due to the success of Black candidates in that county. *Gingles*, 478 U.S. at 41. Thirty years later, in *Cooper*, both the district court and the Supreme Court questioned the inclusion of Durham in the state's first congressional district because of the absence of legally significant racially polarized voting in that county. Both courts also pointed to the district's history as a safe district for minority-preferred candidates, even though District 1's BVAP hovered between 46 and 48 percent. *Cooper*, 137 S. Ct. at 1472.

431. Here, Plaintiffs' experts did not produce the sort of localized racially polarized voting analysis required under this precedent. If Plaintiffs had done even a cursory study on their proposed second majority-minority district, they would have seen what Dr. Solanky discovered—Plaintiffs have a *Cooper* problem. In this case, there is ample evidence that each of Plaintiffs' illustrative CD5s reach into Baton Rouge and pull out Black voters primarily from EBR—just like North Carolina's CD1 reached into Durham. Solanky Rep., SOS_3, ¶¶ 68–72. And, as with Durham in *Cooper,* there is no evidence of legally significant racially polarized voting in EBR. *Id.* ¶ 30.

432. Rather, it appears that there is significant white crossover voting in EBR. In 2020, only 44.1 percent of the voters in EBR were Black, but the Parish overwhelmingly voted for President Biden in the 2020 election. SOS_4 at 11, Table 7. In fact, when Dr. Solanky examined the Fifth District in Mr. Cooper's Illustrative Plan 1, he found that, of the five Louisiana parishes that voted for President Biden in 2020, EBR was the only majority-white parish. *Id.* ¶ 20. The other four parishes were majority-minority. *Id.* ¶ 20. Furthermore, parish-wide races in EBR show that white voters are not voting as a bloc to defeat the minority preferred candidate, but voting to elect that candidate. *Id.* ¶¶ 23, 26, 30; SOS_2 ¶ 9. This is evidenced by the election of a Black

candidate for mayor-president in EBR since 2004. SOS_2 ¶ 9. And as shown by Dr. Solanky, EBR makes up a significant portion of the Fifth District under the illustrative plans. SOS_4 ¶ 27. For example, in Cooper's First Illustrative Plan, EBR comprises 34.2 percent of the parishes used by Cooper to create this version of the illustrative Fifth District. *Id.*

433. Furthermore, Dr. Solanky shows that the voting trends in East Baton Rouge Parish, which makes up a significant population portion of Plaintiffs' illustrative CD5s, is different from those of the remaining parishes. 5/11 Tr. 205:12–206:23; SOS_4 at 13. In fact under the eight statewide elections Dr. Solanky studied, East Baton Rouge Parish voted differently from the trend in the remaining parishes making up illustrative CD5. Under seven of eight of those elections, this was a statistically significant difference, which means chance alone cannot account for this difference. SOS_5 at 6–20; 5/11 Tr. 190:12–191:5.

434. On the other hand, in several parishes making up CD5, including many that are wholly contained parishes in each illustrative CD5, white voters cannot practically vote as a bloc to defeat a minority candidate of choice, because Black voters are a supermajority of voters in the parish. These parishes are East Carroll, Madison, Tensas, and St. Helena parishes. SOS_4 at 6–8. 5/11 Tr. 173:1–174:9; 179:9–180:19. Plaintiffs' experts' choice to include these vastly different Black populations into one district reinforces that the choice could only be made along racial lines, and no other reason.

435. Because Plaintiffs' illustrative plans only keep parishes with large minority populations whole, and slice and dice their way through other parishes to pick up minority voters, Plaintiffs' illustrative plans can only be achieved by targeting minority voters with surgical precision in violation of the Supreme Court's holding in *LULAC* that using race to primarily draw

districts "would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *LULAC*, 548 U.S. at 445–46.

3. Plaintiffs Have Failed to Show The Numerosity Required By *Gingles* I

436. To satisfy their burden under the first *Gingles* precondition, Plaintiffs must show that it is possible to "creat[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *LULAC*, 548 U.S. at 430. To satisfy this test, these remedial districts must contain a 50 percent plus one majority of minority citizens of voting age population. *Bartlett,* 556 U.S. at 19–20.

437. There are several ways in which to calculate the Black Voting Age Population ("BVAP") for purposes of this precondition.

438. The definition used by the United States Department of Justice ("DOJ Black") includes the "sum of the Census responders identifying as 'Black o[r] African American alone' and 'Two Races: White; Black or African American'"; "this definition does not include Hispanic individuals that may identify as black, nor multiracial individuals identifying as a combination of races other than 'White' and 'Black or African American.'" *Pope v. Cty. of Albany*, No. 1:11-cv-0736 (LEK/CFH), 2014 U.S. Dist. LEXIS 10023, at *7–8 n.3 (N.D.N.Y. Jan. 28, 2014).

439. The definition used by Plaintiffs experts ("Any Part Black") is a broader census category that includes anyone that is "Black," as well as "Black" combined with any other race.

440. "Any Part Black" includes persons who may be 1/7th black, and who also self-identify as both black and Hispanic.

441. The only illustrative maps in Plaintiffs' initial volley of illustrative maps that meet the *Bartlett* "50 percent plus one" voting age population requirements are those that use "Any Part Black" to calculate BVAP, and even using this expansive definition, none of the illustrative maps have a BVAP that exceeds 52.05 percent.

442. Using "DOJ Black" to calculate the BVAP results in a single majority-minority congressional district that exceeds *Bartlett*'s "50 percent plus one" voting age population requirement, and that congressional district has a BVAP of 50.81 percent.

443. Plaintiffs have argued that *Ashcroft* established "Any Part Black" as the proper BVAP measurement to use in a Section 2 case, but that is not true. Although it considered Georgia's choice to "include[] those people who self-identify as both black and a member of another minority group, such as Hispanic," for purposes of evaluating a redistricting plan, 539 U.S. at 473 n.1., it was not a Section 2 case and therefore did not consider whether the *Gingles* numerosity requirement was met. Courts that have addressed this question in Section 2 cases have treated the question as unresolved by Supreme Court precedent. *See Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 419–20 & n.118 (M.D. La. 2017), *rev'd on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020). *Ashcroft* was a Section 5 case, and the two statutes have different mechanics and purposes. *See Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471 (1997). Section 5 does not include a majority-minority requirement, and so the "slightly different figures" exhibited between the various metrics, 539 U.S. at 473 n.1, carry a different legal significance under Section 2 than under Section 5.

444. Although no court has ever conclusively settled the question of what degree persons who self-identify with more than one racial or ethnic identity should be categorized for the purposes of the Voting Rights Act, *see Georgia v. Ashcroft,* 539 U.S. 461, 473 n.1 (2003), the party seeking the creation of an additional majority-minority congressional district has done so by showing that the *Bartlett* "50 percent plus one" voting age population requirement is satisfied using numerous BVAP definitions. *See, e.g, Pope v. Cty. of Albany*, 687 F.3d 565, 577 n.11 (2d Cir. 2012) ("Because plaintiffs satisfy the first *Gingles* factor for DOJ Non-Hispanic Blacks, we need

not here consider whether the relevant minority group might more appropriately be identified as "Any Part Black," for which the minority VAP percentages are even higher.”).

445. Plaintiffs’ inability to satisfy the *Bartlett* “50 percent plus one” voting age population requirement using any definition except for the most expansive “Any Part Black” definition compels the conclusion that, as a matter of law, they have not carried their burden under *Gingles* Step I.

446. To this criticism, Plaintiffs have mostly responded with theatrics, arguing that the defense’s challenge to numerosity is somehow an extension of the “one drop” rule utilized in Louisiana’s past to identify members of different racial groups. *See, e.g.,* 5/11 Tr. 108:16–110:1; 5/10 Tr. 229:25–231:1. This argument is baffling. The metric the defense is advancing is called *DOJ* Black. It is called that because the U.S. Department of Justice Voting Rights Section uses it to evaluate redistricting plans. *See Ashcroft*, 539 U.S. at 474 n.1 (observing that “the United States” does not “include[] those people who self-identify as both black and a member of another minority group, such as Hispanic,” whereas Georgia did). There is obviously no connection between this calculation and the history of racism in Louisiana or even the south generally. Indeed, in Ashcroft, it was the former Confederate state of Georgia that utilized the measure Plaintiffs propose here, and the federal government that utilized the measure the defense proposes.

447. And the reason the Voting Rights Section utilizes DOJ Black is to prevent state actors from artificially inflating the minority counts of their redistricting plans to make it seem like there is more minority opportunity than there is. That is, without a showing that members of different racial groups are internally cohesive, there is little reason to believe that a number bringing together a diverse coalition will perform. For that reason, the incentive in picking a calculation of minority VAP is for the state usually to count as many minority members as possible

in discussions with the Voting Rights Section, either to persuade the Section not to bring suit or, at the time of preclearance, to approve a proposed plan. The entire point of the DOJ Black metric was to prevent this type of gamesmanship and to take a more conservative position on likely minority opportunity. The notion that this has some tie to the "one drop" rule in Louisiana is preposterous; DOJ Black was designed to prevent state gimmicks when faced with federal VRA review of their plans.

448. Here, it is Plaintiffs who are incentivized to inflate the potential performance of their district, and their choice of "Any Part Black" as the metric to use underscores how weak their illustrative remedies are. Their unfortunate litigation choice to throw mud at the defense fails to move the needle on the legal questions before the Court.

449. Because Plaintiffs carry the burden of establishing all three of the *Gingles* preconditions, their failure to satisfy the first mandates denial of their motions for a preliminary injunction.

B. The Third *Gingles* Precondition

450. The third *Gingles* precondition requires a challenger to prove an "amount of white bloc voting that can generally 'minimize or cancel' black voters' ability to elect representatives of their choice." *Gingles*, 478 U.S. at 56 (citations omitted). The question is not merely "whether white residents tend to vote as a bloc, but whether such bloc voting is 'legally significant.'" *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc) (citation omitted).

451. Plaintiffs' experts conducted standard polarized voting studies and opined in their reports and at the hearing that voting is polarized. By that, they meant that white voters and Black voters generally prefer different candidates.

452. Although necessary, this is not sufficient. The question in this case is whether Plaintiffs are likely to establish at trial that the voting patterns carry legal significance.

453. There are two distinct questions of legal significance in this case. The first is whether white bloc voting arises to the requisite level of legal significance or, on the other hand, whether there are sufficient levels of white "crossover" voting (where white voters support Black-preferred candidates) to obviate the need for a VRA remedy. The second question is whether polarized voting is the result of racial attitudes in the general populace or whether it results from, for example, differences in partisan affiliation or political and policy views.

454. On both of these questions, Plaintiffs are unlikely to succeed.

1. Levels of White Bloc Voting

455. Perhaps the question on which the hearing evidence was most clear, and on which there is no room for a dispute of material fact, is that white crossover voting is sufficient to enable the Black community to elect its preferred candidates of choice in districts below 50 percent BVAP. As discussed below, this means white bloc voting is not legally significant and that the third *Gingles* precondition is not met.

456. "[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993) (quoting *Gingles*, 478 U.S. at 49 n. 15). That is, "[i]n areas with substantial crossover voting" a challenger will not "be able to establish the third *Gingles* precondition—bloc voting by majority voters." *Bartlett*, 556 U.S. at 24.

457. According to governing precedent, crossover voting becomes "substantial" when it arises to the level that "a VRA remedy," i.e., a majority-minority district, is unnecessary to enable the Black community to usually elect its preferred candidates. *Covington v. North Carolina*, 316 F.R.D. 117, 168 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017).

458. The Supreme Court made this clear in *Bartlett*. That decision held that Section 2 does not require jurisdictions to create "crossover" districts, in which "the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." 556 U.S. at 13 (plurality opinion). One of the rationales for this conclusion was that a crossover-district requirement "would require us to revise and reformulate the *Gingles* threshold inquiry that has been the baseline of our § 2 jurisprudence." *Id.* at 16. The Court reasoned that "the majority-bloc-voting requirement" will not "be met in a district where, by definition, white voters join in sufficient numbers with minority voters to elect the minority's preferred candidate." *Id.* The Court further explained that, where crossover voting is sufficient to create performing crossover districts, "*majority-minority districts would not be required in the first place*." *Id.*at 24 (emphasis added).

459. A subsequent summary affirmance confirmed this definition of legally significant white bloc voting. In *Covington*, the North Carolina legislature created twenty-eight majority-minority districts in its state house and senate plans, based on the advice of statistical experts who found "statistically significant racially polarized voting in 50 of the 51 counties studied." *Covington*, 316 F.R.D. at 169 (quotation marks omitted). The problem was that North Carolina's experts, addressed "the general term 'racially polarized voting'" which "simply refers to when different racial groups 'vote in blocs for different candidates.'" *Covington*, 316 F.R.D. at 170 (citation omitted).

460. But they missed "crucial difference between legally significant and statistically significant racially polarized voting." *Id.* at 170 (underlining in original). Whereas polarized voting can be said to occur "when 51% of a minority group's voters prefer a candidate and 49% of the majority group's voters prefer that same candidate," *id.* at 170, "the third *Gingles* inquiry is

concerned only with 'legally significant racially polarized voting,'" *id.* (quoting *Gingles*, 478 U.S. at 51, 55–56). Non-actionable polarized voting becomes legally significant only when "racial bloc voting is operating at such a level that it would actually minimize or cancel minority voters' ability to elect representatives of their choice, *if no remedial district were drawn*." *Id.* at 168 (quotation and edit marks omitted; emphasis added). The question is whether "the candidate of choice of African-American voters would usually be defeated *without a VRA remedy*." *Id.* (emphasis added).

461. The *Covington* court—whose decision was endorsed by every Supreme Court justice—criticized the North Carolina legislature because it "**Never Analyzed *Gingles*' Third Factor.**" *Id.* at 167 (bolding and capitalization in original). The legislature did not assess whether the Black-preferred candidate would likely lose "absent some remedy," and this "failure" was "fatal to their Section 2 defense." *Id.* As *Bartlett* had explained, where a crossover district would perform, "majority-minority districts would not be required in the first place." 556 U.S. at 24 (plurality opinion). They were not required in North Carolina.

462. *Covington* is not controversial. The case was not close. The three-judge court—led by Fourth Circuit Judge James Wynn—subsequently called the invalidated North Carolina plan "the most extensive unconstitutional racial gerrymander ever encountered by a federal court," *Covington v. North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017). The U.S. Supreme Court summarily affirmed the decision, which fell within its appellate jurisdiction, in a one-sentence order by a unanimous vote. *North Carolina v. Covington*, 137 S. Ct. 2211 (2017); *Covington*, 270 F. Supp. 3d at 892 ("The Supreme Court affirmed that conclusion without argument and without dissent. And the Supreme Court unanimously held that Senator Rucho and Representative Lewis incorrectly believed that the Voting Rights Act required construction of majority-minority districts[.]" (underlining in original)). The Supreme Court reached a materially identical

conclusion in *Cooper*, finding that a majority-minority district was unnecessary, and hence racially gerrymandered, where crossover voting levels were such that a crossover district would perform. 137 S. Ct. at 1471–72.

463. It is worth recounting this because this case is the other side of the *Covington* coin. As in *Covington*, the evidence shows that a white crossover voting arises to the level that a district could perform below 50 percent BVAP. *Covington* held that the North Carolina legislature should not have drawn majority-minority districts in that instance. Here, the Legislature followed that advice: it maintained a "carbon copy" of CD2 for reasons that are not alleged to be racially predominant. 5/9 Tr. 88:17–20. Beyond that, it created no majority-minority districts.

464. Plaintiffs are unlikely to prove at trial that the Legislature violated Section 2 by doing what *Covington* said the Constitution requires. Plaintiffs structured their polarized voting evidence around the wrong legal standard. Both their polarized voting experts, Dr. Palmer and Dr. Handley, defined polarized voting as existing where "black voters and white voters voted differently." 5/10 Tr. 13:12–13; *see also* 5/9 Tr. 309:23–310:2. In particular, they view polarized voting as existing where "black voters and white voters would have elected different candidates if they had voted separately." 5/10 Tr. 21:2–4. That would occur any time bare majorities of Black voters and white voters vote for different candidates.

465. From that starting point, "the experts opined (to no one's great surprise) that in [Louisiana], as in most States, there are discernible, non-random relationships between race and voting." *Cooper*, 137 S. Ct. at 1471 n.5. But, as described, that is the exact error *Covington* condemned. Like the experts whose work erroneously led to a gross constitutional violation in North Carolina, the experts in this case failed to ask whether white bloc voting is so severe that only a majority-minority district can secure an equal opportunity to elect. Plaintiffs bear the burden

on this question and cannot shoulder that burden by ignoring it. "Section 2 'does not assume the existence of racial bloc voting; plaintiffs must prove it.'" *Growe*, 507 U.S. at 42 (quoting *Gingles*, 478 U.S. at 46).

466. In fact, when probed on the question, Plaintiffs' experts admitted that their own studies show that a VRA remedy is not necessary. Dr. Palmer testified that there is meaningful white crossover voting, 5/9 Tr. 337, and that CD2 and CD5 could be drawn below 50 percent and enable the Black community to elect its preferred candidates, 5/9 Tr. 346. Dr. Lichtman—who was also the plaintiffs' expert in *Covington*—agreed that a district around 40 percent BVAP could perform and compared this case to *Covington* without prompting. 5/10 Tr. 198–200. Dr. Handley testified that it is possible districts below 50 percent BVAP may perform. 5/10 Tr. 75–76. The *amicus* brief of mathematics and computer-science professors at LSU and Tulane University presents an analysis of nineteen elections asserting that districts of about 42 percent BVAP afford an equal minority electoral opportunity. *Amicus* Brief in Support of Neither Party (Doc. 97) at 23, 27, 34–34. A defense expert, Dr. Lewis, concluded that a 50 percent BVAP district is unnecessary in either the footprint of CD5 or CD2. Lewis Rep., Leg_2, ¶ 13.

467. There is, then, not even a material dispute of fact on this question. Plaintiffs are not likely to succeed at trial, when summary judgment could be entered against them on the current record.

468. Plaintiffs' responses on the law are quite plainly contrary to governing precedent.

469. First, Plaintiffs appear to argue that CD5 is not a crossover district and thus is vulnerable to a Section 2 challenge even in the face of high crossover voting levels. But that contradicts *Bartlett*, which, as discussed, rejected any Section 2 requirement of crossover districts.

470. Second, Plaintiffs also seem to that they have proposed majority-minority districts that do satisfy *Bartlett*. That is true, but, where a crossover district can perform, "majority-minority districts would not be required in the first place." *Bartlett*, 556 U.S. at 24. And this argument does not distinguish the case from *Covington*.

2. Partisan Politics—Not Race—Created The Divergence Between Black And White Voting Preferences In Louisiana

471. If "partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens," then there is no "legally significant" racially polarized voting under the third *Gingles* precondition. *League of United Latin Am. Citizens, Council No. 4434 v. Clements,* 999 F.2d 831, 850 (5th Cir. 1993).

472. This is so because "[t]he Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party's candidates.'" *Id*. at 854 (emphasis added) (quoting *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992)).

473. Section 2 "is implicated only where Democrats lose because they are black, not where blacks lose because they are Democrats." *Id*.

474. Dr. Alford, professor of political science from Rice University, conducted an analysis of the reports submitted by Plaintiffs' experts. 5/12 Tr. 131:9-13; State Ex. 1 at 1.

475. Dr. Alford found that while "voting may be correlated with race . . . the differential response of voters of different races to the race of the candidate is not the cause." State Ex. 1 at 9; 5/12 Tr. 153:1–9. He testified that "I don't think there's any question that the party affiliation of candidates is the driving force in [explaining divergent voting patterns between blacks and whites in Louisiana] and not the race of the candidate." 5/12 Tr. 153:1–9. This is conclusively shown when one removes partisanship from the analysis. When looking at election contests that pit

Republicans against Republicans, there is no obvious pattern of differentiation between how black and white voters' vote. 5/12 Tr. 144:2–14; State Ex. 1 at 5-6.

476. He found that, instead of race being the driver of differences in voting patterns, the polarization seen in the data is a result of Democratic party allegiance. State Ex. 1 at 6, 8; 5/12 Tr. 153:1–9.

477. The protections of Section 2 of the Voting Rights Act "extend only to defeats experienced by voters 'on account of race or color.'" *Clements*, 999 F.2d at 850. That means that when "partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens" then there is no legally sufficient white bloc voting. *Id*.

478. In other words, Plaintiffs have not shown there is "legally significant" bloc voting. *See id.*

479. Without a showing of legally significant bloc voting, Plaintiffs' motions for a preliminary injunction must be denied.

C. Totality of the Circumstances

480. Because the threshold *Gingles* preconditions are not satisfied, the Court need not address the totality of the circumstances. However, as shown below, factors relevant to this case under the totality test confirm that vote dilution is unlikely to be proven to exist at trial.

1. No Measure of Vote Dilution

481. Plaintiffs "lack any evidence of dilution," as Section 2 defines it. *Gonzalez v. City of Aurora, Illinois*, 535 F.3d 594, 600 (7th Cir. 2008). Section 2 forbids a voting procedure that leaves members of a protected class "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). But it expressly disclaims a requirement of proportionality: "nothing in this section

establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." *Id.*

482. Plaintiffs' have built their case on the very proportionality Section 2 disclaims, contending that a new majority-minority district must be created somewhere in Louisiana, without regard to the State's traditional district boundaries or even for which minority communities should be joined.

483. This is the wrong concept. In *Washington v. Tensas Parish School Board*, 819 F.2d 609 (5th Cir. 1987), the Fifth Circuit reiterated that, "although some democracies provide for proportional representations of parties and ethnic groups, that has never been an American tradition." *Id.* at 612 (citation omitted; alterations accepted). The court rejected the notion that a minority group having three majority districts of seven was entitled to a fourth district to match its percentage of the population. *Id.* at 611–12. The court reasoned that, "while race may be considered as a factor, safe seats for the minorities are not required of a reapportionment plan." *Id.* at 612 (citation omitted); *Wyche v. Madison Par. Police Jury*, 635 F.2d 1151, 1161 (5th Cir. 1981) ("Even as a remedial measure, court plans should not aim at proportional representation.").

484. The Seventh Circuit applied similar reasoning in rejecting a Section 2 challenge to the city of Aurora's council districts in *Gonzalez*. Judge Easterbrook (joined by Judges Wood and Sykes) reasoned that Section 2 contains no obligation on the part of redistricting authorities to create "the maximum influence Latinos could have." 535 F.3d at 598. "Nor is proportional representation the benchmark." *Id.* Instead, "the Voting Rights Act protects the rights of individual voters, not the rights of groups." *Id.* at 598 (discussing *LULAC*, 548 U.S. 399).

485. In *Gonzalez*, the Seventh Circuit assumed that the three *Gingles* preconditions were satisfied, but "[t]his just sets the stage." *Id.* at 597. The challengers there failed to establish some

reasonable baseline to measure dilution. They did not, for example, identify "a minority group in one part of a jurisdiction [that] has been thrown to the wolves," as occurred in *LULAC v. Perry*. *Id.* at 598. Another possibility, said the Seventh Circuit, was to utilize computer simulations, which "can use census data to generate many variations on compact districts with equal population." *Id.* at 599. That method might show "that Latinos are sufficiently concentrated that the random, race-blind exercise we have proposed yields three 'Latino effective' districts at least 50% of the time. Then a court might sensibly conclude that Aurora had diluted the Latino vote by undermining the normal effects of the choices that Aurora's citizens had made about where to live." *Id.* at 600. But the challengers "did not conduct such an exercise . . . (or, if they did, they didn't put the results in the record)." *Id.* "Because plaintiffs lack any evidence of dilution," said the unanimous panel, their Section 2 claim failed. *Id.*

486. This case is no different. The central premise of this case is that "Louisianans who identify as any part Black constitute 31.2% of the state's voting age population" and are injured because "only around 17% of the state's congressional districts" are under their "control." Doc. 1 ¶ 1 (*Robinson* Complaint); *Galmon* Compl. ¶ 2 ("Louisiana has the second-highest proportion of Black residents in the United States, comprising nearly one-third of the state's population. But Black Louisianians have the opportunity to elect their candidates of choice in only *one* of Louisiana's six congressional districts.").

487. But Plaintiffs identify no discrete "minority group in one part of a jurisdiction [that] has been thrown to the wolves." *Gonzalez*, 535 F.3d at 598. Although the illustrative plans all operate, on a general level, to unite East Baton Rouge and territory in its vicinity to the so-called delta parishes in northeast Louisiana, 180 miles away, they fail to make out a community-oriented case concerning these individual voters. Indeed, the *Robinson* Complaint does not so much as

mention the delta parishes. The *Galmon* Complaint does so only twice, and in both instances, it merely makes the point that combining the delta parishes with territory in and around Baton Rouge can achieve a 50 percent threshold. *Galmon* Compl. ¶¶ 34, 96. This is not a voter-centric approach to the VRA. It is a proportionality approach, and Plaintiffs have little meaningful prospect of success in establish a claim the VRA expressly disclaims.

488. Also, as in *Gonzalez*, Plaintiffs either did not run simulations to show that two majority-minority district is the likely non-race-based outcome of traditional districting principles or else they declined to present that information in court. 535 F.3d at 599–600. Unlike *Gonzalez*, the defense side did sponsor such testimony, and that makes this case an even weaker than the claim *Gonzalez* rejected.

2. Disagreement of Discretion in Protecting Minority Voting Rights

489. Plaintiffs challenge the legitimate, discretionary choice of the Legislature in how to protect minority voting strength. "Plaintiffs challenging single-member districts may claim, not total submergence, but partial submergence; not the chance for some electoral success in place of none, but the chance for more success in place of some." *Johnson v. De Grandy*, 512 U.S. 997, 1012–13 (1994). "When the question thus comes down to the reasonableness of drawing a series of district lines in one combination of places rather than another, judgments about inequality may become closer calls." *Id.* "As facts beyond the ambit of the three *Gingles* factors loom correspondingly larger, factfinders cannot rest uncritically on assumptions about the force of the *Gingles* factors in pointing to dilution." *Id.*

490. Plaintiffs' claim, at base, is that two districts in which minority opportunity is dependent on white voting choices are better than one district in which the functional Black majority controls its own electoral destiny. It is undisputed that CD2, as enacted, provides the Black community in Baton Rouge, New Orleans, and surrounding areas "a functional working

majority." *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 802 (2017). Section 2 requires such "an effective majority," *LULAC v. Perry*, 548 U.S. 399, 426 (2006), not a superficial majority, *Anne Harding v. Cnty. of Dallas, Texas*, 948 F.3d 302, 309 (5th Cir. 2020); *Thomas v. Bryant*, 938 F.3d 134, 158 & n.120 (5th Cir. 2019), *vacated on other grounds sub nom. Thomas v. Reeves*, 961 F.3d 800 (5h Cir. 2020). There is, then, no serious question that CD2 satisfies Section 2.

491. The question Plaintiffs present, however, is whether two bare-majority districts are better than one functional-majority district. Like the Wisconsin plan summarily rejected as a racial gerrymander, Plaintiffs' illustrative plans all achieve the "addition" of another majority-minority district "by reducing the black voting-age population in the other" majority-Black district. *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 n.1 (2022). Setting aside the readily apparent problem of racial predominance—which exists for the same reason it existed in *Wisconsin Legislature*—Plaintiffs' proposals are questionable under Section 2 itself, since the practice of drawing down BVAP to spread out Black voters can, under some circumstances, be legally actionable "cracking," even where the BVAP is above 50 percent. *Thomas*, 938 F.3d at 158 & n.120.

492. "[A]n alternative map containing an additional majority-minority district does not necessarily establish an increased opportunity." *Harding*, 948 F.3d at 309. It is not at all obvious that Plaintiffs' proposals will enhance opportunity. Plaintiffs' experts have made projections based on statewide elections from last decade, but they admit (as they must) that no elections have occurred under the challenged plan or under their illustrative plans. 5/10 Tr. 24:22–25:1 (Handley); *id.* 25:11–13. Past performance is no prediction of future outcomes, especially where the past performance is not even in the same elections for the same offices. These predictions, purporting

to indicate what will happen in a *decade's* worth of future elections, are something like farmer's almanac forecasts of weather for a coming season. Maybe they are right. Maybe not.

493. There are good reasons to take these predictions with more than a grain of salt. For one thing, the BVAP numbers in the illustrative versions of CD2 and CD5 constitute the barest of bare majorities. For another thing, Plaintiffs' experts admit that white voting choices will determine the outcomes in all events. Dr. Lewis showed that only with white crossover voting can the Black-preferred candidate reliably prevail in the illustrative version of CD2 and CD5. Dr. Palmer responded that a Black-preferred candidate may also win if white voters chose not to vote at all. *See* 5/9 Tr. 328:4–18. But that only underscores that the white voting choices (whether to vote for the Black-preferred candidate or not vote) control the elections in these proposed districts. "There is a difference between a racial minority group's 'own choice' and the choice made by a coalition." *Bartlett*, 556 U.S. at 15. Plaintiffs fail to explain how a legislature that acknowledges that difference, and affords a minority group a meaningful opportunity to elect its preferred candidates without being dependent on other groups, violates Section 2.

494. Another factor is that the BVAP in CD2 dropped markedly in the decade beginning in 2011 and had good reasons to believe it needed more than the slim majorities Plaintiffs proposed to ensure that a majority-minority district remains such over the course of 10 years.

495. A further cause for concern about the viability of Plaintiffs' alternatives stems from the fact that Plaintiffs—who shoulder both the preliminary-injunction and Section 2 burdens—have taken conflicting positions on critical case issues. On the question of performance, they insist that that districts of the slimmest Black majorities will ensure an equal Black electoral opportunity. *See* Handley Rep., PR-12, at 13–14; Palmer Rep., GX-2, at 6–8. On the question of white bloc voting (for the third *Gingles* precondition), Plaintiffs insist that bloc voting is severe and white

crossover voting very low. 5/10 Tr. 76:11–18 (Handley). On the question of Black turnout (for the fifth Senate factor), Plaintiffs insist that Black turnout is significantly lower than white turnout. 5/10 Tr. 177:1–8 (Lichtman).

496. But not all of that can be true. If white crossover voting is *de minimis* and Black turnout lags behind white turnout, then the white vote will prevail in districts with miniscule Black majorities. On the other hand, if such districts can be deemed to "enhance the ability of minority voters to elect the candidates of their choice," and thus to perform functionally, *Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018), then there must be some explanation for the projected success of the Black preferred candidates. Either Black turnout must match or exceed white turnout—in which case the fifth Senate factor favors the defense—or else white crossover voting must be substantial—in which case the third *Gingles* precondition cannot be proven. It cannot be that the facts align perfectly for Plaintiffs to prevail on *each* of these issues.

497. In any event, this complex calculous admits of substantial unclarity, and "[c]ourts cannot find § 2 effects violations on the basis of *uncertainty*." *Abbott*, 138 S. Ct. at 2333. The Supreme Court in *Abbott*, and the Fifth Circuit in *Harding* and *Fusilier v. Landry*, 963 F.3d (5th Cir. 2020), have held that Section 2 challengers "must meet the overarching demand that their new districting scheme enhances their ability to elect candidates of their choosing." *Id.* at 462. Plaintiffs cannot meet this standard when core aspects of their case contradict the necessary factual predicates.

498. And the Supreme Court has consistently counseled that these gray zones are the proper sphere for judicial deference to state legislatures' "broad discretion" to "comply" as they "reasonably s[ee] fit." *Abbott*, 138 S. Ct. at 2333 (citation and quotation marks omitted). Here, reasonable compliance by maintaining one majority-minority district in the same region that has

hosted a majority-minority district for generations, and at a level of minority voting-age population sufficient to ensure Section 2 compliance, was at least as reasonable as Plaintiffs' proposed high-risk, high-reward gamble with Black electoral opportunity—which came with no analytical support whatsoever during the redistricting.

499. Indeed, this question is the paradigmatic question of legislative discretion under the VRA. "In order to maximize the electoral success of a minority group, a State may choose to create a certain number of 'safe' districts, in which it is highly likely that minority voters will be able to elect the candidate of their choice. Alternatively, a State may choose to create a greater number of districts in which it is likely—although perhaps not quite as likely as under the benchmark plan—that minority voters will be able to elect candidates of their choice." *Georgia v. Ashcroft*, 539 U.S. 461, 480 (2003). Section 2 "does not dictate that a State must pick one of these methods of redistricting over another." *Id.*; *see also Bartlett*, 129 S. Ct. at 23 (confirming that this rule applies under VRA Section 2). The choice of one safe seat or two less safe seats falls well within the Legislature's discretionary choices.

3. Senate Factors

500. The Senate factors, which guide the totality of the circumstances inquiry, cut against a finding of vote dilution.

(a) Senate Factor 1: History of Official Discrimination In Voting

501. Senate Factor 1 looks to the "extent of any history of official discrimination in the state...that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process . . . ." *Gingles,* 478 U.S. at 36–37. Here, the most relevant question is whether there is "recent evidence of discrimination." *Lopez v. Abbott*, 339 F. Supp. 3d 589, 611 (S.D. Tex. 2018). Plaintiffs did not present any meaningful *recent* evidence of official

discrimination. Instead, most of Plaintiffs' historical evidence pre-dates the 21st Century, with Dr. Gilpin's analysis reaching back to 1724 and the passage of the Code Noir. PR-13 at 4.

502. While Louisiana's history of discrimination is tragic, it is in the distant past and is not especially probative of this Section 2 case in 2022. "The Supreme Court has cautioned that 'unless historical evidence is reasonably contemporaneous with the challenged decision, it has little probative value,'" *Veasey v. Abbott*, 830 F.3d 216, 232 (5th Cir. 2016) (quoting *McCleskey v. Kemp*, 481 U.S. 278, 298 n.20 (1987)). The Nation has changed considerably over the past few decades, and those changes must be taken into account. *See, e.g., Fusilier v. Landry*, 963 F.3d 447, 459 n.9 (5th Cir. 2020) (recognizing that "as the Chief Justice has observed, 'our country has changed' in its treatment of minorities" (quoting *Shelby County v. Holder*, 570 U.S. 529, 557 (2013))); *Greater Birmingham Ministries v. Sec'y of Ala.*, 992 F.3d 1299, 1332 (11th Cir. 2021) (cautioning against "allowing the old, outdated intentions of previous generations to taint [a state's] ability to enact voting legislation"); *Fairley v. Hattiesburg, Miss.*, No. 2:06cv167, 2008 WL 3287200, *9 (S.D. Miss. Aug. 7, 2008) ("[T]hese discriminatory practices ceased long ago, and no evidence was submitted to prove official discrimination on the part of the City continues to exist."). For those reasons, "the most relevant 'historical' evidence is relatively recent history, not long-past history." *Veasey*, 830 F.3d at 232 (holding that "the district court's disproportionate reliance on long-ago history was error").

503. Indicative of the change present in Louisiana over the past decades is the fact that experts now believe—as detailed during the hearing—that Black voters in Louisiana can have an opportunity to elect candidates of choice in districts below 50 percent BVAP. Due to meaningful white crossover voting (where white voters support Black candidates of choice), Dr. Palmer testified that CD2 and CD5 in *Galmon* Plaintiffs' illustrative plans could be drawn below 50

percent and still enable the Black community to elect its preferred candidates, 5/9 Tr. 346. Dr. Handley testified that it is possible districts below 50 percent BVAP may perform. 5/10 Tr. 75–76. Indeed, Dr. Lichtman agreed that a district around 40 percent BVAP could perform, 5/10 Tr. 198–200, a conclusion shared by the LSU and Tulane professors who submitted the *amicus* brief arguing that districts about 42 percent BVAP afford an equal minority electoral opportunity. *Amicus* Brief in Support of Neither Party (Doc. 97) at 23, 27, 34–34.

504. Further reflective of that point is the fact that Plaintiffs have not presented recent, specific history of official discrimination with respect to Louisiana's congressional district plans. *See Lopez*, 339 F. Supp. 3d at 612 (finding Factor 1 as having "slight weight" despite Texas's "long history of official racial discrimination" where Plaintiffs failed to "identify any specific history of official discrimination with respect to establishing or maintaining the multimember nature of voting for the State's high courts," the offices at issue in that case). Since the 1980s, the only finding of discrimination with respect to Louisiana's congressional plans were the *Hays* line of cases in the 1990s that struck down two-majority-minority district plans as illegal racial gerrymanders—which, of course, is the same basic plan Plaintiffs urge this Court to impose.[9]

505. Plaintiffs' other Senate Factor 1 evidence is likewise lacking. As one example, Plaintiffs rely upon the fact that, prior to *Shelby County* inactivating Section 5 of the Voting Rights Act, the U.S. Department of Justice had denied preclearance to proposed voting changes in Louisiana under Section 5 dozens of times. GX-3 at 11-13; PR-13 at 37. But as a matter of law, a state's failure to receive "preclearance from DOJ under the now-void Section 4 of the VRA does

[9] At best, *Robinson* Plaintiffs cite a 2021 settlement between the U.S. Department of Justice and the City of West Monroe, Louisiana concerning at-large voting for the City's Board of Aldermen. PR-13 at 49. Those parties entered into a consent decree by which the City adopted a "mixed" method of electing two Aldermen at-large and three through single-member districts. *See id.* at n. 230 (citing press release announcing terms of settlement). But a settlement and consent decree are different than a fully litigated and contested Section 2 decision, and the issues in that case were limited to a single municipality and in no way related to the State's congressional plan.

not prove" historical voting discrimination for Senate Factor 1 purposes, "because the Section 4 test did not deal with actual discrimination in election practices but with the lesser charge of 'backsliding.'" *Fusilier*, 963 F.3d at 459. The denial of preclearance does not establish that Louisiana discriminated against voters on the basis of race.

506. For another, Plaintiffs also cite limitations on felon voting in Louisiana as evidence of present-day discrimination. Even though Louisiana passed Act 636 in 2018[10] to loosen the State's restrictions on voting for convicted felons, Dr. Gilpin nevertheless argued the State still made registration "burdensome and difficult for former felons," which he asserted were disproportionately Black. PR-13 at 48–49. Dr. Lichtman makes a similar argument. GX-3 at 17. But courts have repeatedly rejected challenges to felon disenfranchisement statutes under the Voting Rights Act, whether because the court read the VRA to not apply to felon-disenfranchisement statutes (among other reasons, to avoid conflict with Section 2 of the Fourteenth Amendment, which permits states to deny the franchise to those convicted of felonies), or simply upon the claim's merits. *See, e.g., Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1234 (11th Cir. 2005) (en banc); *Hayden v. Pataki*, 449 F.3d 305, 322–23 (2d Cir. 2006) (en banc); *Simmons v. Galvin*, 575 F.3d 24, 41–42 (1st Cir. 2009); *Farrakhan v. Gregoire*, 623 F.3d 990, 993–94 (9th Cir. 2010) (en banc); *Wesley v. Collins*, 791 F.2d 1255, 1261–63 (6th Cir. 1986). *See also United States v. Ward*, 352 F.2d 329, 331 n.1 (5th Cir. 1965) (recognizing that "Louisiana may exclude persons convicted of felonies" from the franchise). Plaintiffs have failed to prove

[10] Act 636 amended La. Rev. Stat. § 18:102(A) to permit felons on probation or parole, who have not been incarcerated for at least five years, to register and to vote. An editorial in THE ADVOCATE reported that passage of Act 636 restored the electoral franchise to approximately 40,000 Louisianans. *Our Views: Thanks to new law, more Louisiana voters have a stake in democracy*, THE ADVOCATE, Mar. 1, 2019, https://www.theadvocate.com/baton_rouge/opinion/our_views/article_2bd6919c-3b6d-11e9-a86c-9733299a2efb.html (visited May 17, 2022).

why Louisiana's permissive felon-voting regime under Act 636 is evidence of discrimination when a flat-out prohibition on felon voting is legal.

507. *Robinson* Plaintiffs also point to this Court's preliminary injunction decision in *Harding v. Edwards*, 487 F. Supp. 3d 498 (M.D. La. 2020) requiring Louisiana to modify certain early-voting procedures to account for the COVID-19 pandemic, *see* PR-13 at 47, but plaintiffs in that case did not seek a preliminary-injunction under the VRA and the Court did not find a violation of the VRA in that case.

508. More recent and current conditions in Louisiana reflect an equality of opportunity for Black voters in Louisiana to vote. Commissioner of Elections Sherri Hadskey testified that Louisiana has a 90 percent voter registration rate and that it is very easy to register to vote in Louisiana, with online voting registration available. 5/13 Tr. 44:1–14. In addition, the Louisiana Secretary of State has a division devoted to voter outreach, 5/13 Tr. 43:20, and does a significant amount of outreach to minority voters to ensure they are familiar with the voting process. *Id.* 45:11–46:4.

509. In addition, Louisiana has a history of high standards of ballot and election integrity. Recently, Louisiana was ranked 7th in the nation for election integrity. Louisiana's Operation Geaux Vote has been recognized as one of three state finalists by the National Association of Secretaries of State ("NASS") IDEAS award. After a thorough audit over numerous months, the Louisiana Legislative Auditors found that the state has procedures and processes in place to ensure election integrity. *See* SOS_01 at ¶ 12.

510. Indeed, there is no evidence of discrimination as it relates to minorities' right to register to vote or otherwise participate in the democratic process. Plaintiffs offered no evidence at the hearing that any voter had been denied the right to vote or participate in the democratic

process because of their race. No evidence was offered that is more difficult for anyone to register to vote because of their race. In Louisiana, it is clear that people of all races can easily register to vote, and no legal obstacles exist that would prevent a registered voter from voting in an election. *See e.g.,* 5/10 Tr. 266:8-11; 5/13 Tr. 43:10-44:14; 5/11 Tr. 56:18-57:13.

511. For all these reasons, Senate Factor 1 has little weight and does not favor Plaintiffs.

(b) Senate Factor 2: Polarization

512. As discussed in conjunction with the third *Gingles* precondition, polarization in Louisiana does not arise to a legally significant level. This factor, too, cuts against Plaintiffs.

(c) Senate Factor 3: Voting Procedures

513. The third Senate Factor inquires into "the extent to which the state...has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group." *Gingles*, 478 U.S. at 37. Dr. Lichtman cites, as his sole evidence supporting Senate Factor 3, Louisiana's majority-vote requirement and runoff system, and the fact that three Black candidates—Melvin Holden for Lt. Gov. in 2015, Derrick Edwards for Treasurer in 2017, and "Gwen" Collins-Greenup for Secretary of State in 2018—finished in the top two in the primary but lost to white Republicans in runoff elections. 5/10 Tr. 173:9–174:1. *See also* GX-3 at 33–35.

514. But "there is no evidence that racial bias . . . motivated the adoption of these practices." *Lopez*, 339 F. Supp. 3d at 615. Rather, the system emerged after *Foster v. Love*, 522 U.S. 67 (1997), struck down Louisiana's open primary system occurring in October as violative of a federal statute requiring federal elections to occur in November, *see* 2 U.S.C. § 7. *Foster* recognized an exception where "no candidate receives a majority vote on federal election day, there has been a failure to elect and a subsequent run-off election is required." 522 U.S. at 72 n.3

(citing *Pub. Citizen, Inc. v. Miller*, 813 F. Supp. 821 (N.D. Ga.), *aff'd*, 992 F.2d 1548 (11th Cir. 1993)). Louisiana reconfigured its election to match what the Supreme Court described in *Foster*.

515. Moreover, Dr. Lichtman's three examples from statewide elections do not prove that Louisiana's electoral system "enhances" the opportunity for discrimination in congressional elections. For one, the electorates are different; U.S. Representatives are not elected at-large, like statewide officials, but from single-member districts. For another, Plaintiffs have failed to demonstrate how the majority-vote requirement and runoff contributed to the failure of Black candidates. In the 2018 Secretary of State race, for example, one Democrat (Ms. Collins-Greenup) and one Republican (Mr. Ardoin) advanced from a six-way primary, and Ms. Collins-Greenup's vote-share in the runoff (40.7 percent) was roughly equivalent to the total vote-share of both Democratic candidates in the primary (36.2 percent). *See* PR-12 at 24–25. A similar pattern holds true for Mr. Edwards' Treasurer race in 2017, PR-25 at 25, and for Mr. Holden's Lieutenant Governor race in 2015, PR-25 at 25, GX-3 at 34. Dr. Lichtman analyzes this dynamic in racial terms, *see* GX-3 at 34, but the partisan dimension of those runoff races (one Republican vs. one Democrat) is impossible to ignore. It is unclear how Louisiana's primary system "enhanced" any opportunity for discrimination; to the contrary, in each case a Black Democratic candidate advanced from the open primary to the runoff and was thereby able to increase his or her vote-share by consolidating all Democratic votes.

(d) Senate Factor 4: Candidate Slating

516. The fourth Senate Factor requires Plaintiffs to establish whether, "if there is a candidate slating process, whether the members of the minority group have been denied access to that process." *Gingles*, 478 U.S. at 37. "A slating organization can either be an official political party or an unofficial nonpartisan organization." *United States v. City of Euclid*, 580 F. Supp. 2d 584, 608 (N.D. Ohio 2008); *see also Citizens for a Better Gretna v. City of Gretna, La.*, 636 F.

Supp. 1113, 1122–23 n.24 (E.D. La. 1986) (defining a slating group as "an organization whose purpose is to recruit candidates, nominate them, and campaign for their election to office in a nonpartisan election system."). The relevant question is, "where there is an influential official or unofficial slating organization, [what is] the ability of minorities to participate in that slating organization and to receive its endorsement?" *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1569 (11th Cir. 1984).

517. Plaintiffs did not introduce any evidence regarding the candidate slating process to prove Senate Factor 4. Indeed, there is no reason to believe that Black candidates are excluded by political parties and other slating organizations in their endorsement and "slating" processes. This factor accordingly favors the defense.

(e) Senate Factor 5: Impact of Historical Discrimination on Political Participation

518. The fifth Senate factor calls for an inquiry into "the extent to which members of the minority group in the state or political subdivision bear the effects of 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 37 (quoting S. Rep., at 28–29, U.S. Code Cong. & Admin. News 1982, pp. 206–207). The "long history of discrimination" in practically any jurisdiction within the footprint of the Fifth Circuit "is not the subject of dispute." *Clements*, 999 F.2d at 866. Nor is there typically any basis for the defense to "question[] plaintiffs' assertion that disparities between white and minority residents in several socioeconomic categories are the tragic legacies of the State's discriminatory practices." *Id.* But that does not end the inquiry. It does not even begin it.

519. Instead, the fifth Senate factor calls for initial "proof that participation in the political process is in fact depressed among minority citizens." *Clements*, 999 F.2d at 867. The

statute at issue here is, after all, the *Voting* Rights Act. This lawsuit is not an all-purpose vehicle for ending the various grievances referenced in submission of the evidence. It is only if past discrimination results in "reduced levels of black voter registration, lower turnout among black voters, or any other factor tending to show that past discrimination has affected their ability to participate in the political process" that the Senate factor favors the challenger. *Id.* "[P]roof of socioeconomic disparities and a history of discrimination 'without more' d[oes] not suffice to establish" this factor. *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1399 (5th Cir. 1996).

520. Plaintiffs attempted to make this showing in two ways.

521. First, Dr. Burch opined that the disadvantages suffered by Black Louisianans are the types of disadvantages, according to the literature, that can result in decreased political participation. PR-14 at 4. But generic testimony "that individuals of lower socioeconomic status were not as likely to vote as individuals of higher socioeconomic status" does not meet the legal threshold. *Clark*, 88 F.3d at 1399. In *Clark*, the Fifth Circuit held that it was insufficient that an expert "based her conclusion on political science literature, not 'an "intensely local appraisal" of the social and political climate' of" the jurisdiction." *Id.* at 1399. Dr. Burch's testimony is no different.

522. Second, Plaintiffs rely on Dr. Lichtman's opinion. His opinions, too, predominantly addressed the impact of past discrimination on political participation in highly generic terms. GX-3 at 36–40. Dr. Lichtman's testimony has been rejected for this failing before. *See Fairley v. Hattiesburg Mississippi*, 662 F. App'x 291, 298 (5th Cir. 2016) ("Lichtman's testimony and report are not evidence that African Americans in Hattiesburg *actually* have depressed political participation, but rather support the theory that socioeconomic disparity can effect political participation generally.").

523. At the hearing, Dr. Lichtman went a step further an opined, based on one of the defense experts' reports, that Black turnout lags behind white turnout "sometimes up into the double digits" (i.e., by 10 percent or more). 5/10 Tr. 177:17–22. The principal problem with this, however, is that Plaintiffs' contention that their bare-majority districts will perform depends on the factual premise that Black participation is on par with white participation. The Court cannot assume different levels of participation, depending on the circumstances in which one answer or another hurts or undercuts Plaintiffs' position. Further, courts have found this factor met where "voter registration rate[s]" of the relevant minority group are "significantly lower than those of whites." *Lopez v. Abbott*, 339 F. Supp. 3d 589, 616 (S.D. Tex. 2018); *see also Perez v. Perry*, No. SA-11-CV-360, 2017 WL 962686, at *174 (W.D. Tex. Mar. 10, 2017) (discussing Latino turnout rates between four and nineteen percent).

(f) Senate Factor 6: Racial Appeals

524. "While the existence of racial appeals in political campaigns is a factor that may be indicative of a law's disparate impact, it is not highly probative here." *Veasey*, 830 F.3d at 261. Plaintiffs' efforts to demonstrate that political campaigns are marred by racial appeals generated more heat than light.

525. As an initial matter, Dr. Burch testified that some racial appeals "target Black voters." PR-14 at 24. But, in *Veseay*, the Fifth Circuit held that this element was not probative, in part, because "racial appeals seem to have been used by both minorities and non-minorities." 830 F.3d at 261. This fact therefore cuts against the relevance of this factor.

526. As for racial appeals aimed at white voters, Plaintiffs cite only one example of a racial appeal even purporting to relate to congressional elections. Dr. Lichtman opines that "U.S. Representative Steve Scalise . . . admitted that in 2002, while serving as a Louisiana state representative, he had addressed a white supremacist group founded by David Duke." GX-3 at 41.

But Dr. Lichtman fails to explain why that is a racial *appeal*, which occurs where "racial campaign tactics" are used "to defeat candidates" having support of the minority community. *White v. Regester*, 412 U.S. 755, 767 (1973). The trial evidence is likely to show that Rep. Scalise's address was news in 2014 because the congressman was *apologizing* for the 2002 speech and insisting that he did not know of the group's true stances.[11] The Court need not address the sincerity of his apology or the accuracy of his excuse: the relevant point is that the event harmed his image with the public. It was not an appeal to help him win congressional elections.

527. The remaining alleged examples of racial appeals are of diminished probative value because they do not involve congressional elections, and they are, in any event, not persuasive evidence of racism in the electorate. The examples fall roughly into several categories.

528. The first category, which is by far the largest, is purported racial appeals regarding the policy question of persons unlawfully present in the United States. *See* GX-3 at 40–46. There are two problems with Plaintiffs' arguments. One is that a policy of opposing the unlawful entry of aliens into the United States is both a legitimate (if debatable) policy position and one comporting with federal law as it currently exists. *See Arizona v. United States*, 567 U.S. 387, 395–96 (2012). It is difficult to see how campaigning to enforce existing immigration law amounts to racial prejudice, and construing the test otherwise would politicize the VRA analysis to a troubling degree. The second problem is that, even if such campaign amounts to racial appeals, it concerns persons of Hispanic or Latino ethnicity. But Plaintiffs here allege vote dilution against Black residents.

[11] Bruce Alpert, Scalise still could move up in House; His apology has been accepted, New Orleans Times Picayune (June 2, 2015), 2015 WLNR 904753; Scalise will have to repair credibility, New Orleans Times Picayune (June 2, 2015), 2014 WLNR 36984698

529. A second category of alleged appeals, like the first, attempts to spin relatively common, if hard-hitting, political campaign as racial, with no evidence. For example, an advertisement showing then-candidate John Bel Edwards with Stacey Abrams was intended to paint the former as "Too Liberal for Louisiana." *See* GX-3 at 43 (footnote omitted). That Abrams is Black does not somehow translate this into a racial appeal. If the element were otherwise, then every campaign portrayal of a racial or ethnic minority person would be a racial appeal, and racial appeals would be generated automatically by the mere fact that racial and ethnic minorities participate in politics—which the VRA was meant to encourage.

530. A third category of alleged appeal does involve racial themes, but the transparent purpose is to accuse the target of the ad of being racist, not to use racism in the populace against the target. An example is the campaign advertisement of Black candidate Elbert Guillory, a Republican who was attempting to turn the racial script against Democrats and paint them as racist. GX-3 at 41. Another example is an exchange identified by Dr. Burch between gubernatorial candidates Edwards in Rispone with each trading accusations that the other was racist. PR-14 at 24. These examples, again, are evidence that racism is not tolerated, which hardly assists Plaintiffs in showing that candidates leverage invidious racial attitudes to their benefit.

531. A fourth category is alleged appeals that are old and stale, such as the 1995 gubernatorial runoff election and 1991 gubernatorial race. GX-3 at 41; *see Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 179 n.61 (E.D. Va. 2018) (declining to consider "electoral results from the 1990s" because it "was outdated for purposes of the 2011 redistricting.").

(g) Senate Factor 8: Responsiveness

532. The eighth Senate Factor is "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group."

Fusilier, 963 F.3d at 455 n.6. *See also Harding v. Edwards*, 487 F. Supp. 3d 498, 520 (M.D. La. 2020) (Dick, C.J.) ("[E]lected officials' failure to respond to the needs of minority groups is a factor to be considered by the court.").

533. Though it is one factor to be considered as part of the "totality of the circumstances," *LULAC*, 999 F.2d at 849, "responsiveness has limited relevance" in this inquiry. *Clark v. Calhoun Cty., Miss.*, 88 F.3d 1393, 1400 (5th Cir. 1996) (citation and internal quotation marks omitted). In applying this factor, the Fifth Circuit has cautioned that "responsiveness cannot be weighed in the abstract" and that "[r]esponsiveness, like many things, is a question of both kind and degree." *Id.* at 1401.

534. To the extent that responsiveness is relevant in this case, Plaintiffs have not shown that Louisiana's congressional delegation lacks responsiveness. A desire to "elect more African American candidates . . . reasonable as it may be, does not in itself establish the non-responsiveness of current elected officials to minority needs." *Hall v. Louisiana*, 108 F. Supp. 3d 419, 442 n.20 (M.D. La. 2015). Nor does the continued existence of a wide variety of economic and social problems in Louisiana mean that Plaintiffs have identified "any concrete need or concern of a minority member that was *ignored* by an elected official, either judicial or non-judicial[.]" *Id.* at 442 (emphasis added). To decide otherwise would be transform evidence of *any* societal problem—or even mere policy disagreements—into evidence of non-responsiveness.

535. Plaintiffs' generalized arguments about responsiveness are also unpersuasive because they do not speak specifically to whether the *Louisiana congressional delegation*, or its members, are not responsive to the particularized needs of Black Louisianans. Because this case is about Louisiana's congressional map, it is only logical that the responsiveness inquiry should focus on the legislative body in question, not on the prospects of African-Americans in Louisiana

more generally. *See, e.g.*, *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. 1386, 1410 (S.D. Miss. 1992) (noting the absence of proof as to responsiveness by elected officials and "specifically the justices of the Supreme Court of the State of Mississippi, to the particularized needs of blacks"), *aff'd*, 994 F.2d 1143 (5th Cir. 1993); *Jeffers v. Clinton*, 730 F. Supp. 196, 213 (E.D. Ark. 1989) ("We are not convinced, however, that the charge of unresponsiveness can be sustained as to the members of the State Legislature, and it is with them that we must be particularly concerned in this case.").

536. Because Plaintiffs have not established a lack of responsiveness on the part of Louisiana's existing congressional delegation or its members, this factor weighs against Plaintiffs.

(h) Senate Factor 9: Strength Of State's Underlying Policy

537. The ninth Senate Factor is "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." *Fusilier*, 963 F.3d at 455 n.6.

538. In crafting the redistricting plan, the Legislature avoided presumptively unconstitutional race-based redistricting, and it retained the cores of existing districts. These policies are not tenuous.

539. As a threshold matter, compliance with federal law—and indeed, compliance with the U.S. Constitution—cannot be a "tenuous" policy interest. *See, e.g.*, *Terrazas v. Clements*, 581 F. Supp. 1329, 1357 (N.D. Tex. 1984) ("We cannot conclude that compliance with federal constitutional and statutory standards are only tenuously related to the district lines as drawn"); *Mo. State Conference of NAACP v. Ferguson-Florissant School Dist.*, 201 F. Supp. 3d 1006, 1081 (E.D. Mo. 2016) (finding a non-tenuous justification where voting practice was "required by Missouri law"). Additionally, there are compelling reasons to minimize changes, preserve the status quo, and keep constituent-incumbent relationships intact. *See Wright v. Sumter Cty. Bd. of*

Elections and Registration, 301 F. Supp. 3d 1297, 1321–22 (M.D. Ga. 2018), *aff'd*, 979 F.3d 1281 (11th Cir. 2020). In light of these factors, the policies reflected in the Legislature's redistricting plan cannot be dismissed as "tenuous." Indeed, quite the opposite is true.

540. In any event, the Fifth Circuit has rejected tenuousness arguments precisely like the ones advanced by Plaintiffs in this case. *See Fairley v. Hattiesburg Mississippi*, 662 F. App'x 291, 299 (5th Cir. 2016) (upholding district court's finding as to tenuousness where the "primary goal in redistricting was to correct" for population deviation "with as little change to the ward lines as possible"). Here, the districts drawn by the Legislature rate very highly on core retention, 5/12 Tr. 212:21–213:6 (Hood) and evince a clear policy that "align[s] with traditional districting principles." *Fairley*, 662 F. App'x at 299.

541. It is also significant, for purposes of this factor, that the Legislature faced a set of interrelated problems and crafted a policy that "balanced these competing considerations." *Rodriguez v. Harris Cnty., Tex.*, 964 F. Supp. 2d 686, 799 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez v. Harris Cnty., Tex.*, 601 F. App'x 255 (5th Cir. 2015). *Rodriguez* confirms that where legislative bodies have to balance, *inter alia*, compliance with federal law, population shifts, and maintaining incumbent relationships, the limited inquiry is whether the Legislature's reasons "for adopting and maintaining the [plan] are arbitrary or without adequate basis." *Id.* The enacted plan more than clears that bar.

D. Section 2 of The Voting Rights Action Creates No Private Right Of Action

542. The United States Supreme Court has never held that Section 2 of the Voting Rights Act creates a private right of action. *Brnovich. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring) ("Our cases have assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under § 2. . . . [T]his Court need not and does not address that issue today.").

543. The Fifth Circuit has recently acknowledged that it remains an open question as to whether a private right of action exists under Section 2 of the Voting Rights Act. *Thomas v. Reeves*, 961 F.3d 800, 808 (2020) (Costa, J. concurring); *see also id.* at 818 (Willett, J. concurring).

544. The Eastern District of Arkansas has recently held that "[i]t is undisputed that Congress did not include in the text of the Voting Rights Act a private right of action to enforce Section 2." *Arkansas State Conference of the NAACP v. Arkansas Board of Apportionment*, 2022 U.S. Dist. LEXIS 29037, *21 (E.D. Ark Feb. 17, 2022).

545. To determine if an implied right of action exists, a court must first assess whether the statute demonstrates "a congressional intent to create new rights;" and, if so, the court must then determine whether the statute "manifest[s] an intent to create a private remedy." *Alexander v. Sandoval*, 532 U.S. 275, 288-89 (2001).

546. Section 12 of the Voting Rights Act is the only section of the statute that provides a remedy for Section 2, and that provision only identifies the Attorney General of the United States as the party who may enforce the statute. 52 U.S.C. § 10308(d).

547. "[T]he canon of *Expressio Unius Est Exclusio Alterius* . . . provides that 'expressing one item of [an] associated group or series excludes another left unmentioned.'" *Baptist Mem'l Hosp. – Golden Triangle, Inc. v. Azar*, 956 F.3d 689, 694 (5th Cir. 2020) (quoting *NLRB v. Sw. Gen., Inc.*, 137 S. Ct. 929, 940 (2017) (alteration in original)).

548. By including a right of action for the United States Attorney General but nonetheless omitting a private cause of action, Congress intended for the former, but not the latter, to have the power to sue under Section 2 of the Voting Rights Act.

549. Because Plaintiffs have no private cause of action under Section 2 of the Voting Rights Act, their motions for a preliminary injunction necessarily fail.

III. The Equitable Factors Militate Against an Injunction

550. "An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008). Thus, a party seeking such relief must also establish clearly "that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Id.* at 20. For example, in *Winter*, the Supreme Court held that a lower court abused its discretion in issuing a preliminary injunction because the public interest cut against that relief. *Id.* at 31–33. Plaintiffs are require "clearly carr[y] the burden of persuasion" on these requirements. *PCI Transp.*, 418 F.3d at 545. They failed to do so.

A. No Preservation of the Status Quo

551. One equitable deficiency in their claim is that the requested injunction does not preserve the *status quo*. The Supreme Court has held that "[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). That is not the case here. There is no colorable argument that the illustrative plans, or some new plan the Legislature might enact as a remedy, represents that status quo, and there is no colorable argument that the requested injunction would preserve the parties' relative positions before trial. This is true both in the sense that a plan never before used in Louisiana cannot be called the status quo and in the sense that the specific plans at issue here depart markedly from the general district configurations utilized in the State for more than a generation.

552. Plaintiffs respond with a 1979 Fifth Circuit case that expressed toleration for preliminary injunctions that alter the status quo. Doc. 120 at 19–20. But that decision proceeds *Camenisch*, and Plaintiffs fail to explain how that position comports with its crystal-clear directive

that "[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." 451 U.S. at 395.

553. In any event, case law from around that time period also made clear that that "mandatory injunctive relief, which goes well beyond simply maintaining the status quo *pendente lite*, is particularly disfavored, and should not be issued unless the facts and the law clearly favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). Thus, an even higher showing than ordinary applies, and, as shown, Plaintiffs have failed even the ordinary preliminary-injunction standard.

554. Plaintiffs do not cite any redistricting case to have ordered a new redistricting plan as *temporary* relief. Many cases have denied such relief. *See, e.g.*, *Pileggi v. Aichele*, 843 F. Supp. 2d 584, 596 (E.D. Pa. 2012); *Diaz v. Silver*, 932 F. Supp. 462, 468–69 (E.D.N.Y. 1996); *Cardona v. Oakland Unified Sch. Dist., Cal.*, 785 F. Supp. 837, 840 (N.D. Cal. 1992); *Kostick v. Nago*, 878 F. Supp. 2d 1124, 1147 (D. Haw. 2012); NAACPGreensboro *Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 530 (M.D.N.C. 2012); *Perez v. Texas*, 2015 WL 6829596, at *4 (W.D. Tex. Nov. 6, 2015); *Valenti v. Dempsey*, 211 F. Supp. 911, 912 (D. Conn. 1962); *Shapiro v. Berger*, 328 F. Supp. 2d 496, 501 (S.D.N.Y. 2004). It would be imprudent for the Court to break new ground in such a weak case.

B. Risk of Constitutional Injury

555. The public interest cuts against an injunction because granting it would pose an unacceptable risk of constitutional injury to hundreds of thousands of Louisiana residents. Ironically, Plaintiffs rely on the line of cases holding that a constitutional violation is never in the public interest, and enjoining such a violation is always in the public interest. Doc. 42-1 at 22 (citation omitted); Doc. 41-1 at 23.

556. But they forget that the roles here are reversed. They did not bring a constitutional claim. And, if their claim is ultimately deemed deficient, the result will be a gross constitutional violation as the *result* of the injunction they request. They ask the Court to compel the very action that resulted in "the most extensive unconstitutional racial gerrymander ever encountered by a federal court," *Covington*, 270 F. Supp. 3d at 892. That risk is not in the public interest, especially given both the magnitude and breadth of the injury that would be imposed. *See United States v. Hays*, 515 U.S. 737, 745 (1995) (holding that every resident of a racially gerrymandered district suffers injury in fact). It is not in the public interest to impose an "odious" injunction. *Wis. Legislature*, 142 S. Ct. at 1248 (citation and quotation marks omitted).

557. Because it "is always in the public interest to prevent the violation of a party's constitutional rights," *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014), the risk that the demanded injunction would inflict a gross and widespread equal-protection violation cannot be justified by the possibility of a statutory violation. The Court must err in favor of the Constitution. *See Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[I]t may be assumed that the Constitution is the ultimate expression of the public interest."). The Court is required "to balance the harm that would be suffered by the public if the preliminary injunction were denied against the possible harm that would result to United if the injunction were granted." *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 626 (5th Cir. 1985). Here, if Plaintiffs ultimately do not prevail on the merits, then the 2022 election will have inflicted a staggering constitutional injury that can never be remedied. In these circumstances, an injunction would be irresponsible, at best.

C. The Purcell Doctrine Counsels Against Eleventh-Hour Judicial Intervention

558. As the Supreme Court of the United States held in *Purcell v. Gonzalez*, "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion

and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." 549 U.S. 1, 4-5 (2006) (per curiam). Since this seminal opinion in 2006, Court's nation-wide have applied the *Purcell* doctrine. *See Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application) see *also Milligan*, 142 S. Ct. at 879; *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Merrill v. People First of Ala.*, 141 S. Ct. 190 (2020) *Clarno v. People Not Politicians*, 141 S. Ct. 206 (2020; *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020) (per curiam); *Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020)(declining to vacate stay); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018(per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

559. In a normal election cycle, "[r]unning elections state-wide is extraordinarily complicated and difficult." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022 (Kavanaugh, J., concurring in grant of applications for stays). Elections officials must navigate "significant logistical challenges" that require "enormous advance preparations." *Id.* But, the 2022 election cycle has been far from a "normal" cycle in Louisiana, as the Covid-19 pandemic delayed census results, exacerbating the challenge of needing to draw new districts and conduct elections under these new districts, state and parish wide.

560. The 2022 election cycle already underway is no exception. Over two months ago, the United States Supreme Court in *Milligan* issued a stay of the district court's opinion that enjoined the use of Alabama's congressional redistricting plan. In his concurring opinion, Justice Kavanaugh invoked the *Purcell* doctrine for the proposition that courts "should not enjoin a state's election laws in the period close to an election." 142 S. Ct. at 879-880. This is because, "filing deadlines need to be met" candidates need to "be sure what district they need to file for" or even determine "which district they live in." *Id.* As a result, Courts this redistricting cycle have applied

the *Purcell* doctrine for plans in Georgia, North Carolina, and Ohio. *Alpha Phi Alpha Fraternity, Inc., v. Raffensperger,* . ___F.Supp.3d___, 2022 WL 633312, 1:21-cv-05337(N.D. Ga. Feb. 28, 2022; *Moore v. Harper,* No. 21A455, 595 U.S. (Kavanaugh, J. concurring); *Michael Goindakis, v. Frank LaRose, in his capacity as Ohio Sec'y of State, et al.,* No. 2:22-CV-0773, 2022 WL 1175617, at *19 (S.D. Ohio Apr. 20, 2022).

561. Justice Kavanaugh opined *Milligan* that the *Purcell* doctrine "might" be overcome if the Plaintiff establishes "at least" that:

> the underlying merits are entirely clear-cut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.

Milligan, 142 S. Ct. 879 at 881.

562. Plaintiffs fail to even prove that they are likely to succeed on the merits of their claims, much less that the evidence is "entirely clear-cut" in their favor. *Id.* Nor can Plaintiffs prove that their requested change, an entirely new congressional plan, is feasible before the election, and certainly not without significant cost, confusion, and hardship.

563. Sherri Hadskey, who is the current Louisiana Secretary of State's Commissioner of Elections and oversees election administration and implementation of new districting plans at the state and local level testified about the significant cost, confusion and hardship associated with implementing a new districting plan at this late date. 5/13 Tr. 29:13-31:4; SOS_1 p 1. Particularly, Ms. Hadskey testified:

- That substantial administrative work has already been completed on administration of the Enacted Congressional Plan. 5/13 Tr. 31:5–15. In order to implement a new congressional plan Ms. Hadskey's office would have to reassign voters who are in new congressional districts to their new districts in the Enacted Plan. The Secretary of State's office has already reassign voters in the fifteen Louisiana parishes that required changes under the enacted plan in the Secretary of State's ERIN system.

Moreover, approximately 250,000 voting cards have been sent to voters whose parishes changed districts following reapportionment. *Id.*; *see also* SOS_1 at p 4. Those voters have been notified of the specific congressional district in which they will be voting this year. *See id.*

- To the importance of the upcoming June 22, 2022 deadline for potential congressional candidates. By June 22, all congressional candidates who wish to qualify for the ballot by nominating petition must submit nominating petitions with a thousand signatures from voters in their congressional district. 5/13 Tr. at 31:16-32:15; 55:4–7. As of the date of this submission this date is a mere 5 weeks away. In order to meet the June 22 deadline, Ms. Hadskey's office must notify voters (and potential candidates) of which districts they live in—which has already been done under the Enacted Plan by the mailing of the new voter cards. *Id.* at 32:2–15. Candidates and voters need adequate notice of these districts to ensure they have enough time to decide whether to attempt to qualify by petition or, in the case of voters, who to support. *See id.* If congressional candidates do not meet the June 22 qualification deadline, the candidates will have to pay a filing fee and qualify by between July 20-22, 2022. *Id.* at 32:16–20.

- Between now and July 20, Ms. Hadskey's office must complete several tasks to ensure timely and accurate administration of the 2022 election in Louisiana for all offices. *Id.* at 32:21-36:5. These activities include, *inter alia*: (1) implementation of complicated school board and municipal redistricting plans; (2) conducting a June 4 special election in Calcasieu Parish due to a redistricting error; (3) conducting yearly maintenance on scanners and voting equipment; (4) processing an estimated 800 legislative acts when the latest session ends; and (5) completion of a statewide voter registration canvas to maintain the voter rolls[12]. *Id.*; *see* SOS_1 pp 4-5. None of these tasks are straightforward and all are under limited time constraints. For example, school board and municipal redistricting requires coding of the new districts into the ERIN system and distribution of voter cards notifying voters of their school board and municipal districts. *Id.* at 33:1–7; 35:11–15.

- The voter canvas starts in five days, on May 23, 2022. This requires comparing USPS addresses to NOCCA to determine whether a voter's address or registered name has changed. If there is a change, the voter must be sent a card with instructions to update their information. *Id.* at 34:18-35:10.

564. Implementing a new congressional districting plan would create undue hardship and chaos for Louisiana and its voters. Specifically, if Ms. Hadskey's office were forced to

[12] Ms. Hadskey also testified to the nationwide ballot paper shortages and issues with timely printing of Louisiana's unique ballot envelopes. *See, e.g.*, 5/13 Tr. 39:19-40:11, 49:10-50:5; SOS_1 p 6. The paper shortages could also interfere with the printing of voter notification cards and other required items, such as the poll book pages, required by state and federal law. 5/13 Tr. 50:14-51:24.

implement one of Plaintiffs' illustrative plans, at a minimum the following tasks would need to be completed by July 20 at the latest: (1) undoing the coding of the fifteen parishes already completed for the Enacted plan; (2) coding the approximately twenty-five parish changes under an illustrative plan, and (3) timely notifying voters and potential candidates of those changes. 5/13 Tr. 36:6-38:2. At each stage, Ms. Hadskey testified that the process would rushed which gives her a significant concern that voters' information could be coded incorrectly, leading to incorrect information on ballots used in the election. *Id.* at 37:14-38:2. This task would be further complicated if an illustrative map splits precincts, as the registrar of voters for each parish is responsible for moving voters in split precincts by hand. *Id.* at 38:3–12. In addition to regularly scheduled early voting, Ms. Hadskey testified that overseas ballots must be mailed no later than September 24, 2022, under the federal UOCAVA deadline. *Id.* at 45:1-10.

565. In addition to the confusion created by reassigning voters, there is a real risk that doing so on such a compressed time frame could lead to the issuance of incorrect ballots, and even in a worse case scenario, and invalidated election. Ms. Hadskey testified that this scenario has already occurred due to a compressed timeframe this cycle. For example, in Calcasieu Parish, late census information caused a rushed entry of voter information and led to entry of incorrect voter information, ultimately resulting in the issuance of incorrect ballots. *Id*. at 38:3–21. As a result, a judge required state and local officials to hold a special municipal election in Calcasieu Parish to remedy the issue. *Id.*; SOS_1 at pp 5-6. Ms. Hadskey expressed great concern that the issues Calcasieu Parish experienced will arise again, but on a larger scale, if a new congressional plan is implemented by the Court in June or July—especially considering the fact that there are nineteen (19) new registrars across the state who have not handled decennial redistricting before. 5/13 Tr.

at 38:22-39:4. Ms. Hadskey expressed her great concern as to whether her office could administer an error-free election on a new congressional plan within the next few months:

> I'm extremely concerned. I'm very concerned because when you push – when you push people to try a and get something done quickly and especially people that have not done this process before, the worst thing you can hear from a voter is I'm -- I'm looking at my ballot and I don't think it's right, I think I'm in the wrong district or I don't feel like I have the right races.
>
> The other thing is notifying the voters. I think we all can relate to we know who our person is that we voted for for Congress or for a school board or any race; and when you get there and you realize it's not the person you are looking for, you're thinking that's who you are going to vote for and then you find out, wait, I'm in a different district. If we don't notify them in enough time and have that corrected, it causes confusion across the board, not just confusion for the voters, but also confusion for the elections administrators trying to go back and check and double check that what they have is Correct

Id. at 40:12-41:15; SOS_1 pp 4-6. In the entirety of Ms. Hadskey's thirty-year career in Louisiana election administration, she has never moved a federal election. 5/13 Tr. 56:24-57:12.

566. Plaintiffs' claims that *Purcell* does not apply because of Louisiana's late elections fail. Louisiana is four months away from the UOCAVA deadline to mail ballots. And prior to mailing those ballots, ballots must be prepared in accordance to state and federal law. Particularly, Louisiana's requirement that the ballot have an affidavit on the envelope flap makes it difficult to source and print. *Id.* at 49:10-50:5. Courts in the Fifth Circuit have routine abided by the *Purcell* doctrine to not meddle in an election in a period this close to an election. *See Veasey v. Abbott*, 830 F.3d 216, 243 (5th Cir. 2016) (remanding Section 2 case for new trial but ordering that no remedy could be enforced until after the election, which was four months away); *Texas Democratic Party v. Abbott,* 961 F.3d 389, 412 (5th Cir. 2020) (staying enforcement of a preliminary injunction to minimize voter confusion on June 4, 2020, five months prior to the election).

567. Plaintiffs' requested relief is the sort of relief the *Purcell* doctrine commands courts to decline on the eve of an election. And this is true even if the Court were to believe the underlying

election laws may be legally suspect, which, as shown above, is not the case here. *See Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grant of applications for stays of enforcement where lower court found VRA violations in Alabama's Congressional redistricting plan); *Covington,* 316 F.R.D. at 177 (refusing to enjoin election despite a final judgment against certain North Carolina legislative districts because "such a remedy would cause significant and undue disruption to North Carolina's election process and create considerable confusion, inconvenience, and uncertainty among voters, candidates, and election officials."); *Raffensperger*, 2022 WL 633312, at *76 (noting that the Court's denial of the preliminary injunction on the basis of the *Purcell* doctrine "should not be viewed as an indication of how the Court will ultimately rule on the merits at trial"); *Upham v. Seamon*, 456 U.S. 37, 44 (1982) (holding that even though there was error by the lower court the interim plan should be used because the filing date for candidates had "come and gone" and the primary was looming.) Therefore, even assuming *arguendo* the Court were inclined to believe Plaintiffs' arguments that the Congressional Plan violates the VRA, which it does not, the *Purcell* doctrine would require the 2022 elections to go forward under the Congressional Plan pending adjudicating of Plaintiffs' claims.

568. Plaintiffs' expansive relief cannot be denied because of the "increased risk" of confusion the Supreme Court warned about in *Purcell. See also Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 42 (2020) (*DNC*) (Kagan, J., dissenting) ("Last-minute changes to election processes may baffle and discourage voters…).

CONCLUSION

For the aforementioned reasons, and those reasons found in Defendants' combined post-hearing brief, Plaintiffs' motions should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 23, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

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EXHIBIT J

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' POST-HEARING BRIEF*

* Pursuant to the Court's instruction at the preliminary injunction hearing, 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 this joint brief. They respond to the evidence and arguments offered by Defendant R. Kyle Ardoin, in his official capacity as Louisiana

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Secretary of State (the "Secretary"); Intervenor-Defendant the State of Louisiana (the "State Intervenor"); and Intervenor-Defendants Clay Schexnayder, in his official capacity as Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, in his official capacity as President of the Louisiana Senate (the "Legislative Intervenors," and together with the Secretary and the State Intervenor, "Defendants").

INTRODUCTION

Louisiana's new congressional plan violates the rights of Black voters under Section 2 of the Voting Rights Act of 1965. Through their preliminary injunction briefing, evidentiary submissions, and expert and fact witness testimony presented at last week's hearing, Plaintiffs have readily demonstrated that the three *Gingles* preconditions are satisfied and that the totality of circumstances confirms that the new map dilutes the voting strength of Black Louisianians and deprives them of an equal opportunity to elect their candidates of choice to Congress. Rather than squarely address this evidence, Defendants have offered only obfuscation and misdirection: distortions of the governing legal standards, irrelevant digressions, and red herrings. Under the operative law and based on the facts in the record, Plaintiffs have more than just satisfied their burden of demonstrating a strong likelihood of success on the merits of their Section 2 claims—they have *proved* their claims. The evidence also shows that a remedial map can be feasibly implemented in the coming weeks. Accordingly, a preliminary injunction should be issued, and a lawful congressional map adopted ahead of this year's midterm elections.

ARGUMENT

Plaintiffs' concurrently filed proposed findings of fact and conclusions of law chronicle the evidence and testimony that prove their case, while their previously filed preliminary injunction briefing provides an overview of the relevant legal issues and how they apply to the facts in the record. *See* Rec. Doc. Nos. 41–42, 120, 123. Rather than duplicating those efforts here, Plaintiffs provide an overview of the proceedings, and will briefly recount the critical evidence they presented, explore the shortcomings of Defendants' case, and clarify the essential legal issues that the Court must navigate.

I. Plaintiffs have established a likelihood of success on their Section 2 claims.

In presenting their case-in-chief, Plaintiffs provided voluminous evidence—almost entirely unrebutted—to satisfy each of the requirements of a Section 2 claim. Taken together, their documentary evidence, expert reports, and fact witness testimony compel the conclusion that the state's new congressional map as drawn by House Bill 1 ("HB 1") "dilute[s] the voting strength of politically cohesive minority group members" in violation of the Voting Rights Act. *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

A. The *Gingles* preconditions are satisfied, and the Senate Factors uniformly support a finding of unlawful vote dilution.

Section 2 requires Plaintiffs to show that (1) Black Louisianians are "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) Black Louisianians are "politically cohesive"; and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat [Black Louisianians'] preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). The Court must also examine "the totality of circumstances"—the Senate Factors in particular—to determine whether "the political processes . . . are not equally open to participation" by Louisiana's Black voters. 52 U.S.C. § 10301(b); *see also Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991).

Plaintiffs have established each of these elements.

***Gingles* One.** The first *Gingles* precondition requires Plaintiffs to demonstrate that it is possible to "creat[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (plurality opinion) (quoting *De Grandy*, 512 U.S. at 1008). Bill Cooper and Anthony Fairfax submitted a total of six plans that satisfy this precondition. Their illustrative maps each contain two majority-Black congressional districts in which Black voters would have an

opportunity to elect their candidates of choice to the U.S. House of Representatives. *See* GX-1 ¶¶ 10, 58–71, 83; GX-29 ¶¶ 12–13; PR-15 ¶¶ 1–7; PR-86 ¶¶ 1–9; PR-90 ¶¶ 1–5. Their maps comply with traditional redistricting principles, including population equality, contiguity, maintaining political subdivision boundaries, and preserving communities of interest, *see* GX-1 ¶¶ 49–56, 72–82; GX-29 ¶¶ 14–22; PR-15 ¶¶ 2–4, 21–24, 38–39, 45–46; PR-86 ¶¶ 8–9, 32–54 — all of which were criteria adopted by the Legislature during this past redistricting cycle, *see* GX-20. And Plaintiffs' fact witnesses testified that Mr. Cooper's and Mr. Fairfax's illustrative Fifth Congressional Districts unite the Baton Rouge area with St. Landry Parish to the west and the Delta Parishes to the north—communities that share common historical, economic, educational, and ancestral links. *See* May 9 Tr. 239:14–248:2 (Charles Cravins); *id.* at 281:10–285:9 (Christopher Tyson).

***Gingles* Two.** The second *Gingles* precondition requires Plaintiffs to demonstrate political cohesion among Louisiana's Black voters, which they have done by showing bloc voting. *See* 478 U.S. at 68. Drs. Max Palmer and Lisa Handley testified that, in general, Black Louisianians cohesively support the same candidates. *See* GX-2 ¶¶ 16–22; PR-12 at 7–8; PR-87, Revised Appendix B. This conclusion went unrebutted—and Defendants' expert Dr. John Alford confirmed it. *See* LAG_1 at 9; May 12 Tr. 158:15–18.

***Gingles* Three.** The third *Gingles* precondition requires Plaintiffs to demonstrate that "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidates." 478 U.S. at 51. Drs. Palmer and Handley demonstrated that white voters in the area contained within the illustrative Fifth Congressional Districts usually vote as a bloc to defeat Black-preferred candidates. *See* GX-2 ¶¶ 23–24; PR-87, Appendix B; PR-92, Corrected

Appendices C–G. This conclusion also went unrebutted—and Dr. Alford also confirmed it. *See* LAG_1 at 9; May 12 Tr. 159:2–15.

Senate Factors. Once Plaintiffs have established the three *Gingles* preconditions, the Court must consider the totality of circumstances to determine "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.'" *Westwego Citizens*, 946 F.2d at 1120 (quoting *Gingles*, 478 U.S. at 44). This determination "'depends upon a searching practical evaluation of the past and present reality' and on a 'functional view of the political process.'" *Id.* (quoting *Gingles*, 478 U.S. at 45).

The thorough and detailed testimonies of Drs. Allan Lichtman, Traci Burch, and Blake Gilpin confirmed that Black Louisianians have been denied equal access to the political process—a tragic history of marginalization and disenfranchisement that endures today:

- The State of Louisiana has historically and persistently discriminated against its Black citizens, in both voting and other areas inextricably tied to political opportunity. *See* GX-3 at 7–27; PR-14 at 3–4; PR-13 at 4.

- Voting in Louisiana is highly polarized along racial lines, with Black voters supporting their preferred candidates at rates as high as 98% and white voters overwhelmingly supporting opposing candidates. *See* GX-3 at 27–33; GX-31 at 3–7; PR-89 at 5.

- The State employs practices like the majority-vote requirement that enhance discriminatory effects. *See* GX-3 at 33–35; GX-31 at 7–8.

- Black Louisianians experience significant socioeconomic disparities across key areas of livelihood and well-being that inhibit their ability to participate equally in the political process. *See* GX-1 ¶¶ 11, 84; GX-3 at 36–39; GX-31 at 8–9; PR-14 at 9–12.

- Louisiana's political campaigns continue to be marked by both overt and subtle racial appeals. *See* GX-3 at 39–46; PR-14 at 22–25.
- Black Louisianians have been and continue to be underrepresented in elected office at both the statewide and local levels. *See* GX-3 at 46–49; PR-14 at 25–26.
- The State has not been responsive to the needs of its Black communities across key metrics of well-being, from health to environmental justice. *See* GX-3 at 50–60; PR-14 at 26–29.
- As discussed further in Part IV below, the proffered justifications for HB 1 are tenuous and unpersuasive. *See* GX-3 at 60–64; GX-31 at 10–13; PR-14 at 29–48.
- Black Louisianians are underrepresented in HB 1 relative to their share of the statewide population, while white Louisianians are overrepresented. *See* GX-3 at 47.

Defendants have offered little to rebut Plaintiffs' Senate Factors evidence. They mount a feeble response to the undisputed evidence of polarization between Black and white voters with Dr. Alford's assertion that this might be the product of party and not race. But the reasons behind racial polarization are not Plaintiffs' burden to establish in the first instance. *See Teague v. Attala County*, 92 F.3d 283, 290 (5th Cir. 1996). At any rate, Dr. Alford conducted no independent analysis, instead basing his conclusion only on a competing inference drawn from Dr. Palmer's and Dr. Handley's data. *See* May 12 Tr. 162:15–164:12. Moreover, Dr. Alford failed to address or even read Dr. Lichtman's report, which found that race drives party affiliation in the South, *see id.* at 157:2–9, and he conceded that party affiliation might be motivated by race, among other factors, *see id.* at 165:5–12.

Defendants also attempted to capitalize on Governor John Bel Edwards's unprecedented responsiveness to the state's Black residents by grilling Matthew Block, his executive counsel, on the administration's efforts. *See* May 11 Tr. 29:23–31:20, 32:15–38:14. But weaponizing

Governor Edwards's responsiveness to Louisiana's Black communities is particularly galling given that the Legislature not only refused to heed his calls to draw a second Black-opportunity congressional district, but *overrode* his veto of the new map without the support of a single Black lawmaker. Black voters' overwhelming support for a governor who is responsive to their needs only underscores the deep and pervading inequities that have long plagued the state's Black communities and went previously unredressed—and demonstrates just how essential it is for Black voters to have the opportunity to elect their candidates of choice. *See id.* at 46:3–9 (Mr. Block's testimony that Legislature and congressional delegation play roles in responding to needs of Louisianians).

In short, Plaintiffs have readily satisfied the *Gingles* preconditions and the Senate Factors—and have thus proved their Voting Rights Act claims.

B. Plaintiffs' fact witnesses testified to the ongoing marginalization experienced by Louisiana's Black communities—and the need for change.

As the U.S. Supreme Court has noted, Section 2 cannot be "applied mechanically." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993). Nor should the human impact of marginalization and disenfranchisement—or the tremendous gains for Black citizens that result when they are afforded equal access to the political process—be ignored. To that end, Plaintiffs offered the testimonies of Black Louisianians who have been either packed or cracked in such a way as to deny them equal opportunities to elect their preferred candidates to Congress. These witnesses echoed the voices heard across the state at each stage of the redistricting process, from the first roadshow session in Monroe to the final vote in Baton Rouge. And they demonstrated that, despite a history of broken promises, Black Louisianians continue to have hope that justice will prevail.

Ashley Shelton, the president of the Power Coalition for Equity and Justice, described the message delivered to elected leaders by thousands of Louisianians who testified during the

redistricting process: Black Louisianians wanted a fair and equitable redistricting process, and they wanted a second majority-minority district to ensure that leaders who understood their needs and shared experiences would represent them in Congress. *See* May 10 Tr. 236:13–237:2, 253:22–254:9. But that message went unheeded. **Michael McClanahan**, the president of the Louisiana NAACP State Conference, testified that if legislative leaders were listening to Black Louisianians during the roadshows, then "they must have been listening with deaf ears." May 9 Tr. 29:1–5. Although numerous bills were introduced during the legislative process that would have created a second majority-Black congressional district, *see* LEG_31–48, not *one* of those bills made it out of committee for open, transparent debate. Instead of responding to the needs of Black voters and drawing a map that reflected Louisiana's human geography, the Legislature—as Defendants' experts themselves testified—prioritized a "least-change" approach that merely ratified and entrenched the old map's discriminatory effects.

Indeed, the disenfranchisement and marginalization borne by the state's Black communities is nothing new. **Dr. Dorothy Nairne**, **Charles Cravins**, and **Christopher Tyson** described the centuries of discrimination experienced by their families in Louisiana—including instances of racial injustice and inequity that continue to this day. *See* May 10 Tr. 78:19–24, 80:5–81:7 (Dr. Nairne); May 9 Tr. 249:2–250:10 (Mr. Cravins); *id.* 279:14–281:5 (Mr. Tyson). Mr. McClanahan testified about the environmental pollution that impacts Black Louisianians in Cancer Alley and across the state. *See* May 9 Tr. 34:20-36:1. Jim Crow, the one-drop rule, political terror, underrepresentation at all levels of government, and now the disproportionate effects of the COVID-19 pandemic and the closures of polling places in Black areas—this is the legacy of discrimination that undergirds and exacerbates the vote dilution caused by Louisiana's new congressional map.

Redistricting is a fundamentally human endeavor—it affects real people, and affects them profoundly. Behind the statistics and the lines on a map are Black Louisianians who aspire to equal representation and a fair political process. Dr. Nairne described the sense of hope she heard from her neighbors during the latest round of redistricting: that this time, things would be different; that this time, as she put it, "change is coming for us." May 10 Tr. 90:24–91:23. Justice was deferred: although Governor Edwards vetoed the new map because it violates the Voting Rights Act and denies fair representation to Black voters, the Legislature overrode the veto—cheering as they did so, a reaction that Mr. McClanahan described as a "slap in the face" to every Black Louisianian in attendance at the Capitol. May 9 Tr. 33:9–22. The Legislature chose not to vindicate the fundamental rights of Black voters. This Court must now do so.

II. Defendants have distorted relevant legal issues.

In response to Plaintiffs' evidence, Defendants' primary strategy has been to muddy the legal waters. They repeatedly conflated and distorted governing standards, while their experts engaged in a series of irrelevant inquiries that distracted from the straightforward application of the law to the undisputed facts in this case.

A. Defendants conflate illustrative maps and remedial maps, which serve different functions under Section 2.

There is a crucial distinction between an *illustrative* plan—which Plaintiffs have used to satisfy the first *Gingles* precondition, as discussed in Part I.A above—and a *remedial* plan that might be implemented to remedy a Section 2 violation. Under *Gingles*, Plaintiffs must prove that an additional *majority-Black* congressional district can be drawn consistent with traditional districting principles. *See Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality opinion) ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50

percent of the voting-age population in the relevant geographic area?"). Plaintiffs did this, several times over, through the illustrative plans prepared by Messrs. Cooper and Fairfax.

A remedial map, by contrast, serves to cure a Section 2 violation by providing minority voters with a meaningful opportunity to elect their candidates of choice—and is *not* limited by *Bartlett*'s strict 50% Black voting-age population ("BVAP") requirement. *See, e.g.*, *Baltimore Cnty. Branch of NAACP v. Baltimore County*, No. 21-cv-03232-LKG, 2022 WL 888419, at *4 (D. Md. Mar. 25, 2022) (approving remedial plan with reconfigured district where Black voters would not constitute numerical majority but would still "have an opportunity to elect a representative of their choice"). Defendants' repeated digressions regarding the level of BVAP needed to elect Black-preferred candidates thus has no role in the *Gingles* inquiry; right now, the only question before the Court is whether Plaintiffs have established liability under Section 2 by drawing illustrative districts in which Black voters comprise a numerical majority of the voting-age population. Defendants' attempts to skip ahead to what the remedial map could or should look like fails to address that question.

B. Defendants misunderstand the significance of crossover voting.

Defendants have focused heavily on the extent to which white crossover voters are necessary to provide Black voters an opportunity to elect their preferred candidates. *See, e.g.*, Rec. Doc. No. 109 at 15. But that also has no bearing on the *Gingles* inquiry. Instead, the second and third *Gingles* preconditions ask whether Black voters cohesively support the same candidates and white voters engage in bloc voting at levels sufficient to regularly defeat Black-preferred candidates in the area where the new illustrative district would be drawn. *See* 478 U.S. at 51. As discussed in Part I.A above, Drs. Palmer and Handley proved that these preconditions are satisfied here, and no one demonstrated otherwise. (Indeed, Dr. Alford confirmed their conclusions.) They

further demonstrated that voting in Louisiana is strikingly polarized along racial lines—notwithstanding the existence of some white crossover voters.

Defendants incorrectly rely on *Cooper v. Harris*, 137 S. Ct. 1455 (2017), for the proposition that Plaintiffs must establish that their illustrative districts would succeed as opportunity districts without any reliance on white crossover voting. *Cooper* said nothing of the sort. There, the plaintiffs challenged majority-Black districts as unconstitutional racial gerrymanders where map-drawers had unnecessarily increased the BVAP of districts that were *already* performing for minority-preferred candidates. *Id.* at 1468–69. The U.S. Supreme Court found that Section 2 did not require those BVAP adjustments—and thus could not justify the racially predominant line-drawing meant to effectuate them—because white voters in those districts were not otherwise voting as a bloc to defeat Black-preferred candidates as required by the third *Gingles* precondition. *Id.* at 1469–72. Here, by contrast, Black-preferred candidates cannot prevail in the area encompassed by Plaintiffs' illustrative Fifth Congressional Districts due to white bloc voting. Plaintiffs have therefore satisfied *Gingles*, and Defendants muster no authority for the proposition that anything less than total racial polarization nullifies a Section 2 claim. *Cf. United States v. Blaine County*, 363 F.3d 897, 911 (9th Cir. 2004) (explaining that "*Gingles* rejected a blanket numerical threshold for white bloc voting").[1]

Nor, for that matter, have Plaintiffs challenged HB 1 as a racial gerrymander (try as Defendants might to read that into their claims). Rather, Plaintiffs allege—and have proved—that the packing of Black voters into the enacted Second Congressional District has precluded the

[1] Indeed, Defendants' position would render the *Gingles* inquiry internally inconsistent. Senate Factor Two assesses—as a consideration *after* the *Gingles* preconditions have been satisfied—"the extent to which voting in the elections of the state or political subdivision is racially polarized." 478 U.S. at 55 (cleaned up). There would be no need for this if the *Gingles* preconditions already required total racial polarization.

creation of a second Black-opportunity district anchored in Baton Rouge. And because Plaintiffs have shown that the *Gingles* preconditions are satisfied using illustrative plans that include "more than the existing number" of majority-Black districts, *LULAC*, 548 U.S. at 430 (quoting *De Grandy*, 512 U.S. at 1008)—and because the Senate Factors uniformly compel a finding of vote dilution—federal law requires that a second Black-opportunity district be drawn. Crossover voting is simply another of Defendants' distracting sideshows, irrelevant to the actual inquiry this Court must undertake to adjudicate Plaintiffs' Section 2 claims.

C. Racial consideration is not racial predominance.

Finally, Defendants and their experts have repeatedly suggested that *any* consideration of race as part of the *Gingles* illustrative map-drawing process raises constitutional concerns and dooms the entire Section 2 enterprise. But Defendants do not and cannot cite a single case that stands for the illogical proposition that an illustrative plan designed to demonstrate racial vote dilution must be drawn without any consideration of race; indeed, courts—including the Fifth Circuit—have squarely rejected that argument. *See, e.g.*, *Clark v. Calhoun County*, 88 F.3d 1393, 1406–08 (5th Cir. 1996). Moreover, some consideration of race does not automatically equate to racial predominance. As the U.S. Supreme Court has observed,

> redistricting differs from other kinds of state decisionmaking in that the legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination.

Shaw v. Reno, 509 U.S. 630, 646 (1993). Ultimately, Defendants would require that racial vote dilution be evaluated and remedied without even the slightest consideration of race—a proposition with no firmer foundation in common sense than in precedent.

III. Defendants' expert evidence is not responsive to the Section 2 inquiry.

The evidence Defendants offered at the hearing not only fails to rebut Plaintiffs' case-in-chief—it is strikingly unresponsive to the issues actually before the Court.

At the outset, Plaintiffs note the evidence that Defendants did *not* offer at the hearing. The Legislative Intervenors indicated that they would explore "the policy considerations underpinning" HB 1, Rec. Doc. No. 10 at 11, but other than a few conclusory references to those considerations in their opposition brief, the justifications for the enacted map went largely ignored at the hearing. Moreover, their intervention was premised on the fact that they "were directly involved in the redistricting and know the analyses that informed choices relevant to this case," *id.* at 15, but neither they nor any other Republican legislators took the stand to defend the new map, let alone open themselves to scrutiny and cross-examination. Nor did Defendants offer *any* evidence regarding communities of interest—what Joint Rule No. 21 ranked as a paramount districting criterion, *see* GX-20—having conspicuously abandoned the expert reports of Dr. Jeffrey Sadow and Michael Hefner despite relying heavily on them in their pre-hearing briefing.

Instead, the Court heard from seven experts, none of whom squarely addressed or disputed the showings of Plaintiffs' experts as to the *Gingles* preconditions or the Senate Factors. Each of Defendants' experts addressed only an artificially narrow slice of the Section 2 inquiry, none of which pieced together into cogent, complete, or relevant analysis. What is most notable about these experts' testimonies is what they said they did *not* do. This both calls into question their credibility and reliability—certainly their expertise on Section 2 issues—and underscores the inescapable conclusion that Defendants do not have an evidentiary leg to stand on.

Thomas Bryan. Mr. Bryan offered a range of metrics to calculate BVAP, *see* May 11 Tr. 62:1–64:12, but disclaimed any opinion about which particular metric was appropriate in this case, *see id.* at 110:2–7. At any rate, use of the any-part Black metric in this context has already been

definitively resolved by binding U.S. Supreme Court precedent, *see Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003), so Mr. Bryan's extensive analysis of this question is of no consequence.[2] Mr. Bryan's so-called misallocation analysis, meanwhile, said nothing about whether the line-drawing decisions in Plaintiffs' illustrative maps were simply the natural results of population distribution, socioeconomic factors, geographic features, or other race-neutral considerations. *See* May 11 Tr. 125:17–25, 128:16–22. His analysis admittedly ignored virtually all of the traditional districting criteria that informed how Messrs. Cooper and Fairfax drew their maps, making his conclusions both unfounded and unhelpful. *See Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 265001, at *58 (N.D. Ala. Jan. 24, 2022) (per curiam) (three-judge court) (expressing "concern[] about numerous . . . instances in which Mr. Bryan offered an opinion without a sufficient basis," such as opining on racial predominance without "examin[ing] all of the traditional redistricting principles set forth in the Legislature's guidelines").

Dr. Tumulesh Solanky. All Dr. Solanky told the Court was that Black-preferred candidates can win a majority of votes in a single parish that is included (in part) in Mr. Cooper's and Mr. Fairfax's illustrative Fifth Congressional Districts. *See* May 11 Tr. 206:7–22. But the Supreme Court has made clear that the Section 2 inquiry looks at the *entire* proposed district, not just one isolated part. *See Abbott v. Perez*, 138 S. Ct. 2305, 2331–32 (2018). Dr. Solanky's analysis considers the wrong geographic area and is therefore irrelevant.

Dr. Christopher Blunt. As he conceded on cross-examination, Dr. Blunt is not a simulations expert. *See* May 12 Tr. 53:21–56:1, 60:5–13 (admitting that he has published no works

[2] In rejecting Mr. Bryan's last attempt to discount use of the any-part Black metric, a three-judge court observed that "[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).

on simulations analysis or redistricting and that "this is the first simulation that [he had] produced"). This concession was hardly needed given the substance of his testimony. Dr. Blunt simply borrowed online code, read an instruction manual,[3] and then ran simulations—for the first time in his career—with settings so far divorced from reality (and from the Legislature's adopted guidelines) that the resulting analysis could not possibly tell the Court whether race predominated in Plaintiffs' illustrative maps. *See id.* at 22:25–23:3, 67:1–7. Dr. Blunt's simulations—which he conceded took no account of most traditional redistricting principles, *see id.* at 68:2–11, and which he conceded did not resemble any congressional map ever actually enacted, *see id.* at 97:25–100:17—have no bearing on the issues presented in this case.

Dr. John Alford. Dr. Alford hypothesized that Louisiana's significantly polarized voting might be caused by party and not race. *See id.* at 160:6–16. But even if that were Plaintiffs' burden to disprove in the first instance—and it is not, *see Teague*, 92 F.3d at 290—Dr. Alford offered no independent analysis to bolster his conclusion or otherwise explore the reasons Black voters generally support Democratic candidates and white voters generally support Republican candidates. *See* May 12 Tr. 161:13–162:14. Instead, by his own concession, he essentially agreed with *all* of Dr. Palmer's and Dr. Handley's statistical estimates, *see id.* at 158:15–18, 159:2–15—and simply drew different inferences. And neither he nor anyone else refuted (or even addressed) the assessments by Drs. Lichtman, Burch, and Handley that race and party are inextricably intertwined in Louisiana. *See id.* at 157:2–9. Dr. Alford's competing inference is thus fatally unsupported by any substantive analysis. *See Alpha Phi Alpha Fraternity Inc. v. Raffensperger*,

[3] Dr. Blunt's reliance on "the documentation for the software" was apparent during his testimony, as he repeatedly cited it as the basis for his knowledge. May 12 Tr. 94:19–23; *see also, e.g.*, *id.* at 88:3–10. This alone belies any claims of expertise; after all, one does not become an expert in electrical engineering just by reading the instruction manual for a toaster.

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) (declining to credit Dr. Alford's testimony where there was no "evidence—aside from Dr. Alford's speculation—that partisanship is the cause of the racial polarization" and "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'").

Dr. Jeffrey Lewis. Dr. Lewis opined that Black-preferred candidates in Plaintiffs' illustrative districts would typically lose hypothetical elections with no white crossover voting—a scenario he conceded he had never seen in any actual election. *See* May 12 Tr. 196:17–197:13. Dr. Lewis offered no explanation as to how this analysis is relevant to the *Gingles* inquiry, and given that his hypothetical is completely unrealistic, his analysis and conclusion are not reliable. *See* GX-31 ¶¶ 6–7. Similarly, his opinion that the illustrative districts could have been drawn with lower BVAPs while still electing Black-preferred candidates conflates the requirements of an illustrative plan with the analysis of a remedial plan (as discussed in Part II.A above) and is likewise irrelevant. And even if his report were directed at the actual questions posed by *Gingles*, Dr. Lewis analyzed only one election—despite agreeing that a single election does not give a complete picture of voting patterns. *See* May 12 Tr. 192:13–193:3.

Dr. M.V. Hood. All Dr. Hood offered was the unremarkable proposition that drawing a brand-new district changes the shapes of old districts. *See* May 12 Tr. 213:7–17, 216:6–14. Setting aside the fact that core retention was notably absent from Joint Rule No. 21's requirements for congressional maps, *see* GX-20, it is tautological that changing district boundaries *changes district boundaries*. Dr. Hood's analysis attempted to transform an inevitable consequence of a Section 2 remedy into a disqualifying shortcoming. This gambit should be rejected.

Dr. Alan Murray. Finally, Dr. Murray acknowledged on the stand that he engaged in no analysis relevant to the *Gingles* preconditions, the Senate Factors inquiry, HB 1, Plaintiffs' illustrative maps, or anything actually having to do with Section 2. *See* May 13 Tr. 24:11–25:6. Nor did he dispute or even review the reports or testimonies of any of Plaintiffs' experts. Instead, he employed his geographical expertise to demonstrate that Black and white Louisianians live in different places. *See id*. 28:10–15. But neither the parties nor the Court needed expert testimony to confirm what Plaintiffs' fact witnesses have known their entire lives and testified to at the hearing, and what Plaintiffs' Senate Factors experts clearly proved—that racially segregated residential patterns persist across the state.

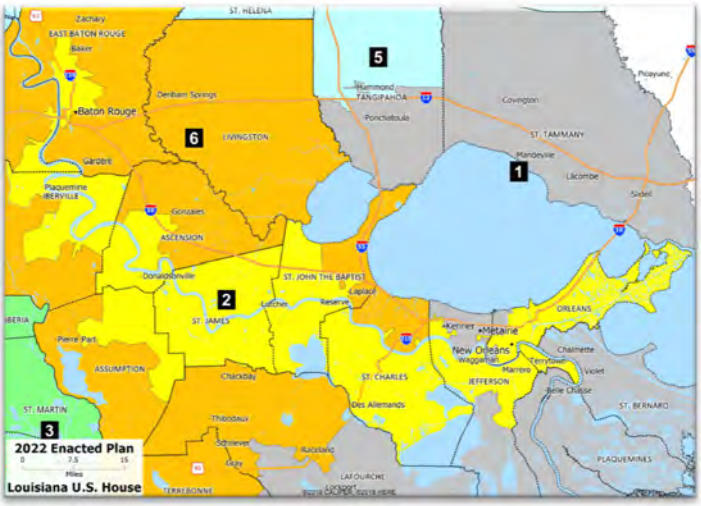
Confronted with Plaintiffs' voluminous evidence that squarely addressed *Gingles*, the Senate Factors, and the other considerations relevant to Section 2 claims, Defendants and their experts responded with inexplicable digressions and irrelevant findings. This evidence does nothing to undermine Plaintiffs' case-in-chief.

IV. Defendants' proffered justifications for the enacted congressional map are tenuous and unpersuasive.

In their pre-hearing briefs, Defendants advanced several justifications for the Legislature's decision to enact a congressional plan with only one Black-opportunity district. The testimony confirmed that none of these proffered justifications holds up under scrutiny.

The Legislative Intervenors have argued that Black voting strength is sufficiently protected by the enacted Second Congressional District, suggesting that shoring up that district's BVAP is how the Legislature chose to best serve the interests of the state's Black voters. *See* Rec. Doc. No. 109 at 18–20. But as Dr. Lichtman explained, the BVAP of the Second Congressional District is "way beyond what is necessary for [Black voters] to elect candidates of choice." May 10 Tr. 188:9–14. And as a consequence of the packing of Black voters into that district, it fails to adhere to

traditional districting principles. In addition to linking New Orleans and Baton Rouge—which Plaintiffs' witnesses testified do not share significant common interests, *see* May 9 Tr. 63:3–16 (Mr. McClanahan)—the Second Congressional District is strikingly noncompact. As Dr. Lichtman found, "to achieve this packing, the state created an elongated, distorted district . . . . The 2011 CD 2 has a large and irregular finger that extends from New Orleans to East Baton Rouge Parish to pick up pockets of black population. It wraps CD 6 around CD 2 to capture white population." GX-3 at 63. The enacted Second Congressional District, which mirrors its predecessor, retains this bizarre shape:



GX-1a at 54.

Moreover, the Legislative Intervenors disingenuously claimed that "it is unclear, at best, whether the Black community is better served with one congressional majority-minority district of a healthy BVAP of about 58%, as the enacted plan provides, or two districts with somewhat smaller Black populations that barely qualify (and may not qualify) as majority-minority districts." Rec. Doc. No. 109 at 18. This characterization is squarely inconsistent with their own assertion *in the very same brief* that, due to white crossover voting, "a 50% BVAP district is unnecessary to ensure an equal opportunity for the Black community." *Id.* at 15. And Drs. Palmer and Handley

demonstrated that Black voters would generally be able to elect their preferred candidates in both the Second *and* Fifth Congressional Districts under Plaintiffs' illustrative plans. *See* GX-2 ¶¶ 25–26; PR-12 at 13, PR-87 at 6; PR-91 at 3. The true choice, then, is between *one* packed, noncompact district where Black voters can elect their candidates of choice—with the state's remaining Black voters cracked among the five other congressional districts in such low numbers as to be unable to elect their preferred candidates, *see* GX-3 at 61–62—or *two* districts, drawn consistent with traditional districting principles and better reflective of the state's population and communities of interest, where Black voters can elect their preferred representatives to Congress. Even setting aside the imperatives of Section 2, the better option for Black Louisianians is readily apparent.

Defendants have also trumpeted core retention and "continuity of representation" as a justification for HB 1. Rec. Doc. No. 101 at 17–18. This emphasis on core retention is not surprising; Mr. Cooper noted that the new congressional map is "basically a carbon copy" of the prior map enacted in 2011, May 9 Tr. 121:25–122:7, as a visual comparison confirms:

2011 Map

2022 Map

GX-1 Figures 7, 11. But core retention is a decidedly tenuous justification for HB 1. Notably, this criterion was *not* included in Joint Rule No. 21's prescribed guidelines for the state's new

congressional map, even though "consideration [for] traditional district alignments" *was* an enumerated criterion "for the [Louisiana] House of Representatives, Senate, Public Service Commission, and Board of Elementary and Secondary Education." GX-20. Moreover, a map that mechanically replicates the contours of districts drawn 10 years ago will not reflect the demographic changes that occurred in Louisiana over the past decade—in particular, the increasing growth of the state's minority populations and the sustained decline of its white population. *See* GX-1 ¶¶ 21–22, Figure 4. Finally—and perhaps most importantly—core retention serves only to perpetuate rather than remedy discriminatory effects. As Dr. Lichtman explained, core retention in Louisiana merely entrenches the inequities of the previous plan,

> freez[ing] in the existing packing and cracking . . . . 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. 185:6–186:11. Dr. Lichtman's analysis strikes at the heart of the problem: In a state like Louisiana where Black citizens have historically suffered from discrimination and disenfranchisement—including through the configurations of congressional districts—core retention calcifies that marginalization and sustains it without end. Defendants should not be allowed to use core retention as a means to foster an endless cycle of self-perpetuating discrimination, especially where the congressional plan at issue otherwise violates Section 2.

V. Defendants are not actually litigating Plaintiffs' case.

Defendants' narrow-minded focus on Louisiana's redistricting history manifested itself in yet another argument: that Plaintiffs' illustrative maps simply replicate the state's second majority-Black congressional districts that were challenged and invalidated during the 1990s. *See* Rec. Doc. No. 101 at 6–7, 9–10; Rec. Doc. No. 109 at 2–4, 7, 13; *see also, e.g.*, *Hays v. Louisiana*, 936 F. Supp. 360, 362–67 (W.D. La. 1996) (per curiam) (three-judge court) (describing extensive 1990s

litigation and joking that "[a]t this juncture the procedural posture of the suit has become almost as convoluted as the shapes of some of the districts drawn by the Legislature"). But the illustrative majority-Black Fifth Congressional Districts drawn by Messrs. Cooper and Fairfax are fundamentally different from the majority-minority districts that were challenged as racial gerrymanders following *Shaw*. Defendants' repeated comparisons between these districts should not be credited.

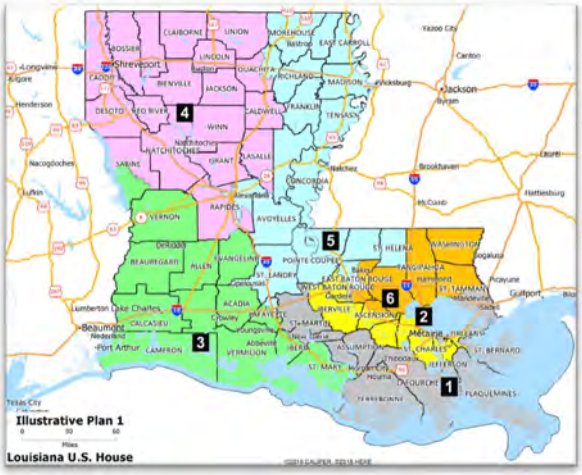
A simple visual inspection confirms the stark contrasts between these various maps. The iteration of the Fourth Congressional District initially challenged in *Hays*, "like the fictional swordsman Zorro, when making his signature mark, slashed a giant but somewhat shaky 'Z' across the state." *Id.* at 363 (cleaned up). The subsequent Fourth Congressional District—enacted by the Legislature during the pendency of the *Hays* litigation and eventually invalidated by the three-judge court—"resemble[d] an inkblot which has spread indiscriminately across the Louisiana map." *Id.* at 364, 371:

1992 Map

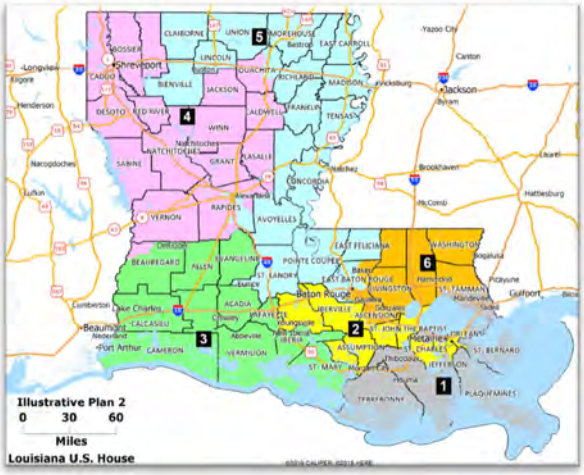
1994 Map

GX-1a at 38, 40. By contrast, none of the illustrative Fifth Congressional Districts drawn by Messrs. Cooper and Fairfax resembles either of these meandering, eccentric districts:

***Galmon* Illustrative Plan 1**

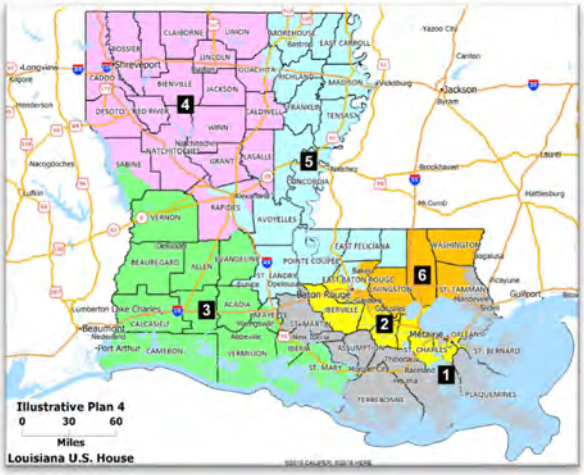


***Galmon* Illustrative Plan 2**

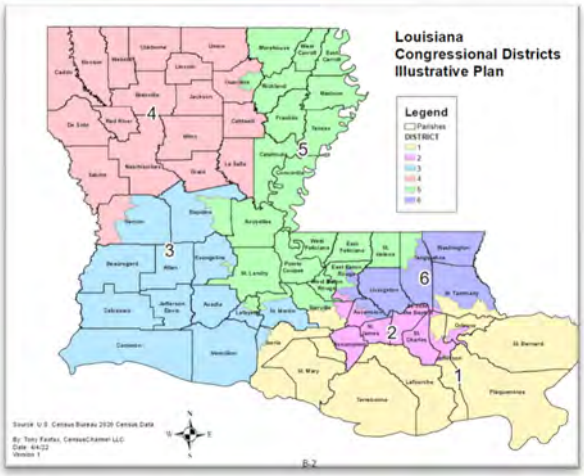


***Galmon* Illustrative Plan 3**

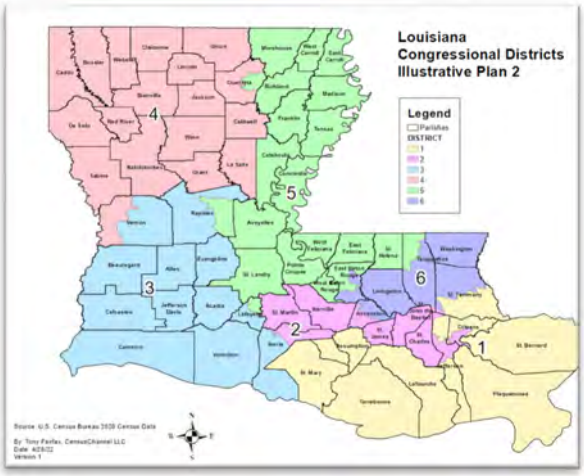
***Galmon* Illustrative Plan 4**



***Robinson* Illustrative Plan 1**



***Robinson* Illustrative Plan 2**[4]



[4] The *Robinson* Plaintiffs also submitted an Illustrative Plan 2A that retains all of the criteria measurements of Illustrative Plan 2 but does not pair incumbents. *See* PR-90 at 4–5.

GX-1b at 13, 40; GX-1c at 7; GX-29 at 45; PR-15 at 47; PR-86 at 27. Notably, Plaintiffs' illustrative plans in many instances are *more* compact and split *fewer* political subdivisions than the enacted plan. *See* GX-1 Figure 20; GX-29 Figure 3; PR-14 at 21; PR-90 at 5, Table 1.

Ultimately, neither Mr. Cooper nor Mr. Fairfax drew illustrative districts that resembled the challenged districts from *Hays*; indeed, both testified that they would never have done so. *See* May 9 Tr. 162:7–19, 222:12–19. Intervening demographic changes in the state, advances in redistricting technology, and dutiful compliance with neutral districting principles have ensured that Plaintiffs' illustrative plans satisfy not only *Gingles*, but any conceivable legal challenge.

VI. A new congressional map can be feasibly implemented in advance of this year's midterm elections.

Having failed to rebut or even meaningfully engage with Plaintiffs' expert and lay evidence, Defendants' last resort is to wave the banner of *Purcell* and try to convince the Court that it is somehow too late to remedy a violation of federal law—even though Louisiana's primary election is still nearly six months away. *See* GX-24.[5] But just weeks ago, Defendants' counsel offered a very different representation to Judge Donald R. Johnson of the Nineteenth Judicial District Court, claiming that (1) a new congressional map could be adopted *after* the legislative session ends next month or even later; (2) the deadlines that actually matter to voters will not occur until *October*, with the preceding candidate qualification deadlines amenable to rescheduling as needed; and (3) "there remains *several months* on Louisiana's election calendar to complete the [redistricting] process." GX-32 at 7–8 (emphasis added); *see also* GX-26 at 3; GX-27 at 4; GX-28 at 3. Given this inconsistency, Defendants are simply not credible on this issue.

[5] Plaintiffs note that 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.

The testimony presented at last week's hearing confirmed that there is ample time and opportunity to implement a lawful congressional map for this year's congressional elections. Mr. Block, Governor Edwards's executive counsel, explained that Louisiana has a responsive elections apparatus that is not only capable of implementing last-minute adjustments to election dates and deadlines, but has done so several times in just the past decade. *See* May 11 Tr. 17:21–22:21, 24:4–7. In those instances, the Secretary's office was able to administer the elections, Louisianians were able to cast ballots, and electoral chaos did not result. *See id.* at 22:22–24:3. What Plaintiffs seek here is far from a last-minute change, and so there is no reason to believe that a new map could not be feasibly implemented. Moreover, Mr. Block observed that a remedial map could be adopted by the Legislature *right now*, since it is in session until June 6. *See id.* at 24:14–23.

Nothing in the testimony of the state's commissioner of elections, Sherri Hadskey, suggests that implementation of a new map is not feasible. Ms. Hadskey did not dispute the ability of the state's election supervisors to hold an election if the drawing of congressional district lines were delayed. May 13 Tr. 56:11–57:2. Although she expressed vague, generalized concerns about competing obligations, *see* SOS_01, she failed to provide a *single* concrete reason why a new map cannot be put in place in the coming weeks. To the contrary, her testimony confirmed that the election calendar could accommodate such a change:

- Multiple rounds of voter information cards will be distributed in the near future, and information about voters' congressional district assignments is easily available through the GeauxVote mobile app and the Secretary's website. *See* May 13 Tr. 52:20–53:3, 53:22–24.

- The most pressing deadline—which is still more than a month away—is a candidate petition deadline that *no congressional candidates* have utilized in the past decade, and the alternative $600 filing fee remains available for candidates. *See id*. at 57:13–20, 58:8–59:2.

- Other than election day, the only deadline identified by Ms. Hadskey that cannot be moved is the mailing of overseas absentee ballots—which is not until September 24, four months from now. *See id.* at 45:1–10.

- The nationwide election-paper shortage has nothing to do with a new congressional map, since ballots will not be printed for many months and changed districts do not impact the number of ballot envelopes and other materials that must be produced. *See id*. at 48:16–50:13.

Louisiana is unique. Its elections are unique. Its election *calendar* is unique. And it is therefore uniquely situated to allow for the feasible implementation of a new congressional map this year. Defendants' *Purcell* argument is little more than sound and fury. A new congressional map can be adopted either by the Legislature or this Court and implemented without significant difficulty for the State—and *nothing* in the record suggests otherwise.

CONCLUSION

Throughout this case, Defendants have tried to move the goalposts. As Mr. McClanahan testified at the beginning of the hearing, the State of Louisiana used to disenfranchise its Black citizens by artificially expanding the definition of Black, *see* May 9 Tr. 26:21–27:3—and now it is artificially contracting that definition to limit the reach of the Voting Rights Act. But the law governing Section 2 claims is what the U.S. Supreme Court and the Fifth Circuit have said it is, not what Defendants might wish it were. And Plaintiffs have offered evidence more than sufficient to prove their entitlement to relief. Defendants' last-ditch reliance on *Purcell* simply has no resonance in a state with such a delayed election calendar. And certainly administrative inconveniences cannot justify diluting the voting strength of hundreds of thousands of Black Louisianians.

Defendants have made much of the fact that the particular boundaries of Plaintiffs' illustrative Fifth Congressional Districts have never before existed in a Louisiana congressional map. This is notable, but not for the reason Defendants imply. Black voters have been historically and persistently denied equal access to the political process, so it is little wonder that this district has never been drawn. The novelty of the district reflects the fact that it is a *remedy* for vote dilution that will serve to undo past discrimination and vindicate the fundamental rights of some of the state's most vulnerable and marginalized residents—with just one result being, as Dr. Nairne testified, that Black voters "would have hope again in Louisiana." May 10 Tr. 91:22–23.

For these reasons and those described in their proposed findings of fact and conclusions of law, Plaintiffs respectfully request that the Court grant their motions for preliminary injunction.

Dated: May 18, 2022

Respectfully submitted,

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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 18th day of May, 2022.

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

EXHIBIT K

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al., *Plaintiffs,* v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Civil Action No. 3:22-cv-00211-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson
EDWARD GALMON, SR., et al., *Plaintiffs,* v. R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Consolidated with Civil Action No. 3:22-cv-00214-SDD-SDJ

DEFENDANTS' AMENDED JOINT POST-HEARING BRIEF
IN OPPOSITION TO MOTIONS FOR PRELIMINARY INJUNCTION[1]

[1] Defendants submit this Amended Joint Post-Hearing Brief that has been updated and corrected with citations to the final transcripts for the preliminary-injunction proceedings.

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INTRODUCTION

Plaintiffs have not satisfied their heavy burden to warrant a preliminary injunction. On the merits, the evidence establishes that—like Louisiana's 1990s-era redistricting plans—Plaintiffs' illustrative plans were created with "the *specific intent* of" including "two black . . . majority districts." *Hays v. Louisiana*, 839 F. Supp. 1188, 1195 (W.D. La. 1993) (*Hays I*). The evidence also establishes that these constitutionally suspect plans are neither justified nor compelled by Section 2 of the Voting Rights Act (VRA). There is no reason to believe two majority-minority districts can satisfy constitutional scrutiny now, when they did not in the 1990s, given that (1) Louisiana's Black population has not materially grown, (2) there is no evidence that it is differently dispersed, and (3) the State has one fewer congressional district with which to work. The challenged plan is "a carbon copy" of the 2011 plan precleared by the Department of Justice under the leadership of Attorney General Eric Holder. 5/9 Tr. 88:17–20.

Further, Plaintiffs failed to address, much less prove, the third *Gingles* precondition, which asks whether "the candidate of choice of African-American voters would usually be defeated without a VRA remedy." *Covington v. North Carolina*, 316 F.R.D. 117, 168 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017). Every polarization expert on both sides testified that white crossover voting is sufficient to enable Black voters to elect their preferred candidates without majority-minority districts, the only available VRA remedy. The Supreme Court just two months ago summarily reversed a Wisconsin court that added a new majority-minority district to that state's legislative plans, just as Plaintiffs demand in this case. *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1247 (2022). Plaintiffs fail to explain why the result would differ here.

On the equities, the *Purcell* doctrine is now practically conceded to apply, and it bars injunctive relief. Plaintiffs' own *Purcell* witness—who presented their only evidence concerning

their burden—conceded that a new plan would render election administration a "huge challenge," 5/11 Tr. 23:1–2, akin to what Hurricane Ida imposed. But *Purcell* forbids injunctions that have the impact of natural disasters, requiring "heroic efforts" from election officials who attempt to implement them. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). When a federal court in Alabama issued the very injunction Plaintiffs demand here—enjoining a plan with one majority-Black district and ordering the use of a plan with two—the Supreme Court promptly stayed that order.[2] Plaintiffs again fail to explain why the result would differ here. Plaintiffs' motions must be denied.

ARGUMENT[3]

I. Plaintiffs Are Unlikely to Succeed on the Merits

A party seeking a preliminary injunction must "clearly carr[y] the burden of persuasion" in showing a likelihood of success. *PCI Transp., Inc. v. Fort Worth & W. R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005). Here, because Plaintiffs seek an injunction impacting the administration of an upcoming election, they must prove that "the underlying merits are entirely clearcut [their] favor." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). But, if anything is entirely clear, it is that Plaintiffs are unlikely to prevail at trial. Defendants' proposed conclusions of law explain the numerous reasons that is so. This brief focuses on the first and third *Gingles* preconditions, which are threshold elements Plaintiffs cannot satisfy.

[2] In addition, the Court granted certiorari before judgment in one of those consolidated matters, noted probable jurisdiction in the other, and set the cases for argument and review on the merits. *Merrill, et al. v. Milligan, et al.*, No. 21-1086 (U.S. 2022); *Merrill, et al. v. Caster, et al.*, No. 21-1087 (U.S. 2022).

[3] Due to space constraints and consolidation of briefing, the arguments presented in this brief are not exhaustive of those Defendants raise in this case and in any appeal. Additional arguments are in the contemporaneously filed proposed conclusions of law, which are incorporated herein for all purposes, including preservation.

A. The First *Gingles* Precondition

The first *Gingles* precondition requires a challenger to establish that the relevant minority group is "'sufficiently large and geographically compact to constitute a majority' in some reasonably configured legislative district." *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (plurality opinion)). This precondition "specifically contemplates the creation of hypothetical districts." *Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1151 (5th Cir. 1993). Plaintiffs have little chance of success on this element.

1. Racial Predominance

Plaintiffs' alternative plans cannot be deemed "reasonably configured," *Wis. Legislature*, 142 S. Ct. at 1248, when they "segregate the races for purposes of voting." *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (*Shaw I*). A plan that links "distinct locations" on the basis of race does not satisfy the first *Gingles* precondition. *Sensley v. Albritton*, 385 F.3d 591, 597 (5th Cir. 2004). The hearing evidence established that race was "the predominant factor motivating the placement of voters in or out of a particular district"—namely, Plaintiffs' remedial versions of CD2 and CD5. *Wis. Legislature*, 142 S. Ct. at 1248. Although Plaintiffs' demography experts, Messrs. Fairfax and Cooper, denied that race predominated, these assertions are purely semantic. Under the legal definition of predominance, their choice to "consciously dr[a]w the district[s] right around 50 percent [BVAP]" to "satisf[y] that first pre-condition," 5/9 Tr. 217:18–23, qualifies as suspect race-based redistricting.

a. *Direct Evidence of Predominance*. Racial predominance occurs when (1) a mapmaker "purposefully established a racial target," such as that "African-Americans should make up no less than a majority of the voting-age population," and (2) the racial target "had a direct and significant impact" on the district's "configuration." *Cooper*, 137 S. Ct. at 1468–69. As

to the first element, there is no question that Plaintiffs' experts set out to draw majority-minority districts. Mr. Fairfax admitted he was "using [a] 50 percent voting age population as" a "threshold" to comply with *Gingles*, 5/9 Tr. 208:2–4, and that he purposefully drew CD2 and CD5 above 50 percent for the same reason, *id.* 218:18–22; *see also id.* 206:25–207:4 (Mr. Fairfax conceding that he was "focused on complying with the first *Gingles* precondition"); *id.* 210:12–212:4 (similar). This testimony compels a finding of predominance. *See Cooper*, 137 S. Ct. at 1469 (holding that lower court "could hardly have concluded anything but" predominance where mapmaker attested to intent to draw a majority-minority district). Likewise, Mr. Cooper testified that a plan with two majority-minority districts was non-negotiable:

> Q. During your map drawing process did you ever draw a one majority minority district?
>
> A. I did not because I was specifically asked to draw two by the plaintiffs.

5/9 Tr. 123:1–4. This, too, qualifies as a racial target. *See Cooper*, 137 S. Ct. at 1469 ("[W]hen (as here) race furnished 'the overriding reason for choosing one map over others,'" race predominates (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 799 (2017)); *see also Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*).

As to the second element, the evidence establishes "a direct and significant impact on the drawing of at least some of [CD5's and CD2's] boundaries." *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 274 (2015). Mr. Fairfax testified that he was using a 50 percent threshold for the purpose of "pulling in black population for these [majority-minority] districts," 5/9 Tr. 207:23–208:2, which is the essence of a target's direct and significant impact, *see Cooper*, 137 S. Ct. at 1468–69. In fact, Mr. Fairfax testified that he consulted racial data at the outset of map-drawing "to get an idea where the black population is inside the state in order to begin drawing," 5/9 Tr. 208:6–8, because "you can't draw a plan in an area where black population doesn't exist,"

id. 209:22–23. Then, Mr. Fairfax continued assigning voters on the basis of race, to "pull the BVAP percentages back up to check [his] work." *Id.* 210:9–12; *see also id.* 210:12–212:4 (similar).

And Mr. Fairfax testified that drawing a least change plan was not an option because that would not produce a majority-minority district. 5/9 Tr. 204:21–22; *see Cooper*, 137 S. Ct. at 1468–69 (departing from prior map for race-based purpose amounted to predominance). He organized the plan's entire architecture around racial data and continued moving voters throughout the process on the basis of race to achieve a 50 percent BVAP target. That is "a textbook example of race-based districting." *Cooper*, 137 S. Ct. at 1469 (citation and quotation marks omitted). Mr. Cooper conceded that he only attempted districting configurations—combining East Baton Rouge Parish with "majority black" territory in the delta—he knew would achieve two majority-minority districts. 5/9 Tr. 130:25–131:9, 131:24–132:4; *see also id.* 124:19–125:1 (conceding he "stopped" adding BVAP to CD-5 after reaching 50.04 percent because, when the district achieved the ideal population, "it was still above 50 percent BVAP"); *id.* 155:11–14 (acknowledging achievement of *Bartlett v. Strickland*'s "50 percent plus 1" rule).

b. *Circumstantial Evidence of Racial Predominance*. The circumstantial evidence confirms racial predominance. *See Bethune-Hill*, 137 S. Ct. at 797 (recognizing that racial predominance may be discerned through direct or circumstantial evidence).

First, Dr. Blunt simulated 10,000 Louisiana redistricting plans according to neutral, non-racial criteria that Messrs. Cooper and Fairfax claimed to have implemented in their illustrative plans, and not *one* plan produced even *one* majority-minority district. 5/12 Tr. 35:25–36:6. Plaintiffs contend that simulated plans shed no light on a map-maker's intent, but numerous courts have disagreed, finding simulated plans to be compelling evidence of redistricting motive—and in most of these cases the legal teams representing one or both sets of Plaintiffs here sponsored that

evidence.[4] Indeed, the Fourth Circuit reversed as clearly erroneous a district court's decision *not* to credit a simulation method in ascertaining intent. *Raleigh Wake Citizens Ass'n*, 827 F.3d at 344; *cf. Gonzalez v. City of Aurora, Ill.*, 535 F.3d 594, 600 (7th Cir. 2008). Plaintiffs' expert, Dr. Palmer, admitted that Dr. Blunt's method "is a standard approach to simulating redistricting plans, used by both scholars and testifying experts." Palmer Rep., GX-30 at 3, ¶ 11. Plaintiffs criticize Dr. Blunt's constraints as too restrictive, *id.*, but the result was the same even after Dr. Blunt conducted a robustness check by significantly relaxing the parameters of his criteria and thereby broadly increased the types of districts that might be simulated, 5/12 Tr. 45:4–48:4. What is telling is that Dr. Palmer admitted Dr. Blunt used a "standard redistricting package that's widely available and one that [he's] used a lot in [his] own academic work," 5/9 Tr. 329:25–330:2, but Dr. Palmer did not run his own simulations (or did not report the results), even though he had the skill and time to do so, *see id.* 346:22–347:13.

Second, evidence "such as stark splits in the racial composition of populations moved into and out of disparate parts of the district" is circumstantial evidence of predominance, *Bethune-Hill*, 137 S. Ct. at 800, and Mr. Bryan thoroughly demonstrated that these stark splits pervade CD2 and CD5 in each of the Plaintiffs' illustrative plans, *see generally* 5/11 Tr. 61–100. Mr. Bryan showed that predominantly Black portions of Baton Rouge, Lafayette, and other localities were placed into majority-minority districts, and predominantly white portions were placed elsewhere.

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[4] *See, e.g.*, *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio), *vacated and remanded on other grounds*, *Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019); *League of Women Voters of Mich. v. Benson*, 373 F. Supp. 3d 867 (E.D. Mich.), *vacated on other grounds sub nom. Chatfield v. League of Women Voters of Mich.*, 140 S. Ct. 429 (2019); *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333 (4th Cir. 2016); *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 251 F. Supp. 3d 935, 937 (M.D.N.C. 2017); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 2018 U.S. Dist. LEXIS 146635 (M.D.N.C. August 27, 2018); *Harper v. Hall*, 2022-NCSC-17, 868 S.E.2d 499; *Adams v. DeWine*, 2022-Ohio-89, 2022 WL 129092 (Jan. 14, 2022); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 2022-Ohio-65, 2022 WL 110261 (Jan. 12, 2022); *League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737 (2018); *Harkenrider v. Hochul*, No. 22-00506, 2022 WL 1193180 (N.Y. App. Div. Apr. 21, 2022), *aff'd as modified*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022); *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sep. 3, 2019).

Id. 86:4–88:13. This was also true at the census-block level, as the lines "were very, very precisely drawn with blocks that were 50 percent or more black population on one side of the line and less than 50 percent, sometimes less than 25 percent of the population on the other side of the line being white population." *Id*. 89:13–20. This evidence of predominance is sufficient to override direct denials of predominance. *See Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 144–75 (E.D. Va. 2018) (three-judge court).

Third, the incentives brought to bear on Messrs. Fairfax and Cooper undergird the overwhelming evidence of predominance and undercut their confusing denials. Plaintiffs hired Messrs. Fairfax and Cooper and charged them with preparing plans containing two majority-minority districts.[5] It is eminently plausible that they employed a high degree of intentionality in doing so and implausible that they did not. Experts have no incentive to produce reports undermining the claims of the parties that hire them. And, here, only a limited set of configurations could achieve this goal—i.e., configurations containing Baton Rouge, Monroe, and other regions with large percentages of Black residents. Only by building their plans around the goal of two majority-minority districts could that goal be achieved. Plaintiffs' experts surely did not stumble upon such configurations as the mere byproduct of non-racial goals.

Fourth, the standard of predominance is lower here than in the numerous Supreme Court cases where racial predominance was found or affirmed. In those cases, the presumption of good faith afforded to state legislatures and the unique sensitivity in redistricting demand that courts "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Bethune-Hill*, 137 S. Ct. at 797 (citation and quotation marks omitted). No

[5] In some plans, the proposed remedial districts were majority Black VAP under the most expansive (and legally dubious) definition by only a couple of hundred individuals out of several hundred thousand residents. This result does not occur without precise focus on racial targets.

presumption of good faith applies, or need for caution arises, when courts evaluate evidence presented by litigants' hired experts.

c. *Plaintiffs' Contrary Factual Arguments*. Plaintiffs' arguments on the facts are designed to confuse, not persuade.

First, Plaintiffs' experts say "diluting minority voting strength" is among "the traditional districting factors" that weighs against a racial goal for purposes of assessing the predominant motive. *See, e.g.*, 5/9 Tr. 97:17–98:5; Fairfax Reb. Rep., PR-86, at 8. But the Supreme Court defines traditional districting principles for the purpose of the racial-predominance test as "*race-neutral* districting principles." *Bethune-Hill*, 137 S. Ct. at 797 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (emphasis added)). Plaintiffs' experts defined their supposed traditional districting principle of avoiding minority vote dilution as drawing a "majority black district," 5/9 Tr. 154:24–155:7, but the Supreme Court precedent defines that as a race-*based* goal, *Wis. Legislature*, 142 S. Ct. at 1248–51; *Cooper*, 137 S. Ct. at 1468–69.

Second, Plaintiffs appear to argue that the race-based goal of creating a majority-minority district falls short of predominance so long as the mapmaker has "followed other traditional redistricting principles." 5/9 Tr. 155:4–7; *accord id.* 222:12–19. But that is "a legal proposition foreclosed . . . as soon as it was raised in this Court," because the Supreme Court rejected it in *Bethune-Hill*, "holding that when (as here) race furnished 'the overriding reason for choosing one map over others,' a further showing of 'inconsistency between the enacted plan and traditional redistricting criteria' is unnecessary to a finding of racial predominance." *Cooper*, 137 S. Ct. at 1469 n.3 (quoting *Bethune-Hill*, 137 S. Ct. at 799). Plaintiffs' assertions regarding compactness scores and other good-government principles do not change the fact that achieving two majority-minority districts "was the criterion that . . . could not be compromised." *Shaw II*, 517 U.S. at 907;

see, e.g., 5/9 Tr. 94:23–95:11. Likewise, Plaintiffs' experts' efforts to distinguish the *Hays* districts by their appearance, 5/9 Tr. 222:16–19 (Fairfax), ignores that *Hays* found the direct evidence of motive sufficient to establish predominance, irrespective of district appearance, *Hays I*, 839 F. Supp. at 1204; *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996).

Third, Plaintiffs get the traditional-principles argument wrong even on their own terms. They suggest, for example, that compliance with the one-person, one-vote principle is among the traditional districting principles that weigh against racial motivation. *See, e.g.*, 5/9 Tr. 97:17–98:5. But "the equal population goal is not one factor among others to be weighed against the use of race to determine whether race 'predominates.' Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator's determination as to *how* equal population objectives will be met." *Ala. Legislative Black Caucus*, 575 U.S. at 272. This criterion carries no weight.

Plaintiffs also assert that their experts' use of race is not suspect because racial identity is a facet of communities of interest. *See, e.g.*, 5/9 Tr. 289:13–22 (Cravins); 5/10 Tr. 190:18–191:14 (Lichtman). But this is just another suspect use of race. "[T]he sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics." *Cooper*, 137 S. Ct. at 1473 n.7; *Miller*, 515 U.S. at 914 (stating that the "use of race as a proxy" for "political interest[s]" is "prohibit[ed]").

Mr. Fairfax intimated at times that his stark racial choices were the result of drawing districts to align with "socioeconomic" data. 5/9 Tr. 186:20–187:1; *id.* 202:25–203:2. This argument fails like so many other attempts to a predominance finding. Mr. Fairfax's maps tracked racial patterns at the census-block level. *See* 5/11 Tr. 89:13–20. Mr. Fairfax had only racial data available at that level. 5/9 Tr. 180:2–8. Mr. Fairfax's socio-economic information is reported at

the census tract level, which is a higher, and less precise, level of census geography. *See* 5/9 Tr. 187:10–20, 226:14–16. Because the lines track race at the census-block level, Mr. Fairfax cannot credibly claim socioeconomic data caused the splits. *See Bush v. Vera*, 517 U.S. 952, 970–7 (1996) (plurality opinion); *Bethune-Hill*, 326 F. Supp. 3d at 175. Nor can Plaintiffs credibly pin the blame for their race-based lines on housing patterns. *See, e.g.*, 5/9 Tr. 114:7–115:24. Lines tracking those patterns were not inevitable, or even likely, absent racial predominance.

Finally, Plaintiffs suggested that drawing majority-minority districts was somehow non-racial because majority-minority districts are, in their view, racially balanced districts. *See, e.g.*, 5/11 Tr. 140:18–147:1. That again is a concession of invidious intent. "[R]acial balancing, . . . is patently unconstitutional." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). The argument contravenes the entire *Shaw* line of cases, each of which invalidated majority-minority districts that could equally have been alleged to create racial balance. The law is clear that the "assignment of voters on the basis of race" is "subject to" the "strictest scrutiny." *Miller*, 515 U.S. at 915.

d. *Plaintiffs' Legal Arguments*. Plaintiffs' strained contentions that race did not predominate betray a lack of confidence in their legal argument that racial predominance presents no problem. *See* Doc. 120 at 10 n.10; Doc. 123 at 2–3. And that argument makes little sense. The Legislature enacted a redistricting plan that Plaintiffs stipulated they have not alleged impinges on constitutional rights. Plaintiffs ask this Court to compare that non-suspect plan against race-based plans the Supreme Court has called constitutionally "odious." *Wis. Legislature*, 142 S. Ct. at 1248 (citation and quotation marks omitted). But no statute, including the VRA, may compel the constitutionally odious, especially when it was enacted to enforce the very constitutional rights being impinged. Plaintiffs do not address these problems, but instead rely on *Clark v. Calhoun*

Cnty., Miss., 88 F.3d 1393 (5th Cir. 1996). Plaintiffs misread the relevant part of *Clark* and ignore how it fits within the larger body of relevant precent.

To begin, Plaintiffs fail to appreciate that *Clark* addressed not one but two racial-gerrymandering arguments in the context of a Section 2 claim. Plaintiffs cite only *Clark*'s first holding (in Section III.B) that the predominance test of *Miller v. Johnson* "does not apply to the first *Gingles* precondition." 88 F.3d at 1406–07. They bypass, however, *Clark*'s treatment of an argument it saw as distinct (in Section III.C): "that the County" sued in that case "did not violate § 2 because the plaintiffs' proposed remedy violates the Equal Protection Clause." *Id.* at 1407. On that latter question, the Fifth Circuit did not find predominance irrelevant but, instead, remanded because "[t]here has been no finding that the plaintiffs' plans subordinate traditional race-neutral districting plans to racial considerations," and the plaintiffs had presented an illustrative plan "which allegedly made minimal changes to existing districts and precinct lines." *Id.* at 1408 (internal quotation marks omitted). The court determined that an inquiry should be made into whether "those changes are truly 'minimal'" and whether the "predominant factor test" was satisfied.[6] *Id.* (citation omitted). That is, *Clark did* view the predominance test as applicable to the illustrative plans, but as only part of the remedial analysis.

Supreme Court and Fifth Circuit precedent have both since held that the remedial and liability inquiries are not separate but are one in the same. *Abbott v. Perez*, 138 S. Ct. 2305, 2333 (2018); *Harding v. Cnty. of Dallas, Tex.*, 948 F.3d 302, 309–10 (5th Cir. 2020). It is therefore no longer a legally available possibility that, as *Clark* assumed, a predominance analysis is appropriate at the remedial phase but not at the liability phase. *See also Wright v. Sumter Cnty. Bd.*

[6] Here, there is no argument that the illustrative plans make minimal changes as compared to the enacted plans. Plaintiffs experts admitted that they made no effort to minimize changes. *See* 5/9 Tr. 157:19–158:18. *Clark* undermines their assertions that a least-change plan cannot be a Section 2 remedy, as a least change plan was asserted to be a Section 2 remedy in that case.

of Elections & Registration, 979 F.3d 1282, 1302–03 (11th Cir. 2020) ("[A] district court's remedial proceedings bear directly on and are inextricably bound up in its liability findings."). What the Fifth Circuit held in Section III.C now has equal applicability to Section III.B.

Further, the law of racial gerrymandering has advanced since *Clark*. Whereas *Clark* instructed the district court to evaluate to what degree the alternative plans "use[d] race at the expense of traditional political concerns," 88 F.3d at 1408, the Supreme Court has since clarified that "a conflict or inconsistency between the enacted plan and traditional redistricting criteria is not a threshold requirement," *Bethune-Hill*, 137 S. Ct. at 799. Before *Bethune-Hill*, the Supreme Court had "not affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional principles." *Id.* When *Clark* was decided, it was not clear that a plan meeting the *Gingles* preconditions—which incorporate "traditional districting principles such as maintaining communities of interest and traditional boundaries," *Abrams v. Johnson*, 521 U.S. 74, 92 (1997) (quoting *Bush*, 517 U.S. at 977)—could be presumptively unconstitutional. Now, it is clear that this can be so and normally is so. "The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race." *LULAC v. Perry*, 548 U.S. 399, 433–34 (2006) (citation omitted). Setting racial predominance as the VRA standard is the wrong way to go about doing that.[7]

Finally, when *Clark* was decided, Fifth Circuit decisions had held that Section 2 remedies may not be created with predominantly racial intent. *See Washington v. Tensas Par. Sch. Bd.*, 819

[7] To the extent *Clark* is read otherwise, Defendants hereby preserve the argument that *Clark* was wrongly decided and should be overruled in an appropriate appellate tribunal, for reasons stated in the main text. The Supreme Court in *Merrill* is considering how racial predominance interacts with the first precondition and may well override *Clark* next Term. Plaintiffs' claim here would necessarily fail if that occurs, which is another reason to deny these motions or stay the case pending *Merrill*.

F.2d 609, 612 (5th Cir. 1987). Under the rule of orderliness, "the earlier precedent controls." *United States v. Walker*, 302 F.3d 322, 325 (5th Cir. 2002).

2. Non-Compliance with Traditional Districting Principles

Plaintiffs' illustrative plans fail the first *Gingles* precondition because, in creating it, they declined to "take into account 'traditional districting principles such as maintaining communities of interest and traditional boundaries.'" *Abrams*, 521 U.S. at 92 (citation omitted). "[T]here is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates." *LULAC*, 548 U.S. at 433. This is because Section 2 rights are individual in nature and do not exist at the statewide level. *Shaw II*, 517 U.S. at 917. A district is not a Section 2 remedy when "the only common index" between the combined territory "is race." *Id.* at 435.

a. That is the case here. As explained, Plaintiffs' illustrative districts are racial gerrymanders, and it is especially critical that Plaintiffs' experts began from a racial starting point, reasoning that "[y]ou can't draw a plan in an area where black population doesn't exist." 5/9 Tr. 209:22–23. Only after discerning that a 50 percent target requires that specific territory be joined—namely, East Baton Rouge Parish, Ouachita Parish (Monroe), and other portions of the delta region—did Plaintiffs seek communities-of-interest and traditional-principles justifications for the choice. 5/9 Tr. 137:13–138:10 (Cooper); *id.* 234:21–235:5. (Fairfax). Plaintiffs' experts did not analyze similarities and differences among these regions. *See* 5/9 Tr. 143:8–146:14.[8] And they conceded these regions are in fact different (e.g., that "East Baton Rouge, West Baton Rouge are not part of the Louisiana delta region"). *Id.* 219:17–20. Their analyses showed marked differences

[8] Mr. Fairfax's references to public comments at the Legislature's road-shows fails to adduce a single comment suggesting that Monroe and East Baton Rouge be joined; the references all concern concepts that lie far from the core of the non-compact configuration necessary to achieve a 50 percent BVAP threshold. *See* 5/9 Tr. 195:10–196:1.

in household income, educational attainment, and poverty levels of Black residents in East Baton Rouge Parish compared to Black residents of the delta parishes. *See* 5/9 Tr. 151:6–154:14; *id.* 232:7–24; *id.* 234:6–18. A defense expert testified that these disparate regions were joined with a transparently racial motive and without regard to actual shared interests. 5/11 Tr. 52–164.

Plaintiffs approached this case from the wrong legal direction. They concluded that two majority-Black districts in Louisiana somewhere—anywhere—should be created and then sought to identify the location as an afterthought. By contrast, Section 2 asks whether a discrete minority community suffers vote dilution. *See Gonzalez*, 535 F.3d at 599–600; *Shaw II*, 517 U.S. at 917.

b. Plaintiffs' efforts to establish compactness in the face of these deficiencies are unavailing. *See Growe v. Emison*, 507 U.S. 25, 41–42 (1993) (it is Plaintiffs' burden to establish the *Gingles* preconditions). First, their experts provide mathematical compactness calculations purporting to show that their illustrative district meet certain scores. *See, e.g.*, 5/9 Tr. 106:5–108:19. But this reduces the compactness inquiry to "style points." *LULAC*, 548 U.S. at 434. "The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district." *Id.* at 433 (citation omitted). An illustrative district is not compact if it adjoins disparate communities on the basis of race, *see Sensley*, 385 F.3d at 597, notwithstanding their "different characteristics, needs, and interests," *LULAC*, 548 U.S. at 434. A district joining urban and suburban Black residents in East Baton Rouge Parish together with rural Black residents of the delta region (e.g., Ouachita and East Carroll Parishes) up to one-hundred eighty miles away, *see* Murray Rep., State_4, at 23–24, is precisely the type of district *LULAC* and *Sensley* found non-compact. *See Sensley*, 385 F.3d at 597 (finding a district joining discrete communities "roughly 15 miles apart from one another" failed the first precondition); *see also Miller*, 515 U.S. at 907–08

(condemning district that "connect[ed] the black neighborhoods of metropolitan Atlanta and the poor black populace of coastal Chatham County").

Second, Plaintiffs' experts measured the extent to which their plans split political-subdivision boundaries, metropolitan statistical areas, and other units of census geography they purported to be communities of interest. *See, e.g.*, 5/9 Tr. 99:21–104:24. But the compactness question is not principally whether the plans *split* areas recognized by the Census Bureau but whether they *join* areas separated by "enormous geographic difference" having "disparate needs and interests." *LULAC*, 548 U.S. at 435. No "mathematical possibility" of minimizing abstractly defined splits can justify the joinder of persons in these disparate regions. *Id.*

Third, Plaintiffs' efforts to compare their illustrative remedies to the majority-white districts of the enacted plan, 5/9 Tr. 93:8–97:3, 100:8–111:1, 116:5–118:8 (Cooper), are legally irrelevant and factually incorrect. They are legally immaterial because no one contends that the plan's majority-white districts are compelled by a federal statute, the Legislature has no obligation to meet the *Gingles* compactness requirement to draw them, and a federal court has no role in policing a state's choices in this respect. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019); *Banerian v. Benson*, --F. Supp. 3d--, 2022 WL 676001, at *2 (W.D. Mich. Mar. 4, 2022) (three-judge court). The question is whether the remedial districts meet the compactness standard of *LULAC* and other precedents interpreting Section 2, not whether they meet some standard Plaintiffs' experts purport to infer from the enacted plan's majority-white districts. Plaintiffs' arguments are factually incorrect because the record establishes beyond cavil that *all* districts in the enacted plan adhere to "traditional boundaries." *LULAC*, 548 U.S. at 433 (citation omitted). Louisiana's congressional redistricting plans have remained markedly similar since the *Hays*

litigation, signaling that generations of legislators have viewed lines like those before the Court as respecting the State's communities of interest. *See* Hood Rep., Leg_1, at 2–4.

Fourth, Plaintiffs' reliance on lay witness testimony to establish the compactness requirement is insufficient to establish a likelihood of success. As an initial matter, the testimony appears to comprise "*post hoc* justifications" contrived only after Plaintiffs' experts determined that hitting the majority-minority goal required a given conglomeration of regions. *Bethune-Hill*, 137 S. Ct. at 799. In any event, the testimony undermined their argument. Mr. Cravins repeatedly testified that Baton Rouge is part of "south Louisiana." 5/9 Tr. 240:23–241:3; *see also id.* 240:24–247:20 (five additional references to "south Louisiana"). The delta parishes are not part of "south Louisiana" by any arguable definition. This testimony appeared to be intended to establish that East Baton Rouge should be joined to St. Landry Parish. *See, e.g.*, 5/9 Tr. 240:24–241:22. But no map was presented demonstrating that a remedial district joining East Baton Rouge and St. Landry Parish, and anchored in "south Louisiana" would cross the 50 percent BVAP threshold in a plan with two majority-minority districts.

B. The Third *Gingles* Precondition

The third *Gingles* precondition requires a challenger to prove an "amount of white bloc voting that can generally 'minimize or cancel' black voters' ability to elect representatives of their choice." *Gingles*, 478 U.S. at 56 (citations omitted). This element cannot be shown "[i]n areas with substantial crossover voting," *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009), which is defined as an area where the Black-preferred candidate can prevail "without a VRA remedy"—i.e., a 50 percent minority VAP district, *Covington*, 316 F.R.D. at 168. Here, it is undisputed that white crossover voting levels are sufficient to obviate the need for even one 50 percent BVAP district. Plaintiffs

therefore have no meaningful chance of proving that two 50 percent BVAP districts are legally required.

1. Plaintiffs structured their polarized voting evidence around the wrong legal standard. Both their polarization experts, Dr. Palmer and Dr. Handley, defined polarized voting as existing where "black voters and white voters voted differently." 5/10 Tr. 13:12–13; *see also id.* 20:9–10; 5/9 Tr. 309:23–310:2. In particular, they view polarized voting as existing where "black voters and white voters would have elected different candidates if they had voted separately." 5/10 Tr. 21:2–4. That would occur any time bare majorities of Black voters and white voters vote for different candidates.

From that starting point, "the experts opined (to no one's great surprise) that in [Louisiana], as in most States, there are discernible, non-random relationships between race and voting." *Cooper*, 137 S. Ct. at 1471 n.5. That is exactly the error that led to "the most extensive unconstitutional racial gerrymander ever encountered by a federal court," *Covington v. North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017), and embellishment with terms like "stark," 5/10 Tr. 13:7, cannot hide this. In *Covington*, the North Carolina legislature created twenty-eight majority-minority districts in its state house and senate plans, based on the advice of statistical experts who found "statistically significant racially polarized voting in 50 of the 51 counties studied." *Covington*, 316 F.R.D. at 169 (quotation marks omitted). A three-judge court found that every one of those districts was a racial gerrymander, and the Supreme Court summarily affirmed that decision in one sentence. *North Carolina v. Covington*, 137 S. Ct. 2211 (2017). The case was not close. *Covington*, 270 F. Supp. 3d at 892 ("The Supreme Court affirmed that conclusion without argument and without dissent. And the Supreme Court unanimously held that Senator

Rucho and Representative Lewis incorrectly believed that the Voting Rights Act required construction of majority-minority districts[.]" (underlining in original)).

The problem was that North Carolina's experts, like Plaintiffs' experts, addressed "the general term 'racially polarized voting'" which "simply refers to when different racial groups 'vote in blocs for different candidates.'" *Covington*, 316 F.R.D. at 170 (citation omitted). But they missed "crucial difference between legally significant and statistically significant racially polarized voting." *Id.* at 170 (underlining in original). Whereas polarized voting can be said to occur "when 51% of a minority group's voters prefer a candidate and 49% of the majority group's voters prefer that same candidate," *id.* at 170, "the third *Gingles* inquiry is concerned only with 'legally significant racially polarized voting,'" *id.* (quoting *Gingles*, 478 U.S. at 51, 55–56). Non-actionable polarized voting becomes legally significant only when "racial bloc voting is operating at such a level that it would actually minimize or cancel minority voters' ability to elect representatives of their choice, *if no remedial district were drawn*." *Id.* at 168 (quotation and edit marks omitted; emphasis added). The question is whether "the candidate of choice of African-American voters would usually be defeated *without a VRA remedy*." *Id.* (emphasis added).

The *Covington* court—endorsed by every Supreme Court justice—criticized the North Carolina legislature because it "**Never Analyzed *Gingles*' Third Factor.**" *Id.* at 167 (bolding and capitalization in original). They did not assess whether the Black-preferred candidate would likely lose "absent some remedy," and this "failure" was "fatal to their Section 2 defense." *Id.* The same is true here. Dr. Palmer and Dr. Handley did not analyze "whether majority bloc voting exist[s] at such a level that the candidate of choice of African-American voters would usually be defeated *without a VRA remedy*." *Id.* at 168 (emphasis added); *see* 5/10 Tr. 62:23–65:16. That is a failure

to prove the third precondition. "Section 2 'does not assume the existence of racial bloc voting; plaintiffs must prove it.'" *Growe*, 507 U.S. at 42 (quoting *Gingles*, 478 U.S. at 46).

In fact, Plaintiffs' experts testified—and the undisputed evidence establishes—that a VRA remedy is unnecessary for the Black-preferred candidate to have an equal opportunity to prevail.[9] The Supreme Court held in *Bartlett* that a VRA remedy is a district that meets "the majority-minority requirement," i.e., 50 percent plus one. 556 U.S. at 17. The question is whether a white voting bloc is sufficient to defeat the Black-preferred candidate in districts below 50 percent BVAP or, by contrast, whether a district below 50 percent BVAP would perform. Here, Dr. Lewis concluded that a 50 percent BVAP district is unnecessary in either the footprint of CD5 or CD2. Lewis Rep., Leg_2, ¶ 13. But the Court need not take his word for it: Plaintiffs' experts, and a sophisticated *amicus* brief submitted by Tulane and Louisiana State University (LSU) math and computer science professors, have found the same. Dr. Palmer testified that there is meaningful white crossover voting, 5/9 Tr. 339:18–343:10, and that CD2 and CD5 could be drawn below 50 percent and enable the Black community to elect its preferred candidates, *id.* 346:18–21. Dr. Lichtman—who was the challengers' expert in *Covington*—agreed that a district around 40 percent BVAP can perform and compared this case to *Covington* without prompting. 5/10 Tr. 198:14–200:20. Dr. Handley testified that it is possible districts below 50 percent BVAP may perform. *Id.* 75:7–11. The Tulane and LSU professors' *amicus* brief presents an analysis of nineteen elections demonstrating that districts of about 42 percent BVAP afford an equal minority electoral opportunity. *Amicus* Brief in Support of Neither Party, Doc. 97, at 23, 27, 34–34. Indeed, Plaintiffs' contention that their remedial districts will perform depends on white crossover voting,

[9] This is a remarkable development in a southern state and a mark of progress from the days when the VRA was read to require districts be drawn above 60 percent BVAP to afford Black residents an equal opportunity to elect candidates of their choice. *See, e.g.*, *Ketchum v. Byrne*, 740 F.2d 1398, 1415 (7th Cir. 1984); *Jeffers v. Clinton*, 756 F. Supp. 1195, 1198 (E.D. Ark. 1990).

as their experts concede that the success of the Black preferred candidates in their projected election results occurs only with some form of white cooperation (either in voting for the Black-preferred candidate or declining to vote). *See* 5/10 Tr. 54:18–55:18; *id.* 62:3–13.

2. There is no merit in Plaintiffs' contrary view that CD5 violates Section 2 because it is below the roughly 40 percent BVAP level that may be necessary for the Black-preferred candidate to prevail. This argument does not explain why a majority-minority district is essential in the footprint of CD2, and it is legally erroneous under *Bartlett*, which held that Section 2 does not mandate crossover districts. 556 U.S. at 23. In so holding, *Bartlett* reasoned that, in areas where white crossover voting is sufficient to create functioning crossover districts, white bloc voting carries no legal significance under the third *Gingles* precondition. *See id.* at 23–24.[10]

Plaintiffs also retort that their illustrative remedies are majority-minority districts, not crossover districts. Doc. 120 at 12–13. But *Bartlett* holds that, where white crossover voting is sufficient to create a functioning crossover district, "majority-minority districts *would not be required in the first place*." 556 U.S. at 24 (emphasis added). *Covington* held the same, condemning majority-minority districts in the absence of evidence that crossover districts would not perform. *See also Cooper*, 137 S. Ct. at 1471–72 (striking down majority-minority congressional district because legislature failed to assess whether a crossover district would perform). If the Legislature had drawn a second majority-minority district, it would have reenacted *Covington*, and *Covington*'s result would have followed. If the Legislature cannot create a district, neither can this Court. *See Clark*, 88 F.3d at 1408; *accord Dillard v. City of Greensboro*, 74 F.3d 230, 233–34 (11th Cir. 1996) ("Whether a redistricting plan is adopted by a court or a legislature does not affect a party's right to challenge the plan."). The Supreme Court recently made clear that

[10] For that reason, the *amicus* request that the Court fashion crossover districts as a VRA remedy is legally foreclosed. *Amicus* Brief in Support of Neither Party, Doc. 97, at 4, 27, 39.

court-drawn plans are subject to the same racial gerrymandering standards governing legislatures—finding the principle so obvious as to justify summary reversal. *Wis. Legislature*, 142 S. Ct. at 1250.

II. The Equities Militate Against an Injunction

Plaintiffs' motions fail because they have failed to prove "that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs were required to "clearly carr[y] the burden of persuasion" on these requirements. *PCI Transp.*, 418 F.3d at 545. They failed to do so.

A. Plaintiffs do not, and could not, deny that the injunction they seek would establish a state of affairs that never before existed and does not preserve the *status quo* pending trial. *See* Doc. 120 at 19–20; Doc. 123. The *Galmon* Plaintiffs contend that this poses no problem, Doc. 120 at 19–20, but the 1979 Fifth Circuit case they cite predates the Supreme Court's holding that "[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Plaintiffs also ignore precedent holding that "mandatory injunctive relief, which goes well beyond simply maintaining the status quo *pendente lite*, is particularly disfavored, and should not be issued unless the facts and the law clearly favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). And Plaintiffs do not cite any redistricting case to have ordered a new redistricting plan as *temporary* relief. Numerous courts have declined the invitation Plaintiffs extend to this Court here. Doc. 199-1 at 23. This Court should as well.

B. The public interest decisively cuts against an injunction because it poses a severe risk of widespread constitutional violations—of the magnitude approaching "the most extensive unconstitutional racial gerrymander ever encountered by a federal court," *Covington*, 270 F. Supp.

3d at 892. Plaintiffs cite the principle that provisional relief from state action contravening "the requirements of federal law" is in the public interest. Doc. 42-1 at 22 (citation omitted); *accord* Doc. 41-1 at 23. But Plaintiffs' illustrative remedies are presumptively unconstitutional, and any legislative or court-crafted redistricting plan with two majority-minority districts would be as well. *Cooper*, 137 S. Ct. at 1468–69. Entering an injunction, then, carries the unacceptable risk—if not the certainty—of violating the equal-protection rights of hundreds of thousands of Louisiana citizens, of all races, colors, and ethnicities. *See United States v. Hays*, 515 U.S. 737, 745 (1995) (holding that every resident of a racially gerrymandered district suffers injury in fact).

Because it "is always in the public interest to prevent the violation of a party's constitutional rights," *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014), the risk that the demanded injunction would inflict a gross and widespread equal-protection violation cannot be justified by the possibility of a statutory violation. The Court must err in favor of the Constitution. *See Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[I]t may be assumed that the Constitution is the ultimate expression of the public interest."). The Court is required "to balance the harm that would be suffered by the public if the preliminary injunction were denied against the possible harm that would result to United if the injunction were granted." *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 626 (5th Cir. 1985). Here, if Plaintiffs ultimately do not prevail on the merits, then the 2022 election will have inflicted a staggering constitutional injury that can never be remedied. In these circumstances, an injunction would be irresponsible, at best.

C. And all that comes before the *Purcell* principle, which standing alone defeats Plaintiffs' motions. There can be no serious question that "considerations specific to election cases" bar an injunction here. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). The facts

attested to by Louisiana's Commissioner of Elections, Sherri Hadskey—who has 30 years of experience as an elections administrator—stand unrebutted. *See* SOS Ex. 01. Election deadlines are looming; candidate qualification must be complete by July 22, 2022; objections must be filed by July 29; overseas ballots must go out no later than September 24; printing must be complete well *before* that; and early voting begins October 18. *Id.* ¶ 16. The existing congressional redistricting plan has already been implemented. 5/13 Tr. 31:9–15. To implement a new redistricting plan, the Secretary of State's office must assign voters to their congressional districts in the ERIN system, mail voter registration cards to voters in newly assigned districts, and mail notification cards to assist voters in navigating the electoral process. SOS Ex. 01 ¶¶ 18–20. The Secretary of State's office must do all of this while also handling school-board redistricting, 5/13 Tr. 33:1–4, municipal redistricting, *id.* 33:4–7, a special election called due to a previous redistricting error, *id.* 33:7–11; *see also* State_30 at 218:26–224:2 (ordering new election because errors resulting from "the short time that the Registrar of Voters had with regard to redistricting."), yearly voting equipment maintenance, 5/13 Tr. 33:15–21, and the potential that legislative acts may change certain processes, *id.* 33:22–34:7. In addition, the voter cards have already been mailed to 250,000 voters—letting them and potential congressional candidates know what districts they are in—and would need to be changed, reprinted, and sent out again. *See id.* 34:18–35:10; *id.* 39:5–9; *id.* 31:9–15. And all that would need to occur despite a paper shortage that is impacting the Secretary's operations. *Id.* 39:19–40:11.

And, even with an injunction, that cannot occur yet because a new redistricting plan (as provisional relief) has yet to be fashioned, either in a lengthy legislative or judicial process. Given that forty-nine days have passed since Plaintiffs filed this lawsuit—and more time will have passed

before an order on the instant motions issues—it would be fanciful to assume a new plan could be in place for a period of months. A whole new round of litigation would follow an injunction.

An injunction "would require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). That is hardly contested; Plaintiffs' evidence *supports* it. Plaintiffs' election-administration witness, Matthew Block, confirmed how thoroughly flawed their *Purcell* position is. As an initial matter, Mr. Block has no credentials comparable to those of Ms. Hadskey: he has never been an elections commissioner, never served on a parish board of supervisors, never sat on a state elections board, and never done anything meaningful by way of elections administration. 5/11 Tr. 28:5–29:9. Any conflict between the witnesses presents no serious contest. The Commissioner of Elections testified that she is "very concerned" with the prospect of implementing a new map with minimal time and potentially harmful effects. 5/13 Tr. 40:12–43:9. No witness of her credibility on this topic disagreed.

Nor is there a conflict between her and Mr. Block, who confirmed that administration of a new plan would require heroism. The premise of Mr. Block's testimony was that the election might be administered *sans* disaster if the ultimate election date, November 8, 2022, is pushed back, as occurred with state legislative elections after Hurricane Ida. 5/11 Tr. 21:17–22:21. That premise fails: Louisiana may move its state election dates, but not the *federal* election date because Congress codified that date, *see* 2 U.S.C. §§ 1 and 7, under its Elections Clause authority, *see Foster v. Love*, 522 U.S. 67, 69 (1997). This Court lacks the same authority because it shares none of the Elections Clause's delegated power. *See Rucho*, 139 S. Ct. at 2495–96. Nor can Plaintiffs plausibly assert that the election-day statute poses an as-applied constitutional violation when a statute supplies the sole basis of their claim.

Moreover, Mr. Block testified that, even if the election date could move, elections administration would be a "huge challenge." 5/11 Tr. 23:1–2. This concedes away the *Purcell* issue. The *Purcell* doctrine does not afford federal district courts free reign to meddle with state election laws so long as the administrative burdens they impose fall short of the "impossible." 5/13 Tr. 57:14. Quite the opposite, *Purcell* requires "that federal district courts ordinarily should not enjoin state election laws in the period close to an election," because "[l]ate judicial tinkering with election laws *can* lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (emphasis added). The doctrine does not permit courts to play election-meltdown roulette on the theory that the odds of disaster are, all things considered, on the lower end. *Purcell* forbids injunctions that act like hurricanes. The very fact that Plaintiffs sponsored testimony drawing that comparison proves that this case falls squarely within *Purcell*.

CONCLUSION

The Black percentage of Louisiana's population has remained essentially the same since the 1990s. There is no testimony that its geographic concentration has changed. It was impossible to create two majority-Black congressional districts of seven in the 1990s in compliance with the Equal Protection Clause. There is every reason to believe it is impossible now, and Plaintiffs have provided no cogent argument otherwise. Plaintiffs' motions lack merit and must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 23, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

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EXHIBIT L

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, *et al*

versus

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana

CIVIL ACTION

22-211-SDD-SDJ

consolidated with

EDWARD GALMON, SR., *et al*

versus

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana

CIVIL ACTION

22-214-SDD-SDJ

RULING AND ORDER

Before the Court are the *Motion for Preliminary Injunction*[1] filed by the *Robinson* Plaintiffs and the *Motion for Preliminary Injunction*[2] by the *Galmon* Plaintiffs. Defendant Secretary Ardoin and the Intervenor Defendants filed *Oppositions*,[3] to which Plaintiffs filed *Replies*.[4] The Court also received a *Brief Amicus Curiae in Support of Neither Party*[5] from a group of mathematics and computer science professors at Louisiana State and Tulane Universities. A five-day hearing on the *Motions* was held, beginning May 9, 2022 and ending May 13, 2022. After the hearing, Plaintiffs and Defendants (along with the

[1] Rec. Doc. No. 41.
[2] Rec. Doc. No. 42.
[3] Rec. Doc. No. 101; Rec. Doc. No. 108; Rec. Doc. No. 109.
[4] Rec. Doc. No. 123; Rec. Doc. No. 120.
[5] Rec. Doc. No. 97.

Intervenor Defendants) both filed *Proposed Findings of Fact*,[6] as well as post-hearing briefs.[7]

For the reasons set forth herein, the Court concludes that Plaintiffs are substantially likely to prevail on the merits of their claims brought under Section 2 of the Voting Rights Act. The Court finds that absent injunctive relief, the movants are substantially likely to suffer irreparable harm. The Court has considered the balance of equities and hardships associated with injunctive relief, as well as the public policies attendant to the issuance of injunctive relief, and concludes that injunctive relief is required under the law and the facts of this case. The Court hereby **GRANTS** the *Motions for Preliminary Injunction*[8] and **PRELIMINARILY ENJOINS** Secretary Ardoin from conducting any congressional elections under the map enacted by the Louisiana Legislature in H.B. 1.

The appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional majority-Black congressional district. The United States Supreme Court instructs that the Legislature should have the first opportunity to draw that plan.[9] Therefore, the Court **ORDERS** the Louisiana Legislature to enact a remedial plan on or before June 20, 2022. If the Legislature is unable to pass a remedial plan by that date, the Court will issue additional orders to enact a remedial plan compliant with the laws and Constitution of the United States. The Court hereby **STAYS** and **EXTENDS** the

[6] Rec. Doc. No. 164; Rec. Doc. No. 166.
[7] Rec. Doc. No. 163; Rec. Doc. No. 165.
[8] Rec. Doc. No. 41; Rec. Doc. No. 42.
[9] *See, e.g., North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018); *White v. Weiser*, 412 U.S. 783, 794–95 (1973).

deadline for candidates to qualify by nominating petition in lieu of filing fees[10] (currently set for June 22, 2022) until July 8, 2022. The candidate qualifying period set for July 20 - 22, 2022 and all other related deadlines are unaffected by this *Order* and shall proceed as scheduled.

BACKGROUND

I. Procedural Posture

In April 2021, the United States Census Bureau delivered the 2020 Census data that would drive the state of Louisiana's redistricting process. Under the new numbers, Louisiana's congressional apportionment was unchanged from 2010, holding steady at six seats in the U.S. House of Representatives.[11] The task of redrawing those six districts fell upon the Louisiana Legislature, where the drawing of new maps was guided in part by Joint Rule No. 21, passed by the Louisiana Legislature in 2021 to establish criteria that would "promote the development of constitutionally and legally acceptable redistricting plans."[12] Joint Rule 21 provided as follows:

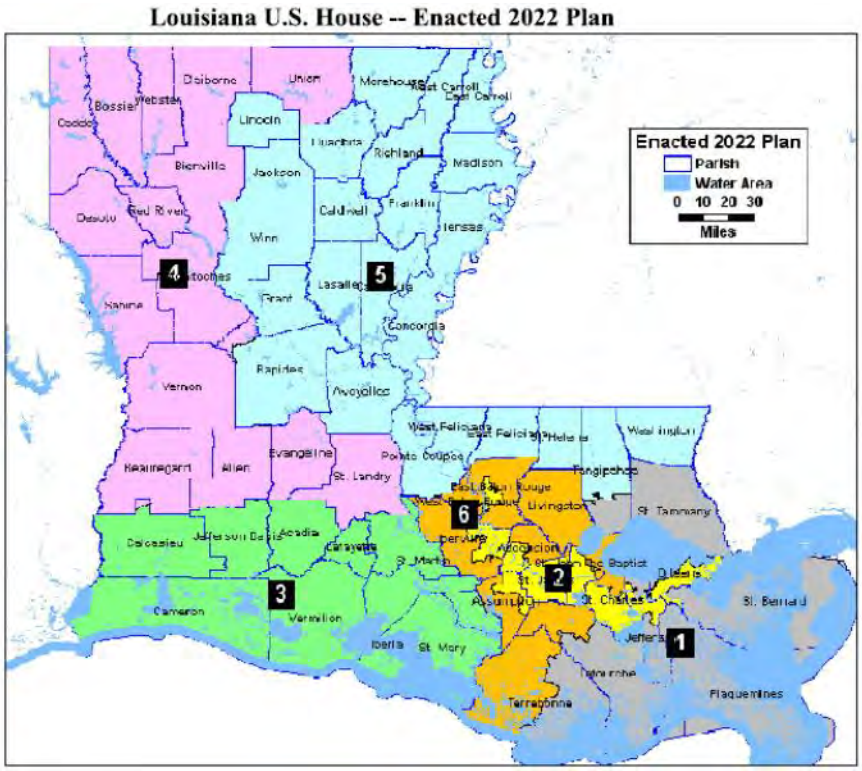
> Joint Rule No. 21. Redistricting criteria
>
> A. To promote the development of constitutionally and legally acceptable redistricting plans, the Legislature of Louisiana adopts the criteria contained in this Joint Rule, declaring the same to constitute minimally acceptable criteria for consideration of redistricting plans in the manner specified in this Joint Rule.
>
> B. Each redistricting plan submitted for consideration shall comply with the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the U.S. Constitution; Section 2 of the Voting Rights Act of 1965, as amended; and all other applicable federal and state laws.
>
> C. Each redistricting plan submitted for consideration shall provide that each district within the plan is composed of contiguous geography.
>
> D. In addition to the criteria specified in Paragraphs B, C, G, H, I, and J of this Joint Rule, the minimally acceptable criteria for consideration of a redistricting plan for the House of Representatives, Senate, Public Service Commission, and Board of Elementary and Secondary Education shall be as follows:
>
> (1) The plan shall provide for single-member districts.
>
> (2) The plan shall provide for districts that are substantially equal in population. Therefore, under no circumstances shall any plan be considered if the plan has an absolute deviation of population which exceeds plus or minus five percent of the ideal district population.
>
> (3) The plan shall be a whole plan which assigns all of the geography of the state.
>
> (4) Due consideration shall be given to traditional district alignments to the extent practicable.
>
> E. In addition to the criteria specified in Paragraphs B, C, G, H, I, and J of this Joint Rule, the minimally acceptable criteria for consideration of a redistricting plan for Congress shall be as follows:
>
> (1) The plan shall provide for single-member districts.
>
> (2) The plan shall provide that each congressional district shall have a population as nearly equal to the ideal district population as practicable.
>
> (3) The plan shall be a whole plan which assigns all of the geography of the state.

[10] Pursuant to La. R.S. 18 § 465, a potential congressional candidate may qualify for the ballot by obtaining one thousand signatures from qualified voters within the district and filing a nominating petition with the Secretary of State. Testimony from the Commissioner of Elections (see *infra*) established that this method of qualifying is used very rarely by candidates for office in Louisiana.

[11] Rec. Doc. No. 143, p. 10 (Joint Stipulation Pre-Hearing).

[12] PR-79.

Leading up to their redistricting session, legislators held a series of "roadshow" meetings across the state, designed to share information about redistricting and solicit public comment and testimony, which lawmakers described as "absolutely vital to this process."[13] Citizens who engaged in the process at the roadshows were assured that "your ideas and recommendations matter to me and they matter to us."[14] The Legislature convened on February 1, 2022 to begin the redistricting process; on February 18, 2022, H.B. 1 and S.B. 5, the bills setting forth new maps for the 2022 election cycle, passed the Legislature. The enacted plan created the six districts pictured below:[15]



[13] PR-38, p. 3.
[14] *Id*. Statement of Senator Sharon Hewitt at the Monroe roadshow in October 2021. *See* PR-38 through PR-46 for transcripts of roadshows held in Monroe, Shreveport, Lafayette, Alexandria, Baton Rouge, Covington, Lake Charles, New Orleans, and Thibodaux.
[15] GX-1, p. 19.

Having long telegraphed that he would,[16] Louisiana Governor John Bel Edwards vetoed H.B. 1 and S.B. 5 on March 9, 2022.[17] The Legislature voted to override the Governor's veto on March 30, 2022.[18] That same day, the *Robinson* and *Galmon* Plaintiffs filed their *Complaints* in this Court, alleging that the 2022 congressional map dilutes Black voting strength in violation of the Voting Rights Act of 1965 (the "VRA") by "packing" large numbers of Black voters into a single majority-Black congressional district (Congressional District 2 or "CD 2") and "cracking" the remaining Black voters among the other five districts, where, Plaintiffs argue, they are sufficiently outnumbered to ensure that they are unable to participate equally in the electoral process.[19]

After the *Complaints* were filed, Patrick Page Cortez, the President of the Louisiana State Senate, and Clay Schexnayder, the Speaker of the Louisiana House of Representatives (collectively, "the Legislative Intervenors"), moved to intervene as Defendants in the suit, as did Louisiana Attorney General Jeff Landry ("Attorney General Landry" or "the Attorney General").[20] The Court granted those motions[21] and, on April 12, 2022, consolidated the *Robinson* and *Galmon* matters.[22] The Louisiana Legislative Black Caucus also sought, and was granted, intervention.[23]

The motions now before the Court -- the *Motion for Preliminary Injunction*[24] by the *Robinson* Plaintiffs and the *Motion for Preliminary Injunction*[25] by the *Galmon* Plaintiffs –

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[16] GX-16.
[17] Rec. Doc. No. 143, p. 11 .
[18] *Id*.
[19] *See* Rec. Doc. No. 1 in 22-cv-214 and 22-cv-211.
[20] Rec. Doc. No. 10; Rec. Doc. No. 30.
[21] Rec. Doc. No. 64.
[22] Rec. Doc. No. 27.
[23] Rec. Doc. No. 82; Rec. Doc. No. 136.
[24] Rec. Doc. No. 41.
[25] Rec. Doc. No. 42.

were filed on April 15, 2022. Therein, Plaintiffs urge the Court to enjoin Secretary Ardoin from conducting the 2022 congressional elections under the enacted district maps, to set a deadline for the Legislature to enact a compliant map and, if the Legislature fails to do so, to order that the November 2022 election be conducted under one of the illustrative plans proposed by Plaintiffs.[26]

After a more condensed schedule proposed by the Court drew objections from Defendants, the Court set the *Motions* for a five-day evidentiary hearing to begin May 9, 2022.[27] On the eve of the preliminary injunction hearing, Attorney General Landry filed a *Motion to Stay*, arguing that the Supreme Court's forthcoming merits decision in *Merrill v. Milligan*[28] "could be dispositive of this litigation" and will, "[a]t the very least. . .be informative to the Parties' claims and defenses in the instant case."[29] The Court denied that motion, reasoning that "[t]he blow to judicial economy and prejudice to Plaintiffs that would result from granting the moved-for stay cannot be justified by speculation over future Supreme Court deliberations. . ."[30]

II. Factual and Legal Background

Article I, § 2 of the United States Constitution compels that members of the House of Representatives "shall be apportioned among the several States . . . according to their respective Numbers."[31] Thus, every ten years, state legislators use census data to divvy their state up into congressional districts via a redistricting process. As the Legislature's Joint Rule No. 21 notes, redistricting efforts are bound by a number of federal

[26] Rec. Doc. No. 41-1, p. 10.
[27] Rec. Doc. No. 35.
[28] 142 S.Ct. 879 (2022).
[29] Rec. Doc. No. 131-1, p. 15.
[30] Rec. Doc. No. 135, p. 4.
[31] U.S. Const. art. I, § 2, cl. 3.

constitutional and statutory requirements. Perhaps most fundamentally, the "one person, one vote" rule requires that districts be drawn such that one person's "vote in a congressional election" is "nearly as is practicable ... worth as much as another's."[32] The United States Supreme Court has observed that "to say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected 'by the People,' a principle tenaciously fought for and established at the Constitutional Convention."[33] To that end, districts must be drawn as close to equal in population as possible, and states must "justify population differences between districts that could have been avoided by a good-faith effort to achieve absolute equality."[34]

More nuanced are the requirements regarding the consideration of race in redistricting. As many courts have observed, mapdrawers are pulled in one direction by the Equal Protection Clause, which "forbids 'racial gerrymandering,' that is, intentionally assigning citizens to a district on the basis of race without sufficient justification."[35] The Voting Rights Act "pulls in the opposite direction" and in fact, "often insists that districts be created precisely *because* of race."[36] "[T]o harmonize these conflicting demands, the [Supreme] Court has assumed that compliance with the VRA is a compelling State interest for Fourteenth Amendment purposes, and a State's consideration of race in making a districting decision is narrowly tailored if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA."[37]

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[32] *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964).
[33] *Id*.
[34] *Tennant v. Jefferson Cnty. Comm'n*, 567 U.S. 758, 759 (2012) (internal quotation marks omitted).
[35] *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018).
[36] *Id*. (emphasis added).
[37] *Id.* at 2309.

Section 2 of the Voting Rights Act provides as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) 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. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.[38]

A state violates Section 2 "when a state districting plan provides 'less opportunity' for racial minorities 'to elect representatives of their choice.'"[39] "A plaintiff may allege a Section 2 violation in a single-member district if the manipulation of districting lines fragments politically cohesive minority voters among several districts or packs them into one district or a small number of districts, and thereby dilutes the voting strength of members of the minority population."[40] *Thornburg v. Gingles*[41] sets forth three threshold conditions for a claim of vote dilution under Section 2: "first, that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single-member

[38] 52 U.S.C. § 10301.
[39] *Abbott*, 138 S. Ct. at 2309 (quoting League of *United Latin American Citizens v. Perry,* 548 U.S. 399, 425).
[40] *Shaw v. Hunt*, 517 U.S. 899, 914 (1996).
[41] 478 U.S. 30 (1986)(hereinafter "*Gingles*").

district"; second, "that it is politically cohesive"; and third, "that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate."[42]

If a party establishes the threshold *Gingles* requirements, the Court will "proceed to analyze whether a violation has occurred based on the totality of the circumstances."[43] The totality of the circumstances determination is made by reference to the "Senate Factors," which are derived from a report of the Senate Judiciary Committee accompanying the 1982 amendments to the Voting Rights Act.[44] The United States Court of Appeals for the Fifth Circuit has held that "[n]o one of the factors is dispositive; the plaintiffs need not prove a majority of them; other factors may be relevant."[45]

At the totality of the circumstances stage, courts also consider "whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area."[46] When a statewide districting plan is the subject of a vote dilution claim, "the proportionality analysis ordinarily is statewide."[47]

The redistricting process is emphatically within the province of the state legislatures.[48] Federal court review, then, represents "a serious intrusion on the most vital of local functions"[49] and calls for sensitivity to "the complex interplay of forces that enter

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[42] *Growe v. Emison*, 507 U.S. 25, 40 (1993)(citing *Gingles*, 478 U.S., at 50–51).
[43] *Bartlett v. Strickland*, 556 U.S. 1, 12 (2009).
[44] *See infra* for further discussion of the Senate Factors.
[45] *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991).
[46] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *13 (N.D. Ala. Jan. 24, 2022)(quoting *LULAC*, 548 U.S. at 426).
[47] *Id*.
[48] *Wesch v. Hunt*, 785 F. Supp. 1491, 1497 (S.D. Ala.), aff'd sub nom. *Camp v. Wesch*, 504 U.S. 902, 112 S. Ct. 1926 (1992)("Congressional redistricting is primarily and foremost a state legislative responsibility").
[49] *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018).

a legislature's redistricting calculus."[50] Further, a "presumption of good faith . . . must be accorded legislative enactments."[51]

III. Statement of Claims and Defenses

A. Plaintiffs' Claims

Plaintiffs argue that the enacted map "artificially limits Black voters' influence" by packing them into CD 2 and cracking them throughout the other five districts. Plaintiffs contend that the maps, "coupled with high levels of racially polarized voting. . .greatly dilute the ability of the State's Black voters to elect their candidates of choice."[52] Relying on the illustrative plans prepared by their experts, Anthony Fairfax and William Cooper, Plaintiffs assert that "Louisiana's Black community is sufficiently large and geographically compact to comprise more than 50% of the voting-age population in a second congressional district that connects the Baton Rouge area and St. Landry Parish with the delta parishes along the Mississippi border."[53]

Plaintiffs argue that "[i]t is beyond dispute that Black voters in Louisiana have voted as a cohesive bloc,"[54] and that "white voters voted in bloc against the candidate supported by Black voters"[55] Thus, Plaintiffs aver that all of the threshold conditions of a vote dilution claim under *Gingles* are met here. Further, they contend that the vestiges of Louisiana's long and irrefutable history of discrimination have resulted in modern day disparate socioeconomic conditions, segregated communities, and unequal educational outcomes,

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[50] *Miller v. Johnson*, 515 U.S. 900, 915–16 (1995).
[51] *Id*. at 916.
[52] Rec. Doc. No. 41-1, p. 12.
[53] Rec. Doc. No. 42-1 p. 9.
[54] *Id*. at pp. 11, 16.
[55] *Id*. at p. 18.

all of which contribute to a totality of circumstances that denies a meaningful opportunity for Black voters to elect their preferred candidates.

Absent an injunction preventing the enacted maps from controlling the 2022 congressional election, Plaintiffs allege, they will suffer irreparable harm. Moreover, they argue that "preserving the rights of Louisianans is strongly in the public interest and the threat of disenfranchising Black Louisianans vastly outweighs the minimal potential administrative burden that an injunction might impose on Defendant."[56] Though Plaintiffs acknowledge that the *Purcell* doctrine proscribes judicial intervention on the eve of an election, they distinguish *Purcell* and progeny factually and point out that here, "the election is over six months away" and that counsel for Louisiana's Speaker of the House and Senate President are on the record in companion state court redistricting lawsuits as representing that "[t]he election deadlines that actually impact voters do not occur until October 2022. . .Therefore, there remains several months on Louisiana's election calendar to complete the process."[57] Indeed, they explained, Louisiana's "election calendar is one of the latest in the nation."[58] Since Louisiana has only six congressional districts, and alternative maps with two majority-minority districts were introduced and debated during the legislative redistricting process, Plaintiffs submit that "only a brief period" should be necessary to craft a VRA-compliant map.[59] Plaintiffs argue that these challenges pale in comparison to the harm from proceeding with the 2022 elections under maps that violate Section 2 of the VRA.[60]

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[56] *Id*. at p. 22.
[57] GX-32, p. 8 (*Findings of Fact and Conclusions of Law* filed by the Legislative Intervenors in *Bullman, et al v. Ardoin*, No. C-716837, 19th Judicial District Court).
[58] GX-32, p. 5.
[59] Rec. Doc. No. 42-1, p. 26.
[60] *Id*.

B. Secretary of State Ardoin

Secretary Ardoin begins by questioning Plaintiffs' standing to maintain this action, arguing that although the *Galmon* Plaintiffs challenge the entire congressional plan, they "only have Plaintiffs living in Congressional Districts 2, 5, and 6."[61] Second, Secretary Ardoin contends that Plaintiffs are unlikely to succeed on the merits of their Voting Rights Act claim, arguing that their claim fails because the second majority-majority district they propose is not geographically compact. Specifically, the Secretary objects to the manner in which Plaintiffs' illustrative plans "combine[] portions of EBR [East Baton Rouge] with parishes in the far north of the state like East and West Carroll."[62] Citing the 1990s *Hays* redistricting cases,[63] Secretary Ardoin avers that such a plan is "absurd on its face" because "federal courts have twice rejected plans that used EBR to build a second majority black district on the ground that such districts were uncompact racial gerrymanders that did not satisfy the *Gingles* preconditions."[64] Further, the Secretary of State argues that the illustrative plans run afoul of the Equal Protection Clause by creating an "obvious racial gerrymander."[65]

Even if Plaintiffs' proposed districts were sufficiently compact, Secretary Ardoin disputes that the districts would "perform" – that is, that they would *actually* provide Black voters with an opportunity to elect the candidate of their choice – because Plaintiffs' illustrative plans create only a "bare majority"[66] of Black voting-age population ("BVAP") in the proposed second majority-minority districts. Further, Secretary Ardoin argues that

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[61] Rec. Doc. No. 101, p. 12.
[62] *Id*. at p. 13.
[63] *Hays v. Louisiana*, 839 F. Supp. 1188, 1195 (W.D. La. 1993) (*Hays I*); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996) (*Hays IV*).
[64] Rec. Doc. No. 101, p. 18.
[65] *Id*. at p. 17.
[66] *Id*. at p. 18.

Plaintiffs cannot make the requisite showing of racially polarized voting and White bloc voting.

Secretary Ardoin next avers that the totality of the circumstances analysis "show[s] that minority voters possess the same opportunities to participate in the political process and elect their candidate of choice."[67] The Secretary urges that a second majority-minority district is untenable because Louisiana has a "substantial interest in maintaining the continuity of representation in its districting plans."[68] Per the Secretary, the Black population in Louisiana is "remaining flat or even declining"[69] such that drawing a second Black congressional district is not justified.

Lastly, Secretary Ardoin argues that the *Purcell* doctrine forecloses the possibility of judicial intervention in the form of an injunction for the 2022 election cycle. He cites a handful of recent cases where courts have applied *Purcell*, and the declaration of Louisiana election official Sherri Hadskey, who attests that the process of assigning Louisiana voters to their new districts in the state election database system is complicated and time-consuming, and that doing so before the 2022 cycle would cause "significant cost, confusion, and hardship."[70]

C. Intervenor Defendant - Attorney General Landry

The Attorney General argues that Plaintiffs are not substantially likely to succeed on their merits of their claims "as to the first and third *Gingles* preconditions."[71] Plaintiffs only *appear* to have proposed a sufficiently numerous and geographically compact

[67] *Id*. at p. 21.
[68] *Id*. at p. 22.
[69] *Id*.
[70] *Id*. at p. 24.
[71] Rec. Doc. No. 108, p. 6.

second majority-minority district, he explains, by using "statistical manipulation."[72] Specifically, Attorney General Landry argues, Plaintiffs' use of the "Any Part Black" metric, which is a census category including anyone who identifies as Black as well as those who identify as Black and any other race, pushes their proposed CD 5 over the 50% Black Voting Age Population (BVAP) threshold "by a razor's edge."[73] The Attorney General submits that if Any Part Black is not used to count Black voters, "the BVAP numbers do not rise above 50%."[74] Attorney General Landry advocates the use of what he calls "DOJ Black," namely, "those who are 'Black' and those who are 'Black and White.'"[75]

The Attorney General challenges the compactness of the illustrative plans as "combin[ing] Black communities from far-flung parts of Louisiana in the same district."[76] The proposed maps are an example of racial gerrymandering, he argues, which is impermissible "even when the purported purpose of the racial gerrymander is in seeking to comply with the dictates of the Voting Rights Act."[77] As for racially polarized voting, the Attorney General argues that partisan affiliation, not race, best explains the tendency of Black Louisianans to vote similarly.

The Attorney General also advances an argument recently credited by the District Court for the Eastern District of Arkansas in *Arkansas State Conference of the NAACP v. Arkansas Board of Apportionment*,[78] finding that there is no private right of action under Section 2 of the Voting Rights Act. He suggests that this is an "open question" that has been flagged for potential consideration by the Supreme Court and the Fifth Circuit, and

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[72] *Id*.
[73] *Id*.
[74] *Id*. at p. 7.
[75] *Id*., n. 3.
[76] *Id*. at p. 12.
[77] *Id*. at p. 13.
[78] No. 4:21-CV-01239-LPR, 2022 WL 496908 (E.D. Ark. Feb. 17, 2022).

that the Court should dismiss Plaintiffs' claims on that basis. Finally, the Attorney General echoes Secretary Ardoin's argument that the *Purcell* doctrine dictates that it is too late for relief to be granted as to the 2022 congressional election cycle.[79]

D. The Legislative Intervenors

The Legislators begin by noting that, in the push-pull of the VRA and the Equal Protection Clause, neither proportional representation nor a desire to maximize minority representation are sufficient reasons to create a new majority-minority district. After reviewing the history of the 1990s *Hays* litigation and the 2020 redistricting process, the Legislators argue that the enacted congressional map should not be invalidated because the "Legislature had before it no evidence justifying race-based redistricting."[80] The Legislators argue that race must have predominated in the drawing of Plaintiffs' illustrative plans because "[a] set of 10,000 computer-simulated redistricting plans generated without racial criteria and according to neutral principles produces *zero* majority minority congressional districts . . .let alone *two* as Plaintiffs demand."[81]

Further, the Legislators argue that the illustrative plans offered by Plaintiffs disregard communities of interest because they "combine[] urban Baton Rouge and its suburbs in some way with the distant rural communities of Louisiana's delta parishes. . . who share race in common and not much else."[82] Plaintiffs' plans, they argue, also ignore legislative priorities "such as preserving incumbencies and their constituencies and district cores."[83] Identifying communities of interest is "the Legislature's role . . . not the

[79] Rec. Doc. No. 108, p. 21.
[80] Rec. Doc. No. 119-1, p. 17-18.
[81] *Id*. at p. 19 (emphasis original).
[82] *Id*. at p. 21.
[83] *Id*.

Court's or Plaintiffs,'" they contend, and Plaintiffs' plans "dismantle the Legislature's legitimate and race-neutral goals."[84] Seconding Attorney General Landry, the Legislators also argue that the "DOJ Black" definition should be used to assess whether Plaintiffs' proposed maps feature two districts with greater than 50% BVAP.

The Legislators argue that "white bloc voting. . .is low enough (and crossover voting is high enough) to permit Black voters to elect their preferred candidates without 50% BVAP districts."[85] Thus, the cohesion of Black voters or the polarization of the electorate "carries no legal significance."[86] What may appear as cohesive Black voting is equally likely to be the product of partisan politics, the Legislators assert, noting that "[i]t is difficult for any Democratic candidate, white or Black, to win in Louisiana, except under special circumstances."[87]

The Legislators argue that Plaintiffs' case also fails under the totality of the circumstances because they "do not focus on alleged discrimination against a discrete group in a discrete locality, relying instead on statewide elections and statewide ideals of proportionality."[88] Overall, the Legislators assert, it is not clear whether Black Louisianans would be better off with the status quo of one majority-minority district with a strong BVAP of roughly 58%, or two majority-minority districts that only slightly exceed 50% BVAP. In any event, they argue, *Purcell* demands that the Court abstain from tinkering with the November election.

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[84] *Id*.
[85] *Id*. at p. 23.
[86] *Id*.
[87] *Id*. at p. 25.
[88] *Id*. at p. 26.

LAW AND EVIDENCE

I. STANDARD OF REVIEW

"[A] preliminary injunction is 'an extraordinary remedy never awarded as of right.'"[89] "To obtain a preliminary injunction, the movant must establish four elements: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest."[90]

II. APPLICABLE LAW

"The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives."[91] *Thornburg v. Gingles* sets forth three threshold conditions for a claim of vote dilution under Section 2: "first, that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single-member district"; second, "that it is politically cohesive"; and third, "that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate."[92]

"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

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[89] *Benisek v. Lamone*, 138 S. Ct. 1942, 1943 (2018)(citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008)).
[90] *Jiao v. Xu*, 28 F.4th 591, 597–98 (5th Cir. 2022).
[91] *Gingles*, 478 U.S. 30, 47 (1986).
[92] *Growe v. Emison*, 507 U.S. 25, 40 (1993)(citing *Gingles*, 478 U.S., at 50–51).

'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."[93] "Unless these points are established, there neither has been a wrong nor can [there] be a remedy."[94] Consequently, if Plaintiffs fail to establish any one of these three conditions, the Court need not consider the other two.[95]

Under the first prong of *Gingles*, "a party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent."[96] Because "only eligible voters affect a group's opportunity to elect candidates,"[97] this requirement is analyzed in terms of Black voting-age population (or "BVAP"). Proving the existence of a sufficiently *large* minority population does not end the inquiry; compactness is also required. If the minority population is dispersed such that a reasonably compact majority-minority district cannot be drawn, "Section 2 does not require a majority-minority district...."[98]

"While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries."[99] "Community of interest" is a term of art that has no universal definition in the redistricting context. Visual assessments are appropriate when assessing compactness. "[B]izarre shaping of" a district that, for example, "cut[s] across

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[93] *Id.* (citations omitted).
[94] *Id.* at 40–41.
[95] *See Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).
[96] *Bartlett*, 556 U.S. at 19–20.
[97] *LULAC*, 548 U.S. at 429.
[98] *Vera*, 517 U.S. at 979.
[99] *LULAC*, 548 U.S. at 433 (internal quotation marks omitted).

pre-existing precinct lines and other natural or traditional divisions," suggests "a level of racial manipulation that exceeds what § 2 could justify."[100]

To determine whether Plaintiffs satisfy the first *Gingles* requirement, the Court compares the enacted plan with Plaintiffs' illustrative plans.[101] The Court's comparison is for the limited purpose of evaluating *Gingles I*, which requires a district that is "*reasonably* compact and regular";[102] compactness is not a "beauty contest[]"[103] where the most attractively shaped district carries the day.

The second and third requirements of *Gingles* require Plaintiffs to establish that voting in the challenged districts is racially polarized.[104] As the Supreme Court has explained, "in the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters."[105]

If Plaintiffs establish all three *Gingles* requirements, the Court then analyzes whether a Section 2 violation has occurred based on the "totality of the circumstances." At this step, the Court considers the Senate Factors, which include:

> the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; 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; the exclusion of members of the minority group from candidate slating processes; 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; the use of overt or subtle racial appeals in political

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[100] *Vera*, 517 U.S. at 980–81.
[101] *Id*. (requiring "a comparison between a challenger's proposal and the 'existing number of reasonably compact districts'").
[102] *Vera, 517 U.S.* at 977 (emphasis original).
[103] *Id*.
[104] *See, e.g.,* LULAC, 548 U.S. at 427.
[105] *Voinovich*, 507 U.S. at 158 (quoting *Gingles*, 478 U.S. at 49 n.15).

> campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction.[106]

Supreme Court precedent also dictates that the Court must consider whether the number of majority-Black districts in the enacted plan is roughly proportional to the Black share of the population in Louisiana.[107]

Not relevant to the Court's inquiry is whether the Louisiana Legislature *intended* to dilute the votes of Black Louisianans. The Court's Section 2 analysis "assess[es] the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors."[108] The Legislature's intent is therefore "the wrong question."[109] "The 'right question . . . 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.'"[110]

III. EVIDENCE PRESENTED[111]

A. *Gingles* I – Numerosity and Reasonable Compactness

To satisfy the first *Gingles* requirement, Plaintiffs must establish that Black voters as a group are "sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district."[112] To establish that, Plaintiffs rely upon the testimony of expert witness William Cooper ("Cooper").

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[106] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *20 (N.D. Ala. Jan. 24, 2022)(citing *De Grandy*, 512 U.S. at 1010 n. 9).
[107] *See LULAC*, 548 U.S. at 426; *De Grandy*, 512 U.S. at 1000.
[108] *Gingles*, 478 U.S. at 44 (internal quotation marks omitted).
[109] *Id*.
[110] *Id*.
[111] The Court's citations to the record use abbreviated prefixes to reflect the party that offered the exhibit. GX = Galmon Plaintiffs; PR = Robinson Plaintiffs; ARD = Secretary Ardoin; AG = the Attorney General; and LEG = the Legislative Intervenors.
[112] *Cooper*, 137 S. Ct. at 1470 (internal quotation marks omitted).

Defendants stipulated to Plaintiffs' tender of Cooper as an expert in redistricting, demographics, and census data. Drawing on his 30 years of experience as a demographer, including testifying in more than 50 voting-related federal cases, Cooper opines that "African Americans in Louisiana are sufficiently numerous and geographically compact to allow for two majority-Black U.S. House districts in a six-district plan."[113] Cooper offers four illustrative maps – all of which contain two majority-Black congressional districts based on his analysis.[114]

Cooper testified that between 2010 and 2020, Louisiana gained approximately 125,000 residents, with all of the gain attributable to minority populations, and about half attributable to gains in the Black population. Conversely, Cooper documented an overall decline in the White population in Louisiana since 1990. Cooper concludes that the Black population, counted using the Any Part Black metric, increased from 32.80% in the 2010 census to 33.13% in the 2020 census – an increase of 56,234 people. According to Cooper, Any Part Black "is the appropriate Census classification to use in Section 2 cases."[115] While Any Part Black is somewhat self-defining, Cooper explains it as encompassing "persons of one or more races that are some part Black."[116]Applying a single-race Black metric, Cooper found that the Black population decreased slightly, from 32.04% to 31.43%. The population data evidence is reflected below:

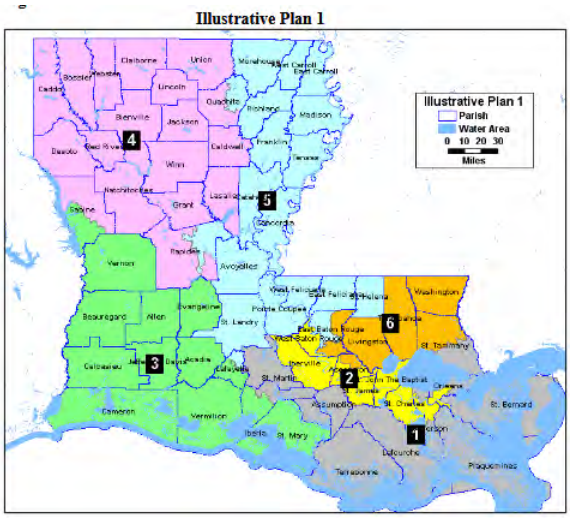
[113] GX-1, p. 5.
[114] GX-1 at 47-83; GX-29 at 10-22.
[115] GX-1, p. 7, n. 10.
[116] *Id*.

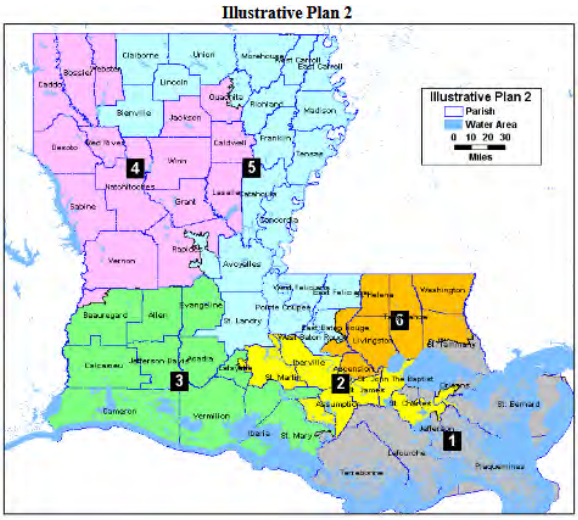
Louisiana – 1990 to 2020 Census
Population by Race and Ethnicity

All Ages	1990	Percent of Total Populatio	2000	Percent of Total Populatio	2010	Percent of Total Population	2020	Percent of Total Population
Total Population	4,219,973	100.00%	4,468,976	100%	4,533,372	100%	4,657,757	100.00%
NH White*	2,776,022	65.78%	2,794,391	62.53%	2,734,884	60.33%	2,596,702	55.75%
Total Minority Pop.	1,443,951	34.22%	1,674,585	37.47%	1,798,488	39.67%	2,061,055	44.25%
Latino	93,044	2.20%	107,738	2.41%	192,560	4.25%	322,549	6.92%
NH Black*	1,291,470	30.60%	1,443,390	32.30%	1,442,420	31.82%	1,452,420	31.18%
NH Asian*	39,302	0.93%	54,256	1.21%	69,327	1.53%	85,336	1.83%
NH Hawaiian and PI*#	NA	NA	24,129	0.54%	28,092	0.62%	1,706	0.04%
NH American Indian and Alaska Native	17,539	0.42%	1,076	0.02%	1,544	0.03%	25,994	0.56%
NH Other*~	2,596	0.06%	4,736	0.11%	6,779	0.15%	16,954	0.36%
NH Two or More Races#	NA	NA	39,260	0.88%	57,766	1.27%	156,096	3.35%
SR Black (Single-race Black)	1,299,281	30.79%	1,451,944	32.49%	1,452,396	32.04%	1,464,023	31.43%
AP Black (Any Part Black)	NA	NA	1,468,317	32.86%	1,486,885	32.80%	1,543,119	33.13%

[117]

Cooper opines that, based on the new Census data, "[t]here are a variety of ways to draw two majority-Black congressional districts in Louisiana while adhering to traditional redistricting principles."[118] Cooper's four illustrative maps are reproduced below: [119]





[117] *Id*. at p. 6.
[118] *Id*. at p. 21.
[119] GX-1, p. 26; *Id*. at p. 28; *Id*. at p. 30; GX-29, p. 6.

Illustrative Plan 3

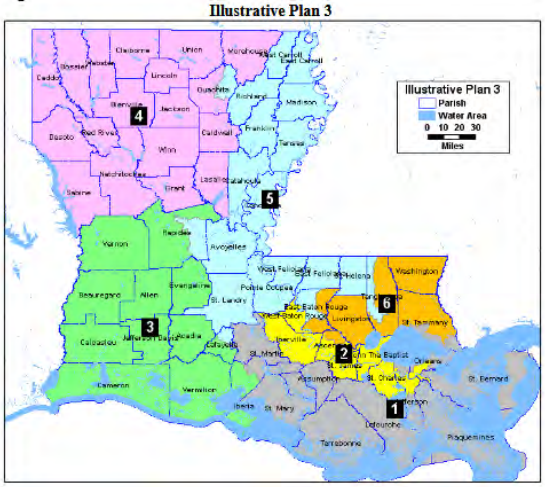
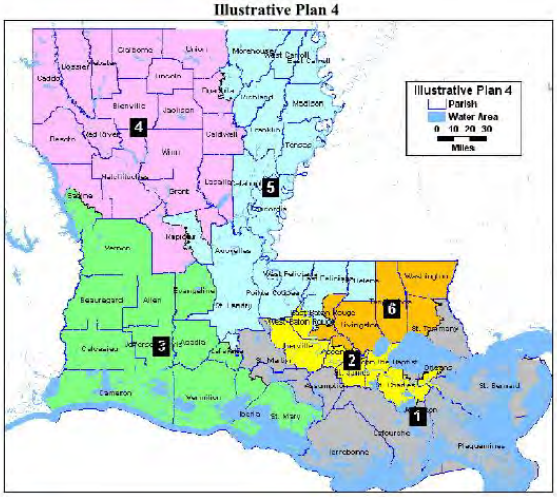


Figure 1
Illustrative Plan 4



Cooper's mapdrawing process began by obtaining the relevant census data and geographic files, then applying traditional redistricting principles and drawing a plan. Cooper testified that he relies upon the concepts of one person one vote, reasonable compactness and shape, political subdivision lines, contiguity, and preserving communities of interest. He considered the Legislature's Joint Rule 21 and the principles expressed therein. Cooper also stated that he was guided by the principle of avoiding dilution of minority voting strength. For this reason, he testified, he is "aware" of race to some extent with drawing maps. Overall, Cooper testified that he did not weigh these factors or give any one more emphasis – he "balanced them all."

Cooper's illustrative plans include two majority-Black congressional districts. A majority-Black district is one in which the Any Part Black Voting Age Population (APBVAP) exceeds 50% in the district. Cooper testified that APB is the obviously appropriate metric, since it has been accepted in many cases throughout the country since the 2003 Supreme Court case *Georgia v. Ashcroft*.[120] Cooper stated that he has relied upon APB since just before the 2010 census, and has applied it in several cases this year, as well as in the 2017 Louisiana case *Terrebonne NAACP v. Jindal*.[121] Cooper

[120] 539 U.S. 461, 461 (2003).
[121] 274 F. Supp. 3d 395 (M.D. La. 2017).

cross-referenced his BVAP data with a registered voter file provided by the Secretary of State in summer 2021, which verified that his CD 2 and CD 5 have over 50% Black *registered* voters, as well. Further, Cooper testified that even using the most conservative definition of BVAP possible, single race non-Hispanic citizen voting age population, CD 2 and CD 5 in his illustrative plans still exceeded 50% BVAP:

2016-2020 Citizen Voting Age Population by Plan

	% NH SR Black CVAP	% NH White CVAP	NH Black CVAP to NH White CVAP Margin	July 2021 Black Registered Voters
2022 Plan				
District 2	61.89%	31.34%	30.55%	61.52%
Illustrative Plan 1				
District 2	53.35%	39.31%	14.04%	52.33%
District 5	50.94%	46.19%	4.75%	51.84%
Illustrative Plan 2				
District 2	53.66%	39.53%	14.13%	52.72%
District 5	51.26%	45.92%	5.34%	51.53%
Illustrative Plan 3				
District 2	53.40%	39.31%	14.09%	52.33%
District 5	52.78%	44.86%	7.92%	53.35%

[122]

Cooper testified that he could have maximized the Black population in his proposed majority-minority districts to increase BVAP, but that doing so would have come at the expense of other traditional redistricting principles.

Analyzing H.B. 1, Cooper described the enacted map's CD 2 as serpentine, making inexplicable twists and turns. He stated that the enacted CD 2 is a "carbon copy" of its previous 2011 iteration, which was found to be the seventh least-compact congressional district in the nation. The Legislature's 2022 enacted CD 2 suffers from the same compactness deficiencies, in his opinion. Furthermore, the diffuseness of CD 2 gives rise to what Cooper called a non-compact "wraparound district" in CD 6, which traverses a large amount of territory from Livingston Parish to Terrebonne. Cooper noted

[122] GX-1, p. 36.

that the BVAP in the enacted CD 2 is 58.65%, while the other five districts have under 34% BVAP. Cooper concluded that the enacted plan "packs and cracks Black voters."[123]

Cooper explained that the purpose of the illustrative plans he drew, and of illustrative plans generally, is to demonstrate to the court that it is possible to draw a map with two majority-minority congressional districts that satisfies the first prong of *Gingles I* – numerosity and compactness – while adhering to traditional redistricting principles. Cooper noted that Plaintiffs did not engage him to produce such a plan no matter what; only to do so if it was feasible. He testified that in other cases, he has declined to draw illustrative maps where it was not possible to add majority-minority districts without violating traditional redistricting principles. This was not such a case. In his view, configuring Louisiana congressional maps with two majority-minority districts with fidelity to traditional redistricting principles was easy and obvious.

Cooper's illustrative maps all take roughly the same shape, reaching from East Baton Rouge and St. Landry Parishes in the south to the Delta Parishes along the Louisiana-Mississippi border. Cooper explained that one difference between his illustrative maps and the enacted map is that he made CD 2 and CD 6, which he considered to be irregularly shaped, more regular. On direct examination, he described how his maps perform with respect to traditional redistricting principles. First, he stated, all of his maps comply with one person-one vote; in fact, three of his four plans are zero-deviation plans, meaning that all of the districts have perfectly equal population sizes. Illustrative Plan 4 has an overall deviation of plus or minus 150 persons, which resulted from reconfiguring the maps to split zero precincts.

[123] *Id*. at p. 20.

Cooper opined that his plans "are across-the-board superior to the 2022 plan in terms of parish splits, municipal splits, and CBSA splits,"[124] as documented in the following charts:

Political Subdivision Splits

	Parish Splits	Populated 2020 VTD Splits	Populated Municipal Splits	Single-Parish Populated Municipal Splits*	CBSA splits
2022 Plan	15	0	30	25	18
Illustrative Plan 1	10	13	24	18	14
Illustrative Plan 2	11	7	30	22	16
Illustrative Plan 3	10	12	29	23	17

[125]

Figure 3
Political Subdivision Splits

	Parish Splits	Populated 2020 VTD Splits	Populated Municipal Splits	Single-Parish Populated Municipal Splits*	CBSA splits
2022 Plan (HB 1)	15	1	36	25	18
Illustrative Plan 4	10	0	30	21	14

[126]

To evaluate splits in political subdivisions, Cooper used Core Based Statistical Areas ("CBSAs"), which are regions defined by the Office of Management and Budget comprised of urban centers and the surrounding areas. The composition of CBSAs is influenced by commuting patterns, commercial activity, and communities of interest. Cooper testified that his illustrative plans split fewer CBSAs than the enacted map and that, overall, his maps better preserved CBSAs and other political subdivisions.

[124] GX-1, p. 34.
[125] *Id.*
[126] GX-29, p. 8.

Cooper testified, and all experts agreed, that the Reock and Polsby-Popper methods are the most widely accepted tools for measuring geographical compactness.[127] Cooper testified that his plans perform better on compactness compared to the enacted plan. The enacted plan earns an average Reock score of 0.37 and an average Polsby-Popper score of 0.16. His illustrative plans score as follows:

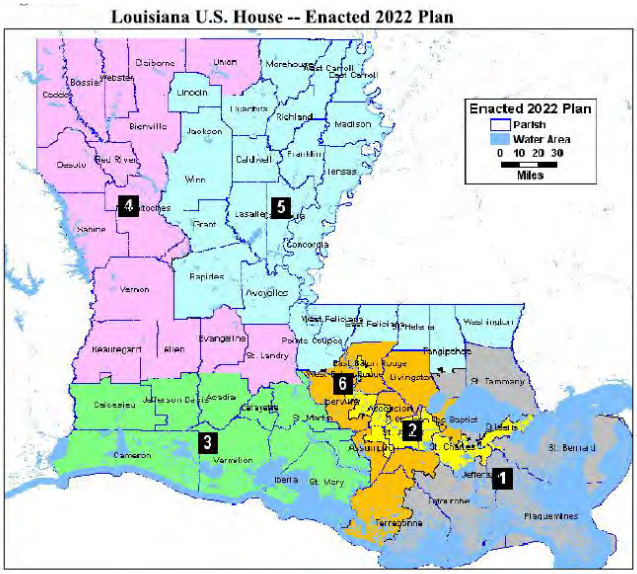
Plan	Reock			Polsby-Popper		
		Low	High		Low	High
HB 1						
Mean of All Districts	.37	.18	.50	.16	.06	.34
CD 2	.18			.06		
Illustrative Plan 1						
Mean of All Districts	.36	.23	.53	.19	.09	.27
CD 2	.23			.15		
CD 5	.33			.09		
Illustrative Plan 2						
Mean of All Districts	.41	.23	.53	.19	.09	.27
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		

[128]

[127] Quoting the documentation accompanying the Maptitude redistricting software, Cooper explains that 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. The measure is always between 0 and 1, with 1 being the most compact. The Reock test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan." The Polsby-Popper test, meanwhile, "computes the ratio of the district area to the area of a circle with the same perimeter: 4pArea/ (Perimeter2). The measure is always between 0 and 1, with 1 being the most compact. The Polsby-Popper test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan." (GX-1, p. 31, n. 26).

[128] Rec. Doc. No. 164, p. 37 (derived from GX-1 Figure 18 and GX-29 Figure 4).

Cooper testified that the superior compactness achieved by his plans is easily verifiable by making a simple visual comparison of his plans to the enacted plan, with its "very oddly shaped" CD 2 and wraparound CD 6:



[129]

Cooper also testified that, in Louisiana cities, the Black population tends to be concentrated in very compact, easily definable areas, partly as a result of historical housing segregation which still prevails in the current day. For example, he explained, Black residents of Baton Rouge are highly concentrated in the northern part of the city, with the White population primarily located in the southern and eastern areas of the city. The Court takes judicial notice of this well-known and easily demonstrable fact.

Cooper reported that all of his illustrative maps have contiguous districts. Although the enacted plan can technically say the same, Cooper was critical of how that result was achieved. For example, he pointed out that CD 2 flanks both sides of Interstate 10 around the Mississippi River Bridge in Baton Rouge; although being bisected by a body of water

[129] *Id*. at p. 19.

does not technically vitiate the district's contiguity, it is not an ideal configuration. Likewise, looking at the enacted plan's District 6, Cooper commented that to get from parts of St. John Parish from the rest of the district, one would have to either swim across Lake Maurepas into Livingston Parish or take Interstate 55 and drive through another district entirely.

Based on Cooper's analysis, under the enacted plan, only 31% of Louisiana's Black population lives in a majority-minority district, while 91.5% of the White population lives in a majority-White district.[130] Cooper testified that in his illustrative plan, approximately 50% of Black people in Louisiana would live in a majority-Black district, while 75% of White people would live in a majority-White district.

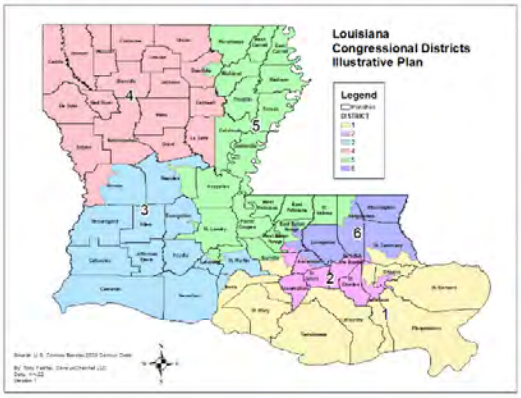
On cross-examination, Cooper again emphasized that although Plaintiffs did *ask* him to draw maps with two majority-minority districts, he did not have a goal of creating create two such districts no matter what. He asserted that he followed traditional principles and considered all of the relevant factors. Defendants' cross of Cooper focused heavily on the inclusion of East Baton Rouge and the Delta Parishes in one congressional district. Cooper testified that, based on the data, he found very clearly defined neighborhoods that were overwhelmingly Black in some areas. This compactness in the Black population made it easy to join Black areas to other Black areas to draw a majority-Black district. Socioeconomic factors also made the combination of East Baton Rouge and East Carroll Parish a natural one; Cooper testified that he found nothing unusual at all about including them in the same district, though he agreed that poverty is much higher

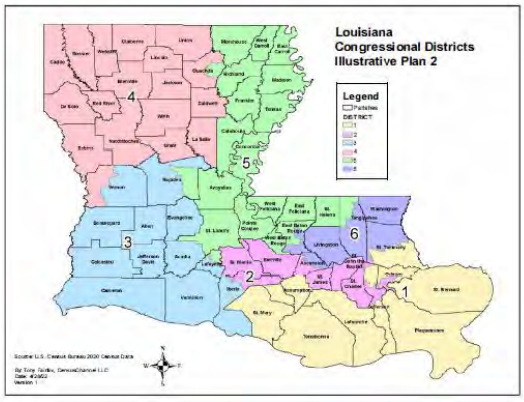
[130] *Id*. at p. 20.

in East Carroll Parish, with much lower median income for the Black population, and that educational attainment was likewise much lower in East Carroll Parish.

As for respecting communities of interest, Cooper agreed that there is no universal definition of a community of interest, but noted that he tried to keep the Acadiana region relatively intact in his maps, and believed that he did so successfully. Conversely, Cooper stated that nothing in his analysis indicated that the areas around Fort Polk should necessarily be joined as a community of interest, so he did not prioritize that.

Plaintiffs' expert Anthony Fairfax also gave opinion testimony related to *Gingles I.* Defendants stipulated to Fairfax's expertise in demography, redistricting, and census data. Fairfax prepared a report and two supplemental reports in this case,[131] advancing three illustrative maps, two of which are reproduced below. Fairfax's third map, Plan 2A, is not pictured because it involved a very minor change designed to avoid incumbent pairing and is not visually distinguishable from Plan 2.





[132]

[131] PR-15; PR-86; PR-90. Fairfax's reports were offered and admitted as substantive evidence without objection.
[132] PR-15, p. 5; PR-86, p. 4.

Fairfax opines that his illustrative maps prove that Louisiana's Black population is sufficiently large and geographically compact to "easily meet[] the first preconditions of [*Gingles*]."[133] Specifically, Fairfax opines that:

> It is possible to draw an Illustrative Plan that adheres to federal and state redistricting criteria and contains two majority-Black congressional districts. The Illustrative Plan was drawn with race not predominating and continues to perform as well or better than the enacted plan HB1 on eight out of eight redistricting criteria including: 1) population deviation (equal population or "one person, one vote"); 2) contiguity; 3) compactness; 4) political subdivision splits for parishes; 5) political subdivision splits for Voting Tabulation Districts ("VTDs"); 6) preserving communities of interest for census places; 7) preserving communities of interest for landmark areas; and 8) fracking.[134]

Fairfax testified that he started with the enacted plan as a baseline. Thus, his illustrative plans retain the current majority-Black district in CD 2, but with adjustments designed to "lessen the presence of District 2 in Baton Rouge and create a more single metro district"[135] anchored in New Orleans. Like Cooper, Fairfax drew various versions of CD 5 that connect the Baton Rouge area to the Delta Parishes along the Louisiana-Mississippi border. Also like Cooper, Fairfax used the Any Part Black definition to conclude that the majority-minority districts in his illustrative plans topped the 50% BVAP mark. Fairfax's Illustrative Plan 1 features a CD 2 with a BVAP of 50.96% and a CD 5 with 52.05% BVAP.[136] His Plans 2 and 2A also feature two majority-minority districts (with APBVAP ranging from 51.55% to 51.98%).[137]

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[133] PR-15, p. 10.
[134] *Id*.
[135] PR-15, p. 26, n. 48.
[136] *Id*. at p. 30.
[137] PR-86, p. 7; PR-90, p. 5.

Fairfax stated that APB is a commonly used and accepted definition in this type of analysis, but in response to Defendants' criticism of that measure, he also assessed his proposed districts' population using the Single-Race Black Non-Hispanic Citizen Voting Age Population category, which resulted in proposed districts with an even stronger Black majority.[138] Significantly, for each of his illustrative plans, regardless of the method used to count BVAP, Fairfax concluded that Black voters make up a majority of the voters in CD 2 and CD 5.

Fairfax testified that he looked at equal population, contiguity, compactness, splits, communities of interest, and fracking when drawing his maps. Consideration of Legislature's Joint Rule 21 was paramount in his process, but his overall strategy was to balance all of the relevant districting principles without allowing any single factor to predominate. Fairfax testified that all of his plans have contiguous districts and that all of his plans achieve population equality. He used the Reock, Polsby-Popper, and Convex Hull measures to assess compactness and demonstrated that his illustrative districts were more compact than the enacted map:

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

[139]

As for parish splits, Fairfax's plans split either 12 or 14 parishes, while the enacted plan splits 15. Moreover, Fairfax explained that it was his belief, based on studying the

[138] Rec. Doc. No. 162, p. 19.
[139] Rec. Doc. No. 162, p. 36. Plaintiffs compiled this chart from Fairfax's reports; the Court has independently verified the figures presented therein from the evidence presented and finds no error.

enacted plan, that the Legislature prioritized the elimination of VTD splits – the enacted plan splits none of them. Fairfax's plans likewise split none. With respect to communities of interest, Fairfax testified that he analyzed them by considering the number of times his illustrative plans split census places and landmark areas. The category of "census places" includes government entities such as cities and towns, as well as Census Designated Places (CDPs).[140] While the enacted plan splits 32 census places, Fairfax's plans are superior on this index, splitting either 26 or 31. Fairfax defended his use of census places as communities of interest, explaining that even more than a city or town boundary, a census place is a locally well-known unit and a good indicator of the existence of a community of interest, even though it may not have a governmental body.

In his supplemental report, Fairfax addressed the performance of his Illustrative Plans 1 and 2 on state and traditional redistricting criteria, as compared to the enacted map:

Table 1 – Illustrative Plans 1, 2 and HB1 Plan Criteria Comparison

Criteria	Illustrative Plan 1	Illustrative Plan 2	HB1 Plan
Equal Population	**51**	**58**	65
Contiguity	Y	Y	Y
Parish Splits	**14**	**12**	15
VTD Splits	0	0	0
COI Census Places Splits	**31**	**26**	32
COI Landmark Splits	58	58	58
Compactness (mean)	**.42, .18, .69**	**.39, .20, .71**	.37, .14, .62
Fracking	**5**	**5**	8

Source: Illustrative and HB1 Plans extracted from Maptitude for Redistricting reports [141]

Fairfax concludes that his "Illustrative Plan 2 in addition to performing better than the HB1 Plan, exceeds many of Illustrative Plan 1's performance on state and traditional

[140] PR-15, p. 21.
[141] PR-86, p. 5.

redistricting criteria."[142] Fairfax explains that he considered the testimony of Louisiana residents from the roadshows held by the legislature during the redistricting process to validate his impressions of communities of interest. His supplemental report cites particular testimony and explains how the testimony specifically influenced his consideration of communities of interest.

Fairfax testified that socioeconomic data was another important guiding factor for assessing communities of interest and to ensure respect for commonalities in mapping the districts. He explained how he used the mapping software's capabilities to overlay data onto his proposed districts related to, for example, median household income, educational attainment, food stamp percentage, poverty level, percentage of renter households, and community resilience estimates. This information led him to conclude that areas in Ouachita Parish, Rapides Parish, Evangeline Parish, Baton Rouge, and Lafayette could be appropriately grouped together. For example, by overlaying data related to the percentage of the population with no high school education in a given area, it was easy to see that the areas shaded red and orange in the map below, indicative of more people with no high school education, followed a pattern that "clearly define[d] the boundaries of District 5."[143]

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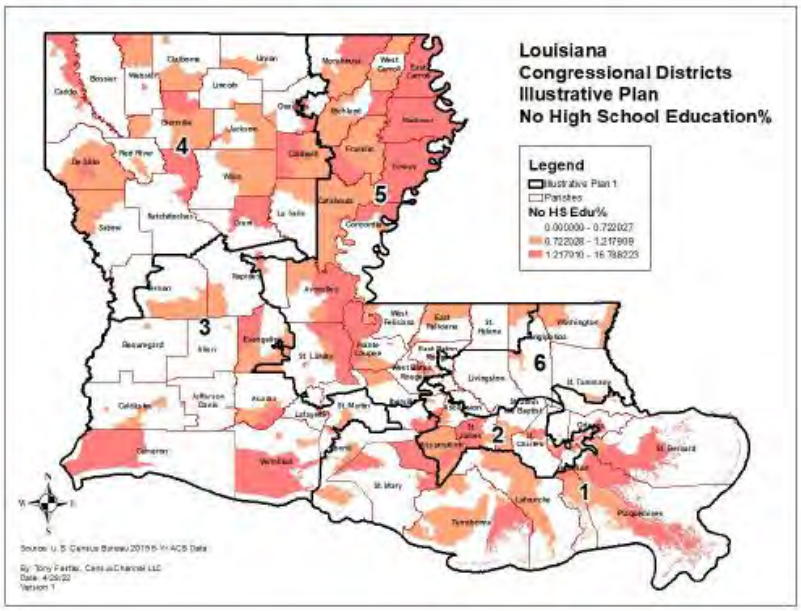
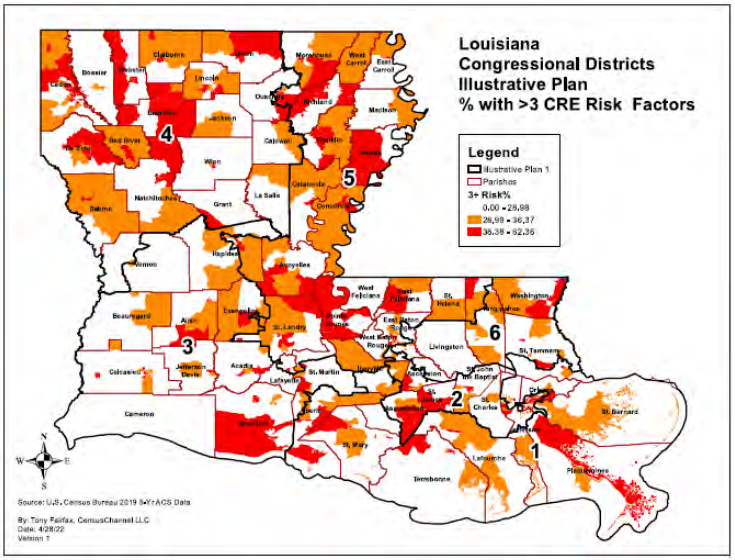
[142] *Id*.
[143] PR-86, p. 15.



144

Likewise, by overlaying data from the U.S. Census Bureau's Community Resilience Estimate (CRE), Fairfax observed a commonality in the areas that he drew into CD 5:



145

Specifically, the more heavily shaded orange and red areas are, according to the Census Bureau, united by a higher level of risk to the impact of disasters; risk factors include low

144 *Id*. at p. 99.
145 *Id*. at p. 100.

income, communication barriers, number of persons per room in the house, lack of health insurance, and others. So, Fairfax explains, this indicator also suggested to him that the areas in his CD 5 were appropriately grouped together.

On cross-examination, Defendants asked Fairfax to elaborate on how race factored into his drawing process. Fairfax confirmed that he had the ability to display BVAP in his mapping software, but that he only used that feature at the beginning of his process, to get a sense of possible areas where a majority-minority district could be drawn. After he got that initial sense of where BVAP levels were strong, Fairfax testified that he "turned off" the BVAP overlay and focused instead on socioeconomic data, which he used to make more granular mapping decisions. Fairfax did not deny that he considered race to some extent in order to determine if two majority-minority districts could be drawn. But he testified that race did not predominate as a factor because he does not look at the racial data constantly; he familiarizes himself with it on the front end and, as he put it, does not look any more than necessary to ascertain numerosity and compactness as per *Gingles I.*

Fairfax also elaborated on how his proposed CD 5 was developed. He testified that he started with the existing congressional map and began trimming the area to the west to make the Delta region in Northeast Louisiana a more substantial presence in the district. He then expanded down further to add different areas, starting in the north and working his way south. Fairfax clarified that he does not simply add territory to the district until he reaches the 50% threshold; the BVAP in the district goes up and down along with way based on the addition and subtraction of different areas. When Defendants asked Fairfax about the maps struck down in *Hays*, Fairfax stated that the districts at issue in

Hays were "extremely non-compact" and therefore not comparable to his illustrative plans. He testified that he would never draw districts like the ones in *Hays*.

Fairfax stated that it would be very difficult to create a second majority-Black district in CD 5 without including parts of East Baton Rouge Parish. Fairfax did not disagree that East Baton Rouge is distinguishable from the Delta parishes in some respects, such as educational attainment and income level. However, he testified that the Delta Parishes are also distinct in terms of socioeconomic factors from the parishes to their west, with which they are grouped in the enacted plan.

Plaintiffs also presented several lay witnesses who spoke to the shared interests, history, and connections between East Baton Rouge Parish and two areas included together with it in Plaintiffs' illustrative CD 5. Christopher Tyson, a professor at the Louisiana State University Law Center and the former CEO of Build Baton Rouge, testified that in the 1860s, his ancestors migrated from the Delta in Wilkinson County, Mississippi to Baton Rouge, the nearest big city. This pattern of migration from the Mississippi Delta to Baton Rouge was common, Tyson testified, explaining that the strong historical connection between East Baton Rouge and the Delta parishes makes combining them in the same congressional district natural. Tyson testified that he and other Black people in Baton Rouge have strong ties to the Delta region through faith, family, and culture. Tyson also cited educational ties between the Delta parishes and Baton Rouge, explaining that McKinley High School in Baton Rouge used to be the only high school option for Black students in a wide swath of Louisiana. Southern University likewise was and is a draw for rural students in the Delta seeking higher education.

Tyson's testimony illustrated a historical link that gives rise to enduring connections between Baton Rouge and the Delta region.

By contrast, Tyson testified, the enacted plans' linking of Baton Rouge and New Orleans in one congressional district is misguided because it fails to take into account urban dynamics besides race. Baton Rouge is a state capital and a university town, he said, while New Orleans relies heavily on tourism. In Tyson's view, Baton Rouge and New Orleans have distinct economies and different histories that require different representation. Tyson was critical of arguments surrounding redistricting that overemphasize "culture" – as in shared music and food tastes, for example – while overlooking the reality of people's experiences due to the effects of racism. Louisianans may use black pepper in some parts and red in others, he said, but in all the state, Black Louisianans were subject to Jim Crow. The pernicious effects of racism and segregation have affected Black Louisianans for hundreds of years, he testified, and congressional representation needs to be considered through the lens of Black experiences, not by reference to superficial cultural concerns. Congressional representation, he testified, brings federal resources to a district that can ameliorate the effects of that history that still exist today.

Plaintiffs also called Charles Cravins, a St. Landry Parish resident who testified regarding how redistricting affects his parish, specifically about how being placed in the same district with areas that share commonalities and communities of interest is critical to the political fate of St. Landry. Cravins is a lawyer in Opelousas and the descendant of free Black people from France. He attended the Southern University Law Center in Baton Rouge and noted that it is very common for St. Landry Parish residents to attend college

in Baton Rouge – five of his nine siblings did. Before integration, he testified, going to Baton Rouge was the only option for Black people seeking higher education.

St. Landry Parish is a relatively small area with not a lot of influence, Cravins testified, which means that in order for it to reach its full potential it needs to be paired in a congressional district with other centers of influence – historically, either Lake Charles, Lafayette, or Baton Rouge. According to Cravins, if St. Landry Parish is cut off from all three of those places – as it is in the enacted plan – voters in St. Landry are effectively disenfranchised. The enacted map pairs St. Landry with Shreveport, which Cravins says disenfranchises Black voters, noting that to his recollection, congresspeople from North Louisiana have typically not visited or taken an interest in St. Landry Parish.

Cravins testified that he hosts a radio program that blends public affairs discussion with zydeco music and that his program has a strong listenership in Baton Rouge. Although Baton Rouge and St. Landry are not technically part of the same "media market," he explained that St. Landry people consume a lot of Baton Rouge media, particularly TV stations and the newspaper. Both Baton Rouge and St. Landry have strong Catholic roots, vestiges of French and Spanish influence, and they both support the New Orleans Saints, he testified.

St. Landry and Baton Rouge share common policy concerns, in Cravins' view. The petrochemical industry is a significant economic driver in both, which is quite distinct, he said, from the natural gas economy in Northern Louisiana. The petrochemical connection brings shared environmental and climate concerns, Cravins said. Moreover, he noted, areas in South Louisiana share a strong interest in disaster relief policy, which is less relevant in North Louisiana, where hurricanes do not generally have as much impact.

Likewise, Cravins testified, St. Landry and Baton Rouge are sugar cane territory, another common economic driver.

Overall, Cravins testified, the illustrative maps prepared by William Cooper, which link St. Landry with Lafayette and Baton Rouge, would allow St. Landry to maintain connections with the centers of influence that are important to making their voice heard. Cravins testified that the number of polling places in St. Landry recently decreased. Previously, he explained, his polling place was 1.2 miles from his home; now, it's 17 miles away. Cravins stated that there was uproar in his local community about this change because people believe the change was made with a goal of diluting minority votes. Black precincts were combined with majority-White ones to make much larger precincts. Cravins testified that the official reason for the change was that there was a mandate from Secretary Ardoin to reduce costs. Cravins does not find this reason to be credible, he said, because he attended the parish council meeting where the precinct combination was on the agenda and there was no mention of cost. In fact, he testified, the parish will actually have one more precinct after the changes are implemented, so he is skeptical that there will be any cost reduction at all.

Defendants offered several experts to rebut Plaintiffs' contention that they have satisfied the first prong of *Gingles* with their illustrative maps. The first, Thomas Bryan, was tendered and accepted as an expert in the field of demographics, based on Plaintiffs' stipulation. Bryan was asked to determine whether Plaintiffs' illustrative maps meet the numerosity criteria from the first prong of *Gingles*, and whether there was evidence that race appeared to predominate in the design of any of the plans. At the hearing, Bryan testified that he did not examine compactness, communities of interest, or other traditional

redistricting criteria. In his words, he was asked to focus on the demographics. Bryan explains that he set out to "explore the demographic definition of minorities and show how different definitions can generate different conclusions about whether a district is 'majority' or not."[146] On this topic, Bryan opines that "only by the most generous definition of Black, the any part black (APB) measure, do any of the Illustrative Plans meet the traditional majority minority criteria of over 50% +1."[147] Bryan's demographic analysis is reflected in the following tables setting forth his findings regarding the BVAP of districts in the illustrative plans:

Table III.A.4 Robinson Illustrative Plan Black Share of Voting Age Population

Illustrative Plan	Black Alone	Black DOJ	Any Part Black
1	16.84%	17.24%	18.29%
2	**48.73%**	**49.39%**	**50.96%**
3	16.77%	17.29%	17.91%
4	30.76%	31.25%	31.90%
5	**50.63%**	**51.25%**	**52.05%**
6	15.31%	15.68%	16.19%

Table III.A.5 Galmon Illustrative 1 Plan Black Share of Voting Age Population

Illustratuve 1 Plan	Black Alone	Black DOJ	Any Part Black
1	16.95%	17.35%	18.18%
2	**47.77%**	**48.41%**	**50.16%**
3	18.55%	19.10%	19.75%
4	30.68%	31.17%	31.82%
5	**48.62%**	**49.22%**	**50.04%**
6	16.36%	16.74%	17.24%

Table III.A.6 Galmon Illustrative 2 Plan Black Share of Voting Age Population

Illustrative 2 Plan	Black Alone	Black DOJ	Any Part Black
1	15.29%	15.67%	16.51%
2	**48.27%**	**48.92%**	**50.65%**
3	20.39%	20.93%	21.59%
4	27.52%	28.00%	28.65%
5	**48.65%**	**49.25%**	**50.04%**
6	18.74%	19.14%	19.67%

[146] AG-2, p. 10.
[147] *Id.*

Table III.A.7 Galmon Illustrative 3 Plan Black Share of Voting Age Population

Illustrative 3 Plan	Black Alone	Black DOJ	Any Part Black
1	17.35%	17.74%	18.52%
2	**47.77%**	**48.41%**	**50.16%**
3	16.82%	17.35%	17.98%
4	31.79%	32.29%	32.96%
5	**50.23%**	**50.81%**	**51.63%**
6	15.14%	15.53%	16.09%

Bryan opined that all of the plans (though he did admittedly not examine Robinson Illustrative Plans 2 and 2A) only achieve two majority-Black districts by using the most expansive metric, Any Part Black.

Bryan testified regarding what he called his "splits analysis," which he used to conclude that "[b]ased on the surgical, divisive nature of the splits in each of the Plaintiffs' Illustrative Plans across Louisiana's places . . . race was the prevailing factor in their design."[149] He explained that his goal was to count how many pieces of geography are split by a given plan, then assess the impact of those splits by examining how many and what races are impacted by those splits. Bryan offered an "index of misallocation," which attempts to quantify "the degree to which a plan splits administrative geography by race."[150] The index works by "measuring how much of a minority population would be in a given piece – if it had an exact same proportionate share as the total population."[151]

For example, Bryan testified, under the illustrative plans, the city of Baton Rouge is split between CD 2 and CD 6. Roughly 65% of the total Baton Rouge population lives in CD 6, he said, but 94.59% of the White people in Baton Rouge live in CD 6. Conversely, although only about 34% of Baton Rouge residents live in CD 2, 57.21% of Black Baton

[149] *Id*. at p. 11.
[150] *Id*. at p. 24.
[151] *Id*.

Rougeans live in CD 2. Bryan testified that these numbers provide some evidence of "misallocation," stating that, if all else was equal, you would expect White residents to be allocated into the districts in the same way the total population is distributed. Instead, he claims, White voters are "over-indexed" in CD 6. Bryan's report includes a number of charts setting forth this "misallocation" analysis under different plans and in different localities.[152]

Bryan further testified regarding his impressions of "misallocation" in Lafayette and Monroe. In the illustrative plans, Lafayette is split between CD 3 and CD 5. According to Bryan, if the districts were drawn race-blind, there should be equal amounts of White and Black voters in each district. Instead, he claimed, they were drawn very precisely, such that blocks with 50% or more Black population ended up on the same side of the line. He testified that the same pattern is observable in Baton Rouge, where the district line, in his opinion, was drawn block by block to precisely divide the Black and White populations. Overall, Bryan testified, he found that all the splits he analyzed occurred in such a way that a disproportionate share of the Black population was drawn into a majority-minority district. Therefore, he concluded that race was a prevailing factor in the designs of the illustrative plans. Responding to a criticism of his report by Anthony Fairfax, Bryan admitted that he did not consider socioeconomic factors in drawing his conclusions.

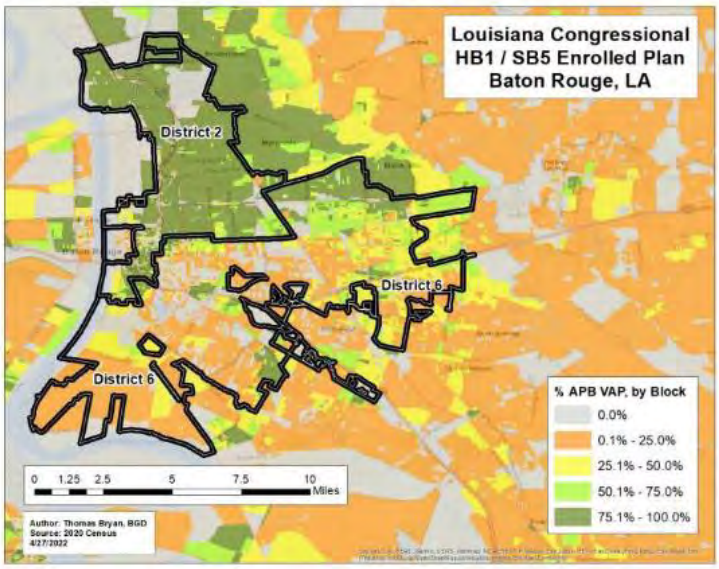
On cross-examination, Bryan agreed that the district court in *Caster v Merrill*, where he offered testimony, found that Any Part Black was the proper metric to apply in Section 2 cases. Bryan testified that he does not have an opinion about the appropriate

[152] *Id*. at p. 39, *et seq*.

definition to use. Using APB, he agreed, all of the Plaintiffs' illustrative plans have two majority-Black districts.

Bryan confirmed that his conclusion about racial predomination was based on data, a visual examination of the maps, and the index of misallocation. He testified that he has never produced an index of misallocation before, and that he is not aware of it ever being credited by a court. In response to questioning about the assumptions built into the "misallocation" inquiry, Bryan testified that the notion of populations being "misallocated" is based on two assumptions: first, that the Black population is evenly distributed in an area and that a split is created randomly. Plaintiffs' counsel asked Bryan to examine this map from his report:

AA. Baton Rouge HB1 / SB5 Enrolled Plan Split by % Any Part Black VAP



Bryan testified that, in the area depicted, the Black population is not distributed evenly; it is heavily concentrated in the north areas of the city. Asked whether the Legislature split Baton Rouge randomly, Bryan testified that he did not believe so; he believed that they followed a least-change approach and followed existing boundaries.

Plaintiffs' counsel further asked Bryan to explain how it can be gleaned whether a "misallocation" is due to Black population being concentrated in a certain area versus racial intent in the drawing of lines. Bryan stated that he *infers* misallocation, because although the map drawer could theoretically divide areas in any number of ways, based on his observation, the lines are drawn to maximize division by putting the line right between Black and White populations. Ultimately, however, he conceded that he cannot say how much of a given "misallocation" is attributable to race-based line drawing or highly segregated populations. Nor, he reiterated, did he examine socioeconomic data or other traditional redistricting principles in determining that race prevailed.

Defendants' next witness speaking to *Gingles I* was Dr. Christopher Blunt. Dr. Blunt, a PhD in political science with a public opinion consulting practice, was tendered and accepted as an expert in political science with an emphasis in quantitative political science and data analysis based on Plaintiffs' stipulation. Dr. Blunt was asked "to analyze and determine whether a race-blind redistricting process, following traditional districting criteria, would or would not be likely to produce a plan with two majority-minority districts."[153] He did so by simulating a set of 10,000 possible congressional maps using commercially available software called REDIST, and computing the BVAP percentage for each of the six districts in the computer-simulated plans, using the APB metric.

Dr. Blunt concluded that "[n]one of the simulated plans produces even one majority-minority congressional district."[154] The average BVAP of the highest BVAP district from each simulated plan is 38.56%, he testified. Although one simulated district did have 45.57% BVAP, overall, 90% of the plans generated by his simulation had less

[153] LEG-3, p. 3.
[154] *Id*. at p. 8.

than 42.2% BVAP.[155] Further, Dr. Blunt found, in only 75 plans out of the 10,000 he simulated did *two* districts each have 40% BVAP. Based on these results, Dr. Blunt concludes that "it would be extremely unlikely for a Louisiana redistricting plan that included two [majority-minority districts] to emerge from a process following only the traditional redistricting criteria [he] employed."[156]

Dr. Blunt testified that his simulations did not consider or account for race, partisanship, or prior district boundaries. Further, he explained that due to limitations of the simulation software he used, he was only able to preserve communities of interest to the extent that a community of interest was located entirely within the bounds of one parish. He stated that he was hesitant to include communities of interest in his simulation in any event, because the term has no firm legal definition, and because a community of interest could serve as a proxy for race, and his intent was to simulate a race-blind redistricting process.

Dr. Blunt opined that his simulated plans were more compact than the illustrative plans and split fewer parishes. He stated that, even when he set the constraints to allow unlimited splits, he found that the results did not change significantly. Simulations without split constraints yielded a highest BVAP district of 46.06% BVAP, but there was still not a single majority-minority district in any plan.

On cross-examination, Dr. Blunt testified that he has never run a simulation of electoral districts before, or, in fact, conducted any simulation analysis previously in his career. He explained that did not write the code for his simulations, but he did write the instructions to execute the underlying algorithm.

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[155] *Id*.
[156] *Id*. at p. 9.

Dr. Blunt agreed that the simulations do not provide a valid comparison if traditional redistricting principles are not part of the constraints. So, he stated, he looked to the Legislature's Joint Rule 21 and selected contiguity, compactness, parish splits, and population deviation as the principles included in his simulations. He admitted that he did not consider preservation of political subdivisions, although it was listed in Joint Rule 21, but he believed it was unlikely that too many subdivisions were split, because parishes were generally not split in his simulated plans. If a political subdivision crossed parish lines, he testified, it would be difficult to account for in the simulation. He also did not consider municipality splits. Dr. Blunt was unable to say how many of his simulated maps split Baton Rouge or New Orleans into three or more districts. Dr. Blunt stated that he was not sure how many majority-minority districts his simulation would have generated if a lower compactness constraint was imposed, but he expressed doubt that it would significantly change the results. Overall, Dr. Blunt opined that creating a map with two majority-minority districts would require prioritizing race – or some proxy for it – over the traditional criteria he followed.

Defendants also called Dr. M.V. Hood III, a political science professor at the University of Georgia, to testify as an expert in the fields of political science, quantitative political analysis, and election administration. Plaintiffs stipulated to this tender. Dr. Hood was asked to compare the district congruity, or core retention, of the enacted map and some of the illustrative plans. District core retention measures the percentage of the population in a district that is carried over from the corresponding benchmark district – here, Dr. Hood used the 2011 Louisiana congressional map as his benchmark. Core retention is a measure that ranges from 0 to 100, with a higher percentage reflecting that

a district is more similar to its former self. A district that is identical to the previous benchmark, for example, would produce a core retention score of 100%. Dr. Hood calculated core retention scores as follows:

Table 1. District Core Retention Comparisons

District	Enacted	Robinson	Galmon-1	Galmon-2	Galmon-3
1	97.9%	68.5%	71.4%	80.6%	63.6%
2	98.8%	81.3%	85.2%	80.6%	85.2%
3	100%	76.0%	80.9%	88.6%	72.3%
4	93.8%	72.3%	69.3%	70.8%	70.3%
5	89.1%	49.1%	52.3%	53.5%	47.0%
6	98.5%	55.4%	58.6%	64.7%	61.1%
Mean	96.4	67.1	69.6	73.1	66.6
S.D.	4.1	12.4	12.6	12.7	12.8
Range	10.9	32.2	32.9	35.1	38.2

[157]

Based on this data, Dr. Hood concluded that for the enacted plan, "most districts appear to be a close approximation of their corresponding configurations from the benchmark plan."[158] Dr. Hood opines that Plaintiffs' illustrative plans, by contrast, have lower overall core retention.

Dr. Hood also analyzed the same districts using a geographic similarity index, which is used to determine the degree to which districts share a common geography. Like core retention, the similarity index is expressed from 0 to 100%, with a higher score indicating more geographic overlap. Dr. Hood calculated that, comparing the 2022 enacted plan to the benchmark 2011 map, the districts have a mean similarity value of 88.3, which, he opines, is an indication that "the congressional districts in the 2022 enacted plan strongly resemble the previous districts from the benchmark plan."[159] The

[157] LEG-1, p. 4.
[158] *Id.*
[159] *Id.* at p. 5.

illustrative plans that he examined had lower mean similarity scores, ranging from 41.0 to 46.4%.[160] Thus, he concludes, "the plaintiff-proposed [districts] deviate to a greater degree from the benchmark plan."[161]

Dr. Hood also performed a racial composition analysis to determine the percentage of Black population contained within each congressional district for the 2011 map, the 2022 enacted map, and Plaintiffs' maps. He used the DOJ Black definition, which, he explains, "combines all single-race Black identifiers who are also non-Hispanic with everyone who is non-Hispanic and identifies as white and Black."[162] Applying his DOJ Black metric to the illustrative maps, Dr. Hood concluded that two of the plans he examined – *Robinson* 1 and *Galmon* 3 – exceeded 50% BVAP using the DOJ Black definition in only one district. Further, he asserts, the Galmon 1 and Galmon 2 plans would yield *no* majority-Black districts using DOJ Black. His calculations are summarized in the below chart:

Table 4. District Percentage Black Comparisons, 2020 Voting Age Population

District	Benchmark	Enacted	Robinson	Galmon-1	Galmon-2	Galmon-3
1	13.7%	12.5%	17.2%	17.4%	15.7%	17.7%
2	**57.0%**	**57.0%**	49.4%	48.4%	48.9%	48.4%
3	23.8%	23.9%	17.3%	19.1%	20.9%	17.4%
4	32.6%	33.1%	31.3%	31.2%	28.0%	32.3%
5	32.4%	32.3%	**51.2%**	49.2%	49.3%	**50.8%**
6	24.1%	23.3%	15.7%	16.7%	19.1%	15.5%

[163]

Dr. Hood agreed that a desire to maximize core retention is not a consideration that trumps compliance with the Voting Rights Act. He stated that he had no opinion on

[160] See table 2, LEG-1, p. 6.
[161] *Id.*
[162] *Id.*
[163] *Id.* at p. 7.

whether or how the Plaintiffs' illustrative plans comply with traditional redistricting principles.

Defendants tendered Dr. Alan Murray as an expert in the field of demographic analysis, spatial analytics as it relates to race, and statistics. Dr. Murray was asked to evaluate the spatial distribution of BVAP and WVAP[164] in Louisiana. Based on his spatial statistical analysis, he concluded that Black and White voters "are not at all similarly geospatially distributed, with significant clusters of concentrated groupings."[165] Rural areas, he noted, are "dominated by high percentages of white population, but urban areas have clusters of high percent white population as well."[166] Meanwhile, the Black population is clustered particularly in urban areas, "although these urban areas are separated from each other."[167] Additionally, in his report, Dr. Murray calculated the distance between the centers of various Louisiana cities and found, *inter alia*, that the cities of Monroe and Baton Rouge are 152 miles apart.[168]

On cross-examination, Dr. Murray stated that he had no basis to disagree with the opinions offered by any of Plaintiffs' experts. He testified that he has no opinion on whether two majority-minority districts can be drawn consistent with traditional redistricting principles. He further stated that he expresses no opinion on numerosity or compactness. He did not review any of Plaintiffs' illustrative plans as part of his analysis. Dr. Murray testified that he has never seen a population where the Black population is *not*

[164] White Voting Age Population.
[165] AG-4, p. 26.
[166] *Id*.
[167] *Id*.
[168] *Id*. at p. 25.

heterogeneously distributed. Therefore, he stated, Louisiana's distribution of Black and White residents is not unusual.

B. *Gingles II* and *III*

To satisfy the second and third *Gingles* requirements, namely that Black voters are "politically cohesive" and "that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate,"[169] Plaintiffs offered the opinions of two expert witnesses, Dr. Maxwell Palmer and Dr. Lisa Handley.

Defendants stipulated to Plaintiffs' tender of Dr. Palmer as an expert in redistricting with an emphasis in racially polarized voting and data analysis. An Associate Professor of Political Science at Boston University, Dr. Palmer has previously testified as an expert in eight federal court voting cases; he prepared a report and a rebuttal report in this case.[170] Dr. Palmer found "strong evidence of racially polarized voting across Louisiana," and "in each of the six individual congressional districts."[171] His analysis revealed that "Black-preferred candidates are largely unable to win elections in Louisiana," and that on a district level, "Black-preferred candidates are only regularly successful in the 2nd Congressional District, which is a majority-Black district."[172] Lastly, Dr. Palmer concluded that Black-preferred candidates would be "generally able to win elections in the Second and Fifth Congressional Districts"[173] under Plaintiffs' illustrative maps.

At the hearing, Dr. Palmer explained that racially polarized voting occurs when voters of different races prefer different candidates. He testified that racially polarized

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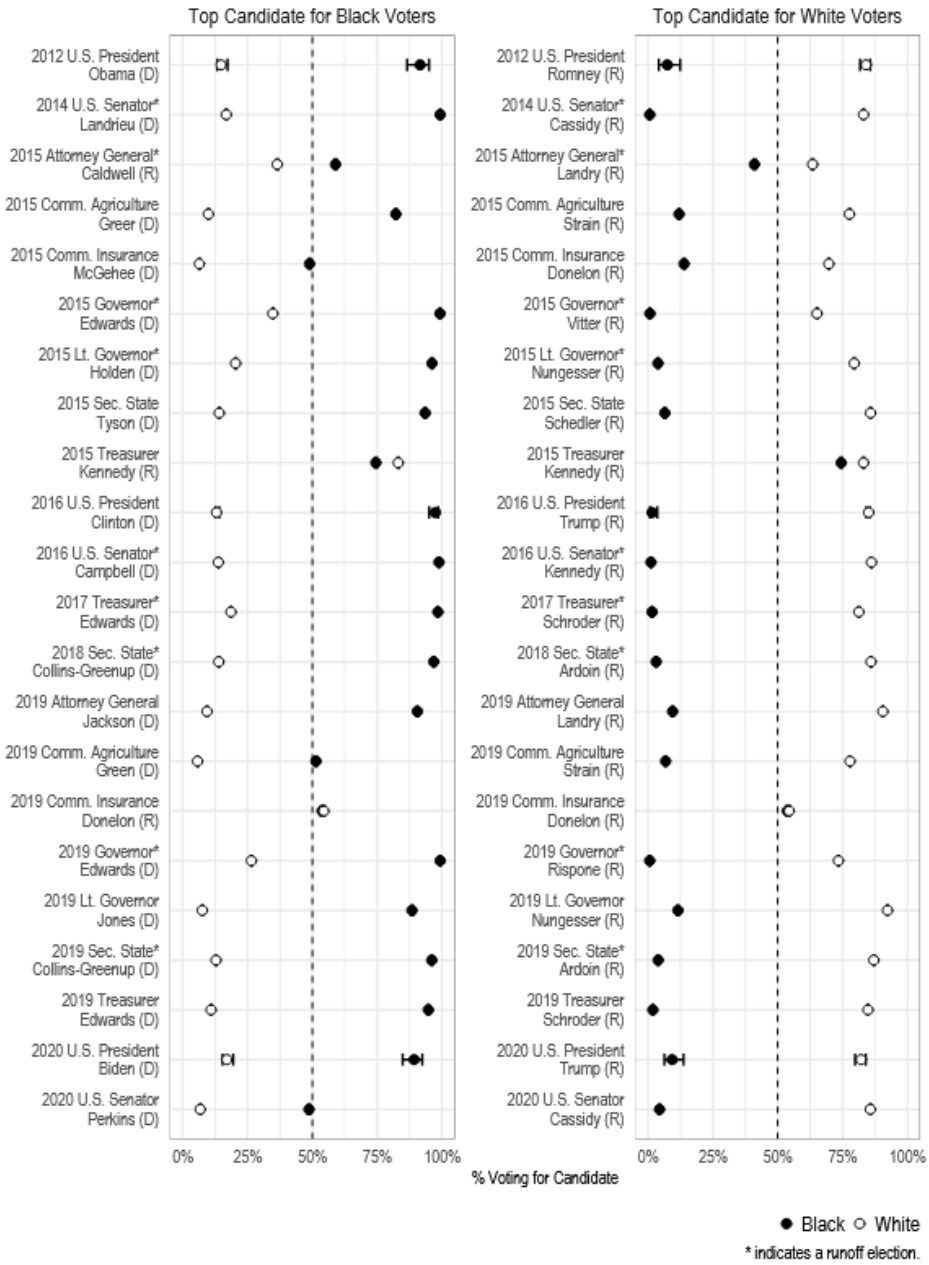
[169] *Growe v. Emison*, 507 U.S. 25, 40 (1993)(citing *Gingles*, 478 U.S., at 50–51).
[170] GX-2; GX-30, admitted as substantive evidence without objection.
[171] GX-2, p. 3.
[172] *Id*.
[173] *Id*.

voting is not always present; for example, in the *Bethune-Hill* case, he found it in some districts but not others. Dr. Palmer explained that his analysis is based on a statistical process known as ecological inference (EI), which estimates group-level preferences based on aggregate data. According to Dr. Palmer, EI is the best available method and has been widely recognized by courts. He emphasized that it is not his project, nor is it within the capabilities of EI, to investigate the reasons behind racially polarized voting. In other words, his analysis sets out to determine *how* different racial groups vote, not *why* they vote that way.

Dr. Palmer's analysis relied on precinct-level election results and voter turnout by race, as compiled by the Louisiana Secretary of State. That data was then paired with precinct-level shape files of the congressional districts. Dr. Palmer examined 22 statewide elections in Louisiana from 2012 to 2020, looking at the final round of voting for each race and the runoff rounds, when runoffs occurred. His analysis began by examining the support for each candidate in a given race by each demographic group, in order to determine if members of the group cohesively support a single candidate. Then, Dr. Palmer compared the preferences of White voters to the preferences of Black voters to see if there was evidence that they supported different candidates.

In 18 of the 22 elections he examined, Dr. Palmer found that there was a Black candidate of choice. In 21 of the 22, there was a White candidate of choice. Of the 18 elections with a Black candidate of choice, Dr. Palmer found that White voters had a different candidate of choice and strongly opposed the Black candidate of choice 17 times. Relatedly, Dr. Palmer found that the 18 Black candidates of choice were supported by 91.4% of Black voters and 20.8% of White voters. Among the 21 White candidates of

choice, the average candidate was supported by 81.2% of White voters and 10.3% of black voters. His findings are summarized in the following chart:[174]



Dr. Palmer also testified about the performance analysis he conducted of Plaintiffs' illustrative districts, opining that under Cooper's three illustrative maps, the Black

[174] GX-2, p. 6.

candidate of choice would statistically, more often than not, be able to win. He reached this conclusion by calculating the percentage of the vote won by the Black-preferred candidate (in the 18 elections where Black voters had a preferred candidate) for each district. In CD 2, he concluded that the Black-preferred candidate would win 17 of the 18 elections, with an average 69% of the vote. In CD 5, the Black-preferred candidate would win 15 of 18 elections under Maps 1 and 3, and 14 of 18 elections under Map 2. Black-preferred candidates in CD 5 averaged 56% of the vote under Map 1, 55% under Map 2, and 57% under Map 3.[175] In conclusion, Dr. Palmer opined that "[u]nder all three maps, Black candidates of choice are generally able to win elections in both of the majority-Black districts."[176]

Asked during his testimony about the possibility that polarized voting patterns may be attributable to partisan polarization, not race, Dr. Palmer stated again that his purview is to identify voting patterns that emerge, not to explain the reasons behind them. In other words, his inquiry is statistical, not social. Dr. Palmer offered a rebuttal of Defendants' expert Dr. Alford's argument that because President Obama, who is Black, received a smaller share of the Black vote than did Hillary Clinton, who is White, the relevant pattern is partisan in nature, not racial. Dr. Palmer disputed the assumption that the Black-preferred candidate is necessarily Black; according to his findings, in the 18 elections with a Black-preferred candidate, that candidate was Black only 9 times.

On cross-examination, Dr. Palmer clarified that his analysis was based on statewide elections and not congressional elections because there have not been any elections conducted under the current map, and it would be impossible to combine data

[175] GX-2, p. 8.
[176] *Id*.

from different districts to comport with the new boundaries, because there are different candidates on the ballot in each district. Statewide elections are the most germane to analysis because the same candidate is up for election in every precinct.

Defendants also queried Dr. Palmer about the impact of White crossover voting on his analysis. White crossover voting occurs when White voters vote for the Black-preferred candidate. Dr. Palmer agreed that, on account of White crossover voting, it could be possible for CD 2 and CD 5 to be drawn at below 50% BVAP and still elect Black-preferred candidates. Dr. Palmer testified that the existence of White crossover voting does not negate the existence of racially polarized voting, however.

Plaintiffs also presented opinion testimony on *Gingles II* and *III* requirements from Dr. Lisa Handley. Defendants stipulated to Dr. Handley's expertise in the area of redistricting with a focus on racially polarized voting. Relying on her 35 years as a redistricting expert and her previous testimony in dozens of voting rights cases, Dr. Handley opined that "[v]oting in the State of Louisiana is racially polarized."[177] This polarization, she explained, "impedes the ability of Black voters to elect candidates of their choice unless congressional districts are drawn that provide Black voters with an opportunity to elect their preferred candidates to the U.S. House of Representatives."[178] Based on her review of the illustrative maps prepared by Anthony Fairfax, Dr. Handley opined that "it is possible to create an additional congressional district that would provide Black voters with an opportunity to elect their candidates of choice."[179]

[177] PR-12, p. 1.
[178] *Id.*
[179] *Id.*

Dr. Handley testified that there is a "quite stark" pattern of racially polarized voting in Louisiana. She stated that voting is polarized if White and black voters vote differently. Or, to put it another way, she explained that if Black voters voting alone would elect a different candidate than White voters voting alone, an election is racially polarized. Dr. Handley testified that she uses three statistical techniques to assess racially polarized voting: homogenous precinct analysis (HP), ecological regression (ER), and ecological inference (EI).[180] HP and ER were used and accepted by the Supreme Court as far back as *Gingles*, she stated. EI, which was developed later, has since become a widely accepted technique, as well. Dr. Handley testified that if estimates of racially polarized voting are similar across statistical measures, the conclusions are more probative.

Dr. Handley analyzed recent statewide election contests that included Black candidates. In her report, she notes that courts consider election contests that include minority candidates to be more probative than contests with only White candidates, because this approach recognizes that it is not sufficient for minority voters to be able to elect their preferred candidate only when that candidate is White. Additionally, Dr. Handley explains that she conducted a racial bloc voting analysis for congressional elections with Black candidates from 2016 – 2020, because endogenous elections – elections for the office at issue in the suit – are considered "particularly probative in a vote dilution claim."[181]

[180] Dr. Handley defines HP as "comparing the percentage of votes received by each of the candidates in precincts that are racially or ethnically homogenous." ER, she states, "uses information from all precincts, not simply the homogenous ones, to derive estimates of the voting behavior of minorities and whites." EI "uses maximum likelihood statistics to produce estimates of voting patterns by race." (PR-12, p. 3-4).
[181] PR-12, p. 6.

Dr. Handley's analysis demonstrated that the 15 statewide contests that included Black candidates were racially polarized, with Black voters "very cohesive in support of their preferred candidates," and "white voters consistently bloc voted against these candidates."[182] Across the 15 contests she studied, the average percentage of Black voter support for the Black-preferred candidate was 83.8%, or an even stronger 93.5% in contests with only two candidates.[183] As for the nine congressional elections she analyzed, Dr. Handley testified that six of them – the ones that did not occur in majority-Black CD 2 – were quite racially polarized. Dr Handley's analysis is reproduced below.

Revised Appendix B Congressional Elections				Estimates for Black Voters					Estimates for White Voters				
	Party	Race	Vote	EI RxC	95% confidence interval	EI 2x2	ER	HP	EI RxC	95% confidence interval	EI 2x2	ER	HP
Congressional District 4													
2020 November													
Kenny Houston	D	B	25.5	70.3	(69.4, 71.1)	66.8	70.8	72.8	3.9	(3.5, 4.4)	3.9	1.2	5.6
Ryan Trundle	D	W	7.8	14.9	(14.2, 15.5)	15.4	14.9	14.9	3.5	(3.1, 3.9)	3.6	3.4	4.2
Mike Johnson	R	W	60.4	11.3	(10.4, 12.2)	12.2	10.8	9.3	85.7	(85.1, 86.3)	86.7	86.6	81.8
Ben Gibson	R	W	6.3	3.6	(3.1, 4.1)	3.6	3.5	3.0	6.8	(6.4, 7.3)	7.7	8.8	8.4
Black turnout/BVAP			*15.9*										
White turnout/WVAP			*13.4*										
Congressional District 5													
2021 March													
Julia Letlow	R	W	64.9	2.8	(1.6, 11.2)	5.8	-2.9	4.9	86.7	(82.6, 87.5)	85.3	88.3	85.9
Sandra Christophe	D	B	27.3	92.9	(82.1, 94.4)	90.4	98.1	90.4	4.8	(4.0, 9.5)	5.7	2.9	5.7
Chad Conerly	R	W	5.3	1.4	(1.0, 3.0)	0.4	1.0	1.1	6.6	(6.2, 6.8)	7.1	6.8	6.1
Others			2.5	3.0	(2.6, 3.6)	3.4	3.7	3.6	2.0	(1.7, 2.2)	2.4	2.0	2.2
Black turnout/BVAP			*14.6*										
White turnout/WVAP			*22.4*										
2020 November													
Sandra Christophe	D	B	16.4	43.2	(42.3, 44.1)	42.9	43.1	41.6	4.5	(4.1, 5.0)	3.6	3.9	4.8
Martin Lemelle	D	W	10.4	30.5	(29.8, 31.1)	30.4	32.1	34.5	1.8	(1.5, 2.1)	1.1	0.0	1.7
Other Dems (2)	D		5.4	13.7	(13.1, 14.3)	12.8	13.1	13.5	1.8	(1.5, 2.2)	1.8	1.7	1.9
Luke Letlow	R	W	33.1	3.8	(3.3, 4.4)	5.2	4.1	3.0	47.7	(47.1, 48.2)	46.6	50.1	44.7
Lance Harris	R	W	16.6	3.2	(2.7, 3.7)	3.4	2.2	2.8	20.1	(19.6, 20.5)	22.9	21.7	22.8
Others (3)			18.2	5.7	(5.0, 6.3)	5.0	5.5	4.5	24.1	(23.6, 24.6)	24.7	22.6	24.1
Black turnout/BVAP			*17.5*										
White turnout/WVAP			*14.7*										

[182] *Id.*, p. 7-8.
[183] *Id.* at p. 8.

Revised Appendix B
Congressional Elections

				Estimates for Black Voters					Estimates for White Voters				
	Party	Race	Vote	EI RxC	95% confidence interval	EI 2x2	ER	HP	EI RxC	95% confidence interval	EI 2x2	ER	HP
Congressional District 6													
2020 November													
Dartanyon Williams	D	B	25.6	74.9	(69.6, 76.3)	72.9	77.6	81.5	7.4	(6.6, 11.0)	6.2	3.3	8.1
Garret Graves	R	W	71.1	22.4	(21.0, 27.7)	22.5	17.8	14.7	91.1	(87.6, 91.8)	91.3	93.8	89.2
Others (2)			3.3	2.7	(2.2, 3.2)	4.6	4.7	3.7	1.5	(1.2, 1.8)	2.8	3.0	2.7
Black turnout/BVAP			*22.3*										
White turnout/WVAP			*16.4*										
2016 November													
Richard Lieberman	D	W	14.9	45.7	(40.3, 47.2)	48.8	48.4	44.0	5.6	(5.0, 8.6)	4.3	4.5	6.9
Jermaine Sampson	D	B	9.0	36.3	(33.4, 37.2)	38.6	36.8	36.2	1.1	(.8, 2.4)	0.6	0.0	2.1
Garret Graves	R	W	62.7	10.1	(8.4, 19.8)	7.4	5.2	13.1	79.8	(75.4, 80.5)	80.4	79.4	77.1
Bob Bell	R	W	10.2	5.0	(4.0, 5.8)	5.3	5.6	3.7	11.9	(11.6, 12.3)	11.7	12.7	10.9
Others (2)			3.3	2.9	(2.3, 3.4)	3.1	3.9	2.9	1.6	(1.3, 1.8)	2.9	3.3	2.9
Black turnout/BVAP			*51.7*										
White turnout/WVAP			*67.3*										
Congressional District 3													
2020 November													
Braylon Harris	D	B	17.9	65.8	(64.4, 67.0)	64.0	69.1	69.1	4.1	(3.5, 4.7)	3.2	1.7	6.1
Rob Anderson	D	W	11.6	22.8	(21.8, 23.8)	22.5	22.4	22.9	8.5	(7.9, 9.0)	8.1	7.9	8.6
Clay Higgins	R	W	67.8	10.0	(8.9, 11.2)	12.1	6.7	6.5	85.2	(84.6, 85.7)	85.7	87.5	82.3
Brandon LeLeux	L	W	2.8	1.4	(1.1, 1.8)	1.9	1.7	1.5	2.3	(1.9, 2.6)	3.1	3.0	2.9
Black turnout/BVAP			*12.9*										
White turnout/WVAP			*11.9*										
2016 November													
Jacob Hebert	D	W	8.9	30.8	(24.8, 32.3)	33.5	33.0	32.1	2.2	(1.6, 4.6)	1.5	1.4	3.4
Larry Rader	D	B	8.7	33.5	(27.5, 35.1)	35.4	37.2	36.0	1.6	(1.2, 3.9)	1.0	0.4	2.9
Clay Higgins	R	W	26.5	6.4	(4.4, 12.5)	3.1	4.4	4.2	32.0	(28.9, 32.9)	33.7	34.7	30.0
Scott Angelle	R	W	28.6	20.1	(19.0, 22.7)	16.2	17.3	16.9	31.6	(30.8, 32.0)	32.3	32.9	30.4
Other Reps (6)	R		25.6	7.0	(5.8, 9.9)	6.1	4.6	8.1	31.8	(31.0, 32.1)	31.6	29.4	32.1
Others (2)			1.7	2.3	(1.9, 2.8)	4.3	3.5	2.6	0.7	(.6, .9)	1.1	1.3	1.3
Black turnout/BVAP			*53.8*										
White turnout/WVAP			*65.8*										

[184]

Dr. Handley stated that polarization was less evident in CD 2; in her report, she finds that the CD 2 contests were "probably not racially polarized."[185] At the hearing, she explained that CD 2 is distinguishable for its relatively high amount of White crossover voting.

Dr. Handley also analyzed whether the Legislature's enacted map provides opportunities for Black voters to elect the candidate of their choice. She analyzed this by recompiling election results from previous elections into the district boundaries in CD 2,

[184] PR-87, p. 9 *et seq.*
[185] *Id.*

3, 4, 5, and 6, to see how those elections would have played out.[186] In the enacted plan, Dr. Handley found, only CD 2 is an opportunity district:[187]

Enacted Plan District	Effectiveness Score #1: Percent of Contests Black-Preferred Candidate Wins or Advances to Runoff From All 15 Elections	Effectiveness Score #2: Percent of Two-Candidate Contests Black-Preferred Candidate Wins
1	0.0%	0.0%
2	100.0%	100.0%
3	6.7%	0.0%
4	26.7%	0.0%
5	26.7%	0.0%
6	6.7%	0.0%

Dr. Handley opines that, by contrast, Plaintiffs' illustrative plans feature two districts that perform for Black voters. She explained that a "district-specific, functional analysis of this plan reveals that it offers two districts that are likely to provide Black voters with an opportunity to elect the candidates of their choice to Congress: Districts 2 and 5."[189] Specifically, Dr. Handley concluded that in the CD 5 proposed in Cooper's Illustrative Plan 1, 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 two-candidate contests.[190] And, in the CD 5 proposed in Cooper's Illustrative Plans 2 and 2A, Dr. Handley concluded that the Black-preferred candidate is likely to win or advance to a runoff in 86.7% of contests, and to win 77.8% of all two-candidate contests.[191] Her results appear in the following table from her report:

[186] Dr. Handley testified that she did not include CD 1 in this analysis because CD 1 provided no voters to the proposed CD 5.
[187] PR-12, p. 11.
[188] *Id*.
[189] *Id*. at p. 12.
[190] *Id*. at p. 13.
[191] PR-87, p. 6; PR-91, p. 3.

Table 6: Effectiveness Scores for Congressional Districts in Illustrative Plan

Illustrative Plan District	Effectiveness Score #1: Percent of Contests Black-Preferred Candidate Wins or Advances to Runoff From all 15 Elections	Effectiveness Score #2: Percent of Two-Candidate Contests Black-Preferred Candidate Wins
1	13.3%	0.0%
2	100.0%	100.0%
3	0.0%	0.0%
4	26.7%	0.0%
5	80.0%	77.8%
6	0.0%	0.0%

[192]

Based on her analysis of the data, Dr. Handley concluded that because of the clearly racially polarized voting in Louisiana, Black voters can only elect their candidate of choice if a district is drawn that gives them that opportunity.

On cross-examination, Dr. Handley agreed that it was theoretically possible for an "effective" district – that is, a district where Black voters have the opportunity to elect the candidate of their choice – to have less than 50% BVAP. On redirect, Dr. Handley discussed the BVAP percentages in Cooper's illustrative plans and asserted that her conclusions on the effectiveness of the proposed districts did not change depending on which definition of Black was used. Regardless, she stated, none of the enacted plan districts perform to allow Black voters an opportunity to elect their preferred candidate except for CD 2.

[192] PR-12, p. 13.

Defendants offered various expert witnesses on the inquiry into racially polarized voting. Dr. John Alford was tendered and accepted, pursuant to Plaintiffs' stipulation, as an expert on *Gingles* II and racially polarized voting. Dr. Alford was retained to provide analysis related to evidence of racially polarized voting in this case; his first step, he explained, was to attempt to replicate the ecological inference (EI) analysis performed by Plaintiffs' expert witnesses, Dr. Handley and Dr. Palmer. Dr. Alford opined at the hearing that EI is the most reliable and widely used of the available techniques in this area, and that it is the "gold standard" widely relied on by experts.

Dr. Alford reported that he very closely replicated Dr. Handley and Dr. Palmer's results, "with only the slight variation that one would expect given the inherent variation associated with [EI] estimations."[193] Because he found their data reliable, Dr. Alford relied for his report "entirely" on Dr. Handley and Dr. Palmer's EI conclusions on cohesiveness of voting among Black and White Louisianans. Overall, Dr. Alford opined that the observable polarization of voting in Louisiana is due not to race, but to partisanship. Black voters generally vote for Democratic candidates, he stated, regardless of the race of the candidate. In his report, Dr. Alford offers an example to illustrate how Black support is not in lockstep with the race of the candidate. Looking at Presidential election results in Louisiana, Dr. Alford states that Black voters supported the all-White ticket of Clinton/Kaine at a rate of 97.5%, while two tickets featuring Black candidates had less – Obama/Biden had 91.6% Black support, with Biden/Harris at 89.3%. On cross-examination, Dr. Alford agreed that in partisan contested elections, Black voters in Louisiana cohesively vote for the same candidates.

[193] AG-1, p. 3.

Defendants also offered the report and testimony of Dr. Jeffrey Lewis, tendered as an expert in the fields of political science, census data analysis, and statistics, specifically racially polarized voting. Plaintiffs stipulated to the tender of Dr. Lewis. In his report, Dr. Lewis describes the scope of his inquiry as calculating "the fraction of voters in the November 3, 2020 Presidential General election who identified as Black in the second and fifth districts of the illustrative Louisiana congressional district plans proposed by the plaintiffs."[194] Next, he attempted to "estimate the support of Black and of white (non-Black) voters for Biden/Harris in the same election among voters residing in each of those illustrative districts."[195] Lastly, Dr. Lewis set out to "calculate the support for Biden/Harris among all voters residing in each illustrative district and the support that Biden/Harris would have received in those same districts in the absence of any white 'crossover' voting."[196]

Dr. Lewis concludes that the illustrative districts proposed by Plaintiffs could be "effective" – that is, they could still provide Black voters an opportunity to elect the candidate of their choice – if they were drawn to have less than 50% BVAP. The reason, he asserts, is White crossover voting. Dr. Lewis testified that his analysis suggests that Biden/Harris would have received over 50% of the vote in all of the illustrative districts, "even if the BVAP in those districts was reduced to as low as 30 percent in the second district or as low as 48 percent in the fifth district."[197] His findings are set forth in the following chart from his report:

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[194] LEG-2, p. 3.
[195] *Id*.
[196] *Id*. at p. 3-4.
[197] *Id*. at p. 7.

District 2

Plan	Percent Black voters	Percent support for Biden/Harris: All voters	Black voters (EI Estimate)	White voters (EI Estimate)	Without white cross-over votes
C130: Robinson/Fairfax	51.18	69.15	99.13	36.35	50.73
C131: Galmon-1/Cooper-1	49.94	68.96	98.57	39.01	49.23
C132: Galmon-2/Cooper-2	50.33	69.11	97.69	40.89	49.16
C133: Galmon-3/Cooper-3	49.79	68.76	98.52	38.85	49.06

District 5

Plan	Percent Black voters	Percent support for Biden/Harris: All voters	Black voters (EI Estimate)	White voters (EI Estimate)	Without white cross-over votes
C130: Robinson/Fairfax	49.66	55.34	96.91	12.10	48.13
C131: Galmon-1/Cooper-1	47.53	54.37	96.58	13.16	45.90
C132: Galmon-2/Cooper-2	46.88	53.24	96.28	13.18	45.14
C133: Galmon-3/Cooper-3	49.00	55.94	96.75	13.93	47.41

[198]

Dr. Lewis conceded that his conclusion was based on a single exogenous election and that a "complete analysis. . .would require consideration of additional elections and more extensive consideration of whether EI estimates of support for each candidate were reliable in this context among other things."[199]

To address *Gingles III*, Defendants offered the opinion testimony of Dr. Tumulesh Solanky, tendered as an expert in the fields of mathematics and statistical analysis. Dr. Solanky was asked to examine voting patterns in the state of Louisiana, focusing in particular on East Baton Rouge Parish. Dr. Solanky opined that East Baton Rouge Parish votes "very differently" compared to the other parishes that are part of Plaintiffs' illustrative CD 5. Specifically, he stated, East Baton Rouge votes more strongly in favor of the minority-preferred candidate than other parishes. Dr. Solanky relies on the 2020 presidential election as the basis for his conclusion. He found that although there were 13.0% more White voters than Black voters who participated in the election, the minority-

[198] *Id.*
[199] LEG-2, p. 6.

preferred candidate (Biden) won by 13.0% in East Baton Rouge Parish. Therefore, Solanky opines, "it is apparent that. . .White voters did not vote as a bloc to defeat the black (minority) preferred candidate."[200]

On cross-examination, Dr. Solanky conceded that he is not a voting expert and that his only familiarity with the concept of racially polarized voting is derived from reading the other expert reports in this case. He emphasized that he did not conduct a racially polarized voting analysis in his report; instead, he investigated the assumption that Black and White voters vote similarly regardless of which parish they live in. He found that assumption not to be true.

C. The Senate Factors and Proportionality

Plaintiffs offered several expert witnesses who presented testimony relevant to the Court's consideration of the Section 2 totality of the circumstances inquiry, which is analyzed by reference to the Senate Factors, *inter alia*. The first such witness was Dr. Traci Burch, tendered as an expert in the fields of political behavior, political participation, and barriers to voting. An Associate Professor of Political Science at Northwestern University who has testified in several federal court cases related to voting rights, Dr. Burch testified that she was asked to evaluate the Senate Factors relevant to this case in Louisiana, particularly Factors 5, 6, 7, 8, and 9. In her report, she presents a useful summary of her opinions, reproduced below:

[200] ARD-2, p. 12.

1. Senate Factor 5: There are large gaps in educational attainment, unemployment, and other socioeconomic indicators between Black and White Louisianans. Research shows that these disparities are the result of contemporary and historical discrimination by government and market institutions and actors. Educational attainment and other socioeconomic indicators are important predictors of voting behavior.

2. Senate Factor 5: Several cities in Louisiana are marked by racial residential segregation, which has been shown to affect voting. These patterns of residential segregation are the result of contemporary and historical racial discrimination by government and market actors.

3. Senate Factor 5: Health outcomes vary by race in Louisiana; health is also an important predictor of voter turnout. Health disparities in Louisiana are shaped by government and market policies that affect the sites of environmental hazards as well as access to health care.

4. Senate Factor 5: Criminal justice involvement also affects voting, and criminal justice outcomes vary by race in Louisiana. Black people are overrepresented in Louisiana's correctional populations. Research has shown that racial discrimination played a role in racial disparities in criminal justice in Louisiana in the past and continues to do so today. Patterns of criminal justice outcomes cannot be explained fully by the differential commission of crimes by race.

5. Senate Factor 6: Political campaigns in Louisiana have historically been and remain marked by implicit and explicit racial appeals.

6. Senate Factor 7: Black people are one third of Louisiana's overall population, yet are underrepresented among elected officials at all levels of government, including among executives (such as Governor, Lieutenant Governor, and Mayors), federal and state legislators, and judges.

7. Senate Factor 8: Policy outcomes, such as with respect to infrastructure, do not track the specific needs of the minority community in several ways. Moreover, Black Louisianans often express the belief that they are not valued equally by elected representatives in both public comments and surveys.

8. Senate Factor 9: Although supporters of SB5 and HB1 offered several justifications for passing SB5 and HB1, including respect for traditional redistricting principles such as minimizing deviations from the ideal district population, compactness, keeping precincts and parishes whole, keeping traditional district boundaries, and maintaining communities of interest, the Legislature ultimately elected not to pass legislation proposing maps with two majority-minority districts that more closely conformed to these traditional redistricting principles than SB5 and HB1.

9. Senate Factor 9: Sponsors of SB5 and HB1 provided no evidence that they tried to draw an additional majority-minority district, nor did they provide evidence that adding a second majority-minority district would fail to allow Black Louisianans an opportunity to elect a candidate of their choice.

(PR-14, p. 6-7).

Dr. Burch also offered opinions on partisanship and race. She opines that, based on her examination of relevant political science literature, "racial identity and racial attitudes shape partisanship and party cohesion, and have become increasingly linked since 2008."[201] For example, Dr. Burch asserts, Black voters consistently identify strongly with the Democratic Party, a fact which scholars have concluded is not explained by socioeconomic status, policy preferences, or ideology.[202] Instead, Dr. Burch explains, this unified Democratic support is caused by the "sense of racial linked fate, or the degree to which a Black person believes that their fate is tied to the fate of the race, and in the social pressure to conform to group ideas of Black uplift."[203] Overall, in Dr. Burch's opinion, attributing the polarization of voting in Louisiana to party cohesion instead of race is flawed because it "ignores the rather strong evidence in the literature that race and racial attitudes increasingly drive partisanship and vote choice."[204]

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[201] PR-89, p. 2.
[202] *Id*. at p. 5.
[203] *Id*.
[204] *Id*. at p. 6.

Plaintiffs offered the expert testimony of Dr. Allan Lichtman, a professor of American Politics at American University who has testified as an expert in roughly 100 cases, including voting rights cases considered by the Supreme Court, and in this Court in *Terrebonne Parish Branch NAACP v. Jindal*.[205] Dr. Lichtman opined that all nine of the Senate Factors are present in Louisiana contemporarily and operate to impede the ability of Black voters to participate in politics and elect candidates of their choice. The factors do not exist in isolation, he stated; instead, they synergistically work together to produce vote dilution.

As to Senate Factor 1, Dr. Lichtman opined that Louisiana has not only a history of voting discrimination, but an "ongoing history." He cited issues like at-large elections, the closure of polling places, and felon disenfranchisement as operating to affect voter access. Louisiana's poor educational attainment and outcomes also impairs Black Louisianans' ability to engage, he stated, since research indicates that education is a prime determinant of political participation.

Dr. Lichtman next addressed Senate Factor 2, which asks whether voting is racially polarized. Like Dr. Palmer and Dr. Handley, he opined that Louisiana has "extreme" racially polarized voting. According to Dr. Lichtman, Black voters vote almost unanimously for Democratic candidates, while Republicans bloc vote against those candidates of choice. This polarization, he explained, is inextricably tied to race. In his view, party labels by themselves are meaningless.

As to Senate Factor 5, which inquires as to "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such

[205] 274 F. Supp. 3d 395 (M.D. La. 2017).

areas as education, employment and health, which hinder their ability to participate effectively in the political process,"[206] Dr. Lichtman opines that Louisiana has "major" socioeconomic disparities, extending to almost every area of significance in people's lives. He cited income, unemployment, poverty, dependance upon welfare, homeownership rates, vehicle ownership, internet access, and educational attainment as areas in which Black Louisianans are significantly less well-off than White ones. The record evidence summarizes the socioeconomic disparities in the following charts:

Senate Factor 5

TABLE 10 ECONOMIC MEASURES, BLACK (INCLUDING MULTI-RACIAL) AND NON-HISPANIC WHITE PEOPLE, LOUISIANA		
MEASURE	AFRICAN AMERICANS	NON-HISPANIC WHITES
MEDIAN HOUSEHOLD INCOME	$32,631	$61,967
MEDIAN FAMILY INCOME	$42,430	$79.574
PER-CAPITA INCOME	$19,464	$34,690
ALL PERSONS IN POVERTY	29.4%	12.7%
CHILDREN IN POVERTY	43.2%	15.0%
UNEMPLOYED	8.0%	4.2%
EMPLOYED MANAGEMENT, PROFESSIONAL	26.3%	40.4%
HOUSEHOLD RECEIVED FOOD STAMPS LAST 12 MONTHS	27.0%	8.6%
HOMEOWNERS	48.8%	76.6%
MEDIAN HOME VALUE	$132,400	$186,700
NO VEHICLE AVAILABLE IN HOUSEHOLD	16.5%	4.7%
NO BROADBAND INTERNET	15.7%	27.8%
Source: U. S. Census, American Community Survey, 2019, 1-Year Estimates.		

[207]

[206] *Gingles*, 478 U.S. at 36–37 (quoting S. Rep. No. 97-417 at 28–29).
[207] GX-3, p. 81.

TABLE 12 HEALTH MEASURES, BLACK AND NON-HISPANIC WHITE PEOPLE, LOUISIANA		
MEASURE	AFRICAN AMERICANS	NON-HISPANIC WHITE S
INFANT MORTALITY RATE PER 1,000 LIVE BIRTHS	12.4	5.3
LOW BIRTH WEIGHT BABIES	15.5%	7.8%
LIFE EXPECTANCY	72.4	76.7
ADULT MEN POOR OR FAIR HEALTH	25%	18%
ADULT WOMEN POOR OR FAIR HEALTH	28%	21%
COMPOSITION OF MEDICAL SCHOOL GRADS	8.3%	72%
NON-ELDERLY MEDICAID	47%	20%
WITH PRIVATE INSURANCE	43.3%	67.5%
WITH NO INSURANCE	8.9%	6.9%

TABLE 11 EDUCATION MEASURES, BLACK (INCLUDING MULTI-RACIAL) AND NON-HISPANIC WHITE PEOPLE, LOUISIANA		
MEASURE	AFRICAN AMERICANS	NON-HISPANIC WHITES
HIGH SCHOOL GRADUATES OR MORE AGE 25+	82.1%	88.9%
BACHELOR'S DEGREE+ AGE 25+	17.0%	28.9%
% AT OR ABOVE BASIC 8TH GRADE MATH	41%	77%
% AT OR ABOVE BASIC 8TH GRADE READING	52%	79%
HIGH SCHOOL GRADUATION RATE	73%	83%

[208] *Id*. at p. 83.
[209] *Id*. at p. 82.

Dr. Lichtman also testified about Senate Factor 6, related to the use of racial appeals in campaigns, concluding that Louisiana campaigns feature both subtle and overt racial appeals, and stated that such appeals are used by winning campaigns in Louisiana. Dr. Lichtman cited advertisements and campaign materials promoted by David Vitter, Mike Foster, Steve Scalise, Mike Johnson, John Kennedy, and various Republican-affiliated organization that, in his view, constituted racial appeals. As for Senate Factor 7, which calls for an analysis of "the extent to which members of the minority group have been elected to public office in the jurisdiction,"[210] Dr. Lichtman points out that no Black person has held statewide office in Louisiana since Reconstruction.

Dr. Lichtman further concluded that with respect to Senate Factor 8, which looks to whether elected officials are responsive to the particularized needs of the minority group, the state has not been responsive. In his report, he looks at five different areas: public education, health care, economic opportunity, criminal justice, and the environment, and concludes that chronic disparities that disproportionately affect Black Louisianans have gone largely unaddressed by elected officials.

Senate Factor 9 asks "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." Dr. Lichtman opines in his report that "Louisiana has no significant justification for its failure to create a second majority-Black district in the post-2020 redistricting process."[211] At the hearing, he disputed Defendants' assertion that the concept of "core retention" is a valid reason not to create another majority-minority district. First, core retention, while it may be a preference, is not a legal *requirement* like one

[210] *Gingles*, 478 U.S. at 36–37 (quoting S. Rep. No. 97-417 at 28–29).
[211] GX-3, p. 60.

person, one vote. Second, Dr. Lichtman testified that prioritizing core retention risks freezing in the inequities of the previous map. If core retention was the key factor in redistricting as Defendants assert, Dr. Lichtman stated, there would never be a remedy for Voting Rights Act violations, because states would be bound to replicate the same maps over and over again.

Nor, Dr. Lichtman testified, does the fact that the 2011 districting map was precleared by the Justice Department provide justification for enacting a carbon copy during this round of redistricting. After all, he explained, preclearance does not mean that a map is not violative of the Voting Rights Act; it only means that the plan is not *retrogressive* with respect to the previous plan; that is, it did not go from one majority-minority district to none, for example.

Dr. Lichtman opined that essentially all of the Senate Factors support a finding of vote dilution with respect to the Louisiana congressional maps. On cross-examination, he acknowledged that the Black candidate of choice prevailed in the last gubernatorial races in Louisiana, but cautioned that "one swallow does not make a spring." Asked whether the mayor of Baton Rouge is Black, Dr. Lichtman stated that she is, adding that the fact that the majority-Black city of Baton Rouge has a Black mayor only proves the point that Black-preferred candidates can win in Black jurisdictions, but they are being shut out in White jurisdictions and White districts.

Plaintiffs further offered the reports[212] and testimony of R. Blakeslee Gilpin, a history professor who was accepted as an expert in the field of Southern history with Defendants' stipulation. At the hearing, Dr. Gilpin testified about Louisiana's long history

[212] PR-13; PR-88.

of discrimination against its Black citizens, and how that history has contributed to voter disenfranchisement and discrimination, both historically and on an ongoing basis. Dr. Gilpin testified that Louisiana's history is marked by a remarkable amount of doggedness and determination to stop Black people from voting.

Dr. Gilpin cites property requirements, poll taxes, literacy tests, and the grandfather clause as historical examples of denying Black Louisianans the ability to vote. Dr. Gilpin notes that there is no record of "a single Black Louisianan elected to office until the 1940s," and from 1910 until 1949, "less than 1% of Louisiana's voting age African-American population was able to register to vote."[213] The passage of the VRA in 1965 was not a magic bullet, he asserts. In fact, he explains, the Voting Rights Act era saw widespread attempts to dilute Black voting strength in Louisiana, including reliance on at-large voting and racial gerrymandering. Dr. Gilpin reports that the Louisiana Parish Board of Supervisors has eliminated 103 polling places since 2012, requiring greater travel to vote, an issue which overwhelmingly impacts Black voters. Louisiana resisted compliance with the National Voter Registration Act, resulting in citizens not being given information about registering to vote when applying for public benefits. And, he states, there is evidence to suggest that poll workers in Louisiana continue to believe, incorrectly, that they can deny the vote to people without identification.

Dr. Gilpin cites very recent examples that, in his view, demonstrate ongoing discrimination against Black voters in Louisiana. In April 2021, the City of West Monroe entered into a consent decree after the Justice Department asserted that the at-large system used for the Board of Aldermen was proven to disenfranchise Black voters;

[213] PR-13, p. 32.

despite Black residents comprising 30% of the electorate, no Black candidate had ever been elected to the Board. West Monroe agreed to end the practice. Gilpin further cites Louisiana's resistance to expand absentee voting during the COVID-19 pandemic, which this Court in *Harding v. Edwards*[214] found placed undue burdens on Black voters.

In his supplemental report, Dr. Gilpin responds to the dispute in this case about the appropriate metric for counting Black voters, be it Any Part Black, "DOJ Black," or some other measure. Ironically, he explains, the state has long attempted to "designate anyone who could possibly be counted as Black to prevent them from voting."[215] Although Defendants' resistance to the use of Any Part Black cuts in the opposite direction, toward *restricting* who can be counted as Black, in Dr. Gilpin's opinion, the attempt "is disturbingly reminiscent of this long history of imposing racial categories to disenfranchise its Black citizens."[216]

Overall, Dr. Gilpin concludes, the "state of Louisiana's long history of racial discrimination is without dispute."[217] The powers that be in Louisiana, he opines, subscribe to the notion that there is an appropriate level of "white political control,"[218] which they have strived to maintain by consistent disenfranchisement efforts from 1868 to the present day. On cross-examination, Dr. Gilpin agreed that he did not refer to the *Hays* litigation in his overview of voting-related history in Louisiana, though, he conceded, it would have been appropriate to do so.

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[214] 487 F. Supp. 3d 498, 503 (M.D. La. 2020), *appeal dismissed sub nom. Harding v. Ardoin,* No. 20-30632, 2021 WL 4843709 (5th Cir. May 17, 2021).
[215] PR-88, p. 5.
[216] PR-88, p. 5.
[217] PR-13, p. 4.
[218] *Id*.

Several of Plaintiffs' lay witnesses offered testimony relevant to various Senate Factors, as well. Mike McClanahan, the state president of the Louisiana NAACP, testified that in his view, anyone with "one drop of Black blood" is Black, no matter what they look like on the outside. According to McClanahan, the Louisiana NAACP engages in voter registration, voter engagement, and voter training efforts involving Black Louisianans. His organization was acutely aware of the importance of the current redistricting cycle, he testified, and undertook efforts related to the Census because they knew the data collected would feed into the redistricting process. When the legislature was holding "roadshow" meetings to solicit public input on new maps, McClanahan participated in a weekly call to coordinate with members across the state to ensure attendance and participation at the roadshows. He himself testified at a roadshow, as well. Based on the maps that the Legislature enacted, McClanahan said, the legislators at the roadshows must have been asleep, or listening "with deaf ears." In his view, the enacted map was not responsive to the pleas of Black Louisianans – it did not reflect the data, the testimony of the public, or the issues raised in legislative hearings.

Once the map passed the Legislature, McClanahan testified that the Louisiana NAACP's strategy was to persuade the Governor to veto it. He explained that his membership did all in their power to get to the Governor, including calling him, holding rallies, engaging on social media, and having legislators contact him on their behalf. When the Governor did, in fact, veto the map, McClanahan felt optimistic but skeptical because of the possibility of a veto override. When the Legislature convened to vote on the veto override, McClanahan and some of his members went to the Capitol, attending session in both houses and, he said, walking the building to ensure their voices were

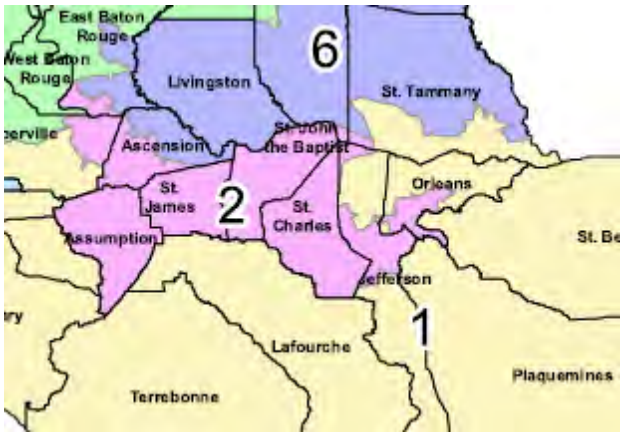
heard. When the vote came in to override Governor Edwards' veto, McClanahan testified that he saw legislators high-fiving one another, cheering, and jumping in the air. To him, this was a slap in the face of everyone who had participated in the process.

Asked about the effects of racism in Louisiana, McClanahan testified that he lives it, every day, all of his life. He testified that Black quality of life is reduced in so-called "Cancer Alley," a strip of parishes from Baton Rouge to New Orleans where, he said, chemical plants set up shop in Black neighborhoods and harm residents with their pollution. He cited officer-involved shootings and the fact that several police departments in Louisiana have operated under consent decrees as evidence that, for Black Louisianans, law enforcement does not serve and protect them equally. McClanahan testified that access to quality health care is limited for many Black Louisianans, and noted that during the COVID-19 pandemic Black people had a significantly higher death rate than the rest of the population. All of this, he believes, reflects a lack of elected official responsiveness to issues which disproportionately affect Black Louisianans.

On cross-examination, McClanahan agreed that he has been involved on various state committees related to police training, access to justice, and moving to closed party primaries. He testified that he believes that the state values the opinion of the NAACP. Asked to describe what principles a fair redistricting map would follow, McClanahan testified that, because Louisiana is roughly one-third Black, the maps should reflect that makeup. It was not his belief, he stated, that every Black voter should live in a majority-minority district. However, having two out of the six districts be majority-minority would give Black Louisianans another voice to speak for their issues, he said.

Plaintiff Dr. Dorothy Nairne offered fact testimony related to a number of the Senate Factors and to the real-world consequences of splitting parishes. Dr. Nairne is Black and resides in Napoleonville, in Assumption Parish. Dr. Nairne testified that she is a registered voter and a regular voter in CD 6, where she is represented by Rep. Garrett Graves. She stated that although she has contacted his office on several occasions, she does not see Rep. Graves at events in her community and he does not campaign in her community. Dr. Nairne explained that she lives "right on the cusp" of the split between CD 6 and CD 2. Her neighbors across the street are part of CD 2, while she is in CD 6. She testified that this disconnection makes it very difficult to organize and speak with one voice about issues affecting Assumption Parish. Dr. Nairne does community work in the river parishes area related to environmental justice and racial justice. She testified that the way the river parishes are split under the congressional map means that although they work together, but they don't vote together. Of this situation, Dr. Nairne said, "I do not believe my interests are represented. I am alienated."

Plaintiffs' counsel showed Dr. Nairne one of their illustrative maps – Fairfax's Illustrative Plan 1 – and zoomed in on her part of the state:



In this map, Dr. Nairne testified, she would be in the same district, CD 2, with the people she organizes with, the river parishes into Orleans and Jefferson. “This map makes sense to me,” she stated, adding that if this map was implemented, she knew exactly which households she would go visit to engage them in the political process.

Ashley Shelton is the President and CEO of Power Coalition, a Louisiana civil engagement organization and one of the Plaintiffs in this case. Shelton testified that she is a lifelong Baton Rouge resident and that her work with communities of color was heavily focused on redistricting this year. She testified that Power Coalition engaged one thousand Louisianans in the process, starting with the census, up through the roadshows and the special session of the Legislature. In her words, she worked to represent folks who asked for a fair redistricting process and did not receive it.

Shelton described that while citizens were speaking to legislators at the redistricting roadshows, the legislators were doodling, not looking up, and not paying attention while people told their story of generations of their families working to vote. Shelton testified that roadshow testimony consistently offered two messages to legislators: first, that the voters wanted a fair and equitable process, and second, that there should be a second majority-minority district to honor the increase in the Black population.

Shelton organized a rally of 250 people of color and allies at the state capitol to, in her words, say “hey, we’re watching you.” On the day of the veto override, Shelton testified, the vote was along racial lines. Conservative politicians cheered and celebrated, which Shelton said was deflating and felt like “a true sign of disenfranchisement.” Now,

Shelton explains, her organization is engaging with voters who feel disengaged because their efforts around redistricting were unsuccessful.

Shelton testified that Black voters in Louisiana face discrimination when it comes to voting. She stated that Black voters experience polling place changes or closures more frequently; a recent consolidation of a black polling location in New Orleans East, for example, made it a lot harder for chronic voters in that area to access the polls. Though the move was only a few miles, the new site required crossing Interstate 10. Often, Shelton explained, Black voters lack access to transportation. Many Black residents face housing insecurity and may not always be able to afford a cell phone or broadband internet.

In Shelton's view, no one makes an effort to talk to Black voters. In her experience with Power Coalition, when she creates a "universe" of voters to target for outreach, she can get 60-65% of them to turn out to vote. This proves to her that it is possible to engage Black voters but that no one is addressing Black concerns or including them in the process. Shelton testified that Black people do not vote for Democrats simply because they are Democrats – they vote for the candidate who they believe will vote with their interests. In her experience, she testified, White and conservative candidates have not centered the issues that she cares about and therefore, would not be her candidate of choice. Overall, she said, she feels that neither party has been particularly responsive to the Black community.

As exhibits to their memoranda in opposition to the *Motion for Preliminary Injunction*, Defendants offered the reports of Dr. Jeff Sadow[219] and Mike Hefner.[220] Dr.

[219] ARD-3.
[220] AG-4.

Sadow was called to testify at the hearing via videoconference, but due to difficulties with his internet connection, was not able to testify. The Court permitted Defendants to call him at a later time, but they did not. Nor did Defendants call Hefner as a witness at the hearing. Their reports were not offered as substantive evidence at the hearing. Additionally, the reports are hearsay, and there was no opportunity for cross-examination. Accordingly, the Court did not consider these reports.

D. The *Purcell* Doctrine

To address the *Purcell* issue in this case, namely, the parties' dispute over whether the November election cycle is too close to allow time for a remedy to be implemented, Plaintiffs called Matthew Block, executive counsel to Louisiana Governor John Bel Edwards. Block testified that he has experience working with the Secretary of State to develop special election plans that become necessary due to emergencies such as hurricanes and other natural disasters. He testified that during Governor Edwards' term, there have been nine instances where election dates, qualifying dates, polling locations, or other aspects of election administration had to be altered, most recently last year after Hurricane Ida. Block noted that after Ida, election dates were pushed back a month, from October/November to November/December, and that in 2020, the April/May elections were moved twice as a result of the COVID-19 pandemic.

Block testified that the state was able to successfully administer these elections, despite the need for last-minute change. He stated that he was unaware of any electoral chaos that ensued, and that he has heard nothing to dispute that the Secretary of State was able to successfully administer these elections. Overall, Block asserted, the Governor, the Secretary of State, and local officials have a lot of experience with adjusting

elections. Turning to the facts of this case, Block testified that, based on his experience working with the Legislature, it would be possible for the body to draw a new map, especially because there were bills previously filed that offer alternative maps for consideration, so the process would not be starting from scratch. The Governor has the power to call an extraordinary session of the Legislature, he stated, and the Legislature can also initiate one itself.

On cross-examination, Defendants engaged Block on the topic of Governor Edwards' efforts on behalf of the Black community in Louisiana. Block agreed that the Governor has Black support and tries to be responsive to the needs of the Black community. Block confirmed that Governor Edwards expanded Medicaid, is a proponent of criminal justice reform, helped pass a bill restoring voting rights for many felons, and supported a constitutional amendment requiring unanimous jury verdicts. Defendants listed several other examples that, in their view, represented Governor Edwards' responsiveness to the Black community – hiring Black officials in his administration, making Juneteenth a state holiday, convening a task force to track inequities in health care, and offering free COVID vaccines and testing – and Block confirmed that, indeed, Governor Edwards did all of the above. Block explained that the Governor vetoed the Legislature's enacted map because he believed that a second majority-minority district was necessary to comply with Section 2 of the VRA, and because he believed that a fair map would have a second majority-minority district.

Defendants called Sherri Hadskey, the Commissioner of Elections for the Louisiana Secretary of State. Hadskey oversees election operations and election administration, including implementation of new districting plans. Hadskey testified that

her office has already undertaken significant administrative work related to the Legislature's enacted map by reassigning and notifying voters who find themselves in a new congressional district under that plan. According to Hadskey, this effort involved voters in fifteen parishes, and 250,000 voting cards have been sent to voters who changed districts under the new map.

Hadskey noted the upcoming June 22, 2022 deadline for potential congressional candidates who wish to qualify for the ballot by the nominating petition process. She explained that candidates and voters need adequate notice of their district to allow them to decide where and how to run for office or, in the case of voters, who to vote for. If candidates do not use the nominating petition process, they must pay a filing fee and qualify between July 20-22. According to Hadskey, qualification by nominating petition is rare. Most candidates qualify by paying the filing fee.

Hadskey further testified that Louisiana's election administration resources have been strained by COVID-19 and the delay in receiving census data. If forced to implement one of Plaintiffs' illustrative plans, she testified that her office would have to undo the coding for the fifteen parishes that saw changes under the enacted plan; code the new changes under an illustrative plan; and timely notify voters and potential candidates of these changes. Hadskey expressed concern that the process would be rushed, potentially causing errors that would give rise to confusion. The process of updating records and notifying voters impacted by districting changes under the enacted map took about three weeks, she testified.

Citing a recent issue in Calcasieu Parish, where voter information was entered incorrectly, leading to the issuance of incorrect ballots, Hadskey testified that she fears

these issues could occur on a larger scale if a new map is handed down in June or July. Moreover, Hadskey testified that a national paper shortage could interfere with re-printing ballot envelopes, voter notification cards, and other items required under the law. Hadskey testified that she is "extremely concerned" about the prospect of administering the congressional election under a new map, noting that in her thirty-year career at the Secretary of State's office, she has never moved a federal election.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PRELIMINARY MATTERS

A. Standing

On the issue of standing, Secretary Ardoin is laboring under misapprehensions of both the facts and the law. As an initial matter, the jointly stipulated facts in this case establish that Plaintiff Edwin René Soulé resides in Congressional District 1,[221] and that the Louisiana NAACP, Plaintiff herein, has members "who live in every parish and in each of the six congressional districts in the enacted congressional plan."[222] Setting aside those factual corrections, the Court finds that, in the context of a vote dilution claim under Section 2, the relevant standing inquiry is not whether Plaintiffs represent every single district in the challenged map but whether Plaintiffs have made "supported allegations that [they] reside in a reasonably compact area that could support additional [majority-minority districts]."[223] In *Harding v. County of Dallas, Texas*,[224] the Fifth Circuit applied an

[221] Rec. Doc. No. 143, p. 7, ¶ 24.
[222] *Id*. at p. 9.
[223] *Pope v. Cnty. of Albany,* No. 1:11-CV-0736 LEK/CFH, 2014 WL 316703, at *5 (N.D.N.Y. Jan. 28, 2014); *See also Perez v. Abbott*, 267 F. Supp. 3d 750, 775 (W.D. Tex. 2017), *aff'd in part, rev'd in part and remanded*, 138 S. Ct. 2305, 201 L. Ed. 2d 714 (2018)(three-judge panel holding that "plaintiffs reside in a reasonably compact area that could support an additional minority opportunity district have standing to pursue § 2 claims, even if they currently reside in an opportunity district").
[224] *Harding v. Cnty. of Dallas, Texas*, 948 F.3d 302 (5th Cir. 2020).

arguably more expansive view of standing in the vote dilution context, finding that the plaintiffs had standing where "[i]t is conceded that each voter resides in a district where their vote has been cracked or packed. That is enough."[225]

In the instant case, Plaintiffs allege that they have suffered the injury of vote dilution because Black voters in Louisiana are packed into one majority-Black district that hoards Black population to prevent another majority-minority district from being drawn, and because Black voters outside of that majority-Black district have been fractured across the congressional map to prevent them from concentrating their voting strength in a district where they would have an opportunity to elect the candidate of their choice. The Fifth Circuit in *Harding* explained that, "[i]n vote dilution cases, the 'harm arises from the particular composition of the voter's own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district.'"[226] Plaintiffs herein have pled such harm and, as the Fifth Circuit counsels, "[t]hat is enough."[227] Accordingly, the Court rejects Defendants' argument that Plaintiffs lack standing.

B. Challenges to *Gingles*

Intervenor Defendant Attorney General Landry invites the Court to toss *Gingles* onto the trash heap, repeatedly arguing that the well-worn *Gingles* test is endangered and, possibly, bound for extinction. The Attorney General candidly acknowledges that *Thornburg v. Gingles* and its progeny are controlling,[228] but warns that the Supreme Court

[225] *Id*. at 307.
[226] *Id*.
[227] *Id*.
[228] "[U]nder the current understanding of claims under Section 2, Plaintiffs must meet the standard announced by *Thornburg v. Gingles* and its progeny" (Rec. Doc. No. 108, p. 4).

"has signaled. . .that it will be reviewing vote dilution claims under Section 2 and the *Gingles* standard in the coming term."[229] The Attorney General goes on to offer his analysis on the merits of the instant motion from a posture of "*[a]ssuming for now* that *Gingles* controls."[230] As Chief Justice Roberts recently observed, "[I]t is fair to say that *Gingles* and its progeny have engendered considerable disagreement and uncertainty regarding the nature and contours of a vote dilution claim."[231] However, this Court is bound to apply the law as it is, not to speculate or venture into advisory opinions. The Court will apply *Gingles* and its progeny.

C. Private Right of Action Under Section 2 of the VRA

Defendants advance another argument premised on dicta: that Section 2 of the Voting Rights Act does not confer a private right of action. In *Morse v. Republican Party of Virginia*, the Supreme Court noted that "§ 2, like § 5, provides no right to sue on its face."[232] But the Court immediately went on to quote the Senate Report accompanying the 1982 amendments to the Voting Rights Act, which declare that "the existence of the private right of action under Section 2 ... has been clearly intended by Congress since 1965."[233] Based on that, the Court wrote, "[w]e, in turn, have entertained cases brought by private litigants to enforce § 2."[234]

Inviting this Court to disregard *Morse* and scores of Section 2 voting rights cases that have been tried on the merits, Defendants cite a concurrence by Justice Gorsuch, joined by Justice Thomas, in *Brnovich v. Democratic Natl' Comm.*,[235] observing that

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[229] *Id*.
[230] *Id*. at p. 5 (emphasis added).
[231] *Merrill v. Milligan*, 142 S. Ct. 879, 882 (2022)(Roberts, J., dissenting from grant of applications for stays).
[232] *Morse v. Republican Party of Virginia*, 517 U.S. 186, 232 (1996).
[233] *Id*. (quoting S.Rep. No. 97–417, at 30).
[234] *Id*. (citing *Chisom v. Roemer*, 501 U.S. 380 (1991); *Johnson v. De Grandy*, 512 U.S. 997 (1994)).
[235] 141 S. Ct. 2321 (2021).

"[o]ur cases have assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under § 2."[236] Justices Gorsuch and Thomas concurred in the majority opinion in *Brnovich*, which considered the merits of a private action brought under Section 2 of the VRA. Defendants further argue that concurring opinions in the 2020 Fifth Circuit case *Thomas v. Reeves*[237] nod at the notion that the private right of action under Section 2 is an undecided issue, and the District Court for the Eastern District of Arkansas recently engaged this question and concluded that "the text and structure of the Voting Rights Act does not "manifest[ ] an intent 'to create ... a private remedy' " for § 2 violations."[238]

While this issue has been flagged,[239] it is undisputed that the Supreme Court and federal district courts have repeatedly heard cases brought by private plaintiffs under Section 2.[240] *Morse* has not been overruled, and this Court will apply Supreme Court precedent. Defendants' private right of action challenge is rejected.

D. How to Count Black Voters

Because the numerosity of Black voters is central to the *Gingles I* inquiry, deciding who counts as Black is a threshold issue. Three definitions have been advanced by the parties' experts: Any Part Black, "DOJ Black," and Single-Race Black. For several reasons, the Court concludes that the Any Part Black metric is appropriate when

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[236] *Id*. at 2350.
[237] 961 F. 3d 800 (2020).
[238] *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment,* No. 4:21-CV-01239-LPR, 2022 WL 496908, at *14 (E.D. Ark. Feb. 17, 2022).
[239] Justice Gorsuch's concurrence raised the private action issue to "flag one thing it [the majority opinion] does not decide." *Brnovich*, 141 S. Ct. 2321, 2350.
[240] *See, e.g., Abbott*, 138 S. Ct. at 2331-32 (2018); *LULAC*, 548 U.S. at 409; See also *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 *Shelby County v. Holder,* 570 U.S. 529, 537 (2013)("Both the Federal Government and individuals have sued to enforce § 2").

considering the *Gingles* I precondition of numerosity. This conclusion is supported foremost by the United States Supreme Court's discussion of the issue in *Georgia v. Ashcroft*, a 2003 Voting Rights Act case. There, the Court wrote:

> Georgia and the United States have submitted slightly different figures regarding the black voting age population of each district. The differing figures depend upon whether the total number of blacks includes those people who self-identify as both black and a member of another minority group, such as Hispanic. Georgia counts this group of people, while the United States does not do so. . . Moreover, the United States does not count all persons who identify themselves as black. It counts those who say they are black and those who say that they are both black and white, but it does not count those who say they are both black and a member of another minority group. Using the United States' numbers may have more relevance if the case involves a comparison of different minority groups. *Here, however, the case involves an examination of only one minority group's effective exercise of the electoral franchise. In such circumstances, we believe it is proper to look at all individuals who identify themselves as black.*[241]

There is no question that the instant case is a case involving "an examination of only one minority group's effective exercise of the electoral franchise."[242] Thus, this Court will follow the Supreme Court and "look at all individuals who identify themselves as black."[243] This conclusion is further supported by the dissenting comments of Chief Justice Roberts in the Supreme Court's grant of an emergency application for stay in *Merrill v. Milligan*. Therein, Justice Roberts stated that the District Court for the Northern District of Alabama, which applied the Any Part Black metric in its analysis, had "properly applied existing law in an extensive opinion with no apparent errors for our correction."[244] If, in the eyes of the

[241] *Georgia v. Ashcroft*, 539 U.S. 461, 474 (2003) (emphasis added).
[242] *Id*.
[243] *Id*.
[244] *Merrill v. Milligan*, 142 S. Ct. 879, 882 (2022)

Chief Justice, a court using Any Part Black "cannot be faulted for its application of *Gingles*,"[245] this Court would be remiss to apply another standard.

The Any Part Black definition is deeply rooted in Louisiana history; testimony established that the state employed a rigid system of categorizing its citizens as Black if they had any "traceable amount"[246] of Black blood. It would be paradoxical, to say the least, to turn a blind eye to Louisiana's long and well-documented expansive view of "Blackness" in favor of a definition on the opposite end of the spectrum. The Court declines to define Black Voting Age Population (BVAP) in a way that gatekeeps Blackness in the context of this Voting Rights case. Finally, the weight of the evidence presented shows that two majority-minority congressional districts that satisfy *Gingles* and respect traditional redistricting principles can be drawn in Louisiana even if more restrictive definitions of Black are applied.[247]

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[245] *Id*.
[246] PR-88, p. 3.
[247] *See* conclusions on *Gingles I*, *infra*.

II. LIKELIHOOD OF SUCCESS ON THE MERITS

A. *Gingles I*

1. Numerosity

The Court finds that Plaintiffs have established that the Black Voting Age Population (BVAP) is "sufficiently large ... to constitute a majority"[248] in a second-majority minority congressional district in Louisiana. Defendants' sole argument to the contrary is their opposition to the use of the Any Part Black metric,[249] which the Court considered and rejected above. Defendants complain that none of Plaintiffs' illustrative maps feature a majority-minority district with a BVAP over 52.05%,[250] but they simultaneously concede that *Gingles I* requires only a showing that a remedial district could contain a *50 percent plus one* majority of minority citizens of voting age.[251]

Plaintiffs have put forth several illustrative maps which show that two congressional districts with a BVAP of greater than 50% are easily achieved. Defendants' expert witness Dr. Bryan concluded the same.[252] Moreover, Plaintiffs have established that they can meet the 50% plus threshold required by *Gingles* I even if a more restrictive metric is used. Cooper calculated the BVAP for his illustrative majority-minority districts using the Non-Hispanic Single-Race Black Citizen Voting Age Population definition and found that even using this most restrictive definition of Black, the *Gingles I* numerosity requirement was achieved. The statistical results of the impact of this narrow definition of 'Black" are reproduced from the record evidence below:

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[248] *Cooper*, 137 S. Ct. at 1470 (internal quotation marks omitted).
[249] In their *Proposed Findings of Fact and Conclusions of Law*, Defendants argue that Plaintiffs' failure to establish 50% + 1 "using any definition except for the most expansive. . .compels the conclusion that, as a matter of law, they have not carried their burden under *Gingles* Step I." (Rec. Doc. No. 159, p. 107).
[250] Rec .Doc. No. 159, p. 105.
[251] *Id*. at ¶ 441.
[252] AG-2, p. 20 *et seq.*

Figure 5
2016-2020 Citizen Voting Age Population by Plan

	% NH SR Black CVAP	% NH White CVAP	NH SR Black CVAP to NH White CVAP Margin	July 2021 Black Registered Voters
2022 Plan				
District 2	61.31%	31.45%	29.86%	61.46%
Illustrative Plan 1				
District 2	52.82%	39.31%	13.51%	52.33%
District 5	50.37%	46.19%	4.18%	51.84%
Illustrative Plan 2				
District 2	53.07%	39.53%	13.54%	52.72%
District 5	50.71%	45.92%	4.79%	51.53%
Illustrative Plan 3				
District 2	52.82%	39.31%	13.51%	52.33%
District 5	51.72%	44.86%	6.86%	53.35%
Illustrative Plan 4				
District 2	52.63%	39.53%	13.10%	52.23%
District 5	50.78%	45.75%	5.03%	52.17%

[253]

Likewise, Anthony Fairfax calculated that his Illustrative Plan 2 still has two majority-minority districts if the "DOJ Black" definition is used:

Table 2 – Illustrative Plan 2's Black Voting Age Population

District	DOJ BVAP	DOJ BVAP%	AP BVAP	AP BVAP%
1	97,079	16.07%	103,416	17.12%
2	**299,351**	**50.02%**	**308,535**	**51.55%**
3	103,263	17.60%	106,965	18.23%
4	186,380	31.25%	190,267	31.90%
5	**300,776**	**50.96%**	**305,661**	**51.79%**
6	97,834	16.46%	100,925	16.98%

Note: DOJ BVAP includes Not-Hispanic Black Alone plus Not-Hispanic Black and White combined race; APBVAP includes "Any Part" Black (which contains Hispanic Black VAP)

(PR-86, p. 7)

[253] GX-29, p. 15.

Dr. Hood also concluded that two of Plaintiffs' plans demonstrate that two majority-Black districts can be achieved using the 'DOJ Black' definition:

Table 3. District Percentage Black Comparisons, 2020 Total Population

District	Benchmark	Enacted	Robinson-2A	Galmon-4	LSU/Tulane
1	15.0%	13.7%	17.5%	18.9%	15.8%
2	**59.1%**	**59.1%**	**51.9%**	**50.3%**	41.7%
3	25.5%	25.7%	19.0%	20.6%	23.5%
4	34.4%	34.9%	32.9%	32.4%	32.9%
5	34.4%	34.4%	**53.7%**	**52.1%**	34.3%
6	25.6%	24.7%	17.5%	18.2%	44.4%

[254]

Although Defendants argue that Plaintiffs can only succeed at *Gingles I* using the Any Part Black definition, they fail to refute the record evidence to the contrary. Accordingly, the Court concludes that Plaintiffs are substantially likely to prove *Gingles I* numerosity should this matter proceed to the merits.

2. Compactness

For the reasons which follow, the Court finds that Plaintiffs have demonstrated that they are substantially likely to prove that Black voters are sufficiently "geographically compact"[255] to constitute a majority in a second congressional district. The Court heard opinion testimony on this topic from William Cooper and Anthony Fairfax, who were accepted as expert witnesses by the Court upon Defendants' stipulation to their expertise in the fields of redistricting, demographics, and census data.

Cooper and Fairfax offered several illustrative plans which included two majority-BVAP congressional districts, CD 2 and CD 5. Both Cooper and Fairfax testified that the illustrative plans they drew performed better than the enacted plan on well recognized and widely-used statistical measures of compactness. Specifically, they testified that

[254] LEG-78, p. 4.
[255] *Cooper*, 137 S.Ct. at 1470.

mean compactness score is the best way to compare compactness among different plans, and that their illustrative plans, almost without exception, demonstrate higher mean compactness scores than the enacted plan.

The record evidence and testimony established following mean compactness scores for the enacted plan as compared to the illustrative plans:

Plan	**Reock**	**Polsby-Popper**	**Convex Hull**
Enacted Plan	0.37	0.14	0.62
Fairfax Illustrative Plan 1	0.42	0.18	0.69
Fairfax Illustrative Plan 2	0.39	0.20	0.71
Fairfax Illustrative Plan 2A	0.39	0.20	0.71
Cooper Illustrative Plan 1	0.36	0.19	X[256]
Cooper Illustrative Plan 2	0.41	0.19	X
Cooper Illustrative Plan 3	0.38	0.18	X
Cooper Illustrative Plan 4	0.37	0.18	X

[256] Cooper did not calculate the Convex Hull score for his plans.

Cooper and Fairfax demonstrated, without dispute, that in terms of the objective measures of compactness, the congressional districts in the illustrative plans are demonstrably superior to the enacted plan.

Like the question of numerosity, Defendants did not meaningfully refute or challenge Plaintiffs' evidence on compactness. Rather, Defendants challenged the Cooper and Fairfax illustrative maps as improperly, and Defendants submit unlawfully, motivated by considerations of race. Defendants offered opinion testimony from Drs. Bryan, Blunt, Hood and Murray to show that race was the predominant factor in configuring a second majority-BVAP congressional district in the illustrative plans.

On stipulation of the parties, the Court heard opinion testimony from Thomas Bryan, offered by the Defendants as an expert in the field of demographics. Bryan quite candidly acknowledged that he testified as an expert in a redistricting case for the first time earlier this year in *Caster v. Merrill*, and that the Alabama District Court afforded his testimony very little weight and found it to be "selectively informed" and "poorly supported."[257] After observing Bryan on the stand in this case, the Court finds that his demeanor was not so problematic as to disqualify him, but the Court found his methodology to be poorly supported. His conclusions carried little, if any, probative value on the question of racial predominance.

Bryan opined that race was a prevailing factor in the design of Plaintiffs' illustrative plans based on his "index of misallocation," which purports to flag areas where a disproportionate share of the Black population was grouped into a majority-minority

[257] *Caster v. Merrill,* No. 2:21-CV-1536-AMM, 2022 WL 264819, at *67 (N.D. Ala. Jan. 24, 2022). The Court found that Bryan "offered dogmatic and defensive answers that merely incanted his professional opinion and reflected a lack of concern for whether that opinion was well-founded." (at *62).

district. Bryan testified that he does not know if this "misallocation" analysis has ever been credited by a court in a voting rights case – he did not offer it in the Alabama case – and that he was unaware of any case in which the "index of misallocation" was accepted as probative or persuasive by a court in the voting rights context.

Even if this "misallocation" method is accepted, the factual assumptions upon which his conclusions rest are absent in this case. Hence, Bryan's conclusions are unsupported by the facts and data in this case and thus wholly unreliable. Bryan testified that his analysis is based on two assumptions – that the Black population is evenly distributed and that district splits are created randomly – both of which, he admitted, are not supported by the evidence in this case. Bryan testified that it is still possible to perform the misallocation analysis when those assumptions are not borne out, but he did not explain why, if the underlying assumptions are false, his resulting opinion is reliable. Ultimately, Bryan conceded that that he could not say how much of the "misallocation" he observed was attributable to a racially-motivated mapdrawing process, as opposed to being reflective of the reality that the Black population in Louisiana is highly segregated. This admission seriously undermines the reliability of his opinion that Plaintiffs' maps are the product of racial predominance. Furthermore, the Court accords Bryan's racial predominance opinion little weight because he testified that he did not account for compactness, communities of interest, or incumbent protection in concluding that race predominated in Plaintiffs' maps.

Finally, the Court finds that Bryan's analysis lacked rigor and thoroughness, which further undermines the reliability of his opinions. On cross-examination, Bryan was asked about Cooper's findings that his illustrative districts had greater than 50% BVAP even

using the single-race Black definition and several other methods for measuring BVAP. He testified that he looked at it but had no opinion to offer about it. For the foregoing reasons, the Court gives very little weight to Bryan's analysis and conclusions.

Defendants offered opinion testimony from Dr. Christopher Blunt, stipulated by the parties as an expert in the field of political science with an emphasis in quantitative political science and data analysis. Dr. Blunt opined that a computer simulation he used to generate congressional districts did not generate even a single majority-BVAP congressional district. Defendants argue that Dr. Blunt's simulations prove that the majority-BVAP districts produced in the illustrative plans are the product of racial predominance in the mapmaking process, i.e., racial gerrymandering. On compactness, Dr. Blunt testified that his simulated plans scored higher on the Polsby-Popper test for compactness than the illustrative plans.[258] This is both unsurprising and unpersuasive, considering Dr. Blunt's testimony that he did not account for all of the relevant redistricting principles and ran his simulations from scratch, without reference to the enacted plan. In any event, *Gingles I* does not require that Plaintiffs' illustrative plans outperform a set of computer-simulated districts on compactness. It requires only that they be reasonably compact.

The Court considers Dr. Blunt to be well-qualified by education and experience in the tendered field of expertise. However, Dr. Blunt has no experience, skill, training or specialized knowledge in the simulation analysis methodology that he employed to reach his conclusions. He testified that had never attempted a simulations analysis before this

[258] He reported the simulation maps as having a mean Polsby-Popper compactness score of .25 compared to an average of .18 or .19 for the illustrative plans (LEG-3, p. 11 (Figure 4)).

case and has never published on the topic, taught, or even taken a course on it. Dr. Blunt's simulation analysis experience is best described as novice.

Dr. Blunt testified that he downloaded publicly available code and wrote the instructions to execute the underlying algorithm. Several times, in response to questions about his analysis, Dr. Blunt admitted that he was limited in his ability to go "under the hood" of the code he was using to program in parameters that would account for certain redistricting criteria. Dr. Blunt conceded the importance of including all the relevant redistricting criteria variables into his simulations. However, he testified that he was only able to account for population equality, contiguity, compactness, and minimization of parish splits. Admittedly, his simulations were performed without regard to minimizing precinct splits, respecting communities of interest, incumbency protection, or even the criterion considered paramount by Defendants, core retention. In short, the simulations he ran did not incorporate the traditional principles of redistricting required by law. Accordingly, his opinions merit little weight.

The Court heard opinion testimony from Dr. M.V. Hood, offered by the Defendants and stipulated to be an expert in the fields of political science, quantitative political analysis, and election administration. Dr. Hood offered opinions on the performance of the illustrative plans by reference to the criteria of core retention, and opinions on compactness of BVAP statewide. The Court finds that he was generally credible but that his conclusions are not particularly helpful to the Court. The Court detects no error in Dr. Hood's core retention analysis and gives it some weight, though the conclusion that the illustrative plans have lower core retention than the enacted map, which was drawn using a target of "least-change," is hardly a blockbuster. Further, the Court notes that the

importance to be assigned to core retention as a traditional redistricting principle is hotly disputed in this case (see *infra*), and Dr. Hood willingly admitted and agreed that a desire to preserve core retention does not trump the Voting Rights Act. Dr. Hood's testimony on the numerosity of Plaintiffs' illustrative plans was likewise unilluminating, since he testified that he offers no opinion on whether DOJ Black or Any Part Black should be used to measure BVAP.

The Supreme Court directs that *Gingles I* compactness "refers to the compactness of the minority population, not to the compactness of the contested district."[259] As the Northern District of Alabama explains in *Caster v. Merrill*, "[i]f the minority population is too dispersed to create a reasonably configured majority-minority district, Section Two does not require such a district."[260] Dr. Hood opined that the Black population in Louisiana is heterogeneously distributed, a demographic characteristic not atypical of many States. In the Court's view, the fact that Louisiana's Black population is unevenly dispersed geographically when viewed statewide is not illuminating, first because congressional districts are not statewide, and second, it overlooks patterns of significant pockets or clusters of BVAP that are the result of segregated housing. The relevant question is whether the population is sufficiently compact to make up a second majority-minority congressional district *in a certain area of the state*. The fact that Plaintiffs' illustrative maps feature districts with 50% + BVAP while scoring well on statistical measures of compactness is the best evidence of compactness.

The Court accepted Defendants' witness Dr. Alan Murray as an expert in the fields of demographic analysis, spatial analytics as it relates to race, and statistics. The Court

[259] *LULAC*, 548 U.S. at 430 at 433 (quoting *Vera*, 517 U.S. at 997 (Kennedy, J., concurring))
[260] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *63 (N.D. Ala. Jan. 24, 2022).

finds Dr. Murray's opinions unhelpful and unilluminating for several reasons. Dr. Murray employed "spatial analysis" to reach the conclusion that the Black and White populations in Louisiana are heterogeneously distributed. This is nothing more than a commonsense observation which is not a whit probative of the compactness of the districts in the Plaintiffs' illustrative plans. In fact, Dr. Murray never looked at the illustrative plans. The time-tested, generally accepted statistical measures of compactness used by other experts in this case are qualitatively superior evidence and far more probative of compactness.

Dr. Murray has no background or experience in redistricting; he did not review any of Plaintiffs' illustrative plans, and, most notably, he testified that he has no basis to disagree with any of the opinions offered by Plaintiffs' experts in this case. Lastly, Dr. Murray testified that he is not aware of any court considering the type of "spatial analysis" that he performed in the context of a Section 2 case. In short, based on Dr. Murray's testimony, it is clear to the Court that his expert opinion is untethered to the specific facts of this case and the law applicable to it. Accordingly, the Court disregards his testimony as it applies to the determination of compactness.

In weighing the opinions of the competing expert witnesses the Court finds the Plaintiffs' *Gingles I* experts Cooper and Fairfax qualitatively superior and more persuasive on the requirements of numerosity and compactness.

Cooper has extensive experience drawing maps for redistricting and has been repeatedly recognized and accepted as an expert in federal voting rights cases. Cooper has familiarity with the unique voting laws and processes in Louisiana, having worked on redistricting projects in in Shreveport and in Terrebonne, Point Coupee, Madison, and

East Carroll Parishes. The Court finds that Cooper's reports[261] in this case were clear, substantiated by unrefuted empirical and statistical data, methodologically sound, and therefore reliable. His testimony was candid, forthright and indicative of an in-depth comprehension of redistricting, demographics, and census data. On cross-examination, when Cooper was pressed for detail regarding his methodology, he was frank, not defensive, and provided reasonable and coherent responses. The Court found Cooper's opinions and conclusions helpful to the Court as the trier of fact and credits his testimony favorably. The Court particularly credits Cooper's testimony that race was only one of the several factors that he considered in reaching his conclusions and drawing illustrative maps and that race did not predominate in his analysis, nor did any other single criterion. Cooper candidly admitted that he was aware of race during the map drawing process, but his testimony about his methodology persuaded the Court that race was not a predominant consideration in his analysis and that he considered all of the relevant principles in a balanced manner. As stated by the Supreme Court, "race consciousness does not lead inevitably to impermissible race discrimination."[262]

Anthony Fairfax's thirty years of experience in preparing redistricting plans make him well-qualified, in the Court's view, and his report and supplemental reports are extremely thorough and methodologically sound. Like Cooper, Fairfax remained steady under cross-examination and candidly described his process in detail. The Court did not observe inconsistencies in his testimony, nor any reason to question the veracity of Fairfax's testimony. The Court credits in particular Fairfax's testimony where he discussed how race contributed to the illustrative plans that he drew. Fairfax did not deny that he

[261] GX-1; GX-29, admitted as substantive evidence without objection.
[262] *Shaw v. Reno*, 509 U.S. 630, 646 (1993).

used his mapping software to assess the location of BVAP in Louisiana initially, but he was adamant and credible in his testimony that race did not predominate in his mapping process. Rather, he testified that he only considered race to the extent necessary to test for numerosity and compactness as required by *Gingles I.*

The weight afforded to Plaintiffs' experts, Cooper and Fairfax, is appropriate considering not a single defense expert disputed that Plaintiffs' illustrative plans are generally more compact than the enacted plan based on statistical measures.

The Court's assessment of reasonable compactness is also informed by a visual inspection of the shapes of the districts in Plaintiffs' illustrative plans. Overall, the Court observes that the districts proposed in the illustrative maps are regularly shaped, without "tentacles, appendages, bizarre shapes, or any other obvious irregularities,"[263] save a few narrow finger-shaped boundaries. Compared to the shape of CD 2 and the wraparound shape of CD 6 in the enacted plan, the illustrative plans are visually more compact.

Next, the Court turns to the question of whether Plaintiffs' illustrative plans demonstrate reasonable compactness when viewed through the lens of "traditional districting principles such as maintaining communities of interest and traditional boundaries."[264] As an initial matter, the Court will not extensively analyze the traditional criteria of equal population and contiguity, because the evidence makes clear that Plaintiffs' plans are contiguous and equalize population across districts, and these issues are not disputed.

The first factor to consider is whether Plaintiffs' illustrative plans respect existing political subdivisions, such as parishes, cities, and towns. The evidence presented by the

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[263] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *64 (N.D. Ala. Jan. 24, 2022).
[264] *LULAC*, 548 U.S. at 433 (internal quotation marks omitted).

parties largely related to parishes and to VTDs, also referred to as precincts. As for parish splits, the Court finds that Plaintiffs' illustrative plans split fewer parishes than the enacted plan. The enacted plan splits 15. Fairfax's Illustrative Plan 1 splits 14, while his Plans 2 and 2A split 12 parishes. Cooper's Illustrative Plans 1 through 4 split 10, 11, 10, and 10 parishes, respectively. Accordingly, the Court finds that Plaintiffs' illustrative maps respect political subdivision boundaries as much or more so than the enacted plan with regard to parish splits.

As for precinct splits, the Legislature's Joint Rule 21 states that districting maps should minimize precinct splits "to the extent possible."[265] The enacted plan splits no precincts, nor do any of the illustrative plans prepared by Anthony Fairfax. Likewise, it is undisputed that Cooper's Illustrative Plan 4 splits no precincts. Cooper explains in his report that, in his plans 1, 2, and 3, he only split a precinct when necessary to achieve perfect population equality among the districts. When splitting a precinct, he states that he did not do so randomly – he followed municipal boundaries, census block group boundaries, or census block boundaries. Accordingly, the Court finds that Plaintiffs' illustrative maps respect political subdivision boundaries with regard to precinct splits.

The Court next considers whether Plaintiffs' illustrative plans respect "communities of interest." The term "communities of interest" has no universally agreed-upon definition. The Legislature's Joint Rule 21 refers to the concept in the following provision:

> All redistricting plans shall respect the established boundaries of parishes, municipalities, and other political subdivisions and natural geography of the state to the extent practicable. However, this criterion is subordinate to and shall not be used to undermine the maintenance of communities of interest within the same district to the extent practicable.[266]

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[265] GX-20.
[266] *Id*.

By its Joint Rule 21, the Louisiana Legislature expressly prioritizes consideration of communities of interest to goal of preserving political subdivisions, but does not elaborate on what, exactly, comprises a community of interest. Plaintiffs' experts employed different approaches to identifying communities of interests and considering them in their illustrative maps. Fairfax, for example, explains that he used census places and landmark areas to gauge how often his maps split communities of interest, as well as socioeconomic data and roadshow testimony from community members for insight into local ideas about communities of interest. A "census place" includes municipalities and census-designated places, which generally denotes a locally known or "named" place that does not have its own governmental body. Fairfax testified that in some ways, the census places metric is more indicative of a community of interest than actual cities, because they are locally defined areas. According to Fairfax, the enacted plan splits 32 census places, while his Illustrative Plans 1 through 3 split 31, 26, and 26 census places, respectively. Cooper analyzed communities of interest in terms of Core Based Statistical Areas (CBSAs) and found that his plans split fewer CBSAs than the enacted plan. His plans also split fewer populated municipalities.[267] The citizen viewpoint testimony of Christopher Tyson and Charles Cravins, *supra,* also contributed meaningfully to an understanding of communities of interest.

Defendants did not call any witnesses to testify about communities of interest. This strikes the Court as a glaring omission, given that Joint Rule 21 requires communities of interest to be prioritized over and above preservation of political subdivisions. While the Legislative Intervenors asserted in their *Opposition* that "it is the Legislature's role to

identify communities of interest, not the Court's or Plaintiffs,'"[268] Defendants have not offered any evidence related to whether or how the Legislature did so. The Legislative Intervenors argue that the enacted plan "accounts for communities of interest identified in committee hearings, including by grouping major military installations and military communities in CD 4, preserving the Acadiana region in CD 3, and joining major cities and their suburbs as much as possible,"[269] but the argument is unsubstantiated by probative record evidence.

In their post-hearing briefs, Defendants criticize the fact that "Mr. Cooper drew Vernon Parish, home of Fort Polk, and Shreveport, home of Barksdale Air Force Base, into different districts in his illustrative plans even though they were joined in the enacted plan."[270] Defendants offer no assessment of how Plaintiffs' maps treat their other two stated communities of interest, preserving the Acadiana region and joining cities with their suburbs. The Court does not find that splitting one argued community of interest is fatal to a finding that Cooper's districts are geographically compact without sacrificing communities of interest. Cooper analyzed the enacted plan and identified splits of 18 CBSAs and 30 populated municipalities. Defendants offered no evidence of why the splits in their plan are less offensive to traditional redistricting principles than the ones in Cooper's.

Regardless, the inquiry under *Gingles I* is not whether Plaintiff's illustrative maps represent the most perfect or preferable way to draw a majority-Black district; there is no need to show that the illustrative maps would "defeat [a] rival compact district[ ]" in a

[268] Rec. Doc. No. 109, p. 21.
[269] *Id*. at p. 13.
[270] Rec. Doc. No. 159, p. 33, ¶ 139.

"beauty contest[ ]."[271] The relevant question is whether, taking into account traditional redistricting principles including communities of interest, a reasonably compact and regular majority-Black district can be drawn.

Courts struggle with analyzing and giving meaning to the subjective redistricting criteria that counsels respect for "communities of interest." This Court offers no recipe for the definition of "community of interest," but based on the testimony and evidence, the Court finds that Plaintiffs' experts demonstrated that they gave careful thought to selecting objectively verifiable indicators to identify for assessing communities of interest and calculating how often their maps split them. By those metrics, Plaintiffs' maps split locally relevant areas less often than the enacted map. To the extent that "communities of interest" is a term susceptible to clear definition, the Court finds that Plaintiffs made a strong showing that their maps respect them and even unite communities of interest that are not drawn together in the enacted map (St. Landry Parish and East Baton Rouge, for one). Defendants have not meaningfully disputed that Plaintiffs' illustrative maps respect communities of interest. Based on the testimony in this matter, the Court finds that Plaintiffs' plans consider and preserve communities of interest to a practical extent.

Next, the Court turns to the final two traditional redistricting criteria: incumbency protection and core retention. Avoiding incumbent pairing was not one of the criteria that the Legislature included in its Joint Rule 21, and incumbency protection is generally regarded as less a less important criterion.[272] Nevertheless, the Court finds that in all of Cooper's illustrative plans, each of Louisiana's six congressional incumbents would still

[271] *Vera*, 517 U.S. at 977–78.
[272] *See, e.g., Larios v. Cox*, 300 F. Supp. 2d 1320, 1348 (N.D. Ga. 2004), aff'd, 542 U.S. 947 (2004).

reside in the district where they currently live.[273] Further, Fairfax demonstrated that he could avoid incumbent pairing through slight adjustments in his Illustrative Plan 2A;[274] his earlier plans had paired two incumbents in CD 5. Although Defendants' expert Dr. Hood testified that, in his view, it would be harder for people to vote for incumbents in Plaintiffs' proposed districts because they have lower core retention than the enacted map, he did not contradict Fairfax's or Cooper's statements that they have developed plans that protect existing incumbents. In any event, "[t]here is no legal basis"[275] for a rule that every illustrative plan must protect every incumbent, but all of Cooper's maps and one of Fairfax's do so anyway. The Court concludes that Plaintiffs' maps demonstrate adherence to the traditional redistricting principle of protecting incumbents.

Lastly, the Court considers core retention. Defendants' expert Dr. Hood testified that the core retention scores for the illustrative plans are lower than those for the enacted plan, reflecting that the enacted plan retains more of the benchmark district cores than the illustrative plan. The Court does not question this conclusion – in fact, it finds that nothing could be more obvious. Plaintiffs' illustrative maps were intended to demonstrate that it is possible to draw, minding the other necessary criteria, two majority-minority districts in Louisiana instead of one. Naturally, their maps are less similar to the benchmark.

Moreover, the Court struggles to grasp why Defendants elevate the importance of core retention. They cite no case which treats core retention as dispositive of, or even central to, the *Gingles* I inquiry. Furthermore, the Legislature's own redistricting rule is

[273] GX-1, p. 25.
[274] PR-90, p. 3.
[275] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *67 (N.D. Ala. Jan. 24, 2022).

silent on core retention. As Plaintiffs highlight, Joint Rule 21 *does* include a core retention-related requirement with respect to its criteria for the *state* Legislature: 21(D)(4), which governs state redistricting provides that "[d]ue consideration shall be given to traditional district alignments to the extent practicable."[276] However, Joint Rule 21(E), which governs congressional redistricting, does not include that provision. And, although 21(E) does specify a list of other paragraphs from the Rule that apply to congressional districting as well, (D)(4) is not one of them.

Thus, the Court concludes that, although Plaintiffs' illustrative maps have lower core retention than the enacted plan, that fact is entitled to essentially no weight under the *Gingles I* inquiry. Even if core retention was demonstrated to be a relevant redistricting principle, Defendants provide the Court with no benchmark for assessing it. How much core retention is "enough"? How much of a district core must be preserved to make an illustrative map legally adequate? Ultimately, it is irrelevant. Core retention is not and cannot be central to *Gingles I*, because making it so would upend the entire intent of Section 2, allowing states to forever enshrine the status quo regardless of shifting demographics. As Defendants' own expert Dr. Hood testified, core retention does not trump the Voting Rights Act.

Ultimately, the Court finds that the illustrative plans developed by Plaintiffs' experts satisfy the reasonable compactness requirement of *Gingles* I. In Defendants' post-hearing brief, they assert that "it is only through a very specific set of contortions that a second majority-minority district can be extracted from Louisiana's demographics."[277] If Plaintiffs' maps are the result of improper "contortions," those contortions somehow went

[276] GX-20.
[277] Rec. Doc. No. 166, p. 81.

undetected by the numerous statistical measures employed to demonstrate their adherence to traditional districting principles. Plaintiffs' maps have roughly zero population deviation, contiguous districts, districts that are at least as geographically compact as the districts in the enacted plan – in fact, they are almost always more geographically compact. Plaintiffs' maps protect incumbents, reflect communities of interest, and respect political subdivisions, splitting fewer parishes than the enacted map. Cooper and Fairfax both offered persuasive testimony regarding how they balanced all of the relevant principles, including the Legislature's Joint Rule 21, without letting any one of the criteria dominate their drawing process. For these reasons, the Court finds that the illustrative plans developed by Plaintiffs' experts satisfy the reasonable compactness requirement of *Gingles* I.

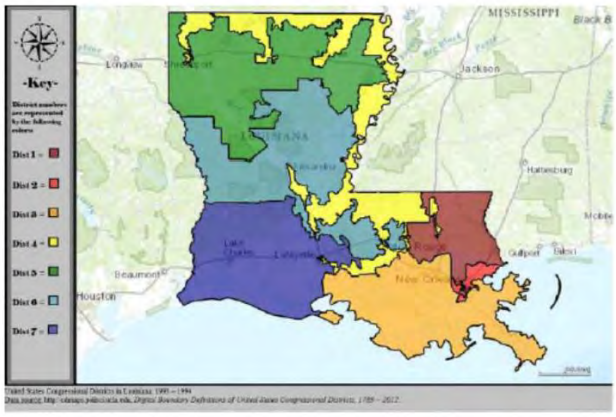
3. Equal Protection: *Hays* and Racial Gerrymandering

Defendants insist that the illustrative maps are racial gerrymanders as a matter of law. They cite the *Hays* series of cases from the 1990s, wherein Louisiana congressional maps with two majority-minority districts were invalidated as racial gerrymanders.[278] In 1993, the District Court for the Western District of Louisiana took up *Hays v. State of Louisiana* (*Hays I*), a private action which challenged a legislatively-enacted congressional map on Equal Protection grounds. At the time, Louisiana was apportioned seven congressional seats; the Legislature's map had two majority-Black districts, CD 2 and CD 4.

The Western District found that the *Hays I* map (depicted below) was the result of racial gerrymandering. The Court colorfully described the map as follows:

[278] *Hays v. Louisiana*, 839 F. Supp. 1188, 1195 (W.D. La. 1993) (*Hays I*); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996) (*Hays IV*).

> Like the fictional swordsman Zorro, when making his signature mark, District 4 slashes a giant but somewhat shaky "Z" across the state, as it cuts a swath through much of Louisiana. It begins north of Shreveport—in the northwestern corner of Louisiana, just east of the Texas border and flush against the Arkansas border—and sweeps east along that border, periodically extending pseudopods southward to engulf small pockets of black voters, all the way to the Mississippi River. The district then turns south and meanders down the west bank of the Mississippi River in a narrow band, gobbling up more and more black voters as it goes. As it nears Baton Rouge, the district juts abruptly east to swallow predominantly black portions of several more parishes. Simultaneously, it hooks in a northwesterly arc, appropriating still more black voters on its way to Alexandria, where it selectively includes only predominantly black residential neighborhoods. Finally, at its southern extremity, the district extends yet another projection—this one westward towards Lafayette—adding still more concentrations of black residents. On the basis of District 4's physiognomy alone, the Plan is thus highly irregular, suggesting strongly that the Legislature engaged in racial gerrymandering.[279]



[280]

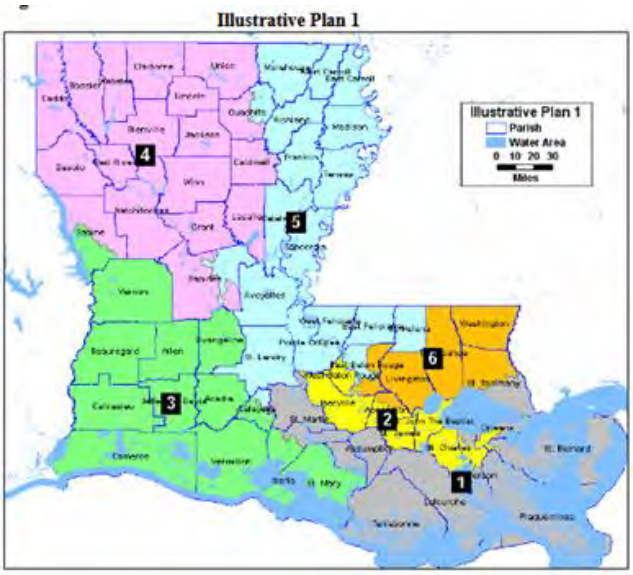
After the Western District's ruling, the Legislature adopted a new redistricting plan, and the finding of racial gerrymandering was vacated and remanded for further consideration in light of the new plan.

Defendants have repeatedly invoked *Hays* as a cautionary tale in this litigation, suggesting that because a map with two majority-Black districts was previously invalidated by a court, there can never be an acceptable map with two Black districts. In

[279] *Id*. at 1199–200 (W.D. La. 1993).
[280] ARD-3, p. 6.

fact, the Legislative Intervenor Defendants use the word "insanity" to describe efforts to draw two, quipping in their *Opposition* to the *Motion for Preliminary Injunction* that "[i]nsanity is doing the same thing over and over and expecting different results."[281] For the 2020 redistricting cycle, they assert, the Louisiana Legislature kept *Hays* in mind and "did not succumb to this malady."[282]

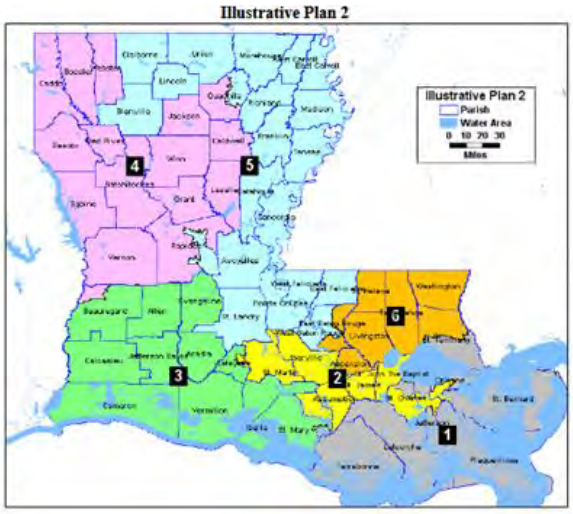
Defendants' assertion that *Hays* automatically vitiates the validity of Plaintiffs' illustrative plans is refutable by a cursory visual inspection of the *Hays* maps. In the *Hays I* map, District 2 appears on the map of Louisiana with the coherence of a sneeze. It is not disputed that Plaintiffs' illustrative plans draw a second majority-Black district by connecting parts of East Baton Rouge Parish with the Delta Parishes in their proposed CD 5. But apart from that commonality, the layout of their CD 5 is scarcely similar to *Hays* I's CD 4. Take, for example, Cooper's Illustrative Plan 1:



[283]

[281] Rec. Doc. No. 109, p. 12.
[282] *Id.*
[283] GX-1, p. 26.

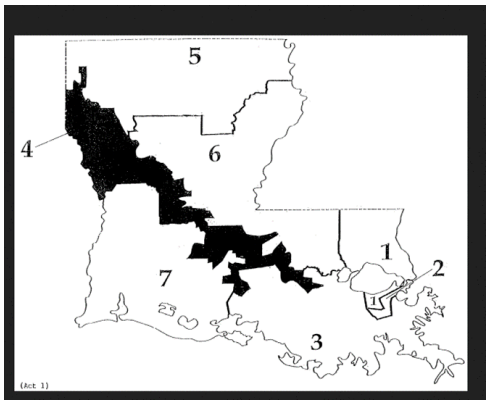
Instead of a narrow and jagged band reaching from the far northwest of the state all the way south toward the Gulf Coast, Cooper's map appears as a relatively compact, reasonable shape. Cooper's Illustrative Plan 2 reaches further to the northwest, but still avoids the plunge to the coast:



[284]

Likewise, Anthony Fairfax's illustrative maps connect East Baton Rouge to the Delta Parishes in compact form and have none of the deranged twists and turns of the map at issue in *Hays I*.

The Legislature's second crack at redistricting in *Hays* era was also invalidated on Equal Protection grounds as a racial gerrymander. The *Hays II* map looked like this:



[284] GX-1, p. 28.

The district shown in black, CD4, was a majority-minority district that the Western District described as "an inkblot which has spread indiscriminately across the Louisiana map."[285] Notably, this CD 4 does not commit what Defendants make out to be the cardinal sin of including East Baton Rouge Parish and the Delta Parishes in the same district. Clearly, then, it was not the combination of those areas that the Western District rejected – it was the diffuse and nonsensical configuration of the majority-minority districts. Plaintiffs' expert Anthony Fairfax testified that the majority-minority districts in *Hays* were extremely non-compact, to the point that he would never draw them.

The invocation of *Hays* is a red herring. By every measure, the Black population in Louisiana has increased significantly since the 1990 census that informed the *Hays* map. According to the Census Bureau, the Black population of Louisiana in 1990 was 1,299,281.[286] At the time, the Census Bureau did not provide an option to identify as more than one race. The 2020 Census results indicate a current Black population in Louisiana of 1,464,023 using the single-race Black metric, and 1,542,119 using the Any Part Black metric.[287] So, by the Court's calculations, the Black population in Louisiana has increased by at least 164,742 and as many as 242,838 since the *Hays* litigation. *Hays,* decided on census data and demographics 30 years ago, is not a magical incantation with the power to freeze Louisiana's congressional maps in perpetuity. *Hays* is distinguishable and inapplicable. Defendants argue vociferously that race was the predominant factor in the creation of CD 2 and CD 5 in Plaintiffs' illustrative maps. A plan that links locations solely on the basis of race is suspect race-based redistricting, they argue, and cannot satisfy

[285] *Hays v. State of La.,* 936 F. Supp. 360, 364 (W.D. La. 1996).
[286] https://www2.census.gov/library/publications/decennial/1990/cp-1/cp-1-20.pdf.
[287] *See* chart *infra*, p. 22.

Gingles I. Defendants assert that Cooper and Fairfax had "racial target[s]"[288] and that drawing two majority-minority districts was "non-negotiable"[289] for them. Because race was "the overriding reason for choosing one map over others,"[290] Defendants argue, quoting *Bethune-Hill*, their illustrative plans are unconstitutional.

The Court rejects this argument, for both legal and factual reasons. As discussed *supra*, there is an inherent tension between the Voting Rights Act and the Equal Protection Clause. Because "the Equal Protection Clause restricts consideration of race and the [Voting Rights Act] demands consideration of race, a legislature attempting to produce a lawful districting plan is vulnerable to competing hazards of liability."[291] "In an effort to harmonize these conflicting demands, [the Supreme Court has] assumed that compliance with the [Voting Rights Act] may justify the consideration of race in a way that would not otherwise be allowed."[292] More specifically, the Court has found "that complying with the [Voting Rights Act] is a compelling state interest, and that a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has good reasons for believing that its decision is necessary in order to comply with the [Voting Rights Act]."[293]

The Supreme Court explicitly acknowledges that some *consideration* of race is permissible in the context of the Voting Rights Act, and lower courts have recognized the sound logic of this "obvious"[294] result, reasoning that "a rule that rejects as unconstitutional a remedial plan for attempting to satisfy *Gingles I* would preclude any

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[288] Rec. Doc. No. 165, p. 6.
[289] *Id*.
[290] *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 792 (2017).
[291] *Abbott*, 138 S. Ct. at 2315 (internal quotation marks omitted).
[292] *Id*.; *Cooper*, 137 S. Ct. at 1464.
[293] *Abbott*, 138 S. Ct. at 2315.
[294] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *80 (N.D. Ala. Jan. 24, 2022).

plaintiff from ever stating a Section Two claim."[295] Indeed, as the Northern District of Alabama observed in *Caster*, every element of *Gingles* past *Gingles I* would be rendered superfluous if it was unconstitutional to account for race in the effort to satisfy numerosity. How can a plaintiff demonstrate that it is possible to draw a district exceeding 50% BVAP without locating areas of Black population and, accounting for all of the other traditional redistricting principles, trying to draw a majority-Black district that includes them? The Supreme Court in *Shaw v. Reno* captured this reality, stating that

> redistricting differs from other kinds of state decision making in that the legislature always is aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination.[296]

Plaintiffs argue that Defendants' effort to import a requirement that map-making be demonstrably race neutral into *Gingles I* was explicitly rejected by the Fifth Circuit in the 1996 case *Clark v. Calhoun County*.[297] In *Clark*, the Fifth Circuit considered whether racial predominance is a factor in the *Gingles I* inquiry and concluded, quite clearly, that it is not. In *Clark,* the Fifth Circuit considered Calhoun County's argument that, because the plaintiffs' predominant concern in drawing their proposed districts was race, those proposed districts did not satisfy *Gingles I*. For that proposition, the County relied upon *Miller v. Johnson*,[298] arguing that under *Miller*, "the gravamen of an Equal Protection claim is not the shape of the district but rather the legislature's motivation or purpose in drawing the district as it did."[299]

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[295] *Id*.
[296] *Shaw v. Reno*, 509 U.S. 630, 646 (1993).
[297] 88 F.3d 1393.
[298] 115 S.Ct. 2475, 2488 (1995).
[299] 88 F.3d 1393, 1406 (5th Cir. 1996).

The *Clark* court "agree[d] with the County's reading of *Miller* but disagree[d] that *Miller* is relevant to the first *Gingles* factor."[300] "In contrast to *Miller*'s focus on motivation," the Fifth Circuit wrote, "the first *Gingles* factor requires that the plaintiff demonstrate that the minority group is 'sufficiently large and geographically compact to constitute a majority in a single-member district.'"[301] This demonstration is typically made, the court observed, by drawing hypothetical majority-minority districts. Based on Supreme Court precedent,[302] the *Clark* court held:

> *Miller*'s emphasis on purpose does not apply to the first *Gingles* precondition. In neither case did the Court suggest that a district drawn for predominantly racial reasons would necessarily fail the *Gingles* test. To the contrary, the first *Gingles* factor is an inquiry into causation that necessarily classifies voters by their race.[303]

The court went on:

> [W]e 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. To be sure, this test of causation insists upon a compact district, and a remedial response narrowly tailored to remedying a found violation must also be compact. As we will explain, however, that tailored response must use race at the expense of traditional political concerns no more than is reasonably necessary to remedy the found wrong.[304]

Further, the *Clark* court drew a distinction between the districts proposed by the plaintiffs, which "were 'simply presented to demonstrate that a majority-black district is feasible in Calhoun County'"[305] under *Gingles I*, and the remedial map that would ultimately be developed by the County in response to the court's ruling. A remedial map, the court

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[300] *Id*.
[301] *Id*.
[302] *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt (Shaw II),* 517 U.S. 899 (1996).
[303] *Clark v. Calhoun Cnty., Miss.,* 88 F.3d 1393, 1406–07 (5th Cir. 1996).
[304] *Id*. at 1407.
[305] *Id*. (quoting *Clark,* 21 F.3d at 95).

explained, "must use race at the expense of traditional political concerns no more than is reasonably necessary to remedy the found wrong."[306] This makes sense, since illustrative maps drawn by demographers for litigation are not state action and thus the Equal Protection Clause is not triggered. On the other hand, a Court-imposed or legislatively-enacted map would be squarely subject to Equal Protection review.

In a strained attempt to get around the well-reasoned holding of *Clark* and piggyback an Equal Protection analysis onto *Gingles I*, Defendants argue that "Supreme Court and Fifth Circuit precedent have both since held that the remedial and liability inquiries are not separate but are one in the same."[307] Therefore, they contend, it is "no longer a legally available possibility that, as *Clark* assumed, a predominance analysis is appropriate at the remedial phase but not at the liability phase."[308] Defendants cite three cases in support of this argument.

In the first, *Abbott v. Perez*,[309] the Supreme Court invalidated a lower court's decision to "defer[] a final decision on the § 2 issue and advise[] the plaintiffs to consider [it] at the remedial phase of the case."[310] This is no more than a recognition of the hornbook legal principle that liability must be decided before a remedy can be ordered. *Abbott* does not hold that the liability inquiry and the remedial inquiry are the same. The *Abbott* court pointed out the lower Court's error in deferring part of the Section 2 liability inquiry to the remedial phase based on speculation that the plaintiff *might* succeed on its § 2 claim."[311]

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[306] *Id*. at 1408.
[307] *Id*.
[308] *Id*.
[309] 138 S. Ct. 2305 (2018).
[310] *Abbott v. Perez*, 138 S. Ct. 2305, 2333 (2018).
[311] *Id*. ("[c]ourts cannot find § 2 effects violations on the basis of uncertainty")(emphasis original).

The other case advanced by the Defendants, *Anne Harding v. County of Dallas, Texas*,[312] is likewise unavailing.[313] Finally, the Court finds that *Wright v. Sumter Cnty. Bd. of Elections & Registration*,[314] an Eleventh Circuit case, also poses no obstacle here. In *Wright*, the court instructed that "a district court's remedial proceedings bear directly on and are inextricably bound up in its liability findings."[315] With that in mind, the Eleventh Circuit affirmed the district court's decision, finding that the challenged "district map impermissibly diluted black voting strength in violation of section 2 of the Voting Rights of 1965."[316] The district court then, "with the help of a well-qualified special master, drew new district boundaries that plainly remedied the violation."[317] *Wright* is not authority for the proposition that the legal analysis applicable to liability and remedy are "one and the same." *Wright* states the obvious, that the liability and remedial phases are highly interrelated; it does not state that all legal theories applicable to the remedy apply with equal force during liability. As keen as Defendants are to bake the racial predominance inquiry into *Gingles I*, the Court finds no legal basis for doing so. *Clark* clearly sets forth the Fifth Circuit's rejection of the conflation of the racial gerrymandering doctrine with the vote dilution claims raised by Plaintiffs here.

Defendants also argue that, in *Bethune-Hill*, the Supreme Court clarified that a plan that meets the *Gingles* preconditions may nonetheless be unconstitutional.[318] In other

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[312] 948 F.3d 302, 310 (5th Cir. 2020).
[313] Like in *Abbott*, the Fifth Circuit in *Anne Harding* did not hold, generally, that liability and remedy are collapsed into one inquiry. It held that it was inappropriate to move to the remedy phase without a clear showing of liability; the court found that liability was not established because the plaintiffs had not demonstrated that their proposed district would "perform" for Latino voters and give them an opportunity to elect a candidate of their choice.
[314] 979 F.3d 1282, 1302–03 (11th Cir. 2020)
[315] *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1302 (11th Cir. 2020).
[316] *Id*. at 1311.
[317] *Id*.
[318] Rec. Doc. No. 165, p. 14.

words, a remedial plan that satisfies the *Gingles* factors must withstand Equal Protection scrutiny at the implementation or remedy stage. There is *no factual evidence* that race predominated in the creation of the illustrative maps in this case. Defendants' purported evidence of racial predomination amounts to nothing more than their misconstruing any mention of race by Plaintiffs' expert witnesses as evidence of racial predomination. As discussed above, it is crystal clear under the law that some level of consideration of race is not only permissible in the Voting Rights Act context; it is *necessary* if Congress's intent in passing the Voting Rights Act is to be given effect. "Race consciousness does not lead inevitably to impermissible race discrimination."[319]

In any event, the "Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in *legislative* districting."[320] Equal Protection "prevent[s] a *State*, in the absence of sufficient justification, from separating its citizens into different voting districts on the basis of race."[321] Defendants' insistence that illustrative maps drawn by experts for private parties are subject to Equal Protection scrutiny is legally imprecise and incorrect. Regardless, the record does not support a finding that race predominated in the illustrative map-making.

Plaintiffs' expert witnesses William Cooper and Anthony Fairfax explicitly and credibly testified that they did not allow race to predominate over traditional districting principles as they developed their illustrative plans. Defendants dismiss this testimony as "semantic,"[322] and they cite both Cooper and Fairfax's statements that they used 50% BVAP as a threshold as evidence that they employed unconstitutional racial targets. They

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[319] *Shaw*, 509 U.S. 630, 646 (1993).
[320] Cooper v. Harris, 137 S.Ct. 1455 (U.S.N.C., 2017) (emphasis added)
[321] *Id*. (emphasis added)
[322] Rec. Doc. No. 166, p. 82.

further cite Cooper's statement that he "was specifically asked to draw two [majority-minority districts] by the plaintiffs."[323] This is not the "gotcha" moment that Defendants make it out to be. It is well-established that in a vote dilution case, the method by which a plaintiff can prove numerosity to satisfy *Gingles I* is the production of illustrative maps demonstrating that it is possible to draw an additional 50% + majority-minority district. So, the fact that Plaintiffs asked Cooper to draw such a map is no surprise. And, while Cooper did testify that Plaintiffs asked him to draw two majority-Black districts, he also testified that he "did not have a goal to under all circumstances create two majority-Black districts" because "when developing a plan you have to follow traditional redistricting principles."[324] And Fairfax's testimony established how he considered socioeconomic data extensively in deciding where to draw his lines. Overall, the Court found Cooper and Fairfax to be highly credible witnesses, and it credits their testimony that race did not predominate in their drawing as sincere.

Defendants also accuse Fairfax of drawing race-predominant maps because he testified that he consulted race data at the beginning of his drawing process to get a sense of where BVAP was located in Louisiana, then proceeded without reference to race data, though he did occasionally pull up the BVAP percentages to check his work. The Court emphasizes yet again that "race consciousness" is not prohibited during the drawing of illustrative maps. If this was a racial gerrymandering case, Defendants' hypercritical parsing of the mapdrawers' statements for evidence of intent would be more relevant. But all Defendants have demonstrated is that the mapdrawers considered race after they

[323] Rec. Doc. No. 166, p. 79. The official transcript of the hearing is not yet available; here, the Court adopts Defendants' quotation, which they derived from the transcript prepared by their private court reporter.
[324] Rec. Doc. No. 164, p. 47.

were asked to consider race – that is, to analyze whether it is possible to draw an illustrative plan adhering to traditional criteria and satisfying the first condition of *Gingles*. This does not offend the Constitution.

In any event, if Plaintiffs' experts engaged in race-predominant map drawing, their illustrative plans would surely betray this imbalanced approach by being significantly less compact, by disregarding communities of interest, or some other flaw. But the Court found that Plaintiffs' plans outperformed the enacted plan on every relevant criteria. Moreover, the accusations that Defendants level at Plaintiffs' illustrative plans – that they pick up areas of BVAP with "surgical precision" and unite far-flung areas with little in common – apply equally to the enacted plan's CD 2. Testimony at the hearing established that the enacted CD 2 is very non-compact and includes Baton Rouge and New Orleans, two major cities with significantly different economies and representation needs, in the same district.

Race-blind map drawing is not required by precedent – in fact, racially *conscious* map drawing has been recognized as necessary to comply with the Voting Rights Act. Justice Kagan, joined by Justices Breyer and Sotomayor, addressed the issue of simulated districts in her dissent from the grant of stay in *Merrill v. Milligan*, writing:

> In Alabama's view . . the advent of computerized districting should change the way the first *Gingles* condition operates. Plaintiffs can now use technology to generate millions of possible plans, without any attention to race. Alabama claims that some number of those plans (what number is unclear) must contain an additional majority-Black district for Section 2 plaintiffs to satisfy the first *Gingles* condition. But whatever the pros and cons of that method, this Court has never demanded its use; we have not so much as floated the idea, let alone considered how it would work.[325]

[325] *Merrill v. Milligan*, 142 S. Ct. 879, 887 (2022).

This Court declines to supplant thirty years of guiding precedent in vote dilution cases in favor of simulation maps created by someone who was performing such a simulation *for the first time* and whose maps bear absolutely no resemblance to the enacted plan or the previous plan.

B. *Gingles II* and *III* – Racially Polarized Voting

Gingles II asks whether Black voters are "politically cohesive,"[326] and *Gingles III* whether White voters vote "sufficiently as a bloc to usually defeat [Black voters'] preferred candidate."[327] Based on the testimony and reports of expert witnesses at the preliminary injunction hearing, the Court finds that the Plaintiffs are substantially likely to prove both prongs.

Gingles II asks whether Black voters are "politically cohesive" – in other words, whether Black voters usually support the same candidate in elections. On this factor, Plaintiffs offered opinions from Dr. Maxwell Palmer and Dr. Lisa Handley and the Defendants offered opinions from Dr. John Alford.

Dr. Palmer was offered by Plaintiffs as an expert in the field of redistricting with an emphasis in racially polarized voting and data analysis. Defendants stipulated to Dr. Palmer's expertise in the tendered field. Dr. Palmer opines that Louisiana has "a clear pattern of racially polarized voting," where "Black voters have a clear candidate of choice in most statewide elections,"[328] and "Black and White voters consistently support different candidates."[329]

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[326] *Cooper*, 137 S. Ct. at 1470
[327] *Id*.
[328] GX-2, p. 7.
[329] *Id*. at p. 3.

Dr. Handley was tendered and accepted, based on Defendants' stipulation, as an expert in redistricting with an emphasis in racially polarized voting and data analysis. She reached the same conclusion as Dr. Palmer, opining that "[v]oting in recent elections in Louisiana is starkly racially polarized."[330] The opinions of Drs. Handley and Palmer were based on a significant amount of historical voting data that they gathered and analyzed. Their conclusions were not seriously disputed at the hearing. Defendants' expert Dr. Alford testified that he found no errors in Dr. Palmer's and Dr. Handley's work. Defendants' expert witness Dr. Solanky testified that he does not dispute Palmer's and Handley's conclusions with respect to *Gingles II.*

Dr. John Alford testified as an expert for the Defendants on racially polarized voting. He does not dispute that voting in Louisiana is polarized as between Black and White voters; rather, it is his opinion that polarized voting in Louisiana is attributable to partisanship, not race. The Court does not credit this opinion as helpful, as it appears to answer a question that *Gingles II* does not ask and in fact squarely rejects,[331] namely, *why* Black voters in Louisiana are politically cohesive. Further, the Court finds that Dr. Alford's conclusions conflict with the opinions of other experts in this case who employed more robust methodology. Dr. Alford merely looked at the results reported by Dr. Palmer and Dr. Handley and opined that polarized voting "may be correlated with race, but whatever accounts for the correlation, the differential response of voters of different races

[330] PR-12, p. 7.
[331] *Gingles*, 478 U.S. 30, 63 (1986) ("The first reason we reject appellants' argument that racially polarized voting refers to voting patterns that are in some way caused by race, rather than to voting patterns that are merely correlated with the race of the voter, is that the reasons black and white voters vote differently have no relevance to the central inquiry of § 2").

to the race of the candidate is not the cause."[332] Not only does this statement appear to concede that Dr. Alford does not know exactly why voting is polarized ("whatever accounts for the correlation"), Dr. Palmer's well-accepted ecological inference analysis contradicts it. Dr. Palmer demonstrated that the race of the candidate does have an effect; he found that Black voters support Black candidates more often in a statistically observable way. The Court finds that Dr. Alford's opinions border on *ipse dixit*. His opinions are unsupported by meaningful substantive analysis and are not the result of commonly accepted methodology in the field. Other courts have found the same.[333]

The Court rejects Defendants' attempt to append an additional requirement to *Gingles II*, namely, that Black voters' cohesion must be shown to be caused by or attributable to race instead of something else, like partisanship. The Court finds no basis for this requirement in the law.[334]

The Court credits Dr. Palmer's opinions and conclusions, finding that his methods were sound and reliable. His testimony was clear and straightforward, raising no issues that would cause the Court to question his credibility. Likewise, the Court credits the testimony and conclusions of Dr. Lisa Handley, who was accepted as an expert in redistricting with a focus on racially polarized voting. Dr. Handley's extensive expertise in the area of redistricting and voting rights is reflected in her CV and was apparent from her testimony, which was thorough, careful, well-supported by data, facts and soundly

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[332] AG-1, p. 9.
[333] *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); *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.,* 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020).
[334] For further discussion of the evidence that polarized voting in Louisiana is race-related, see the section below on Senate Factor 2.

reasoned. The Court finds the opinion testimony of Drs. Palmer and Handley to be both probative and reliable.

Defendants offered Dr. Tumulesh Solanky as an expert in the fields of mathematics and statistical analysis, to which Plaintiffs stipulated. While the Court does not question Dr. Solanky's credentials in the fields of mathematics and statistical analysis, the Court finds there is little, if any, connection between his expertise and his opinions. Solanky opined that "there is no evidence of legally significant racially polarized voting in [East Baton Rouge Parish],"[335] and that the second minority-majority district proposed by Plaintiffs is created by "pull[ing] out Black voters primarily from [East Baton Rouge Parish]."[336] According to his testimony, he has no experience in analyzing racially polarized voting patterns. Solanky used an admittedly narrow data set as the basis for his conclusions. He analyzed only East Baton Rouge Parish, which he conceded is not populous enough to form its own congressional district and would need to be analyzed with as many as 18 other parishes to form an opinion regarding the degree of polarization in a district. Dr. Solanky does not offer any opinion about majority bloc voting in any congressional district under the enacted or illustrative plans. The Court finds that Dr. Solanky's analysis is of limited utility, since at most it speaks to White voting behavior in one parish out of 64. Moreover, Dr. Solanky himself observed that East Baton Rouge is an outlier in terms of White crossover voting compared to surrounding parishes. Voting behavior in a small area that is concededly an outlier is not probative of voting patterns districtwide. Dr. Solanky's opinions are unhelpful and do not inform the Court's analysis under *Gingles II*.

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[335] Rec. Doc. No. 101, p. 20.
[336] *Id*.

Based on the evidence and the opinions of experts, the Court concludes that Plaintiffs have demonstrated that Black voters in Louisiana are politically cohesive.

Gingles III requires an inquiry into whether White voters in Louisiana vote "sufficiently as a bloc to usually defeat [Black voters'] preferred candidate."[337] This question was addressed by Plaintiffs' experts Dr. Palmer and Dr. Handley, who both concluded that they do. Dr. Handley opines that White voters "consistently bloc vote to defeat the candidates of choice of Black voters," both "statewide, in previous congressional elections in all but Congressional District 2, and in the enacted plan districts that would contribute voters to an additional Black opportunity congressional district."[338] According to her analysis, the average percentage of White voter support for Black-preferred candidates in statewide contest was 11.7%,[339] and no Black-preferred candidate was elected to statewide office in the 15 elections she examined. Dr. Palmer analyzed a different set of elections and found that White voters supported the Black-preferred candidate with 20.8% of the vote, on average.[340]

The Fifth Circuit and the Supreme Court have held that "the question here is not whether white residents tend to vote as a bloc, but whether such bloc voting is 'legally significant.'"[341] Defendants posit that White bloc voting is not legally significant if "white crossover voting is sufficient to enable the Black community to elect its preferred candidates of choice in districts below 50 percent BVAP."[342] In *Covington v. North Carolina*, which was affirmed by the Supreme Court in 2017, the District Court for the

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[337] *Cooper*, 137 S. Ct. at 1470.
[338] PR-12, p. 15.
[339] *Id*. at p. 8.
[340] GX-2, ¶ 18.
[341] *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993)(quoting *Gingles*, 478 U.S. at 55)
[342] Rec. Doc. No. 166, p. 108.

Middle District of North Carolina held that "a general finding regarding the existence of any racially polarized voting, no matter the level, is not enough."[343] Because a statistically significant level of racially polarized voting could be found at, say, 51%-49%, the court explained, merely statistically significant levels "cannot be construed as conclusive evidence of the third *Gingles* factor."[344]

The *Covington* court criticized the plaintiff's experts because they "never conducted an inquiry to determine whether racially polarized voting sufficient to enable the majority usually to defeat the candidate of choice of African-American voters was present in the challenged districts."[345] The same cannot be said of Plaintiffs' experts in this case. Both Dr. Palmer and Dr. Handley examined this issue, amassed detailed data, and arrived at the same conclusion: that White voters consistently bloc vote to defeat the candidates of choice of Black voters.

The Court also finds, based on the work of Dr. Palmer and Dr. Handley, that Plaintiffs' illustrative districts would not be opportunity districts in name only but would actually perform to allow Black voters a genuine opportunity to elect the candidate of their choice. Defendants seize on the fact that Plaintiffs' experts all agreed, during their testimony, that it is possible for districts drawn below 50% BVAP to still "perform" because there may be enough White crossover voting to allow Black voters an opportunity to elect their preferred candidate. It is true that the *Covington* court called for an analysis of crossover voting under *Gingles III*, noting that high levels of crossover voting undermine

[343] *Covington v. North Carolina*, 316 F.R.D. 117, 167 (M.D.N.C. 2016), aff'd, 137 S. Ct. 2211, 198 L. Ed. 2d 655 (2017)
[344] *Id*. at 170.
[345] *Id*. at 168.

a finding of legally significant polarized voting.[346] But the experts advanced by Defendants on this topic, Drs. Solanky and Lewis, do not move the needle. As previously noted, Dr. Solanky's analysis was confined only to East Baton Rouge Parish. His opinion that "for the 2020 presidential election it does not appear that White voters are voting as a bloc to defeat the black preferred candidate"[347] is unreliable because it is based on his analysis of one exogenous election and limited to one parish, which Solanky concedes is an "outlier." The Court was presented with no basis by which to extrapolate the voting characteristics of voters in a single outlier parish to Plaintiffs' illustrative CD2 and CD 5 generally.

The Court accepted Defendants' witness Dr. Jeffrey Lewis as an expert in the fields of political science, census data analysis, and statistics, specifically racially polarized voting. Dr. Lewis advances the opinion that majority minority districts are unnecessary because in his view, Black voters have a meaningful opportunity to elect candidates of their choice owing to White crossover voting. Dr. Lewis's analysis is informed by a single election, the 2020 Presidential general election. Using data from that single election, he constructs a hypothetical in illustrative CD 2 and CD 5 where there are no White crossover votes for the Black-preferred candidate, from which he concludes that, without White crossover voting, the Black-preferred candidates, Biden/Harris, would not have been elected except in one illustrative district.[348] This hypothetical based on limited data is not helpful to the Court's assessment of whether Plaintiff's illustrative maps "perform" for Black-preferred candidates. Likewise, Dr. Lewis's conclusion that districts with as little as

[346] *Id*. at 167.
[347] ARD-4, p. 14.
[348] LEG-2, p. 7.

30% BVAP could perform for Black-preferred candidates due to White crossover voting was based on his analysis of one exogenous election. His opinion is simply unsupported by sufficient data and is accordingly unreliable. Dr. Lewis states that further analysis was not possible due to "time limitations."[349] The Court finds this excuse less than persuasive, especially since Dr. Lewis performed his analysis using the data gathered by Dr. Palmer.[350]

White crossover voting was inherently included in the analysis performed by Dr. Palmer and Dr. Handley, and the levels they found were insufficient to swing the election for the Black-preferred candidate in any of the contests they examined. The fact that Plaintiffs' experts agreed, hypothetically, that a sub-50% BVAP district *could* perform under unspecified circumstances, is not sufficient to overcome the conclusions reached by their robust statistical analysis. Although Defendants insist on "legally significant" proof of Plaintiffs' burden, they offer only generalized speculation in rebuttal (e.g. "Dr. Palmer admitted that there *can be* meaningful white crossover voting"[351]; Dr. Handley acknowledged that there *may be* 'pockets of Louisiana where the crossover vote is higher"[352]). Defendants, having generated a theoretical factual issue, then conclude that the issue is evidence of "substantial unclarity"[353] in Plaintiffs' case that, at a minimum,

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[349] LEG-2, p. 6.
[350] Throughout these proceedings, Defendants have complained that the deadlines imposed by the Court left them unable to prepare a full defense. It had been widely known and reported on at least six months before the *Complaints* were filed in these cases that the enacted maps would likely be the subject of litigation. Defendants can hardly claim surprise, especially when they were already participating in related litigation in state court when this suit was filed. And Attorney General Landry and the Legislators chose to participate in this suit by intervention, rendering any prejudice they suffered strictly self-imposed. Moreover, the Court accommodated Defendants' request to re-set the preliminary injunction hearing after they complained that the timeline was too tight. Overall, the Court finds that Defendants' attempt to use the Court-imposed deadlines as a shield is meritless. A preliminary injunction hearing is expedited by its nature.
[351] Rec. Doc. No. 166, p. 36.
[352] *Id*. at p. 39
[353] *Id*. at p. 120.

counsels in favor of judicial deference to the discretion of the Legislature. "The choice of one safe seat [in the enacted CD 2] or two less safe seats falls well within the Legislature's discretionary choices."[354] The Court declines to follow Defendants down this very attenuated road. The hard evidence adduced by Plaintiffs' expert witnesses demonstrates that *Gingles III* is met, even by the high standard imposed in *Covington*. If there is evidence of a successful crossover district[355] in Louisiana, neither side has presented it. Defendants' insinuation that somewhere, somehow, a less than 50% BVAP district *could* regularly elect Black-preferred candidates is contradicted by the substantial record developed by Plaintiffs.

C. Senate Factors and Proportionality

Gingles counsels that a Section 2 violation is established:

> if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision 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.[356]

Courts have concluded that "it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances."[357] Indeed, here the Court finds that Plaintiffs have established that they are substantially likely to prevail in showing that the totality of the circumstances weighs in their favor. The Court first analyzes the

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[354] *Id*. at p. 121.
[355] A "district in which members of the majority help a 'large enough' minority to elect its candidate of choice" (Cooper v. Harris, 137 S. Ct. 1455, 1470 (2017)).
[356] *Gingles*, 478 U.S. at 36, 106 S.Ct. at 2759
[357] *Ga. State*, 775 F.3d at 1342 (internal quotation marks omitted).

Senate Factors (beginning with Factors 2 and 7, which *Gingles* marks as the "most important"[358]) and then turns to the proportionality issue.

1. Senate Factor 2

Senate Factor 2 examines "the extent to which voting in the elections of the state or political subdivision is racially polarized."[359] The Court already found, *supra*, that voting in Louisiana is racially polarized based on the substantial and mostly unrebutted evidence brought forward by Plaintiffs' expert witnesses, who opined that the polarization is "stark." Further, contra Defendants' assertion that polarization is attributable to partisanship and not race, the evidence of the historical realignment of Black voters from voting Republican to voting Democrat undercuts the argument that the vote is polarized along party lines and not racial lines. The realignment of Black voters from Democrat to Republican is strong evidence that, party affiliation notwithstanding, Black voters cohesively for candidates who are aligned on issues connected to race. Plaintiffs' experts Dr. Gilpin and Dr. Lichtman recounted how, in the 1860s, the Louisiana Democratic Party was the party of the Ku Klux Klan, while the Louisiana Republican Party worked for Black suffrage. During Reconstruction, Black voters in Louisiana were fervently Republican, while White voters were aligned with the Democratic party. Plaintiffs' expert Dr. Burch explains that the historic alignment began to break down after the New Deal, as Democrats were increasingly identified with racial liberalism, and Republicans with racial conservatism. Dr. Burch opines 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 liberal racial policies and the participation of Black

[358] *Gingles*, 478 U.S. at 48, n. 15.
[359] *Id.* at 36-37.

Democratic candidates. The passage of the Voting Rights Act in 1965, Dr. Lichtman observes, was the catalyst to this political party realignment.

Dr. Lichtman summarized that the Democratic and Republican parties have undergone a role reversal since the 1860s, and that Black voters were loyal not to the "label" of Republican but to their racial identity. Dr. Lichtman testified at the hearing that party labels have no meaning; what matters to voters is what candidates represent. "[P]arty identification is conjoined with race, although party labels ha[ve] come to mean the opposite of what they once were,"[360] he writes. Dr. Handley's report also cites peer-reviewed scholarly studies which show that the racial attitudes of the parties, and their positions on race-related issues, are what drives support for a particular party.

The analytical evidence of voter polarization which forms the bases for Drs. Palmer and Handley's opinions is bolstered and substantiated by the historical voting patterns described by Drs. Lichtman and Gilpin. The polarization evidence is further bolstered by fact testimony, such as Ashley Shelton who testified that in her lived experience, Black voters in Louisiana prefer Democratic candidates, not because of the party label, but because Democrats are more likely to discuss the issues that matter to Black voters. The Court finds that Senate Factor 2 weighs heavily in favor of Plaintiffs.

2. Senate Factor 7

This factor assesses "the extent to which members of the minority group have been elected to public office in the jurisdiction." It is undisputed that there has not been a Black candidate elected to statewide office in Louisiana since Reconstruction.[361] Since 1991,

[360] GX-3, p. 29.
[361] GX-3, p. 46-47; PR-14, p. 6.

only four Black Louisianans have been elected to Congress.[362] Before 1991, there was one Black Congressperson elected, and it was during Reconstruction.[363] Louisiana has never had a Black Congressperson elected from a non-majority-Black district.[364] This underrepresentation persists at other levels of government, as well. While the state is roughly one-third Black, Louisiana's State Senate is 23.1% black, and the House 22.9%.[365] There has been no Black Louisiana Governor since P.B.S. Pinchback during Reconstruction, and less than 25% of mayors in Louisiana are Black. Senate Factor 7 weighs heavily in favor of Plaintiffs.

3. Senate Factor 1

This inquiry considers "[t]he extent of any history of official discrimination in the state ... that touched the right of the members of minority group to register, to vote, or otherwise to participate in the democratic process."[366]

The Legislative Intervenors candidly concede that Louisiana has a "sordid history of discrimination."[367] In another recent voting rights case in this District, the Court found it "indisputable that Louisiana has a long history of discriminating against black citizens."[368] The expert historians who testified also recounted well-documented, undisputed historical facts of discriminatory voting laws and practices. Dr. Gilpin reported about voting restrictions like poll taxes, property ownership requirements, and literacy tests, which were first implemented before Black Louisianans were granted the right to vote. These mechanisms were first enforced against immigrants, and later against Black

[362] *Id*. at 47.
[363] *Id*.
[364] *Id*.
[365] *Id.* at 47-48.
[366] *Gingles*, 478 U.S. at 36-37.
[367] Rec. Doc. No. 109, p. 20.
[368] 274 F. Supp. 3d 395 (M.D. La. 2017).

Louisianans after their right to vote was recognized. Dr. Gilpin recounted that Black voting in Louisiana reached its peak in 1896, when Black voters made up almost 45% of registered voters.[369] This ushered in a period of onerous restrictions, which rendered Black voting all but futile. For example, the Grandfather Clause, enacted in 1898, prohibited a Black citizen from voting unless they could establish that either their father or grandfather had voted before January 1, 1867.[370] As a result, Black voting plummeted dramatically. Registration purges, the Understanding Clause, and other restrictions disenfranchised Black voters to the point that, between 1910 and 1948, fewer than 1% of Black Louisianans of voting age were able to register to vote.[371] By the passage of the 1965 Voting Rights Act, only one third of the Black population was registered.[372]

Nor did the Voting Right Act foretell an era free from racially motivated voting discrimination in Louisiana. Instead, the Act's provision for supervision of state practices meant that Louisianans were more aware of attempts to disenfranchise Black voters. From 1965 to 1999, the U.S. Attorney General issued 66 objection letters to more than 200 voting changes, and from 1990 until the end of preclearance in 2013, an additional 79 objection letters were issued.[373] Recently, in 2021, the City of West Monroe entered into a consent decree with the Department of Justice related to its use of all at-large districts for elections to the Board of Aldermen; Dr. Gilpin explains that at-large elections commonly result in disenfranchisement of Black voters.

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[369] PR-13, p. 28.
[370] GX-3, p. 9.
[371] *Id*.
[372] *Id*. at p. 10.
[373] PR-13, p. 36.

Dr. Gilpin opines that Black voter suppression results from modern day practices such as restricting access to polling places, restrictions on early voting, and limited mail voting.[374] For example, Dr. Lichtman cites a report by the U.S. Commission on Civil Rights which found that there are fewer polling locations per voter in heavily Black areas.[375] The parish with the third-highest Black population, Caddo, was found to have only one polling location for its 260,000 residents.[376] This pressure on access to polling locations is not limited to Caddo Parish, as shown by the uncontroverted testimony of Charles Cravins, an Opelousas native who described recent closing and consolidation of predominately Black polling places in St. Landry Parish, and Ashley Shelton who testified about relocation of predominately Black polling places in New Orleans East.

Defendants argue that "Plaintiffs did not present any meaningful *recent* evidence of official discrimination."[377] While "tragic," they say, "it is in the distant past and is not especially probative of this Section 2 case in 2022."[378] Defendants tout the fact that Louisiana was recently ranked 7th in the nation for election integrity[379] and the fact that there is White crossover voting[380] as evidence that discrimination is a thing of the past. They assert that the State's abysmal preclearance history is merely indicative of "backsliding"[381] and not discrimination.

Senate Factor 1 explicitly calls for an inquiry into any *history* of voting-related discrimination, but as discussed above, practices which result in barriers to Black voters

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[374] *Id*. at p. 47.
[375] GX-3, p. 14.
[376] *Id*.
[377] Rec. Doc. No. 159, p. 123 (emphasis original).
[378] *Id*.
[379] *Id*. at p. 126.
[380] *Id*. at p. 123-124.
[381] *Id*. at 125.

continue. In this context, taking a broader look is well justified. A Black Louisianan born in 1965, the year the Voting Rights Act was passed, is only 57 years old today. This is not ancient history. Defendants' contention that there is no evidence of Black voters being denied the right to vote is irrelevant. This case presents claims of vote *dilution*.

The Court is not persuaded by the facts adduced by Defendants in support of their argument that the "State of Louisiana has made significant strides in addressing its inequitable past as part of its recent history."[382] It is laudable that, for example, the LSU African-American Diversity Organization hosts programs including Umoja, a welcome event for freshman and transfer students;[383] that the Legislature recently created a task force to study the lack of minority candidates for athletic director and head coach positions in the state;[384] or that Juneteenth has been recognized as a holiday and that "many" members of the Louisiana State Bar Association have agreed to by abide by a Statement of Diversity Principles.[385] But to the extent these facts are offered as mitigation of the repugnant history of discrimination in Louisiana, they fall completely flat.

Lastly, the Court finds that Louisiana's history of discrimination has been recognized by other federal courts. In the 2017 case *Terrebonne Par. Branch NAACP v. Jindal*, Judge James Brady analyzed Senate Factor 1, finding that "Louisiana consistently ignored its preclearance requirements under Section 5,"[386] and that "Louisiana and its subdivisions have a long history of using certain electoral systems that have the effect of diluting the black vote."[387] In 1983, the District Court for the Eastern District of Louisiana

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[382] Rec. Doc. No. 159, p. 15.
[383] AG-19.
[384] AG-13.
[385] AG-18.
[386] 274 F. Supp. 3d 395, 440 (M.D. La. 2017), *rev'd sub nom. Fusilier v. Landry,* 963 F.3d 447 (5th Cir. 2020).
[387] *Id*.

concluded that "Louisiana's history of racial discrimination, both de jure and de facto, continues to have an adverse effect on the ability of its black residents to participate fully in the electoral process."[388] In 1988, that same Court took "judicial notice of Louisiana's past *de jure* policy of voting-related racial discrimination. Throughout the earlier part of this century, the State implemented a variety of stratagems 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 to 'suppres[s] black political involvement.'"[389]

There is no sincere dispute regarding Senate Factor 1. The evidence of Louisiana's long and ongoing history of voting-related discrimination weighs heavily in favor of Plaintiffs.

4. Senate Factor 3

The Court next examines "[t]he extent to which the state ... has used ... voting practices or procedures that may enhance the opportunity for discrimination against the minority group."[390] Plaintiffs cite Louisiana's open primary system and majority-vote requirement as an example of discriminatory voting procedures, explaining that if a Black candidate wins a plurality of the vote in a White jurisdiction, they will have to face the White-preferred candidate in a runoff, where Black candidates rarely win. According to Dr. Lichtman, this system was enacted in 1975 to protect White incumbents from electoral challenges.[391] Defendants dispute that the system was motivated by racial bias, arguing

[388] *Major v. Treen*, 574 F. Supp. 325, 339–40 (E.D. La. 1983).
[389] *Chisom v. Edwards*, 690 F. Supp. 1524, 1534 (E.D. La.), *vacated sub nom. Chisom v. Roemer*, 853 F.2d 1186 (5th Cir. 1988).
[390] *Gingles* at 47.
[391] GX-31, p. 7.

that Louisiana configured its primaries in this manner after a previous system was struck down by the Supreme Court in *Foster v. Love*.[392]

Dr. Lichtman points to the 2015 Lieutenant Governor race, the 2017 Treasurer race and the 2018 Secretary of State race as evidence that Louisiana's open primary system hinders the ability of Black-preferred candidates to win. The Court credits Dr. Lichtman's conclusion that the Black-preferred candidate lost in the runoff in each of these three elections, but the Court is unpersuaded that the results of three exogenous elections prove the point. The Court finds Senate Factor 3 neutral.

5. Senate Factor 4: Candidate Slating

There is no slating process for Louisiana's congressional elections, so this factor is not relevant and the Court makes no finding.[393]

6. Senate Factor 5

Factor 5 concerns "[t]he extent to which members of the minority group in the state ... bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process." Defendants concede the facts which overwhelmingly establish that Black Louisianans "...bear the effects of discrimination in such areas as education, employment, and health." The sobering facts set forth in Dr. Lichtman's tables[394] went undisputed. Defendants argue that Senate Factor 5 requires a showing that disparities *actually* prevent political participation, i.e., "proof that participation in the political process is in fact depressed

[392] 522 U.S. 67 (1997).
[393] The parties agree; see Rec. Doc. No. 162, p. 82, and Rec. Doc. No. 159, p. 135.
[394] GX-3, p. 81 - 83.

among minority citizens."[395] Defendants argue that evidence of disparities does not demonstrate a nexus between disadvantage and participation.

Common sense suggests that a Louisianan who is barely getting by, who has limited access to transportation, who is in poor health, or who is functionally illiterate, is ill-equipped to exercise the franchise. However, a plain reading of Senate Factor 5 requires a showing of hindrance. The Court further agrees the Court's observation in *Caster* requiring explicit proof of impaired participation overlooks "the question whether the lasting effects of discrimination make it *harder* for Black [voters] to participate at the levels that they do."[396] Nonetheless, the Fifth Circuit counsels Courts to require "evidence of reduced levels of black voter registration, lower turnout among black voters, or any other factor tending to show that past discrimination has affected their ability to participate in the political process." [397] Without specific evidence that these disparities manifest themselves in political participation outcomes, the Court finds that Senate Factor 5 is neutral.

7. Senate Factor 6

Plaintiffs' experts Dr. Burch and Dr. Lichtman spoke to "[w]hether political campaigns have been characterized by overt or subtle racial appeals."[398] They cite the following examples of racial appeals in Louisiana politics, among others:

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[395] *Clements*, 999 F.2d at 867.
[396] *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *73 (N.D. Ala. Jan. 24, 2022).
[397] *Clements*, 999 F.2d 831, 867.
[398] *Gingles*, 478 U.S. at 37.

- David Duke, a former Grand Wizard of the Ku Klux Klan, won three statewide elections (1990 U.S. Senate, 1991 gubernatorial open primary, and a 1991 gubernatorial runoff) by appealing "to white racial fears";[399]
- Former Governor Mike Foster, during the 1995 gubernatorial runoff election, stated that predominantly White Jefferson Parish "is right next to the jungle in New Orleans and it has a very low crime rate";[400]
- Incumbent Republican Senator David Vitter in 2010 released a campaign ad depicting Hispanic immigrants sneaking through a hole in a fence and being welcomed by people holding the banner of his opponent and a giant check made out to "all illegal aliens";[401]
- Another ad by Vitter that photoshopped Governor Edwards next to President Barack Obama and stated that Edwards and Obama were scheming to release 5,500 dangerous "thugs" and "drug dealers" back onto the streets;[402]
- Eddie Rispone, a 2019 gubernatorial candidate, produced an ad blaming Governor John Bel Edwards for crimes committed by people released from prison, featuring mugshots of Black men, then accused Governor Edwards and his family of "taking advantage of black people in Louisiana. . .since Louisiana was born."[403]

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[399] PR-14, p. 26.
[400] GX-3, p. 40.
[401] *Id*.
[402] *Id*. at p. 42.
[403] PR-14, p. 26.

This is some evidence that racial appeals are used in Louisiana politics, but the persuasive weight of the evidence is minimal. The Court finds that this factor weighs neither for nor against Plaintiffs.

8. Senate Factor 8

Senate Factor 8 invites inquiry related to "[w]hether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group."[404]

Plaintiffs rely on the reports of Dr. Burch and Dr. Lichtman for this factor, arguing that the disparities in health, housing, employment, education, and criminal justice faced by Black Louisianans are "indicative of a failure on the part of elected officials to address the needs of Black residents."[405] Plaintiffs highlight the roadshow testimony of various Louisianans cited by Dr. Burch as evidence that Black Louisianans have a sense of being overlooked by politicians.[406] On the other hand, Defendants argue persuasively that evidence of disparities is not, in and of itself, evidence of non-responsiveness.

The Defendants elicited testimony from Governor Edwards' executive counsel Matthew Block that the Governor supported Medicaid expansion, criminal justice reform, and has appointed black officials to positions of authority. Though not overwhelming, this is evidence of at least one elected official's responsiveness to "particularized needs."

Plaintiffs' showing on this factor was somewhat anecdotal and indirect, and the Court does not have sufficient evidence before it to conclude that there is a significant lack of responsiveness by elected officials in Louisiana. This factor favors Defendants.

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[404] *Gingles*, 478 U.S. at 37.
[405] Rec. Doc. No. 164, p. 92.
[406] *See* PR-14, p. 29-32.

9. Senate Factor 9

Lastly, in considering the totality of the circumstances, the Court assesses "[w]hether the policy underlying the Plan is "tenuous." While the Legislative Intervenors joined this suit on the premise that they could represent "the policy considerations underpinning"[407] the enacted plan, Defendants offered no direct evidence on that point. Not a single elected official testified about the policies or considerations underpinning the enacted plan. By contrast, Dr. Burch examined the legislative record and points to specific evidence that the reasons in favor of enacted plan offered by legislators "lacked empirical support, were vague or contradictory, or were based on misunderstandings."[408]

For example, although several members cited population equality as one of their foremost priorities for the new map, when Senator Fields presented an amendment with lower population deviation and a second majority-minority district, Senator Hewitt retreated from the previously expressed need for "zero-deviation" districts, stating that "what the courts have ruled is that . . . anything less than a hundred was kind of the objective."[409] Similarly, proposed maps with higher levels of compactness and with zero split precincts were rejected when they had two majority-minority districts. Dr. Burch recounts extensive evidence gleaned from the legislative record which amply supports her conclusion that lawmakers did not stand by their proffered justifications when they voted for the enacted map.

Defendants' advancement of the importance of core retention is, in this Court's view, evidence of the tenuousness of the justifications for the enacted plan. As ably stated

[407] Rec. Doc. No. 10, p. 10.
[408] PR-14, p. 32.
[409] *Id*.

by Dr. Lichtman, core retention is nothing more than a guarantee that inequities in the map will be frozen in place despite changes in population. Defendants' argument that they prioritized avoiding racial gerrymanders, anemically pointing to the *Hays* maps, is likewise unconvincing. The Defendants offered no persuasive or legally relevant illumination of the policies served by H.B. 1. The Court finds this his factor weighs in favor of Plaintiffs.

10. Proportionality

Section 2 expressly provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population;"[410] however, the Supreme Court has held that "whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area" is a "relevant consideration" in the totality-of-the-circumstances analysis.[411] "[P]roportionality ... is obviously an indication that minority voters have an equal opportunity, in spite of racial polarization to participate in the political process and to elect representatives of their choice...."[412]

The Court finds that Black representation under the enacted plan is not proportional to the Black share of population in Louisiana. This fact is not disputed. Although Black Louisianans make up 33.13% of the total population and 31.25% of the voting age population, they comprise a majority in only 17% of Louisiana's congressional districts.[413] Accordingly, the Court finds that the proportionality consideration weighs in favor of Plaintiffs.

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[410] 52 U.S.C. § 10301(b).
[411] *LULAC*, 548 U.S. at 426
[412] *De Grandy*, 512 U.S. at 1020 (internal quotation marks omitted).
[413] GX-1, p. 6.

The Court concludes that on the record before it, the totality of the circumstances weighs in favor of Plaintiffs' request for relief and finds that the Plaintiffs are substantially likely to prevail on the merits of their vote dilution claim.

III. IRREPARABLE HARM

The Court concludes that Plaintiffs have demonstrated that they will suffer an irreparable harm if voting takes place in the 2022 Louisiana congressional elections based on a redistricting plan that violates federal law. Voting is a "fundamental political right, because it is preservative of all rights."[414] "[O]nce the election occurs, there can be no do-over and no redress"[415] for voters whose rights were violated, and votes diluted by the challenged plan.

Defendants do not dispute or directly address Plaintiffs' arguments about irreparable harm. Instead, they posit that the real threat of irreparable harm is an injunction from this Court, which they claim "would pose an unacceptable risk of constitutional injury to hundreds of thousands of Louisiana residents"[416] because this Court would be re-imposing a map with two majority-minority districts, which was struck down as an unconstitutional racial gerrymander in *Hays* almost thirty years ago. The Court considered and rejected Defendants' contention that *Hays* maps are useful comparators here or that *Hays* is instructive, applicable, or otherwise persuasive. It is not. Accordingly, the Court finds that Plaintiffs will suffer an irreparable harm without a preliminary injunction. If the 2022 election is conducted under a map which has been

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[414] *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019) (internal quotation marks omitted)(alterations accepted). *See also Purcell v. Gonzalez*, 549 U.S. 1, 4, (2006)("the 'fundamental political right' to vote")(quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)).
[415] *League of Women Voters of N.C.,* 769 F.3d at 247.
[416] Rec. Doc. No. 166, p. 138.

shown to dilute Plaintiffs' votes, Plaintiffs' injury will persist unless the map is changed for 2024.

IV. BALANCE OF EQUITIES

Elements three and four of the preliminary injunction test, "[t]he balance of the equities and the public interest[,] "merge when the Government is the opposing party."[417] The Court concludes that protecting voting rights is quite clearly in the public interest, while allowing elections to proceed under a map that violates federal law most certainly is not. The irreparable harm to Plaintiffs' voting rights outweighs the administrative burden articulated by Defendants.

The Court further concludes that the implementation of a remedial congressional map is realistically attainable well before the 2022 November elections in Louisiana. In the 2006 case *Purcell v. Gonzalez*, the Supreme Court vacated a lower court injunction enjoining Arizona's voter identification procedures because the injunction came "just weeks before an election."[418] The High Court reasoned that "Court orders affecting elections . . .can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."[419] The Supreme Court vacated the lower court's injunction for the reasons that "[g]iven the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter

[417] *Nken v. Holder*, 556 U.S. 418, 435 (2009).
[418] *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S. Ct. 5, 7, 166 L. Ed. 2d 1 (2006).
[419] *Id*. at 5.

identification rules."[420] Defendants call *Purcell* a "seminal opinion"[421] which requires that this Court do nothing.

As the *Caster* court points out, *Purcell* is not the only opinion ever advanced by the Supreme Court on the subject of timing. In *Reynolds v. Sims*, for example, the Court explained that "once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan."[422] "However," the Court recognized, "under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid."[423] The Court explained that "[i]n awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles."[424]

A necessity standard was endorsed in *Upham v. Seamon*, where the Supreme Court stated that "we have authorized District Courts to order or to permit elections to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements. Necessity has been the motivating factor

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[420] *Id*. at 5-6.
[421] Rec. Doc. No. 166, p. 140.
[422] 377 U.S. at 585.
[423] *Id*.
[424] *Id*.

in these situations."[425] Defendants urge consideration Justice Kavanaugh's concurrence in *Merrill v. Milligan*, where he opined that:

> Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges. The District Court's order would require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion.[426]

The Court concludes that neither *Purcell* nor any other case compels this Court to withhold immediate relief. The evidence presented at the hearing demonstrates that, although the administrative tasks that would be necessitated by a new congressional map would challenge the Secretary of State's office, the effort required would not be a heroic undertaking. Sherri Hadksey, the Commissioner of Elections, testified that after the Governor's veto was overridden and the enacted map became law, her office was able to update their records and send out mailings to all impacted voters in *less than three weeks*. The number of voters affected by a remedial map would likely be greater than the number affected by the change from the 2011 map to the 2022 map. Nevertheless, even if it took twice as long to accomplish, six weeks would be enough. Hadskey further testified that she was concerned that, if the process was rushed, her office may code voter information incorrectly, leading to incorrect information on ballots.

The Court finds that, although Hadskey's testimony demonstrated general concern about the prospect of having to issue a new round of notices to voters, she did not provide any specific reasons why this task cannot be completed in sufficient time for November elections, nearly 6 months from now. Likewise, the Court is not persuaded that the

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[425] 456 U.S. 37, 44 (1982) (citations omitted).
[426] *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022).

national paper shortage referenced by Hadskey in her testimony presents a significant burden. There was no evidence that State's paper demands would be impacted by map changes. Plaintiffs question, as does the Court, how paper usage is affected by the shape of Louisiana's congressional districts. Further, the Court finds that the mailing of paper notices is not the only source of information for voters. Secretary Ardoin's Geaux Vote mobile app and website, touted by Defendants during this litigation as an award-winning example of voter outreach, can also provide information about any district changes. Ultimately, Hadskey testified that she would rely upon her 30 years of experience and work to fulfill her responsibility to administer the election on schedule.

Defendants repeatedly claim that June 22, 2022 is a critically impending deadline. June 22 is the deadline for potential congressional candidates to qualify by nominating petition. Notably, Hadskey testified that it is "extremely rare" for candidates to qualify by nominating petition. The evidence was that most pay the filing fee and qualify during the July 20-22 qualifying period. July 20 is more than six weeks from now. And Louisiana's unique election schedule, with the open primary not occurring until November, allows the State 6 months to accomplish what needs to be done.

Defendants warn the Court against issuing an injunction that would "act like [a] hurricane[],"[427] but the Court finds the metaphor shallow. Placing a bureaucratic strain on a state agency in order to rectify a violation of federal law is not analogous to a natural disaster.

Most importantly, the Court finds that the credibility of Defendants' assertions regarding the imminence of deadlines lacks credence. The Legislative Intervenors in this

[427] Rec. Doc. No. 165, p. 27.

case, President Cortez and Speaker Schexnayder, made judicial admissions to the contrary in March 2022 in a currently pending state court case regarding the very congressional redistricting at issue here.[428] President Cortez and Speaker Schexnayder asserted that: "the candidate qualification period could be moved back, if necessary, as other states have done this cycle, without impacting voters."[429] They further represented that: "[t]he election deadlines that actually impact voters do not occur until October 2022. . .Therefore, there remains several months on Louisiana's election calendar to complete the process."[430] There was no rush, they assured the court, because Louisiana's "election calendar is one of the latest in the nation."[431]

In the context of the state court suit, the Legislative Intervenors were attempting to demonstrate that judicial intervention to resolve the impasse on redistricting was not necessary, and in that context, they painted a very different picture than the one they paint for this Court. The Court sees no reason why the statement that qualifying deadlines could be moved without ill effect does not apply with equal force in this context.

Likewise, the Court relies upon the statement of Secretary Ardoin's counsel in the state court proceeding that Louisiana does not have "a hard deadline for redistricting,"[432] and "the Legislature. . .can also amend the election code if necessary to deal with congressional reapportionment."[433]

---

[428] *Bullman, et al v. R. Kyle Ardoin*, in his official capacity as Louisiana Secretary of State, No. C-716690, 2022 WL 769848 (19th Judicial Dist. Ct.); *NAACP Louisiana State Conference et al v. Ardoin*, No. C-716837 (19th Judicial Dist. Ct.). After the veto of H.B. 1 by the Governor, but before the legislative override, when there was effectively no congressional district map in place, Plaintiffs petitioned the state court to impose a congressional map for 2022.
[429] GX-32, p. 8.
[430] *Id*.
[431] *Id*. at p. 5.
[432] GX-33, p. 32, lines 3-20.
[433] *Id*.

Defendants have not pointed to a single piece of evidence that an order from this Court would require the type of "heroic efforts" that Justice Kavanaugh warns about. The Court credits the testimony of Matthew Block that state election officials and officeholders have significant experience with adjusting the time, place, and manner of elections, thanks to natural disasters like Hurricane Ida and the COVID-19 pandemic. Major deadlines are still months away; overseas absentee ballots are not due to be mailed until September 24, 2022, and limited early voting begins October 18, 2022.[434] And the qualifying deadline is adjustable, according to Defendants themselves.

There are a number of recent Supreme Court actions that merit consideration on this topic. In *Moore v. Harper*, the Supreme Court denied an application for stay out of North Carolina, with Justice Kavanaugh explaining his vote to deny stay as follows:

> In light of the *Purcell* principle and the particular circumstances and timing of the impending primary elections in North Carolina, it is too late for the federal courts to order that the district lines be changed for the 2022 primary and general elections, just as it was too late for the federal courts to do so in the Alabama redistricting case last month.[435]

From the dissent, penned by Justice Alito and joined by Justices Thomas and Gorsuch, this Court is given to understand that the application for stay was received by the Supreme Court "only seven days before the deadline for candidates to file on March 4."[436] This stands in stark contrast to the timing in the instant case, where the most commonly-utilized method of candidate qualifying does not begin for more than six weeks. Remarkably, the dissent stated that even seven days before qualifying, "promptly granting a stay would have been only minimally disruptive."[437]

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[434] ARD-1, p. 4.
[435] *Moore v. Harper*, 142 S. Ct. 1089 (2022).
[436] *Id.* at 1091.
[437] *Id.*

In a *per curiam* opinion in *Wisconsin Legislature v. Wisconsin Elections Commission*, the Supreme Court reversed the imposition of redistricting maps and remanded to the Wisconsin Supreme Court, expressing confidence that the court would have "sufficient time to adopt maps consistent with the timetable for Wisconsin's August 9th primary election."[438] The Court's statement came on March 23, 2022, when the August 9th primary date was 139 days away. Louisiana's open congressional primary will occur on November 8, 2022, more than 150 days from now. Under the Supreme Court's guiding precedent, this provides "sufficient time" for the State to adjust its procedures and accomplish the tasks necessary to administer the election.

In *Merrill v. Milligan*, Justice Kavanaugh explained that in his view, a stay of the Caster court's order was necessary because "the primary elections begin (via absentee voting) just seven weeks from now, on March 30."[439] This timing is distinguishable from the instant case, where the candidates for office will not even be known until late July and early voting begins in October.

The Court finds that a remedial congressional plan can be implemented in advance of the 2022 elections without excessive difficulty or risk of voter confusion. Defendants' assertion that "an entirely new congressional plan"[440] will be required at significant cost and hardship rings hollow. The Legislature would not be starting from scratch; bills were introduced during the redistricting process[441] that could provide a starting point, as could the illustrative maps in this case, or the maps submitted by the *amici*.[442]

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[438] *Wisconsin Legislature v. Wisconsin Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022).
[439] *Merrill v. Milligan*, 142 S. Ct. 879 (2022)
[440] Rec. Doc. No. 166, p. 142.
[441] GX-12.
[442] *See* Rec. Doc. No. 97.

Other courts that have invalidated redistricting plans have imposed deadlines in the range of ten days to two-and-a-half weeks for the legislature to craft a new plan.[443] With a new map in place by mid-June, the Secretary of State would have roughly five weeks before the July 20 qualifying period begins to update records and notify voters. This effort "does not rise to the level of a significant sovereign intrusion."[444] Given the timing of Louisiana's election and election deadlines, the representations made by Defendants in related litigation, and the lack of evidence demonstrating that it would be administratively impossible to do so, the Court finds that the State has sufficient time to implement a new congressional map without risk of chaos.

V. REMEDY

Defendants argue that a preliminary injunction is improper because Plaintiffs seek relief that "would establish a state of affairs that never before existed and does not preserve the *status quo* pending trial."[445] The Court finds useful instruction in the Fifth Circuit's analysis of the "status quo" issue in *Canal Auth. of State of Fla. v. Callaway*:

> It must not be thought, however, that there is any particular magic in the phrase 'status quo.' The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties, by the issuance of a mandatory injunction, or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The

[443] *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016); *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 691 (M.D.N.C.); *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); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1357 (N.D. Ga. 2004).
[444] *Covington v. North Carolina*, 270 F. Supp. 3d 881, 895 (M.D.N.C. 2017).
[445] Rec. Doc. No. 165, p. 23.

> focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.[446]

The Fifth Circuit has recognized that irreparable injury may necessitate an injunction that imposes mandatory preliminary relief instead of merely maintaining the status quo, though it notes such relief is disfavored unless the law and facts clearly favor the moving party.[447] Especially in the context of Plaintiffs' fundamental voting rights, the Court finds that prevention of injury, not fealty to the status quo, is paramount. And courts frequently issue preliminary injunctions that order relief beyond mere preservation of the status quo. This Court previously issued a preliminary injunction mandating changes to state election procedures upon a showing that the plaintiffs would suffer irreparable harm under the status quo,[448] as have other federal courts in similar cases.[449]

The Court pays heed to the principle that "[f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions. It is well settled that 'reapportionment is primarily the duty and responsibility of the State.'"[450] Thus, "[f]ederal courts are barred from intervening in state apportionment in the absence of a violation of federal law precisely because it is the domain of the States, and not the federal courts, to conduct apportionment in the first place."[451] The State has a "sovereign interest in implementing its redistricting plan."[452]

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[446] *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974)(internal citations omitted). See also *Second Baptist Church v. City of San* Antonio, No. 5:20-CV-29-DAE, 2020 WL 6821334, at *3 (W.D. Tex. Feb. 24, 2020).
[447] *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976).
[448] *Harding v. Edwards*, 487 F. Supp. 3d 498, 526 (M.D. La. 2020), appeal dismissed sub nom. Harding v. Ardoin, No. 20-30632, 2021 WL 4843709 (5th Cir. May 17, 2021).
[449] *Caster*, 2022 WL 264819, at *1 (N.D. Ala. Jan. 24, 2022); *Democratic Nat'l Comm. v. Bostelmann*, 488 F. Supp. 3d 776, 783 (W.D. Wis. 2020).
[450] *Miller*, 515 U.S. at 915 (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)).
[451] *Voinovich*, 507 U.S. at 156.
[452] *Vera*, 517 U.S. at 978.

The Supreme Court "has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt."[453] Upon a federal court's finding that a redistricting plan violates the federal law, "it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet [applicable federal legal] requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan. The new legislative plan, if forthcoming, will then be the governing law unless it, too, is challenged and found to violate"[454] federal law.

After a determination that a redistricting plan violates Section 2, "[s]tates retain broad discretion in drawing districts to comply with the mandate of § 2."[455] The State may elect to use one of Plaintiffs' illustrative plans, but is not required to do so, nor must it "draw the precise compact district that a court would impose in a successful § 2 challenge."[456] Overall, "the States retain a flexibility that federal courts enforcing § 2 lack, both insofar as they may avoid strict scrutiny altogether by respecting their own traditional districting principles, and insofar as deference is due to their reasonable fears of, and to their reasonable efforts to avoid, § 2 liability."[457]

The Court's imposition of a particular map becomes necessary only if the Legislature fails to adopt its own remedial map according to the Court's deadline. "Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state

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[453] *Wise*, 437 U.S. at 539–40 (opinion of White, J.).
[454] *Id*. at 540.
[455] *Shaw II*, 517 U.S. at 917 n.9.
[456] *Vera*, 517 U.S. at 978 (internal quotation marks omitted).
[457] *Id*.

election makes it impractical for them to do so, it becomes the unwelcome obligation of the federal court to devise and impose a reapportionment plan pending later legislative action."[458]

Accordingly, this Court provides the Legislature an opportunity to enact a new map that is compliant with Section 2 of the Voting Rights Act. The Court hereby **STAYS** the nominating petition deadline for a brief period, until July 8, 2022, which it finds will be sufficient.

IT IS ORDERED.

Baton Rouge, Louisiana, this 6th day of June, 2022.

SHELLY D. DICK
CHIEF DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

[458] *Wise*, 437 U.S. at 540 (opinion of White, J.) (internal quotation marks and citation omitted).

EXHIBIT M

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al., *Plaintiffs,* v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Civil Action No. 3:22-cv-00211-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson
EDWARD GALMON, SR., et al., *Plaintiffs,* v. R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Consolidated with Civil Action No. 3:22-cv-00214-SDD-SDJ

LEGISLATIVE INTERVENORS' NOTICE OF FILING
PRELIMINARY INJUNCTION HEARING TRANSCRIPTS

Legislative Intervenor-Defendants respectfully give notice to the Court and parties of the filing of the attached private court reporter transcripts from the preliminary injunction hearing held May 9, 2022 to May 13, 2022. The record citations in Defendants' Post-Hearing Brief In Opposition To Motions For Preliminary Injunction and in their Proposed Findings of Fact and Conclusions of Law are to these transcripts.

As this Court may be aware, the private court reporter was delayed in delivering the finalized transcripts due to an unexpected death in her family. The transcripts for May 9, 11, and 13 are final transcripts. The transcripts for May 10 and 12 are rough, daily transcripts, and all citations to these rough transcripts are clearly denoted in Defendants' briefing. Once the court

reporter provides finalized transcripts of May 10 and 12, Defendants will promptly file corrected Proposed Findings of Fact and Conclusions of Law that conform to the finalized transcripts.[1]

Respectfully submitted,

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[1] Late in the day on May 18, 2022, undersigned counsel was provided a final transcript for May 12, 2022, but the delivery was too late for undersigned counsel to incorporate into the briefing.

CERTIFICATE OF SERVICE

I certify that on May 18, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

/s/ Erika Dackin Prouty

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF LOUISIANA

3

4 PRESS ROBINSON, et al, CASE NO.
Plaintiffs,
5 3:22-cv-00211-SDD-SDJ
v
6
KYLE ARDOIN, in his
7 official capacity as c/w
Secretary of State for
8 Louisiana,
Defendant.
9 _____
EDWARD GALMON, SR., et
10 al, CASE NO.
Plaintiffs,
11 3:22-cv-00214-SDD-SDJ
v
12
R. KYLE ARDOIN, in his
13 official capacity as
Louisiana Secretary of
14 State,
Defendant.
15

16 PROCEEDINGS

17 INJUNCTION HEARING

18 Held on Monday, May 9, 2022

19 Before The

20 HONORABLE SHELLY DICK

21 Judge Presiding

22 Baton Rouge, Louisiana

23

24 REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
25 CERTIFIED COURT REPORTER

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4

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8 OLIVIA N. SEDWICK, ESQUIRE

9 JACOB D. SHELLY, ESQUIRE

10 SAMANTHA OSAKI, ESQUIRE

11 SARAH BRANNON, ESQUIRE

12 JOHN ADCOCK, ESQUIRE

13 STUART NAIFEH, ESQUIRE

14 KATHRYN SADASIVAN, ESQUIRE

15 VICTORIA WENGER, ESQUIRE

16 SARA ROHANI, ESQUIRE

17 JONATHAN H. HURWITZ, ESQUIRE

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21 JENNIFER WISE MOROUX, ESQUIRE

22

23

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10 Patrick Page Cortez, in his Official Capacity as
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13 PATRICK. T. LEWIS, ESQUIRE
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15 E. MARK BRADEN, ESQUIRE
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18 Representing the Defendant/Intervenor, State of
19 Louisiana, through Jeff Landry in his Official
20 Capacity as Attorney General:
21 ANGELIQUE DUHON FREEL, ESQUIRE
22 CAREY TOM JONES, ESQUIRE
23 JEFFERY M. WALE, ESQUIRE
24 JASON B. TORCHINSKY, ESQUIRE
25 PHILLIP M. GORDON, ESQUIRE

1 I N D E X

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EXHIBIT INDEX

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1 P R O C E E D I N G S
2 THE COURT:
3 Okay. Call the case, please.
4 THE BAILIFF:
5 This is Civil Action No. 22211
6 consolidated with 22214 Chris Robinson and
7 others versus Kyle Ardoin and others and
8 Edward -- Edward Galmon, Senior and others
9 versus Kyle Ardoin and others.
10 THE COURT:
11 Okay. Counsel, before we get
12 started, I'm going to ask you to make
13 appearances momentarily, but before we do
14 that, let me just make -- make a couple of
15 comments. As a reminder, the court's
16 general order is that masks are -- are
17 optional, but if you are unvaccinated,
18 masks are mandatory. If the court should
19 learn that someone in this audience or
20 someone that comes in is unmasked and
21 unvaccinated, they will be in contempt of
22 court. I don't need to explain it to you
23 what that means.
24 We have agreed previously that we
25 will have one lawyer per witness for the

1 plaintiff or whoever's perpetuating that
2 testimony and one on cross-examination. I
3 want to confirm that the parties are going
4 to be keeping their own time clocks and I
5 registered stipulations obviously. So
6 what we will do at the beginning of court
7 every morning, we will just take a survey
8 to make sure that you are in agreement as
9 to what time was used and what time is
10 remaining, so that we cannot have an issue
11 at the end of the week with respect to
12 some dispute. 4.
13 With respect to today, we will break
14 at 11:45. The court has a 12:00 o'clock
15 obligation. I have every anticipation of
16 being back on the record by 1:15, so 11:45
17 to 1:15. Those are the few little
18 housekeeping matters. We will have a few
19 little other housekeeping matters, but let
20 me ask the parties to make their
21 appearances.
22 First, let me start with counsel for
23 the Robinson plaintiffs.
24 MR. NAIFEH:
25 Your Honor, this is Stuart --

THE COURT:

Okay. Stand when you address the court.

MR. NAIFEH:

This is Stuart Naifeh.

THE COURT:

I'm sorry. Your last name, sir?

MR. NAIFEH:

It's N-A-I-F-E-H, Naifeh, with the NAACP.

THE COURT:

Let's make sure that the mics are on. Hold on a second.

MR. NAIFEH:

The light is on.

THE COURT:

Okay. You might adjust it. Can you adjust it a little bit?

MR. NAIFEH:

(Complied.)

THE COURT:

Okay. Thank you, sir. One more time.

MR. NAIFEH:

Stuart Naifeh.

THE COURT:

Naifeh.

MR. NAIFEH:

With the NAACP Legal Defense Fund.

THE COURT:

And as you introduce yourselves, if you will tell me who you kind of think is going to be taking the lead on things.

MR. NAIFEH:

I will be taking the lead and I have our first examination.

THE COURT:

Okay. Great. Thank you. Next?

MR. ADCOCK:

Good morning, Your Honor. John Adcock on behalf of the Robinson plaintiffs.

THE COURT:

Okay. What kind of role will you be taking, sir?

MR. ADCOCK:

I don't think I'll be speaking. We have witnesses later.

THE COURT:

Great. Let me just ask this,

1 counsel, because there's a lot of you.
2 I'm reasonably good with names and faces,
3 but there's a lot of moving parts in this
4 thing; but more importantly, it's going to
5 be important that the court reporter knows
6 who's speaking so when you get the
7 transcript, your official transcript of
8 these proceedings, you'll -- you'll be
9 appropriately acknowledged.
10 Okay. Yes, ma'am?
11 MS. SADASIVAN:
12 I'm Kathryn Sadasivan with the NAACP
13 Legal Defense Fund.
14 THE COURT:
15 Last name again, ma'am?
16 MS. SADASIVAN:
17 It's S-A-D-A-S-I-V-A-N.
18 THE COURT:
19 NAACP. And what kind of role will
20 you be taking, ma'am?
21 MS. SADASIVAN:
22 I'll be the Robinson plaintiffs.
23 THE COURT:
24 All right.
25 MS. ROHANI:

Good morning, Your Honor. Sarah Rohani with the NAACP Legal Defense Fund on behalf of the Robinson plaintiffs.

THE COURT:

And the last name, please, ma'am?

MS. ROHANI:

Rohani, R-O-H-A-N-I.

THE COURT:

Okay. Thank you.

MS. WENGER:

Good morning, Your Honor. Victoria Wenger with the Robinson plaintiffs for the NAACP Legal Defense Fund.

THE COURT:

And the last name is?

MS. WENGER:

Wenger, W-E-N-G-E-R.

THE COURT:

Okay.

MS. KHANNA:

Good morning. I'm on behalf of plaintiffs. My name is Abha Khanna, A-B-H-A, K-H-A-N-N-A. I'll be taking the lead regarding the Edward Galmon

1 plaintiffs. With me is Darrel Papillion
2 and Lali Madduri. I have several other
3 colleagues for certain witnesses. Would
4 you like each of them to individually
5 present?
6 THE COURT:
7 Why don't we just do that as we move
8 forward. Unless you feel it necessary to
9 make appearances, as we move forward, you
10 can introduce yourself and I am going to
11 assume that you are not enrolled if you
12 are not telling me that, so we can get you
13 enrolled if we need to do that.
14 MS. KHANNA:
15 Thank you, Your Honor.
16 THE COURT:
17 All right. Anybody else? That's
18 it? Can I hear from the Ardoin or
19 actually lead defendant?
20 MR. STRACH:
21 Good morning, Your Honor,
22 Phil Strach, S-T-R-A-C-H. I'll be the
23 lead counsel for secretary of the state.
24 I have a couple of colleagues. They will
25 be with me later in the week and I'll be

crossing the witnesses today.

THE COURT:

Okay. Good morning. Yes, ma'am?

MS. MCKNIGHT:

Good morning, Your Honor. Kate McKnight on behalf of legislative intervenors. I will be taking the lead on matters related to legislative intervenors in this case. One of my colleagues today will be questioning, examining a witness. His name is Patrick Lewis.

THE COURT:

Okay.

MS. LEWIS:

Thank you, Your Honor.

MR. WALE:

And good morning, Your Honor. Jeffrey Wale on behalf of the state through the attorney general. I'll be handling a couple of witnesses today. In the seat next to me is Phillip Gordon. He will be taking the lead for the attorney general's office. Also representing the attorney general's office is Angelique Freel.

THE COURT:

And the person next to you? I didn't catch the name.

MR. WALE:

I'm sorry. That's Phil Gordon. He will be taking the lead today.

THE COURT:

All right. Anybody else for the defendants and the intervenors?

MR. JOHNSON:

Okay. May it please the court, Earnest Johnson representing -- we have one more intervenor.

THE COURT:

You can use this front -- you can either borrow theirs or use this front one, whatever makes you comfortable. Mr. Johnson, you said Earnest Johnson?

MR. JOHNSON:

Yes, ma'am. Good morning. I'm joined today with co-counsel representative, Vincent Pierre, the chairman of the Louisiana Legislative Black Caucus. The trial attorney in this matter will be Mr. Steve Irving, who will

be in court tomorrow.
THE COURT:
Okay. I'm going to ask,
Mr. Johnson, since you are late
intervening, to coordinate with your other
colleagues who are either intervenors or
the plaintiffs, however you want to
coordinate with respect to your role, and
as you don't have any witnesses that you
are going to put on and we are going to
try to stream cross-examination and I'm
not assuming that you haven't already done
this, but I know that you are late in the
game. So if you'll coordinate with the
plaintiffs, in particular with respect to
what witnesses you-all are going to take.
MR. JOHNSON:
Thank you, Your Honor.
THE COURT:
All right. Yes, sir.
Okay. Anybody else that needs to
make an appearance as we move forward? If
you have not made an appearance, if you
are speaking for the first time, if you'll
tell the court who you are so the court

reporter, like I said, can note -- can note that for the record.

All right. Let's go over your stipulation. I have a few things that I want to talk about with respect to stipulations. First, let me just say the -- the parties' decision to present all of the experts with respect to one subject matter congregated or in sequence is a very good -- very, very good idea and the court thanks you for that. I think it will help move things along tremendously.

Again, the parties will monitor the clock, and at the beginning of every morning, if I don't -- if I don't remember, I'll be happy for one of you to prod me. We will figure out where we are in the clock so that we don't get to the end of the week with any surprises.

There is a question that the court has about the expert witnesses what you've stipulated is that the expert witnesses may testify clearly okay. That's great. Reserving the right to cross-examine experts on any matter, including 702. So

1 I take it that this will be
2 traditionally -- the traditional way we do
3 experts. You'll make a tender, they will
4 be crossed on the tender. Is that what I
5 understand? Yes? I'm seeing yeses.
6 Okay. If there is a stipulation as to
7 expertise, it will be helpful if you would
8 make that before, and then we will just
9 have a stipulation to expertise and we can
10 move directly into the subject matter; but
11 otherwise, I will expect that there will
12 be a tender you are articulating to the
13 court the field in which you are tendering
14 the expert and then they will be one
15 person, one lawyer who will cross on
16 tender. Are we in agreement? Okay. Head
17 nods all around.
18 All right. The Court will admit the
19 following into evidence. The parties have
20 stipulated that the following declarations
21 can be admitted requiring testimony. So
22 for the record -- and you-all may want to
23 follow along just to make sure that I
24 don't misstate one of these record
25 document numbers -- the declaration as of

the following: Edward Galmon Record Document 150-1; Ciara Hart Record Document 50-3; Tramelle Howard, I hope I said that right, Record Document 50-4. The other declarations as to the Robinson plaintiffs, Press Robinson Record Document 41-3, Exhibit 5; Edgar Cage Record Document 41-3, Exhibit 6; Dorothy Nairne Record Document 41-3, Exhibit 7; Renée Soule Record Document 41-3, Exhibit 8; Alice Washington Record Document 41-3, Exhibit 9; Clee Lowe Record Document 41-3, Exhibit 10; Devante Lewis Record Document 41-3, Exhibit 11; Martha Davis Record Document 41-3, Exhibit 12; Ambrose Sims Record Document 41-3, Exhibit 13; Michael McClanahan Record Document 41-3, Exhibit 4; Ashley Shelton Record Document 41-3, Exhibit 5.

Those stipulations are admitted into evidence and considered submitted for the purposes of the record of this case.

The parties -- oh, I'm sorry. Defendants' witness, Joel Watson Record

Document 101-3. Likewise, that declaration is admitted into evidence.

Okay. The parties have stipulated that publicly available copies of the legislative materials are admitted and that certified copies, when received, will be substituted into the record; is that correct?

COUNSEL:

(Indicated.)

THE COURT:

Those will be admitted.

The following exhibits will come in without objection and argument: Edward Galmon Exhibits 4-28, 32-, I'm sorry, Exhibit Nos. 4 through 28 and Exhibit Nos. 32 through 38. Those are at Record Document 121. Robinson Exhibits 1 through 11 and 16 through 85 at Record Document 133; defendants' Exhibits Nos. 1 and 2, Record Document 99; Legislative Intervenor, Exhibits 4 through 76, Record Document 138; state intervenor defendants' numbers, Exhibit Nos. 5 through 30, Record Document 140.

1 All right. There are some hearsay
2 objections. As you offer those -- as you
3 offer those exhibits, make your objection
4 and the court will rule on those
5 objections.
6 The legislative record transcripts,
7 the parties have indicated that they will
8 stipulate and may use transcripts of the
9 legislative road show hearings and Florida
10 Bates PR-38 to PR-78, and the parties have
11 agreed to allow the court or that they
12 will use those in their proposed findings
13 of fact and conclusions and law and will
14 cite to page and line numbers for purposes
15 of the record. It is best practice that
16 those be introduced into evidence, so I'm
17 going to count on you.
18 P-38, I'm sorry, PR-38 to PR-78 will
19 be admitted into evidence. They should
20 comprise part of the record, so do need to
21 be uploaded into the jurisdiction at your
22 convenience. If you are not going to
23 refer to them in the hearing, we don't
24 need them right now, just use them in your
25 findings of fact and conclusions of law.

Okay. The stipulated facts that are contained on Record Document 143 at page -- pages 6 -- 6 through 11 are noted as stipulated.

All right. Are there any other housekeeping matters before we call our first witness?

COUNSEL:

(Indicated.)

THE COURT:

All right. Who's starting? Call your first witness.

MR. NAIFEH:

Good morning, Your Honor. Stuart Naifeh for the Robinson plaintiffs. Robinson plaintiffs call Michael McClanahan.

THE COURT:

Sir, if you'll step right up here, there is one other thing for the record. There is a second court reporter in the courtroom, so this is on the record. The only certified record of this matter is the court's official record. The parties have agreed and I assume shared the costs

for another certified court reporter so that you can get daily transcripts. The daily transcripts you may certainly use them in briefing, but they are not constituted from the official court record.

All right. Yes, sir?

MICHAEL MCCLANAHAN,

after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

DIRECT EXAMINATION BY MR. NAIFEH:

Q. Good morning, Mr. McClanahan. Can you please state and spell your name for the record?

A. Good morning. My name is Mike McClanahan. My last name is spelled M-C-C-L-A-N-A-H-A-N.

Q. And how long have you lived in Louisiana, Mr. McClanahan?

A. I'm born and raised in Louisiana. All my life.

Q. And where in Louisiana do you currently live?

A. Baton Rouge.

Q. And what part of Baton Rouge?
A. I stay in the area by called Cortana Mall, Villa Del Rey area.
Q. Okay. And, Mr. McClanahan, what is your role in this case?
A. Well, I'm a plaintiff with NAACP.
Q. And so are you a plaintiff in your individual capacity?
A. No. As the state president of the NAACP.
Q. And so the Louisiana NAACP is a plaintiff in this case?
A. Yes.
Q. And how long have you been a state president of the Louisiana NAACP?
A. For probably about five years.
Q. Okay. And are you also a member of the NAACP?
A. I'm a proud member, life member of the NAACP.
Q. And how long have you been a member?
A. I've been a member probably about over ten years. I've been a life member about two years.
Q. Okay. Can you tell us what is the

Louisiana NAACP?

A. The Louisiana NAACP is called the NAACP Louisiana State Conference. It's a coalition of all of the branches and units throughout the State of Louisiana. I coordinate activities amongst what you call the branches and the youth and college chapters.

Q. Is the Louisiana NAACP a partisan organization?

A. No.

Q. What is the Louisiana NAACP's mission?

A. Well, in a nutshell, we're fighting against the racism, bigotry, hatred, you know, discrimination, anything that, you know, we deem is below the mark of character and dealt adversely effecting people of color like myself.

Q. And does the NAACP's mission include a mission in the area of voting rights?

A. Oh, I believe.

Q. Can you explain that?

A. Well, we believe that in this Democratic society everyone should have an opportunity to participate in it; and we know that the only way you can participate is through

1 vote, and so we are always doing what you call
2 registering, doing voting recommendations, voting
3 training, that type of stuff.
4 Q. And you mentioned the local branches
5 of the Louisiana NAACP. How many local branches
6 do you have?
7 A. It varies, but we have -- basically
8 always basically have about 40.
9 Q. Forty.
10 A. And dove branches and about 16 youth
11 and college chapters.
12 Q. Where are they located?
13 A. All over Louisiana.
14 Q. And do you have branches in every
15 parish?
16 A. Yeah. We have members in every
17 parish and we have branches -- every branch may
18 be able to represent two parishes, but we pretty
19 much cover the whole State of Louisiana.
20 Q. Okay. And does the -- you mentioned
21 members. Does the Louisiana NAACP have members?
22 A. Yes.
23 Q. And who are the members of the
24 Louisiana NAACP?
25 A. People who -- who want to see the

State of Louisiana do better in terms of however it effects the black people of Louisiana, and so those that want to fight, they want to advocate for what's right in terms of how black and brown people are shown respect in Louisiana. They become a member of the NAACP.

Q. Okay. And does your membership include black Louisianians?

A. Black Louisianians.

Q. And does it include registered voters?

A. Registered voters.

Q. And about how many members do you have in the State of Louisiana?

A. That varies somewhere between 5, 5,000 or so.

Q. Okay. Okay. Mr. McClanahan, do you know people in Louisiana who might have one black grandparent and three white grandparents?

A. Oh, yeah. It's called Louisiana.

Q. And do you consider those people black?

A. They are black. 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 considered black.

Q. Okay. And has the NAACP been involved in the redistricting process for the congressional plan in this redistricting cycle?

A. Very much so, but we got involved not only in the redistricting act, because we realized in order to get to the redistricting part, you got to get in the census part, so we are very much involved in the onset of getting bias counted.

Q. And did -- during the redistricting process, did the Louisiana legislature take public input -- input from members of the public?

A. Yeah. They have what you call town hall. They would have redistricting town hall meetings throughout the State of Louisiana.

Q. And are those commonly referred to as road shows?

A. Road shows, yeah, road shows.

Q. And did the NAACP play a role in the road shows?

A. We did, you know, because I realized and understood that in order to let the

1 legislature know and understand what the people
2 think, the people had to go to the road shows.
3 And so I would have calls every Monday, Monday
4 night with members throughout the NAACP state
5 conference and chapters and we talk about getting
6 people to the road shows so they can tell the
7 legislature what they expect them to do, how they
8 feel about the redistricting aspect of the
9 process.
10 Q. And did you offer testimony at any
11 of the road show meetings?
12 A. Happily. I did happily.
13 Q. And what did you testify about?
14 A. I told the legislature, you know,
15 because redistricting only happens every -- every
16 ten years, that there's a shift, and so we want
17 that the legislature would have got back to the
18 session to let the lives reflect the make up of
19 the State of Louisiana, we make up at least a
20 third of the population and so in their -- in
21 their deliberations of drawing these maps, they
22 should take careful consideration as to the make
23 up of the State of Louisiana so they could
24 adequately reflect what it looks like in
25 Louisiana.

Q. And did you feel that the legislatures listened to the testimony that you offered?

A. If they did, they must have been listening with deaf ears.

Q. Okay. And did they act on what they heard from you and your members?

A. They must have been asleep because they didn't.

Q. Okay. And was a map ultimately passed by the legislature?

A. Yes. It was a map that, you know, if you would have closed your eyes, you could have drawn it because it did not reflect nothing that was said at the road shows. It did not reflect what the data has shown. It did not reflect what was said, even in the -- the community hearings at the legislature session.

Q. And what did that map look like?

A. Well, you know, in your eyesight, in our minds, the recollection of the map would have been two majority-minority congressional seats, two. What it looks like now is only one kept -- it keeps power within that one, you know, the make up of six white congressmen and only one

black.

Q. And when you say six white, do you mean there are six districts in total?

A. Seven, six. Yeah. Five. No. I'm sorry.

Q. And after that congressional plan was passed by the legislature, what did you and your members do?

A. Well, I know the process because I've been, you know, down to the legislature for a minute and I realized that once it passed through the state house that means the Senate and the state representatives going to the governor's desk, it only will become you law if he did nothing or he signed it into law. And so our strategy was to get to the governor to veto those maps, and we did all in our power to get to him in terms of calling him. We had a rally, we had -- we had persons operating social media, we contacted legislators to let him know what he thought about those maps.

Q. And what did he ultimately do, the governor of Louisiana, with the congressional maps passed by the legislature?

A. Well, the governor, in his infinite

wisdom, he vetoed that map.

Q. And how did you feel when you heard about the veto?

A. Well, I understand the process, so I was optimistic but skeptical because we knew that the legislature previously -- the previous legislature session tried to override one of his vetoes then, and we know that there was a ground square for them to come and override this particular veto. But I'm a praying man. We went to God first and then we started working the phones and the polls, you know, to ensure that the governor veto -- the veto was sustained.

Q. And was the veto sustained?

A. No, as you would have it. I'm from Louisiana. I do understand how it works. No, it was not.

Q. And were you -- did the legislature convene a veto session to consider an override?

A. Yeah. During the legislative session, they -- they brought in a veto session to override that particular bill.

Q. And were there NAACP members in attendance during the vote on the override of the veto of the congressional planning?

A. Oh, yes. We were -- we were in the chambers of both houses and we were walking throughout the entire building to ensure that our voices were heard.

Q. And were you personally there?

A. I was.

Q. And what was the reaction of you and your members when the legislature voted to override the veto?

A. Well, you know, it was a lot of my members, they just knew that the governor's veto was going to be sustained. They were -- they were hurt. They were dejected because the members of the legislator -- you know, Louisiana's full of festivals and so we love to get together and we talk and go to the crawfish festival and go to the catfish festival and we hang out together, but in the house, the state house, it's separate. They show us that we can eat together, but we cannot share power together.

That's what it meant to me, that we could not share power. They basically told me as a black person in the State of Louisiana that your sons and daughters can play football at LSU, play football at Nicholls State, play football at

ULM and that's good, but your parents cannot share power in the State of Louisiana. I don't want you to do it. You can do whatever you want, but when it comes to having a voice, when it comes to operating here in the State of Louisiana, when it comes to making laws, when it comes to making policy, stay your place on the porch.

Q. Okay. What was the reaction of the legislators who voted in favor of overriding the veto of the congressional house?

A. It's just as though they were outside of their can bringing trash and partying and drinking. It was a party affair. They partied off the history. They were high fiving, jumping up in the air like they scored a touchdown, a home run. You know, it was absurd. It was a slap in the face of everybody who came up through history to make it better. The State of Louisiana went back 40 years, 50 years basically on that vote. That one vote took us back 40 years.

Q. What would it mean to the NAACP if Louisiana were redistricted to have two majority black congressional seats?

A. It's history. It's history. It would be historical for us to get another voice in Congress because, you know -- you know, I'm black. I don't know if you noticed or not, I'm black, no matter what I have on. When I go into stores, I'm black; and so to have somebody understand my plight that would come to my side of town, pull up a chair and play cards and dominoes or we could talk from any part black you want to, but understand it's my plight.

We need that, and I was sharing with somebody the other day -- I have a lot of friends, Democrat, Republicans, what have you, right, but to have somebody look me in the eye and know how I feel, that's what we need. We were hoping to get that with another seat.

Q. Mr. McClanahan, did you file an affidavit in this litigation, a declaration?

A. I did.

Q. And in your declaration, you state -- state that you have personally witnessed the effects of institutional racism in Louisiana.

Can you describe some of the effects that you personally have witnessed?

A. How much time do I have? I live it.

1 I'm 57. I've lived it every day all of my life.
2 I lived -- this -- Louisiana is full of stuff.
3 This is called cancer alley. It's a strip of
4 towns and zone in the parish that runs from --
5 from New Orleans up to Baton Rouge, all points in
6 between.
7 Those chemical plants, they set up
8 shop in black neighborhoods where they poison and
9 kill people every day, poison school kids every
10 day, senior citizens every day. They don't live
11 to grow old. If they do, they will have -- they
12 don't have a quality of life. They are being
13 poisoned up and down the Mississippi River where
14 their way of life is off the bayou blowing that
15 poison. Now, they are poisoning the water.
16 I had a hearing before the committee
17 a while back in St. James. The Corps of
18 Engineers was there because they have to give us
19 permission to operate in coastal -- a navigable
20 body of water. I said take this plant and let it
21 operate on Pennsylvania Avenue, get it out of our
22 neighborhoods, stop killing our people because
23 black lives do matter, black lives matter. Who
24 wants their loved one to die and you can't do
25 anything about it because he got 20 or 30 forms

of cancer? It's ridiculous.

I live in Louisiana. Most of the --

most of the police departments and fire

departments operate up under the consent decree.

We couldn't even get that right.

The police department is there to

serve and protect. How can they serve and

protect because they want to beat me up first,

throw me on the ground? If I'm lucky, I'll

escape alive. Captain Reeves said he was killed.

Ronald Green was murdered by the state police.

This is Louisiana. I testified before the

legislature last year. I'm on the committee with

LSU dealing with racism, the extent of racism.

We talked about the extent of racism in one of

the -- one of the --

MR. WALE:

Your Honor, I have an objection.

The question calls for an area -- I

apologize I didn't object earlier, but the

I find that under all four maps, black

candidates of choice are generally able to

win elections in the majority black

district.

In the 2nd Congressional District,

1 under all four maps, black preferred
2 candidates won 17 of the 18 elections and
3 averaged about 69 percent of the votes.
4 In CD5, black preferred candidates
5 won 15 of the 18 elections under maps 1
6 through 4 and 14 of the elections under
7 Map 2 averaging in the mid to high
8 50 percent range. The witness is in an
9 area --
10 THE COURT:
11 Overruled.
12 THE WITNESS:
13 They -- you know, I testified about
14 a -- about a church -- about a church,
15 black -- a white church in Baton Rouge,
16 the older population. And so one of my
17 friends told the church I see we have an
18 older population, no members, what do you
19 want to do. Well, the back part of the
20 church was a black and brown community.
21 He said we can go out and fellowship, get
22 the members in and keep the church open.
23 I can tell you the church is closed,
24 it was sold. Instead of them going out
25 and evangelizing to the black and brown

1 people behind them, they chose to close
2 the church down. This is Louisiana.
3 Gemco laws were instituted right here.
4 The black codes were right here in
5 Louisiana. The Plessy versus Ferguson,
6 right here in Louisiana.
7 BY MR. NAIFEH:
8 Q. Mr. McClanahan, did you work on the
9 governor's task force concerning the impacts of
10 COVID?
11 A. Healthcare, I did healthcare,
12 quality healthcare. You know, we realized when
13 COVID first came on there was an inordinate
14 number of blacks dying. We said everybody
15 catches COVID. Looked like why are so many of us
16 dying because it was found out access to quality
17 healthcare was limited in the black communities.
18 You know, either we went to the doctor, the
19 doctors couldn't see us or it's found out this is
20 documented, that they -- they had a choice: Let
21 me save the life of a white person or a black
22 person. Our numbers went up, the deaths went up
23 because the doctors even in their mission failed
24 to carryout and provide quality healthcare to all
25 of the citizens of the State of Louisiana.

Q. And in your role as the president of the Louisiana NAACP, did you hear from members who were effected by the chemical contamination in the area called cancer alley?

A. I live it. We would march and protest all the time, and I was sharing with some members it's sad. I get all the calls. You know, I understand sometimes it's long at the top because all the calls come up and to -- there's an area called Moss Field. It's right outside of Lake Charles. And, you know, you get to know these people. You get to know them. You get to know their families. You get to know them. You see their kids grow up. And so Marksville is no longer Marksville. It's called Sasaw -- Sasaw. The entire town has been wiped out.

I get a call about last year, Mike, you got to come see me, when you going to come see me. I said why. She said because we are still fighting, but my husband has died. Come on now, my husband died, cancer. Black lives matter, and I'm telling you brother, black lives matter and we going to fight those chemical plants because they need to take that -- those plants somewhere else.

1 There's a whole lot of Texas out
2 there. Take it to Odessa, because they should
3 come out of our communities and we going to fight
4 it until they are no longer there.
5 MR. NAIFEH:
6 Thank you. No more questions.
7 THE COURT:
8 Any cross? Counsel, make an
9 appearance.
10 MR. WALE:
11 Hi, Jeffrey Wale on behalf of the
12 state intervenor defendant, Your Honor.
13 CROSS-EXAMINATION BY MR. WALE:
14 Q. Hi, Mr. McClanahan. My name is
15 Jeffrey Wale. I have a few questions for you.
16 You testified earlier that you are
17 familiar with the legislative process, correct?
18 A. Yes.
19 Q. And so do you agree that the
20 Louisiana House of Representatives is controlled
21 by the Republicans?
22 A. I don't know who they controlled by.
23 All I know is --
24 Q. I'm sorry. I'll rephrase that. Is
25 the majority of the house representatives

1 Republican in Louisiana?
2 A. Right.
3 Q. And is the Senate in Louisiana also
4 majority Republican?
5 A. I think so.
6 Q. And is the governor a Democrat?
7 A. I really don't know that process.
8 If you say he is, he is.
9 Q. If I say the governor is a Democrat,
10 you would believe me?
11 A. I have no reason to discredit you.
12 Q. Thank you.
13 So Mr. McClanahan, as president of
14 the NAACP, you serve on a variety of committees
15 and task forces and the like for the State of
16 Louisiana; is that correct?
17 A. Correct.
18 Q. That includes we mentioned earlier
19 the Louisiana governor's COVID health task force?
20 A. That's correct.
21 Q. I'm sorry. We just need the volume
22 for the -- for the transcript. I know you were
23 nodding. I'm sorry.
24 A. Okay.
25 Q. So you were also on the legislative

and police training and screening police task force?

A. That's correct.

Q. And the Access to Justice committee created by the Louisiana Supreme Court?

A. That's correct.

Q. And the Closed Primary committee?

A. Yes.

Q. Which I work with. And would you say this is because the state values the opinion of the NAACP?

A. We believe so.

Q. All right. And you mentioned that in your declaration that you texted the governor regarding the congressional plan; is that correct?

A. Yes.

Q. So you have the governor's cell phone number?

A. No. This is what we do. We text his office, whatever is going on in the office, we text and e-mail.

Q. Who do you text in the office?

A. There's a main switchboard that those things go there and we have a deal. We

1 call it a texting campaign, and so we have the
2 numbers on their office and everybody gets on
3 their phone and texts.
4 Q. I'm generally interested. The
5 governor has a number you can text?
6 A. Someone told me we have a Monday
7 call that you call and text these numbers, e-mail
8 these numbers, that stuff goes to -- goes to his
9 office. As a matter of fact, they shut his
10 office down.
11 Q. You shut his office down?
12 A. We shut the switchboard down.
13 Q. Shut the switchboard down. Does
14 that include phone calls and text messages?
15 A. I know that includes when you text
16 and e-mail and all that. That's what we did.
17 Q. So you don't remember who in the
18 governor's office you texted?
19 A. No. Because what I do is I send
20 out -- you know, we have them call and say we
21 need to let the governor know our displeasure and
22 so they start doing that.
23 Q. All right. Did you speak to the
24 governor personally regarding the NAACP's
25 position?

A. I did not.
Q. You never or did any of your members speak to him?
A. Not that I'm aware of.
Q. So you're not aware that you do not have a complaint to the governor one way or the other regarding the veto?
A. No.
Q. Or regarding any position on redistricting?
A. No.
Q. All right. And you mentioned earlier in your testimony that you had a rally. What was the rally regarding?
A. The rally was regarding do you want the governor to veto the -- the congressional map.
Q. And where was that rally held?
A. From front of his house.
Q. At the governor's mansion?
A. Governor mansion.
Q. All right. And who did you contact to arrange that rally?
A. Nobody. We went there.
Q. Nobody?

A. (Shook head negatively.)
Q. Is the governor's mansion not secured by a gate?
A. We didn't go inside the gate. There's public parking in front of the governor's mansion and we held it there.
Q. Oh, I'm sorry. You were outside the gate?
A. Right.
Q. Outside the mansion?
A. Right.
Q. In paragraph 17 of your declaration, you said that you supported every map that the legislature proposed that included a second majority black district; is that correct?
A. Correct.
Q. And was that regardless of whether the map adhered to traditionally redistricting principles?
A. What are traditional redistricting principles?
Q. Well, again, I believe you mentioned that -- that the maps in paragraph 18, you say the maps also adhered to traditional redistricting principles, so I'd like you to tell

me --

A. Well, if you going to say that --

Q. I didn't say it, sir. You said it in your declaration.

A. Yes, sir. My thought process is since Louisiana's made up of a third of African-Americans, that all maps should reflect that and so --

Q. So -- I'm sorry.

A. So that should be some traditional redistricting principles, that they should reflect the make up of that particular area.

Q. So you are saying that Louisiana should have proportional representation?

A. I didn't say proportional. I said it should reflect the make up.

Q. And what is the current make up of -- of the black population of Louisiana at the moment?

A. 30 some odd percent.

Q. Okay. And what -- and how many congressional seats do we have?

A. I think we have six.

Q. And you are seeking a second majority district, correct?

A. Yes.
Q. So that would bring us to 206?
A. 206.
Q. And that would be one-third?
A. One-third.
Q. So what you were saying is not like proportional records you mentioned?
A. I -- I would think one-third would be good. That means that the people in Louisiana, the black folk would have another voice to speak for our issues.
Q. All right. In paragraph six of your declaration, you state that under the enacted map black voters in Louisiana are packed into Congressional District 2 because they constitute a disproportionate majority. Black voters are disbursed or cracked across the other five congressional districts. Do you see that in your declaration?
A. I don't have it before me.
Q. You don't have your declaration in front of you?
MR. WALE:
Can you get that pulled up, please?
And that will be exhibit -- I believe it's

Exhibit 10 of the plaintiffs. And so I believe that can pop up in the screen in front of you, if I understand the technology correct.

TRIAL TECH:

(Complied.)

THE WITNESS:

You said 10?

MR. WALE:

I'm sorry. It's Exhibit PR-10. It's at the bottom of the screen. I don't know if the screen in front of you is on.

THE WITNESS:

Yes, it is. I see it.

BY MR. WALE:

Q. But we are looking at No. 6. And so if I -- and so, again, I -- I can repeat it if there's no objection.

Under the enacted map, black voters in Louisiana are packed at the CD2, which I believe is Congressional District 2, because they constitute a disproportionate majority. Black voters were disbursed or cracked across the other five congressional districts, which comprise positions for our -- to elect our candidates,

etc. So you do see that now?
A. I see it.
Q. That is your declaration, right?
A. It is my declaration.
Q. Do you believe that every voter should be placed into a majority black district?
A. No.
Q. You do not. Okay. So you would agree that at least some black voters in Louisiana cannot be in a majority black district?
A. Right. I do.
Q. Are those voters not cracked?
A. Well, I don't know what you mean by -- by black voters and crack. Only thing I know is that --
Q. Again, I'm sorry. In paragraph six, you said black voters are disbursed or cracked across the other five congressional districts.
THE COURT:
Mr. Wale --
BY MR. WALE:
Q. Is that where I'm getting that from?
THE COURT:
Mr. Wale, you are going to have to slow down a tad.

MR. WALE:

I apologize.

THE COURT:

I'm having trouble hearing you.

MR. WALE:

I apologize to the court and the private court reporter as well, so I'm sorry. Let's go back.

BY MR. WALE:

Q. No. 6, the second sentence, black voters are disbursed or cracked across the other five congressional districts which comprise of black people of main representation and opportunity to elect our preferred candidates.

So my question is, are black voters that cannot be in a majority district wherever they are drawn, are those voters cracked?

A. Yes. They are disbursed, right.

Q. All right. Thank you.

And so you had mentioned earlier that you had provided or that you used all available means -- I forget your exact words, but you used every available mean to convince the legislature to adopt the second majority district, correct?

A. Correct.

Q. And so did the NAACP perform any studies relative to the performance of a second majority-minority congressional district?

A. We did not.

Q. You did not do that.

MR. WALE:

All right. So can we pull up legislative Exhibit No. 9, please? Can we go to page 2 of this exhibit, please? I'm sorry. We are going to look at the letter attached to this e-mail, which is page 2, and this is legislative Exhibit No. 2.

TRIAL TECH:

(Complied.)

MR. WALE:

I'm sorry. Can we go to the next page on this exhibit, please?

TRIAL TECH:

(Complied.)

MR. WALE:

All right. Nope. Here we go.

BY MR. WALE:

Q. Let's see. In the -- it looks like the second full paragraph, it starts with "Chair

Stefanski's concerns are unfounded and reflect an incomplete analysis of Coalition maps. We conducted an analysis of recompiled election results and determined that these two proposed black majority districts in the Coalition maps (CD2 and CD5) would reliably perform to provide an opportunity for a candidate preferred by black voters to prevail." Do you see that?

A. Yes, I do.

MR. WALE:

Can you scroll to the bottom of this exhibit, please?

TRIAL TECH:

(Complied.)

MR. WALE:

All right. Stop there.

BY MR. WALE:

Q. On page 7, is that your name that appears at the top, towards the top of the page?

A. Yes, it is.

Q. So you wrote this letter?

A. Yes, I did.

Q. All right. So now that we are -- now that we have refreshed your memory, did the NAACP perform any studies relative to performance

of the second majority-minority congressional district?

A. Our lawyers did.

Q. Your lawyers did?

A. Yes, the lawyers.

Q. Okay. All right. And those were the lawyers for the -- was that the NAACP legal defense fund?

A. There you go. That's right.

Q. Okay. I'm just asking. I mean, your name is on the letter, so I'm just wondering.

So on page 2, you discuss the analysis and about recompiling the election results. Do you know when the studies were performed?

A. I don't remember.

Q. You don't remember. Okay. And do you know why weren't these studies provided to the legislature?

A. I'm quite sure they were. I'm quite sure. I don't know why they were, but I'm quite sure they were.

Q. You're sure they probably were? My understanding is they were not provided, so, I

mean, do you have any records of when you would have sent that to the legislature?

A. No, I don't.

Q. So you don't know what format you would have sent it to them in?

A. No. Because it's been a while.

Q. Okay. All right. So you attended the road shows conducted by the legislature, correct? And when I say "road shows," I think we discussed that earlier --

A. Correct.

Q. -- the town halls across the state. Do you remember attending a road show on or around December 16th, 2021?

A. Yeah.

Q. You do. Okay.

MR. WALE:

So I want to draw your attention, it's an exhibit that's already been admitted into evidence. It's PR-42. If we can pull up PR-42 and if we go to page 86 of that, looking for page 86 of PR-42.

TRIAL TECH:

(Complied.)

BY MR. WALE:

Q. All right. We are going to look on -- let's see. All right. We are going to start on -- on line 11. On line 11, it says "I got something called the law on my side and I like to tell people how to organize, immobilize, agitate and litigate. Literally, we have the best, largest side of heaven, and if I talk to you, don't win out and I know it will. I'm from Louisiana, from Zwolle, but if it doesn't work, I'm going to sue you and I can tell you now, if we sue, we win, end quote.

MR. NAIFEH:

Objection. No foundation for this question.

MR. WALE:

I -- Your Honor, I believe I laid the foundation. I said he attended the road shows and he's looked at it.

THE COURT:

Objection overruled.

MR. WALE:

Thank you, Your Honor.

MR. NAIFEH:

Your Honor, if I may, that he hasn't

established that these are
Mr. McClanahan's words.
MR. WALE:
I'm sorry.
BY MR. WALE:
Q. Mr. McClanahan, do you recall stating these words?
A. They written there. I'm from Zwolle.
Q. Okay. Thank you.
Do you feel like you had a better chance of obtaining your goals in court than in the legislature?
A. No. I said that we were going to go through the process. In the end, if the process, what we started at first didn't work, then we would continue until we got some resolution.
Q. All right. I understand. So I want to turn to a little bit of the work of the NAACP. And I know that you had stated earlier in your declaration, particularly in No. 12, you had talked about, you know, one of your big goals is to registered voters in the State of Louisiana; is that correct?
A. That's correct.

Q. And that -- that this litigation or it seems like the redistricting process is for -- is causing you to divert your resources away from those goals; is that correct?

A. That's correct.

Q. So are you not encouraging people to register to vote right now?

A. We are, but our focus has also been to make sure that this process here is seen through.

Q. But you did encourage -- but you do continue to encourage people to register to vote?

A. We do.

Q. To hold the events across the state, all right. And one of the things I'm interested in is the Souls to the Polls program. The Louisiana NAACP participates in that, correct?

A. Correct.

Q. All right. And can you explain a little more what that does? My understanding is that it -- you encourage people to go vote, and is that faith based?

A. It's not -- it's not particularly faith based. You know, what we do is get your church and your pastor to get you and your

1 congregation to the polls on a particular date,
2 but it doesn't have to be your church as long as
3 a pastor talks about a person, he sees your choir
4 members while they are practicing their songs,
5 they going to sing on a Sunday, while they are
6 leaving, we want to get people to the Souls to
7 the Polls.
8 Q. Got it. And that's part of a
9 national movement, right, or a national
10 organization, the Souls to the Polls?
11 A. Well, I know - I know we do it here
12 in Louisiana.
13 Q. Okay. And what election do you-all
14 do it at? I mean, is it every election? I know
15 we just had one on April 30th. I mean, is it
16 every single election or just kind of the big
17 ones?
18 A. When you say "we," what are you
19 talking about?
20 Q. The State of Louisiana held an
21 election on April 30th --
22 A. Okay.
23 Q. -- and before that in March.
24 A. Okay.
25 Q. And we have at least four different

elections every year.
A. Yeah.
Q. So my question for you is what election does -- what elections does Souls to the Polls participate in?
A. Well, I do know we -- we chose to do it a couple years ago and we don't do it at every election.
Q. Okay. Were -- were you-all active in the last governor's election?
A. We were.
Q. And do you think that the souls to the polls effort was successful?
A. I know we got Souls to the Polls, so that increased the voter turnout, the voter participation. We were successful.
Q. Would you say that was steadily increasing the black voter turnout?
A. Well -- well, when I go out, most of the time I wear voting shirts because I understand the voting, so I want people to vote all the time and often. I want them to become primary voters.
Q. Right. But my question is do you feel like that increased the number of black

voters that participated?
A. I think it had something to do with it.
Q. All right. And when you say that, in the 2019 election, that -- that would have been pivotal in electing Governor John Bel Edwards?
A. I don't know pivotal, but I know we got them to vote.
Q. Okay. So you -- you participated in that election. All right. And so do you think if Governor Edwards was the candidate of choice for -- for many of the voters participating in the Souls to the Polls?
A. I don't know. I didn't -- I didn't -- I just wanted them to go out and vote.
Q. Okay.
A. So whoever they voted for, that was their choice.
Q. All right. And so -- so there's been a lot of talk about the second majority-minority district. Do you know who's interested in running for that second majority-minority?
A. No. They don't come tell me.

Q. They don't come tell you, so you are not familiar with that.
A. No.
Q. So you said you are from Zwolle, but you live in the Baton Rouge area?
A. Correct.
Q. So you live here in Baton Rouge?
A. Correct.
Q. So obviously with the changes over the years with hurricanes, you have experience dealing with hurricane relief; is that correct?
A. Correct.
Q. And so does that include working after Hurricane Katrina?
A. Right.
Q. And so you're aware that many people moved to Baton Rouge and to the Baton Rouge area following Hurricane Katrina --
A. True.
Q. -- is that correct? And then for a while, Baton Rouge became the largest city in Louisiana; is that right?
A. I think we are still now.
Q. Yeah. I believe they are the largest parish. So you would admit that a lot of

1 people living in Baton Rouge live here now, they
2 once lived in New Orleans?
3 A. I don't know where they came from
4 because, you know, Hurricane Katrina affected
5 almost all of Louisiana.
6 Q. Sure.
7 A. They could have come from this. I
8 don't know where they came from.
9 Q. Sure. But you can see that some
10 people did move from New Orleans to Louisiana?
11 A. I don't know.
12 MR. NAIFEH:
13 Objection. Asked and answered.
14 MR. WALE:
15 I apologize, Your Honor. I'll move
16 on.
17 BY MR. WALE:
18 Q. And so --
19 THE COURT:
20 Folks, if you are going to make
21 objections, make them and either let me
22 rule on them or, I mean -- okay. Go
23 ahead.
24 MR. WALE:
25 Yes, Your Honor. I apologize.

I'll -- I'll move on.

BY MR. WALE:

Q. So would you say that -- that New Orleans and Baton Rouge have a lot in common with each other as far as voting areas?

A. No.

Q. You would not. In your declaration, you do state that New Orleans and Baton Rouge are distinct cities with distinct needs.

A. Distinct. They have their own -- New Orleans has its own and Baton Rouge has its own.

Q. Right. And so for that reason, you think they should be in different congressional districts, right?

A. Yeah.

Q. And so my question for you is, don't all the congressional districts have cities that are very distinct from each other? For example, Monroe and Bogalusa are in the same congressional area, but they have very distinct needs; would you agree to that?

A. Yeah.

Q. And would you agree about Lake Charles and Lafayette having distinct needs?

A. Uh-huh (affirmatively).
Q. And then also, you know, like Shreveport and Minden up -- up in north Louisiana?
A. Right.
Q. So you would agree with that. I was interested that you had stated in your declaration, I do forget where, that you said that feel like Baton Rouge has a slower pace than New Orleans?
A. Correct.
Q. Isn't New Orleans nicknamed the "Big Easy"?
A. Big Easy.
Q. All right. I was just wondering. It seems like that's a thing, but Baton Rouge and New Orleans, they have been -- you know, Baton Rouge and New Orleans seems like they are having more and more in common together.
Are you familiar with the rail project the governor is pushing to link Baton Rouge and New Orleans?
A. I'm -- I'm -- I'm from -- I've been in Baton Rouge for 40 years.
Q. Yes, sir.

A. You know, so when I go to the Big Easy, I go to the Big Easy because Baton Rouge is a little slower, so I don't know what they have in common other than I-10.

Q. But in addition to I-10, are you familiar with the rail project that the governor's pushing?

A. That's another I-10.

Q. That's another I-10?

A. That's another way to get from Baton Rouge to New Orleans.

Q. Right. But why are people going between Baton Rouge and New Orleans? Isn't it because they work and live there, some people work in New Orleans and live in Baton Rouge and vice versa?

A. That may -- that's true. That -- that could be true in any area, though, you know, build the highways and byways in the State of Louisiana for the people to travel for work, play, church, to go to the football game, see Southern University beat up on our quarterback for Grambling, right.

Q. Right. And so I'm just making sure that Baton Rouge and New Orleans have a lot of

common. So you said you would go to New Orleans for a good time. That's a normal part of what Baton Rouge people do?

MR. NAIFEH:

Objection. These questions are testimony. They are not questions.

THE COURT:

Rephrase. Sustained.

BY MR. WALE:

Q. All right. So, Mr. McClanahan, do you think that Baton Rouge and New Orleans have at least some things in common as far as -- as far as people traveling to and from them?

A. I've been in Baton Rouge for 40 years. You tell me when.

Q. Okay. About the NAACP, it is my understanding that the NAACP opposes candidates, but they don't endorse candidates at any level; is that correct?

A. All I know is we get people out to vote. We support issues, but we don't support or oppose candidates. You know, we are -- that's what we do, so we want people to vote. I wear a voting shirt all the time. I have one up under here that's called vote, go vote.

Q. So it's your position that NAACP will not -- will not oppose a candidate for any reason?

A. All I know is we get people out to vote. Our mission is voting, voting engagement, voting participation.

Q. So NAACP will not be endorsing a candidate of choice for the second congressional district?

A. We get people out to vote, vote for participation, voting registration, voting engagement, voter training. That's what we do.

Q. And so if there -- there is no candidate of choice, you don't have any candidates of choice, the NAACP doesn't have candidates of choice in an election, correct?

MR. NAIFEH:

Objection. He's using a legal term asking a question about candidates of choice of the NAACP. It's a legal question.

THE COURT:

Sustained.

BY MR. WALE:

Q. All right. And so the NAACP does

not endorse or oppose candidates at any level, correct?

A. We are -- we voter engagement, voter participation. You got to vote. That's what we do.

MR. WALE:

I -- I didn't hear an answer, Your Honor.

THE COURT:

Restate your answer, sir.

THE WITNESS:

We do voting engagement, voting participation, just get people to vote. We don't -- we don't endorse anybody.

MR. WALE:

My question is more of a yes or no, Your Honor.

BY MR. WALE:

Q. Does the NAACP --

MR. NAIFEH:

It's already been asked and answered.

MR. WALE:

At any level was my clarification, Your Honor. I previously asked about

1 endorsing candidates generally. I wanted
2 to confirm it was at any level.
3 THE COURT:
4 At any level?
5 MR. WALE:
6 Endorsing a candidate.
7 THE COURT:
8 He just said no.
9 MR. WALE:
10 All right. Thank you, Your Honor.
11 BY MR. WALE:
12 Q. And so if there -- so there's no
13 record of the NAACP supporting or opposing
14 candidates; is that correct?
15 A. Not at the state levels since I have
16 been the state president.
17 Q. Okay. And then the last thing I
18 want to talk to you, you had -- you had recently
19 discussed talking environmental racism at
20 chemical plants, and you had discussed in your
21 declaration and in your testimony about cancer
22 alley. Is that -- can you describe that area,
23 what you are talking about cancer alley?
24 A. When you talk about describe, what
25 do you mean by "describe"?

MR. WALE:

Well, let's go -- if we could pull up your declaration again at paragraph 26, if we could do that.

BY MR. WALE:

Q. In your declaration at paragraph 26, and it says "Another example of Louisiana's long history of racism includes environmental racism, Louisiana cancer alley where petrochemical plants" --

THE COURT:

Slow down.

BY MR. WALE:

Q. -- "where petrochemical plants running along the Mississippi River between Baton Rouge and New Orleans have caused high rates of cancer and respiratory diseases."

The area running along Mississippi River between Baton Rouge and New Orleans, are you familiar with that?

A. Uh-huh (affirmatively).

Q. Is that currently near Congressional District 2?

A. Repeat your question.

Q. Does the area you're describing

between the Mississippi River between Baton Rouge and New Orleans, does that mirror Congressional District 2?

A. You said -- mirror is the word you used, mirror?

Q. Right. Similar district?

A. I -- I don't know.

Q. You don't --

A. I don't know.

Q. All right. So you don't -- you don't have any information?

MR. WALE:

All right. Your Honor, can I consult for a second with my co-counsel?

THE COURT:

You may.

(A short recess was taken.)

BY MR. WALE:

Q. All right. Mr. McClanahan, just a couple more questions. Does the Louisiana NAACP have a website, correct?

A. The state conference, we have one.

Q. All right.

A. We built -- we built one.

Q. And there's a biography, your

biography is on that website, correct?

A. I haven't had a chance to look at it.

Q. You haven't had a chance to look at it. So would you disagree if I represented to you that -- that in your biography online the Souls to the Polls is -- you state "Souls to the Polls is instrumental in electing the only Democratic governor in the deep south"?

A. I have to see it. I don't know.

MR. WALE:

All right. No further questions, Your Honor.

THE COURT:

All right. Any -- anything further, sir?

MR. NAIFEH:

No, Your Honor.

THE COURT:

Okay. You may step down. Thank you, sir.

Counsel and folks in the gallery, how's the air-conditioner? I have on a lot of clothes and it feels cold to me, but I'm not -- but I'm fine. So by a show

of hands, is it too cold?

Okay. We will roll it up or down or whatever it needs to be. Next?

MS. KHANNA:

And, Your Honor, Abha Khanna for the Galmon plaintiffs. We call Mr. Bill Cooper.

THE COURT:

Will there be a stipulation as to Mr. Cooper's expertise?

MR. LEWIS:

Your Honor, I -- I just asked plaintiffs' counsel to --

THE REPORTER:

Can you state your name?

Mr. LEWIS:

Oh, I'm sorry. I'm sorry. Patrick Lewis on behalf of the legislative intervenors. If plaintiffs' counsel could identify the subject matter with regard to his expertise?

THE COURT:

Well, there's a Cooper that's -- that's an expert. Do I have the wrong Cooper here? Oh, I have the wrong Cooper.

MS. KHANNA:
No, no. You're okay. You have the right one. He's the expert.
THE COURT:
Okay. He's their illustrative map expert; is that correct?
MS. KHANNA:
Yes, Your Honor.
THE COURT:
What would the tender be? What would -- in what field?
MS. KHANNA:
We are offering him as an expert in redistricting, demographics and census data.
THE COURT:
Redistricting, demographics and census data.
MR. LEWIS:
We have no objection, Your Honor.
THE COURT:
All right. So there's a stipulation to the tender. Dr. -- is it Doctor, sir?
THE WITNESS:
Mister.

THE COURT:

Mister, Mr. Cooper will be permitted to give opinion testimony in the field of -- one more time, Ms. Khanna?

MS. KHANNA:

Redistricting, demographics and census data.

THE COURT:

Okay. Please swear in the witness.

THE DEPUTY:

Raise your right hand, please.

WILLIAM SEXTON COOPER, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

DIRECT EXAMINATION BY MS. KHANNA:

Q. Good morning, Mr. Cooper.

A. Good morning.

Q. Can you please state your full name for the court?

A. My name is William Sexton Cooper.

Q. And you've been retained as an expert on behalf of the Galmon plaintiffs in this case?

A. I have.

1 Q. You prepared two expert reports; is
2 that right?
3 A. I did.
4 Q. And those are marked, just for the
5 court's reference, as Galmon and plaintiff
6 Exhibits 1 and 29, GX-1 and GX-29.
7 Do you actually have a copy of the
8 exhibits in front of you?
9 A. No, I do not.
10 Ms. KHANNA:
11 Your Honor, if I may approach, this
12 is just a copy of his stamped exhibits in
13 case he has trouble reading the screen.
14 MR. LEWIS:
15 No objection.
16 THE COURT:
17 Sir, for the record, you have before
18 you GX-1 and GX-29; is that correct?
19 Those are your two reports, the report and
20 the supplemental report. Mr. Cooper, do
21 you have before you your report and your
22 supplemental report?
23 THE WITNESS:
24 Oh, yes.
25 THE COURT:

1 Is there anything else but those
2 documents in front of you?
3 THE WITNESS:
4 No.
5 THE COURT:
6 All right. Go ahead.
7 MS. KHANNA:
8 Thank you, Your Honor.
9 BY MS. KHANNA:
10 Q. Included with your initial report is
11 your CV; is that correct?
12 A. Yes.
13 Q. And just for the court's records,
14 that's that GX-1-A, Exhibit H-4 is where that
15 begins? Is that a complete and accurate summary
16 of your background and professional experience
17 through March of this year?
18 A. Yes. I did testify in a case a
19 couple of weeks ago in Arkansas.
20 Q. And does that CV involve all of your
21 experience and other experience as well?
22 A. It does. I mean, it lists all the
23 cases that I've been involved in that related to
24 the -- it does not list, for example, cases that
25 I have been involved in relating to school

1 desegregation or a couple of environmental cases
2 in state courts, for example.
3 Q. Mr. Cooper, what is your profession?
4 A. I provide GIS consulting services,
5 mapping census data or other kinds of data that
6 can be displayed with a map on a screen for
7 different varieties of clients, mostly
8 non-profits, occasionally governmental entities
9 or ad hoc requests from individuals.
10 Q. Is it fair to say that you draw maps
11 for a living?
12 A. Yes.
13 Q. And you've been accepted as an
14 expert witness in cases before and undergone
15 fact; is that right?
16 A. Yes. I've testified in federal
17 court in about 52 cases that involved voting and
18 the vast majority of those would have been
19 Section 2 district cases.
20 Q. Have you testified in any Louisiana
21 cases before?
22 A. I have. I think I've testified in
23 four or five trials involving voting in Louisiana
24 and filed declarations in several others and also
25 have been involved in providing maps to community

1 organizations here and there around the state.
2 Q. What regions has that experience
3 covered over the course of years?
4 A. Well, overall, it's pretty much
5 covered the whole state. I -- I was involved in
6 Shreveport area back in the '90s; and also in the
7 '90s and even in the early 2000s in the northeast
8 part of the state, East Carroll Parish, down in
9 Madison Parish and Pointe Coupee and some of the
10 other areas right around Baton Rouge to the north
11 and even extending south all the way to
12 Terrebonne Parish. So I've been in almost the
13 whole state over the course of that time. I
14 don't like to fly from here. I generally drive
15 from southwest Virginia and, because of that,
16 I've criss-crossed the state a number of times.
17 Q. So is it fair to say that you are
18 pretty familiar with Louisiana geography and
19 communities?
20 A. I think so. I have general
21 knowledge. I can't speak to the knowledge that
22 the president of the NAACP has offered, but at
23 least I've been here for a number of trips.
24 Q. Thank you, Mr. Cooper.
25 Can you tell the court a little bit

about what you were asked to do in this case?

THE COURT:

Counsel, let me just interrupt you.

There's also been a stipulation as to the tender and the court has accepted him.

Can we reach an agreement that record Document 44, which is his CV, will be admitted into evidence?

MR. LEWIS:

Your Honor, yes, we can.

THE COURT:

All right. All right. 44 is in evidence. Go ahead.

MS. KHANNA:

Just to clarify, I believe that's GX-1A at page 4 is where his CV begins.

THE COURT:

Well, I don't know what that means. It's in the record at Document 44, all right?

BY MS. KHANNA:

Q. All right. Just to make sure, Mr. Cooper, will you please tell the court what you were asked to do in this case?

A. Well, there were two primary

1 requests; one was just to determine whether the
2 black population in Louisiana is sufficiently
3 large and geographically compact to allow for the
4 creation of two majority black congressional
5 districts out of the 6th District plan.
6 Secondarily, I was asked to examine
7 socioeconomic data to identify whether or not
8 there are disparities between the races with
9 respect to socioeconomic well-being statewide as
10 well as at the local level.
11 Q. I'm going to focus in for a moment
12 on that first question. Did you arrive at any
13 conclusion when it came to the first question of
14 whether Africa-Americans in Louisiana are
15 sufficiently numerous and geographically compact
16 to form an additional majority-minority
17 congressional district?
18 A. Yes.
19 Q. And what was your conclusion?
20 A. Unquestionably, the answer is that
21 the black population in the State of Louisiana is
22 sufficiently large and geographically compact to
23 allow for two districts that are majority black.
24 MS. KHANNA:
25 Let's pull up your first report,

which is Galmon plaintiffs Exhibit 1; and
I want to turn to exhibit page 10,
Figure 4. And we can just highlight
Figure 4.
TRIAL TECH:
(Complied.)
MS. KHANNA:
There we go. Thank you.
BY MS. KHANNA:
Q. Mr. Cooper, what does this figure indicate about populations growth patterns among the different racial groups in Louisiana between the 2010 and 2020 census?
A. This shows that Louisiana gains population between 2010 and 2020, approximately 125,000 persons, but the white population, the non-Hispanic white population actually fell by 132,182 persons. So all of the gain over that ten-year period can be attributed to growth from the minority population; and of that gain, about half of it related to gains in the black population.
Q. So over the course of the last decade, the white population actually fell by a larger amount than the state as a whole

population gained?

A. Yes.

Q. And this is similar to the same kind of trend we see in the previous decade; is that right?

A. That's right. There's been an overall decline in the percentage of the white population in the State of Louisiana since the 1990 census.

Q. And does that comport with a corresponding increase for what has also been an increase in the black population over that time?

A. Yes.

Q. Mr. Cooper, looking at this chart, I see at the top right two columns, I see the terms SR black and AP black. Can you explain what those are?

A. Yes. SR black is -- simply refers to persons who identify as single race black in the 2020 census. Any part black corresponds with persons who identify as single race black or black and some other race.

Q. And which metric do you use typically when determining whether the black population is sufficiently numerous and

1 geographically compact in the Gingles 1 analysis?
2 A. Well, I use voting age, and I use
3 the any part black voting age metric to determine
4 whether or not the population at -- in question
5 is -- is in a district that's over 50 percent
6 black voting age.
7 Q. Why do you use the any part black
8 definition?
9 A. That has been accepted, I think, in
10 many cases throughout the country since the
11 Ashcroft v Georgia decision in 2003, and I've
12 testified in cases here in Louisiana even where
13 I've used that metric and other places as well.
14 Q. And the Georgia v Ashcroft position
15 that you mentioned, that's from the U.S. Supreme
16 Court?
17 A. Yes.
18 Q. You also mentioned that you
19 testified in Section 2 cases in which the courts
20 have used the APV app metric; is that right?
21 A. Yes. Specifically in Fayette
22 County, Georgia in 2014, although I think my
23 testimony in Fayette County, Georgia was by way
24 of declaration. And in Ferguson, Missouri in
25 2016, in Terrebonne Parish, Louisiana in 2017;

and then in several cases this year, Alabama, the Castor case; in Georgia, the Pendergrass case; in Baltimore County, Maryland, I used the any part black definition. So it's pretty much been a standard that I've relied upon since just before the 2010 census.

MS. KHANNA:

I'm going to now pull up Figure 1 of your first report, which is going to be on GX-1 exhibit, page 6.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. What does this figure tell us about each racial group's share of the population in 2020?

A. It shows that at the top, you see non-Hispanic whites now represent 60 -- I'm sorry, 55.75 percent of the overall population. African-Americans in the any part category are about one-third, 33.13 percent.

Q. So how has the white population changed over time just looking at this figure? How do we see the effect on white population? You mentioned that there has been a steady

1 decline. Where do we see that in this chart?
2 A. Well, you can see by looking at the
3 left most columns there for 1990, the -- at the
4 time of the 1990 census, the white population
5 comprised almost two-thirds of the population in
6 the state, 55.78 percent, and the black
7 population at the same time would have been about
8 32 percent. So there's been a big drop in the
9 amount of non-Hispanic white population and a
10 modest increase in the portion of the state that
11 is African-American since 1990.
12 MS. KHANNA:
13 I want to turn now to the 2022
14 congressional maps, so if we could pull up
15 GX-29 at page 20.
16 TRIAL TECH:
17 (Complied.)
18 BY MS. KHANNA:
19 Q. Mr. Cooper, this is the
20 congressional map that was just recently enacted
21 over the governor's veto; is that correct?
22 A. Yes.
23 Q. If we could take a closer look at
24 Districts 2 and 6, which we can find at page 29
25 and 27, can you please describe for the court the

1 configuration of the enacted map?
2 A. Well, yes. You can see it's sort of
3 a certain district that stretches from the east
4 end that's Lake Pontchartrain, Orleans Parish.
5 One is all the way through Jefferson and Orleans
6 and into the River Parishes over as far west as
7 Assumption Parish back through Iberville, part of
8 Iberville Parish, and then there are quarters
9 through West Baton Rouge along the river and then
10 into East Baton Rouge Parish.
11 Q. Can you also describe District 6,
12 which is the orange district on this map?
13 A. Yes. District 6 is a wraparound
14 district. It's sort of the inverse of the -- of
15 District 2. So it extends from the Livingston
16 Parish in north and wraps around, goes all the
17 way around to the Terrebonne Parish and the
18 barrier islands and then back up on the other
19 side of District 2. You can see that it's also
20 partly in the River Parishes and extends in on
21 the -- on the west side of Pontchartrain and then
22 narrow peninsula between Lake Pontchartrain and
23 Lake Maurepas. I think that's how you pronounce
24 it.
25 Q. Would you characterize either of

these two districts as compact?

A. I could not characterize them as compact.

Q. How -- you testified in cases across the country. Do you have a sense of how District 2 compares in terms of compactness to other districts across the country, other congressional districts across the country?

A. Well, there -- there was a report produced by a software firm called -- starts -- I think it's -- I think it's called -- they looked at all the congressional districts in the country and District 2 was the seventh least compact district in the nation out of 435 congressional districts in 2011. I haven't seen a similar report yet for the congressional districts based on the 2020 census, but District 2 is just a carbon copy in the 2020 plan of the 2010 census plan, in other words, the 2011 congressional plan. So it's going to score very low nationwide, guarantee it.

MS. KHANNA:

If you could pull up GX-29, page 18.

This is the -- this is the population data for the enacted plan.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. What is the black voting age population or the BVAP of the new congressional CD2 under the plan?

A. It is 58.65 percent.

Q. And the surrounding districts?

A. All are under 34 percent. District 4 is 33.82 percent, District 5 is 32.91 percent, and the others are even lower.

Q. Mr. Cooper, you mentioned earlier that the black population in Louisiana now constitutes over a third of the population; is that right?

A. Right.

Q. What percentage of the congressional districts in the enacted plan are majority black?

A. Well, it's just one out of six, so it's a little over 16 percent.

Q. You also testified that whites make up 55 percent of the population of Louisiana in 2020; is that right?

A. Correct.

Q. What percentage of the congressional

1 districts in the enacted plan are majority white?
2 A. A little over 91 percent. I'm
3 sorry, 84 percent. Excuse me.
4 Q. So that's the five out of six?
5 A. Right.
6 MS. KHANNA:
7 We can take this down.
8 TRIAL TECH:
9 (Complied.)
10 BY MS. KHANNA:
11 Q. Mr. Cooper, you drew four
12 illustrative plans in this case; is that right?
13 A. Yes.
14 Q. Can you please briefly describe for
15 the court what is an illustrative plan, what is
16 its purpose?
17 A. It's simply to demonstrate to the
18 court that plaintiffs have met the first
19 Gingles 1 prong, which is whether or not the
20 district is comprised of a population that is a
21 majority voting age for the minority community of
22 interest.
23 Q. So what is your general approach
24 when you draw an illustrative map?
25 A. Well, I obtain census data and --

and the geographic files for the jurisdiction at issue and then apply traditional redistricting principles. I draw a plan.

Q. Can you explain what traditional redistricting principles are generally?

A. Well, in general terms, traditional redistricting principles are just the procedures one would use to develop a plan that is acceptable in court; and that would include things like one person would vote, districts that are regionally compact, that to the extent practicable follow political subdivision lines, that did not dilute minority voting districts, districts that are contiguous and that are observants of -- of communities of interest.

Q. In these traditional redistricting principles, the map drawers have used them and you have used them both for in court presentations like illustrative maps and in actual maps for drawing jurisdictions; is that right?

A. Right.

Q. When you draw an illustrative map, do you consider race?

A. I am aware of race, exactly, because

one of the traditional redistricting principles is to avoid looking at the minority voting strengths.

MS. KHANNA:

I'd like to call up your Illustrative Plan 1 and I'd like to put it alongside the enacted congressional map.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. So if we are looking at this, you can see GX-1A at page 51 is on the left of the enacted map and GX-29 at page 20, the illustrative plan 1. Great.

MS. KHANNA:

I think these are actually not -- I think we need to switch these out. It looks like I have the -- two versions of the enacted plan.

THE WITNESS:

Right. That's not the -- that's not the illustrative plan.

MS. KHANNA:

Okay. I'm sorry. Can we -- Mr. Martinson, can you -- can we put up

1 GX-29, page 20 on the left and then GX-1B,
2 page 13 on the right?
3 TRIAL TECH:
4 (Complied.)
5 MS. KHANNA:
6 There we go.
7 BY MS. KHANNA:
8 Q. Now, we are looking at the enacted
9 plan versus the Illustrative Plan 1. Just
10 looking at the two plans, Mr. Cooper, what are
11 the key differences between the Illustrative Plan
12 1 as you drew it and the enacted map?
13 A. Well, the enacted map, as I
14 discussed, has this really bizarrely shaped
15 District 2 that extends from New Orleans up into
16 parts of Baton Rouge. There's the wraparound
17 District 6, so that's problematic, very
18 problematic, and you can see Illustrative Plan 1
19 does not have that configuration. It has a
20 District 2 that extends from New Orleans to the
21 River Parishes and West Baton Rouge and that's
22 it.
23 District 5, which in the enacted
24 plan covers a very large land area, stretches
25 from around Ruston in the north all the way to

1 Bogalusa and beyond on Alabama and Mississippi
2 border area. And the plan that I developed for
3 illustrative 1, it's a more compact district that
4 extends from the delta northeast, East Carroll
5 and Morehouse Counties (sic) down to the
6 Baton Rouge area and as far east as St. Helena.
7 Q. And District 6 in your illustrative
8 plan?
9 A. That too is a district that is much
10 more compact than District 6 under the existing
11 plan. It includes the Florida Parishes and part
12 of the River Parishes.
13 MS. KHANNA:
14 I'm going to pull up Illustrative
15 Plan 2, GX-1B at page 40.
16 TRIAL TECH:
17 (Complied.)
18 BY MS. KHANNA:
19 Q. What are the defining features of
20 Illustrative Plan 2 in relation to illustrative
21 1? What's the main distinction between the two
22 plans?
23 A. Well, I developed Illustrative Plan
24 2 in an effort to put as much of Acadiana in the
25 District 3 as I could. Acadiana involves 22

1 parishes; and the base population of those 22
2 parishes is too large to go in one district, so
3 Acadiana has to be split.
4 In the end, using this
5 configuration, I was able to create two majority
6 black -- majority black districts, District 2 and
7 District 5, while at the same time keeping about
8 81 percent of Acadiana in District 3, which is
9 about the same percentage that is achieved in the
10 enacted plan where I think the figure is
11 84 percent of Acadiana is in District 3.
12 MS. KHANNA:
13 And let's pull up Illustrative
14 Plan 3, GX-1-Z, at page 7.
15 TECHNICAL SUPPORT:
16 (Complied.)
17 BY MS. KHANNA:
18 Q. What are the defining features of
19 illustrative plan three. How is it different
20 than the other illustrative plans that you drew?
21 A. This plan actually does not change
22 District 2 at all, as it's compared to
23 Illustrative Plan 1, CD2. However, it does
24 change District 5 by making it cover a slightly
25 smaller footprint, excluding some of the parishes

in the north that are included in illustrative plans one and two. So it's a -- it's a more eccentric, even though it does include the rural parishes along the Mississippi River.

MS. KHANNA:

And let's look also at Illustrative Plan 4, which you said that in your supplemental report, that's at GX-29, page 45, so we can go to now.

TECHNICAL SUPPORT:

(Complied.)

BY MS. KHANNA:

Q. And what would you say are the distinctive or defining characteristics of this illustrative plan compared to the others?

A. Well, this is similar to Illustrative Plan 1. In this particular plan in response to a criticism or assertion by one of the defendants experts, I decided to draw a plan that splits no precincts at all, no VTDs to make the point that that was possible.

The other three illustrative plans were drawn to achieve absolutely perfect 0 population deviations, so this -- this is a -- a representative map showing how Illustrative Plan

1 1 could be modified to be drawn solely with whole
2 VTDs and the same can be done with illustrative
3 plans two and three.
4 Q. Thank you.
5 Mr. Cooper, you spoke earlier about
6 the traditional districting principles that you
7 considered in drawing your illustrative plans; is
8 that right?
9 A. Yes.
10 Q. You list out in your reports
11 specific principles that you factored that you
12 considered for your references at paragraphs 49
13 and 50 of your report.
14 Can you list for the court what the
15 traditional districting factors that you
16 considered were?
17 A. Well, I balanced them all,
18 specifically one person, one vote requirements,
19 the importance of drawing districts that are
20 reasonably compact and reasonably shaped. I
21 looked at making sure that I was following to the
22 extent practicable political subdivision lines,
23 so I was paying attention to parish lines and
24 municipal lines and precinct lines.
25 Obviously, I needed to also respect

1 communities of interest to the extent possible,
2 and certainly I needed to make sure that I was
3 not diluting minority voting strength, so I
4 balanced all those factors. I didn't weigh one
5 over the other in the sense of the word.
6 Q. You also examined the legislature's
7 adopted redistricting criteria; is that correct?
8 A. I did. Joint Rule 21.
9 Q. So I'd like to touch upon the
10 contributing factors individually as they pertain
11 to your illustrative map. Let's start with one
12 person one vote. How is this principle reflected
13 in your illustrative plan?
14 A. The illustrative plans, all four of
15 them apply to one person one vote in my opinion.
16 Clearly, Illustrative Plans 1, 2 and 3 are the
17 perfect plans from the standpoint of one person
18 one vote because the districts analysis is one
19 person in the 6th District is shown. It's not
20 possible to draw six zero deviations in our
21 figures, but it is possible to draw five and an
22 additional district is minus one.
23 Q. So the first three illustrative
24 plans have exactly equal populations among the
25 six congressional districts, except for one

1 district, which has one fewer person?
2 A. I think that's correct.
3 Q. And what about Illustrative Plan 4?
4 A. Illustrative Plan 4 is drawn to
5 avoid splitting any precincts or any VTDs, so
6 it's zero, zero VTD splits. And so because of
7 that, you can't get to ideal perfect deviation,
8 but that particular plan, I don't have the number
9 in front of me, but it's plus or minus 150 or so.
10 It's about a hundred 50 persons over all
11 deviations, so it for all intents and purposes
12 meets the population requirements.
13 MS. KHANNA:
14 Let's turn now to parish and
15 municipality splits. Let's put up from
16 your report GX-1 exhibit, page 34,
17 Figure 20.
18 TRIAL TECH:
19 (Complied.)
20 BY MS. KHANNA:
21 Q. What was your approach when it comes
22 to parishes and municipalities in drawing the
23 illustrative plans? Let's just focus on those
24 two for now.
25 A. Well, Joint Rule 21 specifically

1 outlines that plan drawers should attempt to keep
2 parishes intact and in one district to the extent
3 practicable and avoid splitting municipalities
4 and VTDs to the extent bracket. So that's what I
5 did again, balancing things, and I was able to do
6 better than the enacted plan in all four
7 illustrative plans across all four categories.
8 Q. So looking at specifically parish
9 splits, your illustrative plans managed to
10 minimize the number of parish splits compared to
11 the enacted map; is that right?
12 A. That's right. The enacted map has
13 15 parish splits and the illustrative plan has
14 one, two, three and four have 10 or 11. I think
15 plan two has 11, so one, three and four have ten
16 parish splits.
17 Q. And when it comes to municipality
18 splits, how do your illustrative plans compare to
19 the enacted plan?
20 A. Again, superior. The 2022 plan --
21 and this is actually showing the arranged chart
22 that I think I have mentioned in my second
23 declaration. The actual number of splits and
24 municipalities in the enacted plan is 38. Two of
25 them are actually a zero population split, so I

1 discount those. So the number I would be using
2 would be 36 because that is actually reflecting
3 pieces not -- not split municipalities in this
4 chart. The numbers that I come up with are 18
5 municipalities are split in the enacted plan and
6 I'd have to go -- well, you can see here that
7 Illustrative Plan 1 was split, I think 12
8 municipalities in Illustrative Plan 2 was split,
9 15 in Illustrative Plan 3 would actually split,
10 16 if you just looked at municipality splits as
11 opposed to pieces of municipalities as clearly
12 superior to the enacted plan across that metric
13 as well as the parish splits. And although it's
14 not superior in terms of VTD splits, that's only
15 because I was seeking to achieve zero population
16 deviation. Clearly, it would be very easy to
17 draw four illustrative plans that are zero VTD
18 splits and within plus or minus 150 people or so,
19 as I've shown in Illustrative Plan 4.
20 MS. KHANNA:
21 And let's take a look at that.
22 Let's look at in your supplemental report
23 GX-29 page 8, Figure 3.
24 TRIAL TECH:
25 (Complied.)

BY MS. KHANNA:

Q. So this talks about -- can you explain what the -- what happened here when it came to the precinct or the VTD splits?

A. Yes. This is the actual HB1 plan instead of my mistake that was SB1, not HB1 in my initial declaration, but the bottom line, it doesn't change my opinion in any way. You see the 2022 plan splits 15 parishes versus Illustrative Plan 4 splits 10 with no precinct splits; whereas, the 2022 plan actually does have a split VTD in West Baton Rouge right along the I-10 bridge area and it has fewer populated municipal splits. And if you discount some of the dozen or so towns and cities in -- in Louisiana that spill over into another parish, both plans then have fewer real splits in the sense that they are -- like Morgan City I think is in two different parishes, and so it's kind of unfair to call that a split when, you know, you're not splitting the parish. You are keeping the parishes intact and, because of that, you're actually splitting a municipality. That really shouldn't count as a strike against you. So single parish populated splits, again, you can

see from the Illustrative Plan 4 fewer municipality splits are involved in Illustrative Plan 4.

Q. Looking at the same figure on the screen, the last column says CBSA splits. Can you explain for the court what CBSA refers to?

A. Yes. CBSAs are defined by the Office of Management and Budget, and they are -- most people are familiar with the term metropolitan municipal areas, like -- so like an area of New Orleans would have two or three parishes where there is metropolitan statistical areas.

These metropolitan statistical areas are defined by Office of Management and Budget. They reflect commuting patterns that then can be expressed as relationships between parishes and small towns in and around a larger population center. Metropolitan statistical areas have to have at least one urban center that is 50,000 people or more.

So obviously New Orleans and Baton Rouge are metropolitan statistical areas, but so is Thibodaux and Houma because those areas have smaller cities that are more than 50,000

1 people.
2 And there are nine metropolitan
3 statistical areas in Louisiana, but there are
4 also some areas that are kind of urbanized but
5 smaller cities and they are known as micropolitan
6 statistical areas, and there are ten of those in
7 the state.
8 Q. So --
9 A. And that would include some of the
10 smaller cities. Like Bogalusa I think is
11 actually a micropolitan statistical area.
12 Q. So it's fair to state that the CBSA
13 are government defined regions of -- basically
14 centered on urban centers and their surrounding
15 communities; is that right?
16 A. Right. Based on commuting patterns,
17 so they reflect communities of interest that are
18 centered on commercial activity, journey to work.
19 They are defined in -- in this a neutral way by
20 the Office of Management and Budget in
21 conjunction with the census bureau in the
22 journey-to-work files. So it's a very effective
23 way to define regions, and that's not just in
24 Louisiana but nationwide.
25 Q. And what does the federal government

do with the CBSAs? Why is that relevant in terms of federal funds and other things?

A. Well, that's exactly it. It effects things like highway funding, medication funds, Medicare reimbursement. I mean, it's amazing all the different federal programs that would be effected as it relates to whether or not a place is in a metropolitan statistical area or in a micropolitan statistical area. And some parts of the state, of course, are not in either. They are part of a rural area, so there would be other funding formulas for those particular parishes, but a lot of areas in northeast Louisiana -- northeast Louisiana, for example, would be rural and not in micropolitan or metropolitan areas.

Q. How does your Illustrative Plan 4 compare to the enacted plan when it comes to division of these CBSA communities?

A. There are 14 splits. In other words, 7 CBSAs are split compared to 18 splits in the 2022 plan or 9 CBSAs.

MS. KHANNA:

I want to turn now to the criterion of compactness. If you could pull up Figure 18 of your first report, GX-1,

page 32. A lot of numbers here.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. What are the metrics that are reflected here and what do they say about quantitative compactness?

A. Well, these are measures that demonstrate graphs that have been developed over the years to determine whether or not one can objectively measure compactness. And so I'm looking here at two different measures that are probably like the most widely used measures. One is the REOCK that is based on the -- the land area of a district as it relates to a circumscribed circle.

So a perfect plan or district would be 1.0 and districts that are not so perfect would drop from that level. Most districts never achieve 1.0 because there are not very many circular cities. So you get a range between zero and 1, and so the right score for the 2022 plan is 3.7. And you can see that CD2 is 0.18 and the illustrative plans are generally in the same range for REOCK, but significantly better on the

1 Polsby–Popper.
2 The Polsby–Popper score, which is
3 the right most column, looks at the perimeter of
4 a district. So if you've got lots of squiggly
5 lines, then you are going to have a low
6 Polsby–Popper score. And, you know, you can see
7 the 2022 plan has a fairly low Polsby–Popper
8 score overall, .16, and the illustrative plan
9 scored higher on that measure. And of particular
10 note is the extraordinary low score for CD2,
11 which is .06 on the Polsby–Popper score.
12 Q. So looking at these metrics, I
13 believe you mentioned that the -- how do your
14 illustrative plans compare overall as an average
15 measure to the enacted plan?
16 A. Better.
17 Q. And what about on the individual
18 district level?
19 A. Again, better, particularly as
20 compared to CD2, which is the majority black
21 district in the 2022 plan.
22 Q. If you could go back to that
23 side-by-side showing the enacted plan on the left
24 and the Illustrative Plan 1 on the right, how do
25 these metrics that we just talked about map onto

the visual, the map itself? Just looking at the map, how would you describe where we see those being in compactness?

A. Well, the -- you can see that District 2 is just very oddly shaped and so that's -- you don't need to look at compactness scores to see that Illustrative Plan 1 is far superior in terms of compactness scores. If you examine District 2 alone and then -- but because District 6 is the inverse of that and wraps around CD2, it naturally also is going to have a very low compactness score. And you can look at Illustrative Plan 1 and see that District 6 in Illustrative Plan 1 states basically north of Lake Pontchartrain, that is not wraparound, so obviously it's going to score higher. But, again, it's just in the eye of the beholder. Illustrative Plan 1 surely can be that, no reasonable person arguing otherwise.

Q. You also mentioned in your report that contiguity is another traditional redistricting principle; is that right?

A. Yes.

Q. Are your illustrative plans contiguous?

A. Yes, they are.

Q. And how did the illustrative plans compare to the enacted plan on contiguity?

A. The enacted plan is contiguous, technically speaking, but if you look very closely at the enacted plan around East Baton Rouge and West Baton Rouge Parish --

MS. KHANNA:

I -- I can pull up a map for you.

Put up GX-29 at 27.

TRIAL TECH:

(Complied.)

THE WITNESS:

Yeah. This is a Zoom on District 2 and District 6, and you can see how in the enacted plan District 2 kind of picks up a few VTDs in West Baton Rouge and then when it reaches I-10. And, again, this particular exhibit doesn't zoom in like maybe it could to make this point.

MS. KHANNA:

Can we zoom in on the area we need?

TRIAL TECH:

(Complied.)

THE WITNESS:

Yeah. Okay. You can sort of see the area of concern here where you get to the I-10 bridge; and naturally taking the I-10 bridge, you're going to cross from Port Allen into Baton Rouge. And you can see that going by I-10, it -- District 2 is on both sides of I-10, just barely on the other side. So you really leave District 6 and go into District 2. And so there's a little -- a little piece, a little carveout in downtown Baton Rouge around the capital, the federal building here that is in District 6, but it's not really connected other than by water to any other part of District 6. Basically, you have to swim upriver in order to actually get to a point where you could go from that part of downtown Baton Rouge, which is District 6, into the other part of District 6 in East Baton Rouge.

BY MS. KHANNA:

Q. If we could zoom out back to the original exhibit, are there any other portions that -- of the enacted map that present -- presented any continuity concern?

TRIAL TECH:

(Complied.)

THE WITNESS:

Yeah. There's another area on the east side. Well, actually really the west side of Lake Pontchartrain, but on the east side of District 6, you can -- you can see how there's a little peninsula kind of between Lake Pontchartrain and Lake Maurepas. I'm not sure if I'm pronouncing that right. I guess you know where I mean, and you can see to get from St. John the Baptist Parish, you either have to swim across Lake Maurepas to Livingston Parish or you have to take I-55 and go into Tangipahoa Parish and then pick up another road that would take you back into District 6. So it's contiguous by water but not by land.

BY MS. KHANNA:

Q. Mr. Cooper, how many majority black districts do your illustrative plans contain?

A. Two.

Q. And when you say "majority black," how did you -- what method did you use to measure

1 whether your districts were majority black?
2 A. I used the any part black voting
3 age. Anything over 50 percent black voting age
4 is majority black.
5 Q. Were there any other metrics that
6 you examined when determining whether you had
7 created two majority black districts?
8 A. Yes. I also confirmed that by
9 looking at the registered voter file that the
10 State of Louisiana legislature released in the
11 summer of 2021 for redistricting purposes. And
12 there too, I was able to determine that both
13 Districts 2 and 5 in the illustrative plans have
14 over 50 percent black registered voters. That
15 confirms that it's clearly a situation where both
16 districts are over 50 percent.
17 And then I also looked at the census
18 bureau's special tabulation of citizen voting age
19 population and determined there again that using
20 the most conservative measure possible, which is
21 single race, non-Hispanic citizen voting age,
22 both citizens in all four illustrative plans are
23 over 50 percent black, so there's really no
24 argument. I'm sure the defendants will try and
25 claim otherwise, but these are two majority black

1 districts that were very easy to draw.
2 Q. Mr. Cooper, we discussed a number of
3 factors.
4 MS. KHANNA:
5 You can take that down. Thank you.
6 TRIAL TECH:
7 (Complied.)
8 BY MS. KHANNA:
9 Q. We discussed a number of factors
10 that went into the drawing of the illustrative
11 plans. Was any one factor a predominant factor
12 in drawing your illustrative maps?
13 A. No. I made a real effort to try to
14 balance all the factors.
15 Q. Tried to balance all the factors
16 concurrent?
17 A. Right, right.
18 Q. Could you have increased or
19 maximized the black voting population of one or
20 both of your majority coefficients if you wanted
21 to?
22 A. Sure. I could have split more
23 precincts, more municipalities, maybe more
24 parishes and increased it quite a bit probably.
25 Q. So you could have increased the

1 black composition of the black districts that
2 would have come at the expense of other
3 principles?
4 A. Yes. However, municipalities and
5 precincts in Louisiana take on some very odd
6 shapes.
7 Q. Mr. Cooper, you read a report
8 submitted by Tom Bryan on behalf of the state
9 defendant; is that right?
10 A. Yes.
11 Q. And Mr. Bryan suggests that your
12 illustrative maps segregate black neighborhoods
13 from white neighborhoods in various cities; do
14 you recall that from his report?
15 A. Yes.
16 Q. And that both cities included like
17 Baton Rouge and Alexandria, right?
18 A. Right.
19 MS. KHANNA:
20 I'm going to pull up an exhibit from
21 Mr. Bryan's report looking at state's
22 Exhibit 2, page 81. And, if you could,
23 just zoom in on the figure itself.
24 TRIAL TECH:
25 (Complied.)

1 BY MS. KHANNA:
2 Q. This is the City of Baton Rouge in
3 the enacted plan; and if you could just ignore
4 the district lines and numbers for the moment,
5 are black and white Louisianians uniformly
6 distributed within Baton Rouge?
7 A. No. The black population lives
8 predominantly in the northern part of Baton Rouge
9 and the white population lives in the southern
10 areas and eastern areas.
11 Q. So apart from the way districts are
12 drawn, there is also a segregation between the
13 two division populations within the city?
14 A. Right. There's been historical
15 housing segregation and that's been per graduated
16 into modern times. So yes, there's no question
17 that African-Americans are in a very compact area
18 in Baton Rouge and it's in the north.
19 Q. And that's -- the same patterns are
20 seen in other cities as well?
21 A. Oh, absolutely. Absolutely. You
22 see the same segregated housing pattern, and it's
23 clear that within those cities African-Americans
24 live in very compact, easily definable areas.
25 MS. KHANNA:

We can take down this exhibit.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. Mr. Cooper, under the enacted plan, what percentage of the state's black population lives in a majority black district?

A. For the black population living in a majority black district, approximately 31 percent live in a majority black district.

Q. And that's listed in your report?

A. Right.

Q. Just for the court's reference, paragraph 42 of your initial report, what about the white population under the enacted plan, what percentage of the white population lives in a majority white district?

A. 91.5 percent.

Q. Under your illustrative maps, approximately what percentage of the black population would live in a majority black district?

A. A little over half.

Q. And the other half would be -- what -- what racial composition would that be?

A. Well -- well, you -- well, about -- about half of the black population would live in the majority black district.

Q. Okay. Thank you.

And approximately what percentage of the white population would live in a majority white district under any of your illustrative plans?

A. About three, three-quarters of the white population would live in a majority white district. So this improves over the enacted plan where we see 31 percent of the black population and 91 percent of the white population living in separate or majority white districts.

THE COURT:

Just a second, Counsel.

THE DEPUTY:

Why do we keep losing the counsel or is there nothing up there?

THE COURT:

There's nothing up there.

BY MS. KHANNA:

Q. Just to make sure, while you described the enacted plan has approximately 31 percent of the black population in a majority

1 black district and 9 -- over 90 percent of the
2 white population in a white district, your
3 illustrative plan would make up roughly half of
4 the population in the black majority district and
5 three-quarters of the white population in a
6 majority white district; did I hear that
7 correctly?
8 A. Right, right.
9 Q. So under your illustrative maps, is
10 it fair to say that more white people would live
11 in more racially diverse districts than they do
12 under the enacted map?
13 A. Absolutely.
14 Q. You were also asked to look at
15 various economic data; is that right?
16 A. Yes.
17 Q. And what was the purpose of that
18 analysis?
19 A. Just to determine whether or not the
20 black population and white populations have
21 disparate measures in terms of socioeconomic
22 well-being. It relates to factor five, which I
23 believe another witness may testify on, but I
24 just gathered together the underlying data from
25 the American Community Survey for the year 2019,

a one-year survey statewide that is the most current data available from the census bureau.

Q. And what did you conclude from your examination of that socioeconomic data?

A. Well, I prepared an exhibit with charts to accompany the data set in my declaration, and across almost every single category, you could see that non-Hispanic whites enjoy higher levels of socioeconomic well-being.

Q. And is that both statewide and at the parish level?

A. Absolutely. I've got a link to a set of files from the 2015, 2019 ACS. The link is in my declaration on the last page; and if you are interested in a particular parish, there's data comparing African-Americans and whites and also included a table -- a -- charts that show the Latino population, and you can get that information for any parish in Louisiana. Guaranteed, you'll see the same patterns. And if you are interested in a municipality, you can get all municipalities in Louisiana; cities, towns villages and even unincorporated places that have at least 10 percent black population; and the same pattern is there.

Q. And that pattern is that whites outpace blacks --

A. Yes.

Q. -- under any socioeconomic map that you looked at?

A. Yes.

Q. Thank you.

MS. KHANNA:

Your Honor, I have no further questions at this time, but I would like to move into evidence plaintiffs -- Galmon plaintiffs' Exhibits 1, which includes 1-A, 1-B, 1-C, and Galmon plaintiffs' Exhibit 29. Those are Mr. Cooper's reports and all the attachments.

THE COURT:

Without objection, admitted.

MS. KHANNA:

Thank you, Your Honor.

THE COURT:

We still got about 20 minutes on the record. Does the -- would the defense like to come in and cross-examine Mr. Cooper?

MR. LEWIS:

Yes, Your Honor.

THE COURT:

Counsel, if you don't mind, state your name, please, sir.

CROSS-EXAMINATION BY MR. LEWIS:

Q. Good morning, Mr. Cooper. My name is Patrick Lewis. I represent the legislative intervenors in this case.

A. Good morning.

Q. Mr. Cooper, when were you hired to work on this case?

A. Pardon?

Q. When were you hired to work on this case?

A. I think in early March or February of 2022.

Q. Okay. And did you spend the time from -- at March or February until the date of your initial report working on your illustrative maps and other work in this case?

A. Yes. I was doing a lot of other stuff; but yes, I was -- that would have been the time period I would have worked on the illustrative maps.

Q. Now, Mr. Cooper, I just want to make

1 sure I understand from your -- your direct
2 testimony. Would you agree with me that House
3 Bill 1 is functionally a carbon copy of the 2011
4 congressional plan for Louisiana?
5 A. I stated that in my declaration.
6 There are minor differences, but it's basically a
7 carbon copy, right.
8 Q. Okay. And I believe you testified
9 on direct examination that your assignment in
10 this case was to determine if Louisiana's black
11 population was sufficiently large geographically
12 compact, excuse me, to permit two majority black
13 districts; did I hear that right?
14 A. Yes.
15 Q. Okay. So is it fair to say that
16 your goal from the outset was to draw two
17 majority-minority districts from the get-go,
18 right?
19 A. No. It was not my goal, because
20 when developing a plan, you have to follow
21 traditional redistricting principles; so I -- I
22 did not have a goal to under all circumstances
23 create two majority black districts. I had to
24 balance out the population from peer-reviewed
25 redistricting principles.

Q. During your map drawing process, did you ever draw a one majority-minority district?

A. I did not because I was specifically asked to draw two by the plaintiffs.

Q. Okay. Now, Mr. Cooper, for each of your four illustrative plans, isn't it true that you don't draw a single district that's 52 percent or higher that measured with the any part black metric?

A. That could be correct. I don't have the numbers in front of me, but that could be correct.

Q. Okay. But we could find those numbers in Exhibits J-1, K-1 and L-1 to your report; is that right?

A. I think so. I guess. I'm not disagreeing with you. I -- I don't recall drawing a district that was significantly above the low 50s BVAP.

MR. LEWIS:

Okay. And, in fact, just to -- just to illustrate the plan, if we could pull up Exhibit GX-1B at page 37.

TRIAL TECH:

(Complied.)

MR. LEWIS:

There we go.

BY MR. LEWIS:

Q. I believe this is Exhibit K-1 to your report. Do you recognize this, Mr. Cooper?

A. Yes.

Q. So this is your Illustrative Plan 2, correct?

A. It is.

Q. Okay. And so your District 2 has 50.65 percent BVAP; is that right?

A. That's correct.

Q. And District 5 is 50.04 percent, right?

A. Right.

Q. So, Mr. Cooper, what made you decide to stop right there at that 50.04 percent at District 5?

A. Zero deviation. I was attempting to balance out the population so that it was perfect. I've been in some cases where the parties on the other side have insisted that no, it's got to be zero deviation or you haven't prepared an acceptable plan for the court. So yeah, when I hit zero, I stopped because it was

still above 50 percent BVAP.

Q. Okay. Now, you testified on direct examination, Mr. Cooper, that for your fourth illustrative plan, that rebuttal report, that you no longer attempted to reach perfect population equality; is that right?

A. That's correct.

MR. LEWIS:

Okay. And if we can go to Exhibit GX-29 at page 43.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. Okay. Mr. Cooper, this is Exhibit B-1 to your rebuttal. Do you recognize this?

A. Yes.

Q. Great. And would you agree with me that District 2 in your Illustrative Plan 4 has a BVAP of 50.06 percent?

A. Yes.

Q. Okay. So what made you stop at 50.06 percent for District 2 in this plan?

A. Well, again, I'm not sure I stopped at 50.06 percent. That's where it ended up. I was simply focused on trying to put together a

good combination of precincts so that the overall deviation was in the same range as the enacted plan, but I didn't split any VTDs where the enacted plan splits one. So the deviation in this plan is slightly higher than the deviation in the enacted plan, if that matters.

Q. Sure. But I believe you testified on direct that you could have drawn higher than -- than a bare 50 percent BVAP majority, correct?

A. Oh, I'm confident you could by splitting more VTDs.

Q. Okay. Now, Mr. Cooper, did you conduct an analysis to determine if your 50 percent BVAP districts in your four illustrative plans would be likely to elect black preferred candidates in Congress?

A. No. I did not handle panels two and three. There's another expert in this case. Dr. Palmer who will be testifying on that point.

Q. Okay. I'd like to ask you a few questions now about your CD5.

MR. LEWIS:

So for one example, let's pull up your Illustrative Plan 2, which is GX-1 at

page 27.
TRIAL TECH:
(Complied.)
MR. LEWIS:
There we go. Sorry about that.
It's actually page GX-28. I apologize for that.
BY MR. LEWIS:
Q. So, Mr. Cooper, you would agree that you drew East Baton Rouge Parish into all four of your illustrative plans District 5, correct?
A. That is true.
Q. Okay. Would you further agree with me that all four of your plans you drew in the parishes of East Carroll, West Carroll, Madison, Tensas, Concordia and portions of Ouachita, correct?
A. Correct.
Q. Okay. And those parishes that I just mentioned, those are up in that delta region; is that right?
A. Right.
MR. LEWIS:
Okay. So if we could now turn to Figure 3 on page 8 of your report, which

should be page GX-9, GX-1-9. Excuse me.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. Okay. Now, Mr. Cooper, this figure you drew here, it's shaded to show the percentage of BVAP in each of Louisiana's 64 parishes; is that right?

A. Yes.

Q. All right. Now, those delta parishes have pretty substantially high BVAP; isn't that correct, as a percentage?

A. Well, East Carroll and -- and Madison are clearly super majority black. Of course, they are not heavily populated, and then some of the others are in the 40 to 60 percent black category, right.

MR. LEWIS:

Okay. So just to put some numbers on it, I'd like to turn to Exhibit C-1 to your report, which is Exhibit GX-1A at page 18.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. And, Mr. Cooper, this table reports, among many other variables, the number of any part black population in each of Louisiana's 64 parishes, right?

A. Yes.

Q. All right. Okay. So just to go through very quickly just a few of these, so Concordia has any part black population of 7,725, right?

A. Yeah. Correct.

Q. All right. East Carroll Parish, 5,272, correct?

A. Correct.

Q. And then Ouachita has 61,217, right?

A. I'm not on --

Q. Oh. I need to go to the next page.

A. I need more.

Q. There we go. 61,217, correct?

A. Yes.

Q. Okay. Now, the ideal population size for a Louisiana congressional district is 776,293. Does that sound right?

A. That sounds right. I guess I can confirm it. Yes, that's right.

Q. Okay. Great. So would you agree

1 then that in order to draw a second
2 majority-minority district in Louisiana, that
3 other than District 2 and District 5, that you
4 needed to include substantial black population
5 from the delta parishes?
6 A. That -- that would be true. I
7 believe that you would have to include part of
8 the delta area in at least part of the delta
9 area. In District 5, it would be majority black.
10 Q. And, in fact, none of the remedial
11 plans or illustrative plans submitted in this
12 case drew a second MMD without including those
13 parishes; is that right?
14 A. That is correct.
15 Q. Did you try to draw a remedial plan
16 that had a second MMD without going up into the
17 delta?
18 MS. KHANNA:
19 Objection, Your Honor. Under
20 Rule 26, we are not allowed to ask about
21 draft reports and other things that are
22 not actually in the expert report.
23 THE COURT:
24 Counsel?
25 MR. LEWIS:

I'm asking him -- he's asked to draw -- I'm asking him if he made an attempt. I'm not asking about his draft report did he draw it or not.

THE COURT:

Well, restate your question.

BY MR. LEWIS:

Q. Okay. Try this again. Have you drawn -- have you ever drawn --

All right. Let's try it this way. None of your reports include a remedial plan that has a second MMD that did not go into the delta; is that right?

A. I have not prepared remedial plans. These are simply illustrative plans to --

Q. Excuse me.

A. -- demonstrate the principles when it's met.

Q. But let me restate that. An illustrative plan. None of your illustrative plans contain two MMD districts that go up into the delta, right?

A. That's correct.

Q. And, as you sit here today, are you aware of a way that you could draw a second

1 majority-minority district without going into the
2 delta?
3 A. I -- I am not. I've never tried to
4 do that.
5 Q. Okay. All right. Now, I believe
6 you've spoken on direct examination about trying
7 to protect core-based statistical areas as a
8 community of interest; is that fair?
9 A. They represent a community of
10 interest, yes, sir.
11 Q. Okay. And did you try to protect
12 those communities of interest in your -- in your
13 plans?
14 A. Well, I believe I did. I was aware
15 of the lines. It's impossible to avoid splitting
16 those metropolitan statistical areas and
17 micropolitan statistical areas because they are
18 comprised generally of more than one parish. So
19 there are splits, but the end result of
20 Illustrative Plans 1, 2, 3 and 4 are that my
21 plans involved fewer splits of core-based
22 statistical areas in the enacted plan.
23 Q. Now, Mr. Cooper, is it fair to say
24 that there is no MSA metropolitan for a
25 core-based statistical area that includes both

East Baton Rouge and parishes of the delta such as East Carroll, Morehouse or Ouachita?

A. I'd have to look at the map. I don't believe that Baton Rouge metropolitan area would extend into the delta area.

Q. Okay. Now, one of the metropolitan statistical areas that you considered was the Monroe metropolitan statistical area; is that correct?

A. That would have been one that would have been split.

Q. Okay. That's what I mean, split. All right. And, in fact, you split over 40 percent of its population to create District 5; is that not correct?

A. I'd have to look at the table. What table are you looking at?

Q. Sure. Sure. Let's do that.

MR. LEWIS:

If we could go to exhibit GX-1B at page 35. This looks right.

TRIAL TECH:

(Complied.)

THE COURT:

I'm having a hard time seeing it.

MR. LEWIS:

Yeah. If you could zoom in for us.

TRIAL TECH:

(Complied.)

THE WITNESS:

I could probably find it now. It's GX-1B.

BY MR. LEWIS:

Q. There. Does that help?

A. Yeah.

Q. If I'm reading this correctly, maybe I'm not, but it looks to me like you've got for District 4, Monroe, Louisiana, 86,424 people of that MSA or CBSA, excuse me, were put into District 4, correct?

A. That is correct.

Q. Okay. And for District 5 you had 120,608 people, right?

A. Right.

Q. Okay. So I think I -- actually, my question to you, I may have had that number backwards. It looks like about 58 percent of the Monroe MSA or, excuse me, CBSA was put in and assigned to District 5, correct?

A. Correct.

Q. And do you -- would you agree with me that in the remainder of your plans that that split would be similar?

A. Probably is similar.

Q. All right.

A. I would agree with that.

Q. Okay. So I'd like now to turn to the report of Tom Bryan. I believe you testified about that briefly on direct examination.

A. Uh-huh (affirmatively).

MR. LEWIS:

And specifically page 46, so State 2 at page 46, please.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. Okay. Have you seen this chart before?

A. I have seen the chart. I have not looked at it in great detail.

Q. Sure. Okay. And do you see for East Baton Rouge where he's identifying that you divided a certain population between Districts 5 and 6 in your Illustrative Plan 2?

A. Yes.

Q. Okay. Do you have any basis to dispute his calculation that you assigned 72.78 percent of the black population of East Baton Rouge Parish into District 5?

A. Oh, I have not double checked his figures, but it is not unlikely. It is likely that that's correct.

Q. All right. And then if we could look down at Ouachita Parish, I believe Ouachita is in the Monroe MSA, right?

A. It is.

Q. Okay. And in your review, did you have any basis to dispute his calculation when you divided Ouachita Parish between Districts 4 and 5 that you assigned 88.45 percent of Ouachita's black population into District 5?

A. Again, I cannot confirm his numbers, but I have no reason to think that they could be correct.

Q. Okay.

THE COURT:

Counsel, I apologize for interrupting you in cross, but we are going to have to take a break until 1:15, so we will be in recess until 1:15 p.m.

(A lunch recess was taken at 11:45 a.m.)

THE COURT:

Mr. Lewis, your witness.

BY MR. LEWIS:

Q. Good afternoon, Mr. Cooper.

A. Good to see you again.

Q. So before the break, we were talking briefly about some of the manners in which, you know, you split some of the parishes between Congressional District 5 and other districts. Do you recall that testimony?

A. I do.

Q. Okay. Good. Is it fair to say that through those moves that you moved a fair amount of BVAP into CD5 through those splits?

A. Well, the splits do follow some areas that are segregated. I did a housing segregation going back decades, so the end result is I have put majority black neighborhoods in the second majority black district, not exclusively, but certainly that's -- that's the case.

Q. Okay. And is that one of the main -- you know, the fact that those are black majority neighborhoods, is that one of the big drivers why you assigned those to CD5?

A. Not necessarily. I have to go back and carefully review the map and my decision-making process at the time, which often is not something that I would record. But the point is that these cities have very clearly defined neighborhoods that are overwhelmingly black in some cases, and that's just the way it is. They are compact areas and easy to join to other compact majority black populations to comprise the second majority black district.

Q. Okay. I had one question for you about your testimony about the growth of the population changes in Louisiana, so if you can go to page 5 of your report, GX-1?

A. (Complied.)

Q. And my question for you relates to Figure 1. And I believe, you know, you offered testimony that since between 2000 and 2020 that the share of non-Hispanic white population decreased in the State of Louisiana; is that right?

A. I believe I was talking about between 1990 and 2020. It may have -- I may have referenced the white population in 1990 as being 65.8 percent roughly, and as of the 2020 census,

it's 55.8 percent roughly.

Q. Okay. And is it fair to say that --

you know, that there's been a substantial growth

in the Latino population in the State of

Louisiana since 1990?

A. That is fair to say.

Q. And that growth would be reflected

on Figure 1 --

A. Right. Correct.

Q. -- from about 2 percent to 7 percent

roughly in the state's population?

A. Roughly speaking, correct.

Q. All right. So, Mr. Cooper, are you

aware of any time in the 20th or 21st century

when a Louisiana congressional plan combined East

Baton Rouge Parish with East Carroll Parish?

A. In the 20th century?

Q. Yes, sir.

A. I actually have maps. I don't think

that the 2001 plan did. It's in my report, but

allow me to double check. Get my hand on -- yes.

The 2001, which was actually a seven district

plan, included Iberville in District 5, but it

did not include Baton Rouge.

Q. Okay. So, and then in the prior,

you know, from 1990 to 2000 or, no, 1900 to 2000, are you aware of a district that put East Baton Rouge Parish and East Carroll Parish in the same congressional district?

A. I have not reviewed all the maps, so I really -- I really could not -- could not say with any certainty at all --

Q. Okay.

A. -- one way or the other.

Q. All right. Were you familiar with the Hays litigation in Louisiana in 1990?

A. I'm aware of it. I have no -- no involvement at all on any level.

Q. Okay.

A. And actually, I have some maps showing the majority black districts that were drawn during that 1990 to 2000 timeframe.

Q. So just to illustrate one of them, if we could just go to -- and I'm only using this for illustrative purposes, but to Dr. Sadow's report, Exhibit SOS_3 at page 6?

A. I don't have his report. I have these maps in my declaration. I just have to put my hands on them. I actually prefer to use my maps. They have a little better detail. So we

are looking at the original map, which would be Exhibit F-1 in my declaration.

Q. Okay. So that's GX-01 at looks like page 38?

A. GX-1A.

Q. At 38?

A. Right.

Q. All right.

MR. LEWIS:

Morris, can you pull it up?

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. Okay. So this --

A. So that map actually did include East Baton Rouge and District 4.

Q. Okay. And that map was struck down as a racial journey member, was it not?

A. Yes. I think that map has the lowest Polsby-Popper score I think I've seen in my life at 0.1, so it's not surprising, but I do not know the specifics of the ruling in terms of why it was -- why it was rejected by the court.

Q. Okay. And this particular plan also included portions of Ouachita Parish combined

with East Baton Rouge; is that right?

A. It did apparently, right.

Q. Okay. Okay. So, Mr. Cooper, I'd like now turn to some of that -- some of the sociological data that you pulled in this case.

My understanding of your report is that you reported on certain economic, educational and other, I'll just say, sociological statistics from Louisiana, both at the state level and at the local level, in East Baton Rouge Parish and Orleans Parish; is that right?

A. I do have charts that can be accessed from the 2015, 2019 five-year surveys for East Baton Rouge and all parishes in Louisiana.

Q. Okay. And I believe you testified on direct examination that you looked at these statistics to help determine if -- if there were differences between the black population and the white population of Louisiana on those particular factors; is that right?

A. Well, I didn't look at all those charts. They were batch produced. I've looked at I think in December of 2020 or maybe it would

have been -- I think it would have been December of 2020. I was recently involved in a voting case in Louisiana and filed a declaration where I produced charts from I think the 2015, 2019 ACS or 2014 ACS based on East Baton Rouge. That was -- that was one of the charts that I prepared for that case.

Q. And for this particular case, your report doesn't contain any analysis comparing the economic, educational or sort of other sociological differences between the black community of East Baton Rouge Parish and the black community of the delta parishes; isn't that right?

A. Well, you could look at those -- those similarities. I'm not saying that folks who live in East Carroll Parish where I admit where I've seen that people are in dire economic straights, at least as of the mid 1990s, I'm not saying that those folks necessarily are on the same income level as a typical African-American in Baton Rouge; but I think you've heard very clear testimony from Mr. McClanahan, representing and the president of the state NAACP -- and he's right -- in great detail how the people in the

1 delta area have a great deal of connections to
2 East Baton Rouge. So there's nothing at all
3 unusual about including East Carroll Parish and
4 East Baton Rouge in the same district.
5 Q. Okay. But, in fact, would you agree
6 with me that there are, in fact, significant
7 differences both -- you know, just two examples:
8 You know, median black household income and
9 educational attainment levels between the black
10 community of East Baton Rouge and the black
11 community of East Carroll Parish?
12 A. Well, I think you could also look at
13 the white community in East Carroll Parish and
14 the white community in East Baton Rouge and you
15 can also see there are differences.
16 Q. So the answer to my question is yes,
17 sir?
18 A. My answer is is that you can do
19 that, but it really -- it does not mean much of
20 anything because the -- the key thing to remember
21 in this lawsuit is that African-Americans have a
22 shared interest in a history that they have
23 experienced in Louisiana, and only Mr. McClanahan
24 and other plaintiffs who will follow him can
25 describe that because I'm not black and I didn't

1 grow up in Louisiana.
2 MR. LEWIS:
3 Your Honor, I'd like to move to
4 strike that answer. It goes beyond his --
5 his expertise as an expert in census data
6 and the sociological statistics and stuff.
7 He's speaking about -- he's going into
8 specific factors he didn't get asked for.
9 THE COURT:
10 Denied. Ask the next question.
11 MR. LEWIS:
12 So I'd like to review with you just
13 a few of those numbers. So if we could
14 turn to Exhibit GX-1C at page 88. And,
15 Mr. Cooper, I'll represent this comes out
16 of Exhibit O to your report.
17 TRIAL TECH:
18 (Complied.)
19 THE WITNESS:
20 Yes.
21 BY MR. LEWIS:
22 Q. Okay. All right. Is it fair to say
23 from this report, sir, that approximately
24 50.6 percent of black residents have either some
25 college, an associate's degree or higher level of

education?

A. This would indicate that that 30.8 percent of the black population has some college with an associate's degree as compared to whites in that category, which would be 27.2 percent. Although, I remind you that even though there's a gap there, you see that if you look at bachelor's degrees, blacks have 19.8 percent of the population under 25 with a bachelor degree versus 31.6 percent. So in some ways, this second-to-the-right column is just a reflection of the big disparity among those who are actually holding -- hold four-year degrees, so there's nothing unusual about this chart.

Q. Okay. So if I -- if I just add 30.8 and 19.8, I get 50.6. Is it then fair for me to say that 50.6 percent of black residents in the Baton Rouge metropolitan area have some college or greater educational attainment?

A. I did not --

THE COURT:

No.

THE WITNESS:

I did not add those up myself, but I'll take your word for it, but -- but

then I'll remind you that 50 -- 58 percent of -- of whites have some college or a bachelor's degree.

THE COURT:

And would not the 19.8 be a part of the 30.85 not in addition to? Am I the only one that sees it that way? If -- if the 19. -- I'm sorry, the 30.8, which is some college or associate's degree, then if you have a bachelor's, that is a subset of that, not in addition to. Am I incorrect, Mr. Lewis?

MR. LEWIS:

I guess I could put that question to the witness.

THE COURT:

Okay. And I'm sorry.

THE WITNESS:

And actually --

THE COURT:

You ask the question. I don't want to -- I don't want to take over your case. I just want to make sure that I understand.

MR. LEWIS:

1 Yes, Your Honor.
2 THE WITNESS:
3 Yeah. And, I mean, in this chart,
4 the -- the persons in this category, some
5 college or associate's degree, would be
6 individuals who did not complete the
7 four-year degree, so it's -- it's not
8 really a subset.
9 THE COURT:
10 Okay.
11 THE WITNESS:
12 It's those who went to college maybe
13 for a couple of years but didn't graduate.
14 THE COURT:
15 Okay. Thank you.
16 THE WITNESS:
17 Or graduated with an associate's
18 degree as opposed to four years or higher.
19 MR. LEWIS:
20 Okay. Thank you.
21 If we could turn to page 97 of this
22 document.
23 TRIAL TECH:
24 (Complied.)
25 BY MR. LEWIS:

Q. And, Mr. Cooper, would you agree with me that black median household income was reported in this chart for east -- you know, for Baton Rouge area is $42,643?

A. Yes.

MR. LEWIS:

All right. If we could then turn to page 102.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. And here, Mr. Cooper, would you agree with me that 16.6 percent of black family households in Baton Rouge were below the poverty level in the past 12 months?

A. Yes. Except this is Baton Rouge metro area, so I'd -- I'd have to go back and --

Q. I understand.

A. And it's not -- it's not just the City of Baton Rouge.

MR. LEWIS:

Okay. So I would like to take a very -- just a very quick look at a couple of those figures you've got on your website, so I'm going to go with -- we

will start with East Carroll Parish, and specifically we are going to take -- you can start with page 22.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. First of all, do you recognize this document?

A. Yes.

MR. LEWIS:

Okay. And if we could go to page 22?

TRIAL TECH:

(Complied.)

MR. LEWIS:

Yes.

BY MR. LEWIS:

Q. So would you agree with me then that East Carroll Parish, based on this ACS survey, that 58 percent of black families in East Carroll Parish were below poverty level in the past 12 months?

A. During that survey period, which went from 2015 to 2019, so it would be a survey at that point in 2017.

MR. LEWIS:

Okay. So if we could go to page 24?

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. All right. And -- and would you agree with me this is reporting that the median household income for black residents of East Carroll Parish was $14,800 per year within that survey period?

A. Yes.

MR. LEWIS:

All right. If we turn to page -- page 18.

TRIAL TECH:

(Complied.)

THE WITNESS:

By the way, I ran these charts off a nationwide basis for various uses and so I'm including the Latino population as part of that batch production that went into all like 3,000 counties and I don't know how many municipalities, and the idea was that any place that was at least -- at least had 10 percent black population or

1 10 percent Latino population would be
2 included. I don't have the number
3 percentage of the population in East
4 Carroll Parish that is Latino, but it's a
5 very small number, so you have to take
6 some of these Latino numbers off.
7 BY MR. LEWIS:
8 Q. And, Mr. Cooper, we are
9 unfortunately on a clock, so I just ask that you
10 please confine your answers to the question asked
11 and, if you want to follow up, your counsel can
12 inquire.
13 A. I'm sorry. I didn't know you had a
14 clock.
15 Q. Thank you. So for here again, if
16 we -- if we just sum up this is educational
17 attainment, East Carroll Parish, can you just sum
18 up that 16.8 and 5.4, we get approximately, you
19 know, just slightly -- just slightly over
20 22 percent of black residents have either some
21 college or greater; is that fair?
22 A. Fine.
23 Q. Okay. All right. Same exercise
24 very quickly for Ouachita Parish, which would be
25 Exhibit 2, okay. Once again, you recognize this

is one of your charts?

A. Yes.

Q. Okay. Perfect.

MR. LEWIS:

All right. If we could go to page 26.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. All right. And this is again that daily household below the poverty line for the past 12 months for Ouachita. The report says 38.7 percent of black family households were below the poverty level in that time period, correct?

A. In the parish, yes.

Q. Okay. Perfect.

MR. LEWIS:

All right. If we could go to page 32.

TRIAL TECH:

(Complied.)

BY MR. LEWIS:

Q. All right. And this -- this sheet is reporting median household income in Ouachita

1 Parish for black households is $25,644, correct?
2 A. Correct.
3 MR. LEWIS:
4 All right. And then page 22.
5 TRIAL TECH:
6 (Complied.)
7 BY MR. LEWIS:
8 Q. All right. And I won't ask you to
9 add these numbers other than, you know, I added
10 them up, I got about 47.7 percent as educational
11 attainment of black residents in Ouachita Parish
12 black population or greater. Does that look
13 right?
14 A. That looks about right, yes.
15 Q. Thank you. I'd like to turn you --
16 you indicated that in your rebuttal report, you
17 said race did not dominant in any of your
18 illustrative plans; and you've also testified
19 that one of the criteria you attempted to follow
20 was the avoidance of minority voting dilution.
21 Do you recall that testimony?
22 A. Well, along with several other
23 redistricting principles.
24 Q. How does one avoid minority voting
25 dilution in drawing your plan?

A. Well, if you have a jurisdiction where it is a significant black population and there is no majority black district, and then if you can create that majority black district while following other traditional redistricting principles, then you've avoided minority vote dilution.

Q. And is there a specific target black voting age population that you would look to to assure you were not diluting minority votes?

A. No. I -- I am not aiming for a target, but I am aware of the Garner v. Strickland rule that basically acknowledges that 50 percent plus 1 is the voting age majority.

Q. All right. Now, when you were drawing these districts, you used the map, right?

A. I did.

Q. And did your computer have the racial breakdown of the voting tabulation districts in Louisiana at the time you drew them?

A. Yes. It had the 2020 census for the voting tabulation districts.

Q. Okay. And did you ever consult that data while you were drawing?

A. I was aware of the data, right.

Q. All right. So is the answer to that question yes?

A. Yes. To the extent that I -- I knew that parts of Baton Rouge, specifically north Baton Rouge are significantly black, parts of Alexandria are significantly black, that can be obvious when working with Maptitude.

Q. Sure. Would 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.

Q. But certainly race would have been an important factor that you considered, right?

A. It was one of several.

Q. Okay. Now, you talked about, you know, looking at certain communities of interest, and I know you mentioned core-based statistics where your report doesn't document any other types of communities of interest that you attempted to preserve, correct?

A. Well, I -- in the first part of my declaration, I identified Acadiana and also identified eight parishes that are considered the Acadiana park land; and, as I testified to

earlier today, I felt like I should at least try to keep that area relatively intact when I drew Illustrative Plan 2 and I did so. It's -- it's over 80 percent in line with the percentage of Acadiana that is in District 3 under the enacted plan.

Q. Sure.

MR. LEWIS:

All right. Well, let's pull up -- I'd like to go back to your first illustrative plan. It's in your report at page 25, Figure 12.

TRIAL TECH:

(Complied.)

MR. LEWIS:

Yeah. If you could zoom in on the figure.

BY MR. LEWIS:

Q. So if -- you mentioned that you looked at joining -- or Joint Rule 21 from the legislature. It's a set of legislative goals that you considered when drawing your plans, right?

A. Right.

Q. Now, if the legislature identified a

1 particular goal in drawing its enacted plan, for
2 example, pairing a military installation in
3 Vernon Parish, which I believe is Fort Polk, with
4 another military installation near Shreveport,
5 Barksdale Air Force Base, would your illustrative
6 plans have taken those goals into account?
7 A. I did not see anything that
8 indicated those military installations should be
9 joined. Perhaps if I have another opportunity, I
10 will take that into consideration.
11 Q. Okay. And, in fact, in this plan
12 here, Vernon Parish and Shreveport are not drawn
13 under the same district, right?
14 A. Which plan?
15 Q. The one on the screen, Illustrative
16 Plan 1.
17 A. That is true. In this plan, Vernon
18 Parish is in District 3.
19 Q. And would you agree with me that
20 there's no universal definition of community of
21 interest?
22 A. Yes.
23 Q. Okay.
24 MR. LEWIS:
25 Your Honor, I have no further

1 questions.
2 THE COURT:
3 Any redirect?
4 MS. KHANNA:
5 Thank you, Your Honor. Very
6 briefly.
7 REDIRECT EXAMINATION BY MS. KHANNA:
8 Q. Mr. Cooper, you were asked about the
9 extent to which you tried to preserve other
10 communities of interest other than the core-based
11 statistical areas you discussed in your report?
12 A. Yes.
13 Q. Do you consider parishes to be
14 communities of interest in Louisiana?
15 A. They can be.
16 Q. And how about municipalities?
17 A. They can be.
18 Q. Did you make those preserve
19 political subdivision boundaries?
20 A. Yes, I did.
21 Q. Can you tell us again what you were
22 asked to do by counsel when it comes to the
23 Gingles 1 analysis in this case?
24 A. Well, I was asked to prepare plans
25 that adhered to traditional redistricting

1 principles and that would possibly demonstrate
2 the second majority black district could be drawn
3 in Louisiana. I was not told that I had to
4 produce such a plan, but in the process of
5 drawing districts, it was clear to me that it is,
6 in fact, relatively easy and relatively obvious
7 that one can do so and I don't see how anyone
8 could think otherwise.
9 Q. You were asked to determine whether
10 Gingles 1 could be satisfied--
11 A. Exactly. That's --
12 Q. -- is that right?
13 A. That's the point.
14 Q. And part of that question was
15 determine whether the black population in
16 Louisiana is sufficiently numerous to form an
17 additional black majority district; is that
18 correct?
19 A. Yes.
20 Q. The second part of that analysis is
21 to determine whether the black population is
22 sufficiently compact to comprise a
23 majority-minority district; is that right?
24 A. Yes.
25 Q. And in answering that question,

1 whether the black population is sufficiently
2 numerous and geographically compact to form a
3 second majority black district in the -- in the
4 congressional map, what was your answer to that
5 question?
6 A. Yes.
7 Q. Have you been asked that question by
8 other counsel in other Section 2 cases, other
9 plaintiffs' counsel in other Section 2 cases,
10 whether Gingles 1 is satisfied in a particular
11 location?
12 A. Yes. I don't think I can ever
13 recall a Gingles 1 Section 2 case where that
14 question was not answered affirmatively. I've
15 probably in some instances told people that you
16 just cannot draw a district because it doesn't
17 adhere to other redistricting principles, but
18 certainly have done that.
19 Q. Thank you. That anticipated my
20 question. Just to clarify, you've been asked by
21 other counsel in other cases whether it's
22 possible to draw a majority black district
23 consistent with Gingles 1 in other places?
24 A. Yes.
25 Q. And --

A. And I told some folks no, can't do. Can't do it.

Q. So when you feel you can't do it or whether you determined you can't do it consistent with redistricting principles, you've told counsel the answer to the question is no?

A. No. Well, that's -- that's exactly the case and I would never have testified in court in the 1990s supporting the plan that was drawn that created the second majority black district that we just reviewed in Exhibit F-1 or whatever from -- from the early '90s. I mean, that's really a crazy looking plan. There may have been better ways to draw it. Those were days when GIS software was not necessarily available and it could have been developed by people working off of paper maps at the block level and that was the result, and perhaps a better plan could have been drawn.

Q. But at the end of the day, whether it was 30 years ago or in recent times, if counsel were to ask you whether you could draw an additional majority black district consistent with traditional redistricting principles, your answer would be yes or no, depending on the

1 demographics and the geographic makeup of the
2 map; is that correct?
3 A. Exactly.
4 MS. KHANNA:
5 Thank you. That's all I have.
6 THE COURT:
7 Thank you. Next witness?
8 MS. SADASIVAN:
9 Your Honor, Kathryn Sadasivan for
10 the NAACP Legal Defense Fund. The
11 Robinson plaintiffs will next call
12 Anthony Fairfax.
13 ANTHONY FAIRFAX,
14 after having first been duly sworn by the
15 above-mentioned court reporter, did testify as
16 follows:
17 MS. SADASIVAN:
18 Your Honor, would you like us to
19 stipulate to the proposed expertise that
20 we are proffering?
21 THE COURT:
22 What are -- what are you tendering
23 this witness in?
24 MS. SADASIVAN:
25 We are tendering Mr. Fairfax an

expert witness in demography, redistricting and the census data.

THE COURT:

All right. Is there a stipulation as to the tender?

MR. STRACH:

No objection, Your Honor.

THE COURT:

Do you want to offer his CV into evidence?

MS. SADASIVAN:

Yes, Your Honor. It's PR-15, his -- his report, which includes his full CV.

THE COURT:

Okay. Well, the report is hearsay, so unless you don't object to the report coming in, sir? I asked if she wanted to offer his CV. Since there's no objection as to his expertise, she says his CV is part of the report. My comment is report is hearsay, unless you want to let it in.

MR. STRACH:

Your Honor, I believe we have a stipulation of the witness testifying. We won't object to the hearsay.

THE COURT:

Okay. That's fine then, so what is your exhibit number?

MS. SADASIVAN:

PR-15.

THE COURT:

All right. Admitted.

MS. SADASIVAN:

Thank you, Your Honor.

DIRECT EXAMINATION BY MS. SADASIVAN:

Q. Good afternoon, Mr. Fairfax.

A. Good afternoon.

Q. Can you state your full name for the record?

A. Yes. Anthony Fairfax, A-N-T-H-O-N-Y, F-A-I-R-F-A-X.

Q. And are you here today, Mr. Fairfax, to testify as an expert in Robinson versus Galmon?

A. Yes.

MS. SADASIVAN:

And, Your Honor, can I approach and hand the witness the exhibit?

THE COURT:

You may.

THE WITNESS:

Your Honor, can I remove my mic?

THE COURT:

Are you fully vaccinated, sir?

THE WITNESS:

I'm -- I'm triple vaccinated. I just didn't have my card.

THE COURT:

Yes, you may.

THE WITNESS:

All right. Thank you.

BY MS. SADASIVAN:

Q. So I handed to you what has been premarked as PR-15. Do you recognize this document?

A. Yes, I do.

Q. And how do you recognize it? How do you recognize the document?

A. Yes. It's the illustrative plan that I wrote, the report for the Illustrative Plan 1.

Q. And does this report fairly summarize your qualifications as an expert in this case?

A. Yes, it does.

Q. And does the report include your most recent curriculum vitae or CV with the exception of maybe a case or two?

A. Yes, except for a recent project I started in March.

Q. And that's on page 35?

A. That's correct.

Q. How long have you been a demographer, Mr. Fairfax?

A. Approximately 30 years.

Q. And could you give the court an overview of your prior redistricting work?

A. Sure. I began my involvement in redistricting in the 1990 rounds. I was a GIS consultant, had an office at university. The project goals were to assist nonprofit organizations mostly throughout the south that did not have the wherewithal to draw and develop redistricting plans.

The second part was to actually go out and train different universities HBCU on how to actually draw and develop plans.

The next decade I was hired as the consulting demographer for a nonprofit, a newly-formed nonprofit called the Congressional

Black Caucus Institute, and its goals and objective was to look at different congressional districts throughout the country where African-Americans could elect candidates of choice, analyze, develop plans and alternatives.

That next following decade I was rehired as a consultant demographer once again for the congressional black caucus. Along the way, I've done various training, redistricting training sessions, different expert preparation sessions; and ultimately, finally this decade I moved to the level of providing expert witness and testimony.

Q. And have you done demographic and redistricting work on behalf of state or local government entities?

A. Yes. Recently, I guess a couple years ago, I was hired by the City of Everett, Washington. They were moving from an at-large system to their first districting system and they hired me to I guess shepherd the commission that they had to develop their first plan.

Q. So let's now turn to your role in this case, what you describe on page 4 of your initial report, which is PR-15. At a high level,

what were you asked to examine?
A. I was asked to determine whether I could develop an illustrative congressional district plan for the State of Louisiana that hereto stayed in federal criteria and satisfied the first precondition of Gingles.
Q. And how many reports did you submit in this case?
A. Three.
MS. SADASIVAN:
Your Honor, may I approach again?
THE COURT:
You may.
MS. SADASIVAN:
(Tendered.)
BY MS. SADASIVAN:
Q. So, Mr. Fairfax, I just handed you what has been premarked as PR-86. Do you recognize this document?
A. Yes.
Q. And how do you recognize it?
A. It appears to be my second report, my response supplemental report.
MS. SADASIVAN:
And, Your Honor, can I approach for

the last time because this is the last --

THE COURT:

You may.

MS. SADASIVAN:

(Tendered.)

BY MS. SADASIVAN:

Q. And I just handed you what's been premarked as exhibit PR-90. Do you recognize this document?

A. Yes, I do.

Q. And how do you recognize that?

A. It appears to be my third report, my second supplemental report.

Q. And why did you submit the two supplemental expert reports in this case?

A. The first supplemental report was in response to the defendants' experts, primarily with the issue that they had on using what they considered DOJ formula forces of the majority black districts versus the any part black that I used. In addition, I actually improved the plan and it ended up being a better plan than -- than in many cases in the illustrative plan, the original illustrative plan.

The second supplemental report

1 involved including all incumbents within the
2 districts and so there was some slight
3 modifications made on the second illustrative
4 plan to make sure that all incumbents were
5 included. There was one paired incumbent.
6 Q. And so we will come back to the
7 reason and the basis for your second supplemental
8 or your first supplemental report, but before I
9 get there, what were you compensated for your
10 expert opinions in this case?
11 A. My hourly rate is $200 an hour.
12 Q. And was your compensation in any way
13 contingent upon your findings or the illustrative
14 plans you drew?
15 A. No.
16 Q. Can you please tell me what
17 Gingles 1 is?
18 A. Gingles 1 comes from the court case
19 Thornburg versus Gingles, et al, in 1986; and out
20 of that court case came a three-prong test and
21 what's called the conclusion of what's called the
22 totality of circumstances.
23 The first prong or the first
24 precondition is that you should show that you can
25 create one or more single member

1 majority-minority districts that are sufficiently
2 large -- now they say numerous -- and
3 geographically compact.
4 Q. And how do you determine whether a
5 minority population is sufficiently large for the
6 purposes of G1?
7 A. Usually, you use the voting age
8 population above 50 percent. On occasion, you'll
9 need to look also at the citizen voting
10 population.
11 Q. And the minority population that you
12 considered here is the black population?
13 A. Yes. That's correct.
14 Q. And how did you determine it was
15 black in your assessment of the minority black
16 population?
17 A. I used the any part black.
18 Q. Is that common in your practice?
19 A. Yes.
20 Q. How did you define the black
21 population, the various illustrative plans you
22 alluded to earlier, that you used another
23 definition in later plans?
24 A. How did I define them?
25 Q. Yes.

A. Any part black was used for each one of those plans. The -- the second report, as I mentioned before, looked at whether you could use the same metric for non-Hispanic black alone plus black and white combined.

Q. And, in general, how do you determine whether a population is geographically compact for the purposes of Gingles 1?

A. Compactness is really subjected to the jurisdictional boundaries, the size and shape of the voting tabulation districts, and so the best way to do it is to compare your plan to another plan, for example, the last enacted plan or the just past enacted plan. And that's what I did, I compared it to the 2011 plan as well as the HB1 enacted plan.

Q. And when you say the HB1 plan, you mean that's the bill number that established the plan that was vetoed by the governor and subsequently overridden by the legislature?

A. That's correct.

Q. Did you consider the redistricting criteria in drawing your illustrative plans?

A. Yes, I did.

Q. What sources did you look at to

identify Louisiana redistricting principles?

A. What documentation?

Q. Any source did you look at?

A. Yeah. I looked at the state constitution that had a brief mention, but it mostly came from what's called Joint Rule 21 or the state legislature actually provided a guideline of those that were developing plans.

MS. SADASIVAN:

Okay. Matthew, could you please pull up PR-79, page 1?

TRIAL TECH:

(Complied.)

MS. SADASIVAN:

Thank you.

BY MS. SADASIVAN:

Q. So let's walk through the redistricting principles that you considered in undertaking your Gingles 1 analysis in this report. Which traditional or state redistricting criteria did you use to evaluate your plans and the HB1 plan on?

A. Sure. I looked at five criteria. I looked at people population or what comes from one person one vote; I looked at continuity; I

1 looked at compactness; I looked at political
2 subdivision of splits of parishes as well as
3 voting tabulation districts. I looked at
4 communities of interest, minimizing or preserving
5 communities of interest or census places and
6 landmarks, and something called fracking.
7 Q. And we will get to that in just a
8 second, but how does the census designate census
9 places?
10 A. The census designates a place as a
11 city, a town, a village and something that's
12 called census designated places.
13 Q. And what is a census designated
14 place?
15 A. The census rule has created the
16 statistical areas called census designated
17 places, or CEPs, and these are usually locally
18 recognized. They are named by the area, but they
19 don't have a governmental body. And so the
20 census utilized these areas for statistical
21 purposes.
22 Q. And you read the expert report
23 submitted by the defendants in this case that
24 addressed your illustrative plans?
25 A. Yes.

Q. And the Bryan report or one of your reports evaluates some splits of census places, correct?

A. That's correct.

Q. Does it evaluate all the census places that you evaluated in your report?

A. No. It appears that what he did was he removed the census designated places and he evaluated only the city, towns and villages.

Q. And why do you consider census places, including census designated places, in your consideration in communities of interest in evaluating the Louisiana congressional map?

A. Because census places are actually 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 areas than a city or a town.

Q. And how does a census designate landmark areas?

A. Landmark areas include dozens of areas, including, say, airports and colleges and universities, parks, cemetery, large industrial

areas.

Q. And why did you seek to preserve census landmarks?

A. Because those are areas many times you just don't want to split and separate.

Q. What other sources did you look at to identify communities of interest?

A. I looked at reference information of a website called Folk Life, a website that provided me some context to tradition in cultural areas throughout the -- the state as well, and I used socioeconomic data and also some testimony.

Q. What kind of testimony?

A. Testimony from the road show declarations, the videos that the state legislature had.

Q. And what socioeconomic data did you consider?

A. I looked at a variety of sort of common standards, socioeconomic indicators like income and education and poverty, renter percentage; and those were the major ones.

Q. Going back to communities of interest, can they overlap?

A. Yes. Yes.

Q. And conflict?
A. Yes.
Q. How did you prioritize the traditional redistricting criteria that you considered?
A. I tried to balance out all of the criteria. So there really wasn't any priority, except for communities of interest. Excuse me. Compactness and fraction -- fracking weren't included in the Joint Rule 21.
That said, compactness is part of the component of Gingles, so I had to weigh that a little higher than normally and so I would actually equalize that with the other traditional redistricting criteria. So fracking was really the only one that I probably put at a lower level.
Q. Is it possible that different redistricting principles can conflict with one another?
A. Oh, absolutely. Yeah. There are trade-offs. There are always trade-offs in redistricting and when you are drawing plans.
Just to give you an example, if you are trying to make something more compact, if you

will, that means that you may have to split a political subdivision, and if you split a political subdivision, that works against or works for compactness.

It also may mean that if you are trying to make something more equally populated, you may also have to split a political subdivision, if you are trying to make something more compact, maybe that you have to adjust the equal population and tolerate a little more in population deviation, so there are always trade-offs that you have.

MS. SADASIVAN:

Thank you, Matthew. You can take those down. Let's turn now to your map drawing process.

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. Did you software-develop the illustrative plans?

A. Yes, I did.

Q. What software did you use?

A. I used Maptitude for redistricting.

Q. And what kind of data did you

consider in drawing the illustrative plans?

A. A variety of sources. I used -- the primary source was something called a P.L. 94-171. It's known as redistricting data. It's an extract from the census, the decennial census, in this particular case the 2020 census. It provides you the race and ethnicity down to the block level.

Also looked at the American Community Survey, both a one-year and the five-year surveys. Part of that extract from the ACS, they call it, was the CVAP data, which provides you citizen voting age population. The ACS also provided socioeconomic data as well.

I also looked at different geographic boundaries, of course, from the 2011 boundaries for the previously enacted plan, as well as the HB1 plan. I also accessed the -- the American Community Survey has integrated and created or rather the census bureau has integrated and created from ACS and other sources something called the community resilience estimates, and these are designed really to show where communities are at risk of for a disaster, including COVID, throughout the country. I also

accessed plaintiffs' locations and ultimately incumbents' addresses.

Q. And did you use any other redistricting plan as the basis for your illustrative plans?

A. Yes. Yes. The 2011.

Q. And why did you use that 2011 that was the basis for your illustrative plans?

A. Oh, in redistricting, normally you don't start from scratch. You don't just start developing a plan anywhere you want. You start with a baseline, and usually that's the previously enacted plan, and then modify from that plan.

Q. And there was a majority-minority district in that plan?

A. Yes.

Q. In which district?

A. District 2.

Q. So let's now walk through each principle that you considered in your map drawing process and whether your opinion and your opinion that you formed the illustrative plans that you draw adhere to that principle and whether the HB1 plan adhere to that principle.

MS. SADASIVAN:

Matthew, can you please pull up Table 5, PR-15 at page 20?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. And what's the ideal district size for a Louisiana congressional district?

A. 776,293.

Q. And how did you measure population deviation?

A. You measure -- and, of course, the software does this, but the population deviation is measured from what's called the ideal population size, and it's calculated by taking the total population of the state residential population and dividing the number of districts into it, and that gives you the ideal population size. And so that deviation from that is how much the deviation district is from that population size; and if you divided the ideal population size by that number, you end up with the deviation percentage.

Q. Thank you.

MS. SADASIVAN:

Matthew, you can take those down.
If you wouldn't mind pulling up PR-20 at page 3 and PR-9 at page 5.
TRIAL TECH:
(Complied.)
BY MS. SADASIVAN:
Q. Mr. Fairfax, how did your illustrative plans compare to the enacted plans in terms of the equal population standard?
A. The Illustrative Plan 1 was only 51 or an overall deviation where you look at the lowest populated district from the highest populated district and get the difference, and so there was 51 individuals in that difference. The HB1 plan had 65.
Q. And you testified earlier that you took into account mathematically compactness when you developed your illustrative plans in addition to other state and redistricting criteria, right?
A. That's correct.
Q. And what are the qualitative measures of compactness that you considered?
A. I looked at three measures, three popular measures; the REOCK, Polsby-Popper, and Convex Hull.

Q. And is a single quantity of measure of compactness dispositive as to whether or not a plan is or is not compact?

A. No. No. They all usually measure a particular aspect of the districting plan.

Q. So how do you compare plans to determine which is more compact?

A. Probably the best way and the most common way is to look at the mean, the mean of all the districts, and so you would calculate or the system calculates what that mean is for each of the districts for the plan and then you compare that number with one plan against another plan.

Q. And so how did the mean compactness of your illustrative plans compare to the HB1 plan?

A. The Illustrative Plan 1, 2 and -- and 2A were more compact in all three measures than the HB1 enacted plan.

Q. In your opinion, how did your illustrative plans compare to the HB1 plan in terms of the principle of continuity?

A. Both plans were contiguous.

Q. And you talked earlier about VTD.

What is a VTD?

A. VTDs are voting tabulation districts, and it's the census bureau's effort to mimic, if you would, precincts. In some cases, they are exactly like precincts; in other cases, they are not. But the census bureau uses census blocks for their basis. Precincts at the locality may not. They may split census blocks.

Q. So why did you consider VTD splits in comparing your illustrative plans with the HB1 plan?

A. They are considered political subdivisions split or political subdivisions.

Q. And how did your illustrative plans compare to the HB1 plan in terms of splitting or not splitting VTDs?

A. Both of the plans would zero split as far as I could tell.

Q. In your opinion, how do your illustrative plans compare to the HB1 plan in terms of adhering to the criteria of preserving political subdivisions?

A. In addition to the VTDs, I looked at error splits and so the illustrative plan split 14 and the HB1 plan 15.

Q. As you were drawing these illustrative plans, you testified earlier that you compared the illustrative plans to the HB1 plans in terms of preserving communities of interest and looking at the census landmarks, right?

A. Yes.

Q. And did your illustrative plan compare to the HB1 plan or splitting census places?

A. The illustrative plans were 31 and the HB1 plan split 32.

Q. And how about the comparison of your illustrative plans to the HB1 plan in terms of census landmarks?

A. Both of them split the same at 58.

Q. At what point in your map drawing process did you consider socioeconomic indices in sharing interests?

A. In the beginning, many times when I draw plans, I'll draw or develop overlay maps of socioeconomic data and that will allow me to actually see and visually see commonalities amongst different geographic areas in the state or even in a particular city, and so I did this

in this plan too.

MS. SADASIVAN:

Matthew, can you please pull up

PR-86 at 98?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. And, Mr. Fairfax, can you please describe what this map illustrates?

A. This is an example of one of the overlays that I created to overlay during the districting process; and it wouldn't be on all the time, but I would be able to turn it on at certain times, but this represents the census tracks and that depicts the median household income. And the colors represent or are represented by five different, what's called, Quinn tiles. So Quinn tile breaks up equally parts of census tracts into five equally parted areas.

When I'm looking at this, the color areas represent the lowest two Quinn tiles. So you may see that in District 5 you can kind of map out, if you will, the shapes or the commonalities amongst the median household

income.

Q. And when you say "overlay," you meant you overlay the congressional districting plans onto the socioeconomic data?

A. Yes. As I'm drawing, I can actually see this same map on my screen, and so I can actually draw and add or remove areas at will using this particular map and the other maps that -- that I created.

Q. So, for example, why didn't you add Caldwell Parish into Congressional District 5?

A. Right. I looked at Caldwell Parish to be included in District 5, very similar, and -- and -- but I decided once I added it, looked at it, it made the district less compact, so I decided not to include that. But I also realized that you could create an additional majority black district with Caldwell included that satisfied Gingles and adhered to traditional redistricting principles.

Q. So this is just one of the maps that you could have drawn?

A. That's correct.

MS. SADASIVAN:

Matthew, could you please pull up

PR-86 at page 99?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. Mr. Fairfax, what does this figure illustrate?

A. This is very similar to the previous one. It's broken down into, again, the five quintiles, if you will, but this shows you really the top two quintiles for no high school education. So the top two shows those census tracking that have a great deal, if you will, of persons that have no high school education and you can see that reflected in the red and brownish colors.

Q. Can you give me an example of how you consider this information in drawing the illustrative plans?

A. Yes. If you look at it, excluding Caldwell, the census tracks of those highest quintiles tend to draw the Congressional District 3 itself. So it directs you really where the boundary lines actually should be in that particular district.

One of the other things is it also

lets you know of where the split parishes potentially could be; and so you see in Ouachita and Rapides and Evangeline and Lafayette, even Baton Rouge area, they have that same, similar commonalities, if you will.

MS. SADASIVAN:

And, Matthew, can you please pull up PR-86 at page 100.

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. And what does this page of your supplemental report illustrate, Mr. Fairfax?

A. 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 track 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

1 boundaries really for District 5.
2 Q. Thank you.
3 MS. SADASIVAN:
4 And Mr. -- Matthew, sorry, would you
5 please pull up PR-86 at page 101.
6 TRIAL TECH:
7 (Complied.)
8 BY MS. SADASIVAN:
9 Q. What does this page of your
10 supplemental report illustrate, Mr. Fairfax?
11 A. Very similar to the other ones, it
12 shows you the top two quintiles for households
13 that receive food stamps and the SNAP program.
14 This one specifically is designed to show how
15 these areas in Ouachita and Rapides and
16 Evangeline and Lafayette and Baton Rouge all have
17 similar and common amounts amongst cities,
18 including the food stamp percentage.
19 Q. And these are the maps that you were
20 also looking at as you were drawing the
21 illustrative plans?
22 A. Yes. Absolutely.
23 MS. SADASIVAN:
24 And, Matthew, could you please pull
25 up PR-86 at page 102.

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. And can you describe what this map illustrates, Mr. Fairfax?

A. Once again, this is a map of the top or the five quintiles that we are looking at the top percent of persons in poverty. And, once again, you can see how the census tracks tend to define that District 5 as well as the parishes that were split.

Q. And how did you consider this data in determining which cities to include within the parishes for District 5?

A. When I went about developing the plan, I would look at this and use it as a reference, so where am I going to actually add populations by splitting a parish. And so this let me know that I -- it was okay, if you will, to go into a different parish and split it, add a particular area to that District 5, that CD5.

MS. SADASIVAN:

Matthew, can you please pull up PR-86 at page 103 now?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. And, Mr. Fairfax, what does this map illustrate?

A. This is similar to the other one where it's really designed to show how those split parishes in Ouachita, Rapides, Evangeline, Lafayette and East Baton Rouge actually have that commonality, which makes me believe that they belong within that same district.

Q. And are any of the socioeconomic indices we just went through in these maps that you considered broken down or aggregated by race?

A. No. No.

Q. And what is fracking, Mr. Fairfax?

MS. SADASIVAN:

Matthew, you can take that down.

Thank you.

THE WITNESS:

Fracking is a somewhat of a relatively new criteria; and it's where a district slices through, let's say, a county in two different areas in the county, and within the county those two areas aren't touching each other, they are

not contiguous.

BY MS. SADASIVAN:

Q. And why did you evaluate fracking in considering the illustrative plans in the HB1 plan?

A. As I mentioned before, fracking is becoming more and more popular. They are including it in or they included it in Maptitude for redistricting's latest version. The special masters included in the Bethune-Hill case and the idea is that it gives an indication of gerrymandering.

Q. Thank you.

MS. SADASIVAN:

And, Matthew, could you please pull up PR-15 at 23 and PR-90 at 5?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. And how many instances of fracking occur in your illustrative plans?

A. Five.

Q. How many instances of fracking occur in the HB1 plan?

A. Eight.

Q. And so how does your plan compare to the HB1 plan in terms of fracking?

A. It performed better.

MS. SADASIVAN:

And, Matthew, could you please pull up page -- PR-86 at page 23?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. Mr. Fairfax, on pages 21 and 22 of your supplemental report, you address testimony you considered from the road show.

Can you describe how you use this road show testimony in your illustrative map drawing process?

A. Sure. The testimony was used either to modify or at least validate the process that I was going through. So, for example, there were tests or there was testimony about keeping the delta parishes intact, if you will. There was testimony about keeping the Florida Parishes whole, there was testimony, for example, about the River Parishes where they were split before, but could you make them whole. And so they all fit into the design, if you will, of the

1 congressional districting plan.
2 Q. Overall, Mr. Fairfax, how did your
3 illustrative plans compare to the HB1 plan in
4 terms of adhering to those traditional
5 redistricting criteria that we just went through?
6 A. The illustrative plans performed
7 equally or better in eight of the eight
8 redistricting criteria. In five of the criteria,
9 they performed better and in none, in zero, did
10 the HB1 enacted plan perform better.
11 Q. Thank you, Mr. Fairfax.
12 MS. SADASIVAN:
13 You can take that down, Matthew, and
14 if you could, please pull up PR-15 at 5
15 and PR-86 at 27.
16 TRIAL TECH:
17 (Complied.)
18 BY MS. SADASIVAN:
19 Q. So going back to the question you
20 were asked, considering in this case, you
21 testified earlier that you were asked to draw
22 illustrative plans showing it's possible to
23 reorganize state and redistricting criteria while
24 creating two compact black congressional
25 districts in Louisiana.

1 Do you have an opinion as to whether
2 the black voting age population in Louisiana is
3 sufficiently numerous as to constitute a majority
4 in a second congressional district?
5 A. Yes.
6 Q. And why?
7 A. I performed the same analysis
8 looking at the voting age population both for any
9 part black and as well for the non-Hispanic black
10 alone plus the black and white combined. I've
11 looked at the compactness. I've looked at all of
12 the metrics of political subdivision splits and
13 communities of interest and led me to believe
14 that it is sufficiently large.
15 Q. And you drew these two illustrative
16 plans as an example of adhering to those
17 principles?
18 A. Yes.
19 MS. SADASIVAN:
20 Matthew, would you please pull up
21 PR-15 at 74?
22 TRIAL TECH:
23 (Complied.)
24 BY MS. SADASIVAN:
25 Q. What was any part black voting age

population of the majority-minority districts in your Illustrative Plan 1?

A. For District 2, it was 50.96 and for District 5, it's 52.05.

Q. And what was the any part black citizen voting age population of the majority-minority districts in your Illustrative 1?

A. For District 2, it was 54.1 and for District 5, it was 52.21.

Q. And why did you submit the second illustrative congressional plan?

A. Once again, the -- some of the defendants' experts had an issue with the any part black, using any part black, so it -- what I did was I determined you can create a plan that doesn't have to use any part black. It could use the non-Hispanic black alone plus the non-Hispanic black and white combined.

Q. Let's talk about that a little bit more.

MS. SADASIVAN:

Matthew, would you pull up PR-86 at 36?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. So this was responding to the Bryan expert report regarding the any part black statistics that you used this other metric?

A. That's correct. I think it was two experts that brought that up.

Q. And does Mr. Bryan's aggregation of restat in his report comport with your understanding of the justice department aggregation of race data for the purpose of allocating individuals' civil rights enforcement?

A. Right. I think they only look at the first step involved in the DOJ process guidelines.

Q. Can you explain why that is not appropriate in Louisiana?

A. Right. The first part that the DOJ guidelines recommend is to use a non-Hispanic black, let's say, minority population, but in this case black alone plus the non-Hispanic black and white combined; but then the next sentence is if there's a significant amount of combined race, then you begin to add that into the iterative process, and so that's the part that's left out.

And so when you do that and do so, you'll end up using the any part black or close to any part black.

Q. So what is the black voting population percentage, as Mr. Bryan has defined it, in the majority-minority districts in the Illustrative Plan 2?

A. It is 50.02 for District 2, and 50.96 for District 5.

Q. And what's the any part black?

A. Any part black for District 2 is 51.55, and District 5 is 51.79.

MS. SADASIVAN:

Matthew, could you please pull up 37 of 86, PR-86?

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. What's the percentage of black registered voters in the majority-minority district of the illustrative plan for District 2?

A. For District 2, it is 53. You said registered voters, didn't you?

Q. Yes.

A. Yes. It is 53.62 and District 5 is

53.2.

Q. And why did you consider the percentage of black voters in your Illustrative Plan 2?

A. It's just another way to determine whether the black population is in the majority.

Q. Thank you.

MS. SADASIVAN:

And if you take that down, Matthew, and pull up the PR-90 at page 8. I promise this is the last time I ask for that.

TRIAL TECH:

(Complied.)

BY MS. SADASIVAN:

Q. What is the black voting age percentage population, as Mr. Bryan defined it, of the majority-minority district in Illustrative Plan 2A?

A. That's 50.02 for District 2 and 51.15 for District 5.

Q. And any part black voting age in the majority-minority districts?

A. For District 2, it's 51.55 and District 5, it's 51.98.

Q. Thank you.

MS. SADASIVAN:

And you can take that down, Matthew.

BY MS. SADASIVAN:

Q. So several of the defendants' experts asserted that in drawing your illustrative plans it raised a predominant factor motivating your decision to move communities in or out of particular districts. Do you agree with those statements?

A. No. No, I don't.

Q. Why?

A. Because my primary use is specific to a point that different areas to split was the socioeconomic data, and that's what I used to go into those areas of those parishes, the cities that were inside those parishes as well.

Q. And several of the defendants' expert reports asserted that the splits of Lafayette, Alexandria, Monroe and Baton Rouge were on the basis of race. Do you agree with those statements?

A. No.

Q. And why not?

A. The same, same answer, the same

1 answer. I used socioeconomic data during the
2 planned development phase.
3 Q. Your rebuttal report addressed the
4 report submitted by Allan Murray as well, which
5 alleged the geographic distribution of white
6 voters or the white voting age population is
7 fundamentally different from the geographic
8 distribution of the black voting age population
9 and that the black voting age population is often
10 not as close.
11 Did that report have any effect on
12 your conclusion that the black voting age
13 population is sufficiently geographically compact
14 for the purposes of Gingles 1?
15 A. No. No. In fact, it didn't have
16 any impact on the conclusions, and I -- I was a
17 little lost at what the conclusions he was trying
18 to -- to make with that. And so my only
19 inference from that was that I believe he's
20 trying to say that since the clustering of black
21 populations are further apart than white
22 populations, then you cannot naturally create a
23 majority black district without creating
24 something irregularly shaped. And we have
25 something to test that with, and that's called

1 compactness; and I used the three compactness
2 measurements: The REOCK, Polsby-Popper, and
3 Convex Hull; and in three of those, the
4 illustrative plan performed better than the HB1
5 enacted plan.
6 Q. Your rebuttal report also addressed
7 the claim by M. D. Hood that your illustrative
8 plans don't preserve the cores of the prior
9 districts as well as the HB1 plan.
10 Did Dr. Hood's report change your
11 conclusion that your plan better adhered to
12 traditional and state redistricting criteria than
13 the HB1 plan?
14 A. No, not at all. First, district
15 cores were not included as a criteria in Joint
16 Rule 21. That's it. It is a redistricting
17 criteria, a traditional one; but it's --
18 specifically in new or additional
19 majority-minority districts, it's not expected
20 that you are going to stay with the same plan.
21 How can you create a new district, a new minority
22 district by staying with the exact same plan that
23 you did before?
24 Q. Did you have to compromise in the
25 traditional or state redistricting criteria or

1 subordinate that criteria to rank in order to
2 create two congressional districts with a
3 majority black voting age population?
4 A. No, not at all.
5 Q. And, in your opinion, is Louisiana's
6 black population sufficiently large and
7 geographically compact to constitute a majority
8 in two single member congressional districts?
9 A. Yes, it is.
10 Q. Thank you.
11 MS. SADASIVAN:
12 Your Honor, at this time, I'd like
13 to move PR-15, 86 and 90 into evidence.
14 THE COURT:
15 Okay. Any objection?
16 MR. LEWIS:
17 No.
18 THE COURT:
19 So noted. I should say admitted.
20 CROSS-EXAMINATION BY MR. STRACH:
21 Q. Good afternoon, Mr. Fairfax.
22 A. Good afternoon.
23 Q. Good to see you again. It's been a
24 long time.
25 A. Yes. Good afternoon.

Q. And it is Mr. Fairfax, right? You do not currently have a PhD?

A. No, not yet at least.

Q. Okay. And you are not a lawyer, correct?

A. That's correct.

Q. No legal training?

A. No.

Q. All right. So you reference some case law in your report, but you are not purporting to give any sort of legal opinions?

A. Absolutely not. It only comes from the map/charts perspective.

Q. All right. So is it a fair statement that your assignment in this case was to draw a second 50 percent majority black congressional district?

A. No. No. It was to analyze whether I could draw an illustrative congressional plan that adhered to traditional redistricting criteria and satisfy that first precondition of Gingles. It could have been three districts; I could have drawn one, if that satisfied it. In this case, it came up to two.

Q. All right. And then but you concede

in your report that you were only focused on complying with the Gingles first precondition, correct?

A. That's correct. And adhering, of course, to traditional state and federal guidelines for redistricting criteria.

Q. All right. So you weren't analyzing whether or not the populations that you were putting together in this majority black district would actually, in fact, elect the black candidate of choice, right?

A. That is correct.

Q. All right. And you were not studying at all whether the black population that you were putting into this new district were subjected to or -- or engaged in racial polarized voting, correct?

A. That is correct.

Q. And you certainly weren't looking at whether any polarized voting in this new black district was legally significant, right?

A. That is correct.

Q. So as you were going around pulling in black population for these districts, you had no idea in your mind how they were going to

actually vote in an actual election, correct?
A. Correct. I'm using that 50 percent voting age population as whatever threshold Gingles brings to it.
Q. All right. So you, as a demographer or map drawer, you are just looking at the racial data to make sure you get the number right, correct?
A. Right. And, of course, adhering to traditional redistricting criteria and making sure that there's commonality inside the district, yes.
Q. Okay. And let me just ask you a practical question. You were using Maptitude, right?
A. Yes, that's correct.
Q. And in Maptitude, I think you testified you can display the BVAP for each VTD?
A. No, I didn't testify to that. Maybe somebody else did that.
Q. Okay. All right. Sorry.
A. So that --
Q. I apologize. Oh, I'm -- I'm likely to get many things wrong, so feel free to correct me.

A. No. That's all right.
Q. Did you have the ability to display the BVAP of each VTD as you were drawing?
A. Yes.
Q. Did you do that?
A. No. The only time I did that is you have to get an idea where the black population is inside the state in order to begin drawing, but then after that, the socioeconomic data took over.
Q. Okay. Thank you. And so -- so let me make sure I understand because we haven't -- no one's taken any depositions in this case, so just let me ask a few follow-ups about that so I can kind of straighten my mind.
So you did an initial check using the BVAP information in Maptitude to see where the black population was in the state?
A. I analyzed where the black population was in the state using a variety of -- of levels, if you were, just to see where you need to start. You can't draw a plan in an area where black population doesn't exist.
Q. All right. So you wanted to get a sense on the front end of where that black

population was, correct?

A. Yeah.

Q. And you used the display of BVAP information on Maptitude to get that sense early on, correct?

A. Yes. Very early on just to get an idea just to understand where the district could exist and inside the state.

Q. All right. And then as you were completing the map, did you pull the BVAP percentages back up to check your work?

A. Oh, yeah. You have to, yeah.

Q. All right. That's how you knew what the actual percentages were, correct?

A. That's right. That's right.

Q. All right. And so just to be clear, during the map drawing process, after you did this initial view, did you turn the BVAP function off?

A. No. It's not a matter -- it's a matter of not looking at it; and I assume you are talking about the data view?

Q. Correct.

A. It's just a matter of not looking at the data view on a constant basis. Of course,

you've got to look at it, but you are not looking at it on a constant basis that you are developing the plan using race. So race doesn't dominant because you are not looking at each map that you actually draw.

Q. All right. So, but to know exactly how much you looked at, we would have had to be right there next to your shoulder, right?

A. That's true. That's true.

Q. All right. Is it fair to say you were looking at it enough to see the BVAP percentage increasing so that you knew when you got to 50 percent you're done?

A. No, no. It's not a matter of getting 50 percent increasing. You may be already at 50 percent. And so, you know, in -- in redistricting when you are adding areas, you may be at 60 percent and add areas, and -- and so it's not a question -- a question of you add an area, you go from 30 to 40 to 50 percent. It's not like that.

Q. All right. So -- so during the map drawing process, you said you would occasionally look at the BVAP information. What were you looking at it for; what was the purpose?

A. Well, I mean, you have to. I mean, that's the sufficient large component of Gingles. If you -- if you don't look at it, you'll never know if you reach that.

Q. Right. So you -- you need to look at it occasionally to know when the BVAP was approaching 50 percent, right?

A. Right. And I'm -- I'm only having issue with -- it sounds as though it's an increasing 30, 40, 50. It's not like that; do you see what I mean? Because you can -- you can start at 60 something percent and so it's not as if you are adding population to get to that 50 percent.

Q. All right.

A. You could add a group and be at 70 percent starting and then start to add different areas and then go down.

Q. All right. Well, and with regard to the CD5 that you drew, which is the second majority black district, where did you start drawing that district; in the north, in the south, in the middle, where?

A. I started with the existing plan. And so then District 5 was the starting and so I

1 began trimming the area to the west to make that
2 northeast delta region a more substantial
3 presence in the northeast, and so I then began to
4 expand down further to add different areas.
5 Q. Okay. So is it fair to say then you
6 started in the north and worked your way down
7 south?
8 A. That's correct.
9 Q. All right. And -- and then --
10 A. And it wasn't exactly like that
11 because there's a back and forth when you are
12 actually drawing plans. It's an -- it's an
13 adding and subtracting here and subtracting
14 there. So it's not necessarily a let's go down
15 south and just complete the district.
16 Q. But it's generally a north to south
17 draw?
18 A. It's -- I don't know if I can accept
19 that, but it is a -- a north to south with
20 different variations on the district.
21 Q. Okay.
22 A. Here and there.
23 Q. Got you. And --
24 A. Right.
25 Q. And so if you were starting in the

northern delta parishes and trimming those, obviously you were not at 50 percent at that point in the district, correct?

A. That is correct.

Q. And so that means as you added districts, you would have been increasing the BVAP as you went along?

A. That is correct. But there is a time where I'm above 50 percent, 60, say, because I made some changes. And so at that time, we're not -- we're not increasing now, we are decreasing.

Q. Got it. So let me ask you. Yeah, let me be specific about CD5 in your illustrative plan.

A. Uh-huh (affirmatively).

Q. In -- in the process of drawing that district, did there come a time when that particular district was 60 percent?

A. Yes, when I was adding and removing areas just to see. So during the process, I may have removed several particular parishes and the increase went up above 50 percent, let's say, to 60 percent, then it's a matter of adding the territory that brings it down.

Q. Got it. So once you -- your district obviously ended up around 50 percent, right?

A. That's correct.

Q. So while you were drawing and you were at or around 60 percent, you obviously made decisions that got that down to closer to 50 percent, right?

A. That's correct. That's right. And I'm using 60 as just a -- yeah, a split, yes, but it's above 50 percent, more than just 1 or 2 percentage.

Q. Point being, when you got to 60 percent, you didn't stop drawing?

A. That's correct.

Q. All right. So in your first plan, the numbers I have for CD2.

MR. STRACH:

And, Forest, let's pull up PR-15 at paragraph 55 where they have a chart. So scroll to the next page. Go back.

TRIAL TECH:

(Complied.)

BY MR. STRACH:

Q. Okay. The -- the AP is any part

black 52.05 in District 5 in your illustrative --
illustrated plan, correct?
A. Yes.
MR. STRACH:
All right. Now, let's go, Forest,
to PR-86 at paragraph 14. All right. If
you'll scroll to the next page.
TRIAL TECH:
(Complied.)
BY MR. STRACH:
Q. All right. Look at Table 2 on
page 6 of your supplemental report, Mr. Fairfax.
A. Yes.
Q. It looks to me like you're -- the
DOJ black, not the any part black, the DOJ black
in your CD2 is 50.02 percent, correct?
A. That's correct.
Q. And CD5 is 50.96 percent, correct?
A. That's correct.
Q. And -- and, as you testified,
isn't -- isn't it true that both of these
districts could have been well above 50 percent?
A. Can you elaborate what --
Q. Sure.
A. -- do you mean by both of them could

be?

Q. So when you were drawing, we were talking about CD5 a minute ago, and you said at one point the district got up to 60 percent?

A. Got you. During the process, sure, sure. They could have been anywhere, yeah.

Q. Okay. All right.

A. Yeah.

Q. At least we know that the CD5 could have ended up at 50 to 60 percent DOJ black?

A. I don't know if it would be that high. Yeah, I don't know if it would be that high.

Q. All right.

A. But certainly there's a possibility it could be higher than what it is here if that's what you are getting to.

Q. Okay. So you consciously drew the district right around 50 percent because that's what you needed for the first Gingles precondition, right?

A. That's right. It satisfied -- it satisfied that first precondition.

Q. All right. So, and in both of your illustrative plans, you include the northern

delta parishes or at least some of them in CD5, correct?

A. That's correct.

Q. And that's your second majority black district, correct?

A. Yes.

Q. All right. And you made a point in your report, you said that the Louisiana delta region is characterized by unique communities of interest of culture and tradition. It is commonly represented by the parishes of Morehouse --

MR. STRACH:

Your Honor, I'm going to have to seek help on a pronunciation.

Patrick, Ouachita?

MR. LEWIS:

Ouachita.

MR. STRACH:

Ouachita. My apologies to all the Louisianians.

BY MR. STRACH:

Q. Ouachita, West Carroll, East Carroll, Caldwell, Tensas, Catahoula, Richland, Madison, Franklin, Lasalle and Concordia. Do you

remember writing that in your report?
A. Yes.
Q. And you remember citing a website called louisianafolklife.org for that?
A. Yes, yes.
Q. All right. And the East Baton Rouge and West Baton Rouge Parishes are not listed in the community of interests that you've cited in that paragraph of the Louisiana delta region, are they?
A. It wasn't included as that. And there are other websites that actually mention the delta parishes as well that matched that.
Q. All right. But you didn't cite those, correct?
A. That's correct.
Q. All right. So -- so East Baton Rouge, West Baton Rouge are not part of the Louisiana delta region, correct?
A. As far as I know, correct. That's correct.
Q. All right. But -- but -- but you know because you've looked at the data additionally that East and West Baton Rouge parishes have a significant number of black

1 residents, correct?
2 A. I would say East Baton Rouge
3 probably would be classified as having a
4 significant black population.
5 Q. All right. And you included East
6 Baton Rouge in your version of CD5, which went up
7 to the delta region, correct?
8 A. That's correct.
9 Q. All right. And isn't it true that
10 you included East Baton Rouge in that CD5 because
11 you needed that -- the black population of East
12 Baton Rouge to have a chance at getting a
13 50 percent district?
14 A. I would say that if I removed East
15 Baton Rouge from that, it would be very difficult
16 to create a majority black district, but
17 that's -- that's just not uncommon in plans like
18 this. It's -- it's probably, what, the second
19 largest metropolitan area in the state, has a
20 significant amount of black population. It's
21 understandable that that's going to have to be
22 part of that second black district.
23 Q. All right. And did you try to draw
24 any second majority black districts that didn't
25 include East -- include East Baton Rouge?

A. I might have looked at that. I'm trying to recall. And I believe that I did not come up with any plans. Not to say that it's not possible, but I believe I didn't recall coming up with any plans or I don't recall coming up with any plans that don't include East Baton Rouge.

MS. SADASIVAN:

Your Honor, I would like to object to the extent that this calls for attorney work product that was developed in ICOR's litigation.

MR. STRACH:

I'm not asking for work product. I'm just asking whether he tried -- it's a simple question.

MS. SADASIVAN:

That's our work product that the expert prepared in developing his illustrative plans for this case.

MR. STRACH:

I don't know how to incorporate it. I'm just asking if he tried or not.

THE COURT:

Overruled.

BY MR. STRACH:

Q. Mr. Fairfax, are you aware of any majority black district that's ever been drawn in a Louisiana congressional plan that connects the black population of the northern delta parishes with East Baton Rouge Parish?

A. Any black districts?

Q. Are you aware of any majority black districts in the past that have been drawn connecting those two populations?

A. I think we previously saw some examples of that I believe in the past.

Q. Yeah. To your recollection, would that be -- would the only time that occurred was in that -- the plan at issue in the Hayes case when it was struck down?

A. Yeah. I believe so, but those were extremely non-compact plans. It's, as another expert says, that I would never draw a plan that looks like that.

Q. Understood. Other than that plan, are you aware of any other Louisiana congressional plan that had a majority black district connecting those two populations?

A. Not that I know of, no.

Q. All right. And speaking of

compactness, you use mathematical tests for compactness?

A. Correct. They are all mathematical.

Q. All right. Well, the -- the eyeball test, that's not mathematical, right?

A. They have even got quantified on shape redistricting, so there's some map to calculate that.

Q. All right. So those -- those tests compute compactness based on the mathematics of the shape of the district line; isn't that correct?

A. Yeah. That's correct. The area and the boundaries.

Q. All right. Those mathematical tests don't measure the dispersion of particular populations within the district, do they?

A. That's correct.

Q. All right. All right. And you have -- you testified at length about the socioeconomic data that you used in drawing the two plans, correct?

A. Right. Can I add something to your last comment?

Q. Sure.

A. I need to say that there's a growing argument over the last 20 or 30 years of whether compactness is geography or is it population in geography and it's still unresolved. I'm resolved that people are more on the geographic side versus the population and geographic side, if you can follow what I'm saying. The dispersion of that population, people looking at it to define compactness was by a geographic area versus a geographic and population area, so I just wanted to say that.

Q. Got it. And that debate's among demographers --

A. Yeah.

Q. -- and experts; is that right?

A. Yeah.

Q. That's not -- you -- do you know if that's a legal debate or not?

A. No, no, no. I think insofar as what my understanding is, that compactness legally relates to the geography, not population and geography.

Q. All right. Thank you for that.

Let's talk about the socioeconomic data.

A. Uh-huh (affirmatively).
Q. In your first report, you concluded that Louisiana's white population outpaces the black population in several socioeconomic indications according to 2019 ACS data. Black people had significantly higher percentages of the people with no high school education and lower median household incomes than white people and households. Furthermore, black people had higher poverty rates than white people. Do you recall those findings?
A. Yes.
Q. And do you still stand by those findings?
A. Yes.
MR. STRACH:
Okay. Let's go to PR-86, and let's go to page 13; and particularly, I'm looking at Figure 5, so you can blow that up for us.
TRIAL TECH:
(Complied.)
BY MR. STRACH:
Q. So you talked about this in your direct. This is a map where your illustrative

1 congressional districts overlay on areas with
2 population that has no high school education,
3 correct?
4 A. That's correct.
5 Q. All right. So isn't it true that an
6 area with no high school education, based on your
7 conclusion, these are also areas with a high
8 black population?
9 A. No. No.
10 Q. Had you actually studied that?
11 A. I -- I am just familiar with the --
12 the black area and the white area. You know,
13 remember, I'm looking at areas that -- excuse me.
14 I'm looking at census tracks that don't have a
15 racial component. If I was looking at a census
16 track that were majority black census tracks that
17 had a certain no high school education
18 percentage, I would agree with you; but these are
19 all population, all races included in here and
20 not just the black population.
21 Q. I understand that. Let me -- let me
22 be clear. That was a bad question. And let's
23 break this down a little bit. The -- the darker
24 the shading, the -- the more concentrated the
25 number of people are with no high school

education; is that right?

A. That's correct.

Q. All right. And -- and you know, based on the -- the look you took at the BVAP data, you know that the -- the northern delta parishes are significantly minority black, correct?

A. Right. But there's a white population also.

Q. I understand. But those are also areas on this map that are heavily shaded, correct?

A. That's correct.

Q. So -- so the area, at least in the northern delta parishes where there's a lack of high school education correlate with the black population, correct?

A. I disagree, because I believe that there are also white persons included in those areas that don't have high school education in a higher percentage, just like poverty. I'm sure there are white persons that have -- are in poverty at a higher percentage, just like income, white persons that have a higher income in those areas.

Q. All right. Let me -- let's take a look at -- when you look at this, the areas with no high school education, and you compare the northern delta region, which is I'll just call it heavily shaded, do you agree with that characterization?

A. Yes. Yes.

Q. All right. And I compare that with East Baton Rouge and West Baton Rouge, they are not heavily shaded, are they?

A. They are shaded in areas.

Q. But there's a lot of white there too, which indicated high school educations?

A. In this particular atrophy, that's correct.

Q. All right. And yet you thought it was appropriate, based on socioeconomic factors, to include those two parishes with the heavily shaded northern delta parishes?

A. Remember, I'm using a collection of multiple socioeconomic aspects, not just this one for high school education, so I'm overlaying all of them together. Not only that, when it comes down to the fine tuning of redistricting, I recall this was one of the areas that I also

1 added to equalize that population basically.
2 Q. All right. And in your illustrative
3 plan, your CD5, you don't just include the areas
4 of, say, West Baton Rouge that are shaded. You
5 include all of East Baton Rouge I think. Well,
6 maybe all of West Baton Rouge and a lot of East
7 Baton Rouge, correct?
8 A. I included a portion of East
9 Baton Rouge and all of West Baton Rouge.
10 MR. STRACH:
11 All right. Well, then let's look at
12 Figure 6 on page 15.
13 TRIAL TECH:
14 (Complied.)
15 BY MR. STRACH:
16 Q. So, Mr. Fairfax, this is the chart
17 regarding median household income, correct?
18 A. Correct.
19 Q. And the more the shading there is,
20 the lower the income, correct?
21 A. That's correct.
22 Q. And similarly, the last chart we saw
23 the last map, the areas in the northern delta
24 parish are fairly heavily shaded, correct?
25 A. Yes.

Q. All right. And then would you agree with me that if we look at East and West Baton Rouge, there's very little shading in that one?

A. You're talking about throughout or --

Q. Yeah. I mean, I'm just looking at East and West Baton Rouge and I'm just not seeing very much shading, like I am up in the northern delta?

A. Correct.

Q. Okay. And -- and there are a lot of parishes to the west of your CD5 that are heavily shaded, right?

A. Correct.

Q. All right. You show --

A. Not a lot, but yeah, I understand there are some.

Q. Yeah. I mean --

A. Yeah.

Q. I look at this map and I guess, to my eye, it would have made more sense to take that west to capture those heavily shaded parishes rather than going south.

A. You're talking about in the northern

end?

Q. In the northern end, yes.

A. No, not -- not when you look at all the socioeconomic aspects. It's clear that the western portion of those delta parishes, when you look at totality of the socioeconomic indicators, that there is a difference between the delta parishes and those to the west. You can pick out one or two areas that -- that are different; but overall, that western area is different than -- than the eastern area.

Q. All right. Let's go back to Figure 5 on page 13 for us. So you're saying, based on the shading that I'm seeing in District 4, that it would not have made sense for this district to go west instead of south?

A. The only -- excuse me. The only parish that I could see was Caldwell, and I explained that the reason why they used Caldwell, all of these other ones had fractured little pieces, if you will. And so you have to take the -- the totality of the parishes; whereas, you can see on -- on the east side, they have the majority of the -- the parish included in the color.

Q. All right. Well, let's go to page 16 and I think, Mr. Fairfax, you have another Figure 6. So I think you duplicated Figure 6, just FYI, in this report. These are the risk factors now, correct?

A. That's correct.

Q. And there's a lot of heavy shading in the northern delta parishes, correct?

A. Yes. But to get to them, you would almost have to form one of these redistricting configurations you talked about in the '90s. You would have almost a Z looking because you grab those areas in the northern end, and if you notice, there aren't a substantial amount in the parishes that are directly west. You have to go to the north or you would have to go right through those parishes that are -- that don't have the same CRE risk factors to get to some of the ones that do.

Q. And you'll agree with me, at least in West Baton Rouge, there was almost no shading, correct?

A. In West Baton Rouge?

Q. Correct.

A. That is correct. In this particular

example.

Q. All right. And that was one -- that was a parish that you have included wholly within your CD5, correct?

A. That is correct. But, once again, it's the totality that I'm looking at, not just one of these maps.

Q. All right.

MR. STRACH:

Thank you, Your Honor. Nothing further at this time.

THE COURT:

Redirect?

MS. SADASIVAN:

Kathryn Sadasivan for the -- representing the plaintiffs again.

REDIRECT EXAMINATION BY MS. SADASIVAN:

Q. Mr. Fairfax, when you started drawing your illustrative plans, which district did you start in?

A. CD2.

Q. And why?

A. First, it is a convention to start with what's called the Voting Rights Act district, the VRA district. So since CD2 was

that, usually you start and I started with that as somewhat protecting that district. If you end up having that last, the district may not end up being configured or may end up with a Voting Rights Act violation.

Q. And what did you seek to do in congressional District 2?

A. The design or -- or goals that I had from the beginning was to make that district more compact, split less political subdivisions, including -- or 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 I moved a portion out of East Baton Rouge, brought that district down and made it more compact that way as well.

Q. And then what district did you go to?

A. Then I began in the north and began looking at that 4th and 5th somewhat combined together. I wanted the 5th to be that delta, more of a delta presence in the north area, and I noticed that the socioeconomic makeup of the west

1 District 5 wasn't the same as the east portion.
2 So I began going back and forth removing portions
3 of District 5 and adding them to District 4 and
4 then began, I guess, coming down and recreating
5 sort of that District 5.
6 Q. And when you were talking about
7 congressional District 5 earlier, you were
8 talking about the number of the -- or the black
9 voting age population fluctuating. You weren't
10 trying to achieve any particular racial target --
11 A. No.
12 Q. -- in drawing District 5?
13 A. No, no, no. I'm just trying to
14 satisfy that first precondition, first component
15 precondition of Gingles sufficient in large.
16 MS. SADASIVAN:
17 Thank you, Mr. Fairfax. That's all
18 I have.
19 THE COURT:
20 That concludes your examination?
21 MS. SADASIVAN:
22 Yes, that concludes my examination.
23 Thank you so much, Mr. Fairfax.
24 THE COURT:
25 Okay.

MR. SHELLY:

Good afternoon, Your Honor. I'll be taking the next witness. Will it be okay to take a quick break first?

THE COURT:

I was just going to say, we can take a quick break; and I do have something off the record. Okay. We will be in recess for 15 minutes.

(A short recess was taken at 3:06 p.m.)

THE COURT:

Okay. Ladies and gentlemen, we are working on the temperature and I only have one word to say, a word is an acronym, GSA. If you want to go to your car and get a blanket, we will relax our protocols accordingly. We are working on it, so we are going to try to get a little bit more habitable in here. Next witness.

MR. SHELLY:

Good afternoon, Your Honor. I'm Jacob Shelly, S-H-E-L-L-Y. I represent again the plaintiffs, and we call Mr. Charles Cravins.

CHARLES CRAVINS,

after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

THE COURT:

Go ahead, sir.

DIRECT EXAMINATION BY MR. SHELLY:

Q. Good afternoon, Mr. Cravins. Could you please state your full name for the record?

A. Charles Cravins.

Q. Where do you live?

A. I live in St. Landry Parish outside the Town of Washington, Louisiana.

Q. How long have you lived in St. Landry Parish?

A. Sixty-six minus three years that I spent in the military.

Q. That's, in fact, your entire life?

A. Yes.

Q. How long has your family lived in the St. Landry Parish area?

A. My forebearers came to St. Landry Parish in 1764.

Q. Can you briefly describe how that came about?

A. They was a Frenchman by the name of

1 Gregoire Guillory and an enslaved woman by the
2 name of Marguerite Guillory. Marguerite
3 subsequently went to court in 1782 under Spanish,
4 while Louisiana was under Spanish authority, and
5 maintained her freedom and the family's been
6 there ever since.
7 Q. Can you briefly describe your
8 professional background for the court?
9 A. Currently, I'm a partner in Cravins
10 Trosclair, A Professional Law Corporation in
11 Opelousas since January of 2021. From January of
12 2020 until January of 2021, I was district
13 attorney of St. Landry Parish. Prior to that, I
14 was first assistant district attorney. Prior to
15 that from -- from 2007, I was an assistant
16 district attorney and chief administrative
17 officer. Prior to that from 1997 to '07, I was
18 only chief administrative officer of the district
19 attorney's office. Before that, I worked for the
20 4th Congressional District in constituent
21 services and government relations. And prior to
22 that, I was in the radio and insurance industries
23 and still have an advocation in radio and doing a
24 radio show since 1986. And that's really the --
25 the bulk of what I've done.

Q. What is the subject of that radio program?

A. Our radio show is a public affairs and Zydeco music radio program. It's our unique format.

Q. Do you consider yourself familiar with St. Landry Parish and surrounding areas and how it fits into the State of Louisiana?

A. I do.

Q. You mentioned you are a lawyer. Where did you attend law school?

A. Southern University Law Center in Baton Rouge.

Q. In your experience, is it common for St. Landry residents to attend college or university in Baton Rouge?

A. Yes.

Q. Do you have any other personal experience with that?

A. Yes. We're -- we're nine siblings in my family. Of the nine, five have college degrees or postgraduate degrees. All five of those attended college in Baton Rouge. Also, just a lot -- there are a lot of people I know, a lot of people from St. Landry Parish who attend

college in Baton Rouge.

Q. What do you attribute that educational connection to?

A. Well, I think as far as the African-American community is concerned, that started as the only option because there were no integrated colleges that people could attend. There was Grambling, but Grambling is in northwest Louisiana and virtually inaccessible at that time from St. Landry Parish.

And the other college in Lafayette was at the time known as Southern Louisiana Institute, so it was a regional college and just didn't have the prestige that LSU had and continues to have in Louisiana. And so from that necessity, I guess from the segregation and the educational opportunities, it's become sort of a tradition for people to attend in Baton Rouge.

Q. In addition to the educational ties, are there other economic ties that link St. Landry Parish with Baton Rouge?

A. Definitely.

Q. Can you tell us about them?

A. All of south Louisiana is very involved and is dependent upon the petrochemical

industry, and particularly as it relates to offshore drilling and refining, and so there are a lot of jobs in that industry.

My father, for instance, belonged to Baton Rouge Local 1177, which is the laborer's local; and he and a lot of men from St. Landry Parish of his generation rode a bus or hitchhiked every day to Baton Rouge to work. As a matter of fact, those buses weren't commercial buses. They were buses that were set up specifically for that purpose to -- to bring people to work in Baton Rouge. So that and, of course, we have a refinery in St. Landry Parish that's a very strong tie, very strong economic tie.

Also, there's agricultural ties. You know, immediately to the west of -- of the City of Baton Rouge. If you are traveling up 190 toward Opelousas, you'll see sugar cane fields all throughout that area; and that is a very important row crop in St. Landry Parish and a lot of south Louisiana up in -- as I said, to the border of Baton Rouge proper.

Q. Are there social and cultural connections that St. Landry Parish shares with Baton Rouge?

A. Well, we do a Zydeco public affairs program so that people listen to in Baton Rouge and, yes, there are. The media, I know media market is a term of art used in that industry, but media -- so St. Landry Parish is not part of the Baton Rouge media market, but there's a great deal of Baton Rouge media consumption in St. Landry Parish. You -- when you subscribe for cable, for instance, you can get the Baton Rouge stations. Baton Rouge newspaper is very widely read in St. Landry Parish. Baton Rouge television stations, radio stations very popular in St. Landry Parish, so there's that connection.

There's also family connections that are derived from those economic connections we talked about earlier. People get jobs at the plants, they move there, their families grow up there. I have two daughters who live in Baton Rouge. You also have the historic connection I talked about, Spanish governance of Louisiana. Baton Rouge and St. Landry Parish also both share vestiges of that strong French and Spanish influence in those, both areas in food, just, you know, it's pervasive. Those connections are pervasive.

Q. Any connections in religions, sports, anything like that?

A. Yeah. The Catholic church is very -- there are a lot of Catholics in south Louisiana, and the church has a lot of influence in the southern part of the state, both -- well, particularly from cultural and that particular standpoint. And as far as sports are concerned, this is Saints country and so, you know, this is where the Saints fans are.

Q. Would communities of interest best be maintained by grouping St. Landry Parish with Shreveport or Baton Rouge?

A. Definitely Baton Rouge.

Q. And when we are thinking specifically about congressional representation, why is it important to keep St. Landry Parish with Baton Rouge?

A. St. Landry Parish is not a small parish, you know, in Louisiana, as far as Louisiana parishes go. But it is not a large, heavily populated area, generally mostly rural, 13 municipalities, but not dense -- densely populated. In order for St. Landry to have its full political potential, it needs to be paired

with what I call some center of influence or centers of influence.

And there is traditionally been more densely, three -- three more densely populated areas that St. Landry has been associated with and has aligned with, and those would be Lake Charles, Lafayette and Baton Rouge. And there are no other densely populated areas that where St. Landry can extend and magnify its influence by associating with those areas. If St. Landry is cut off from one of those, you can make it. You still have some voice because you have two remaining. If you cut off from two, you have less of a voice, but you still -- there's still some reason for people to pay attention to you. When you are cut off from all three, you are effectively disenfranchised as far as congressional politics go because nobody cares about you.

For instance, right now under the 2011 map, St. Landry is divided between the northwestern part of the state and the northeastern part of the state. As far as I know, the congressman from Shreveport has never visited. He has roughly half the geographic area

of St. Landry Parish. I don't know that he's visited since he's been elected. Now, I do know that several different Congress people from northwest Louisiana have visited, so I don't know what's the reason for that disparity. Well, I do have some ideas what reasons are for that disparity, but the disparity exists.

Q. Just for the record, I think you said people from the northwest have --

A. No. Northeast. I'm sorry. I meant to say from the northeast have visited. From the Monroe area, the current congressman is from Stark I believe. I know she's been there, which is in -- in the northeast portion of the state, but the congressman from the northwest who's from Shreveport, as far as I know, has never visited St. Landry.

Q. Are there policy interests that residents of St. Landry share with Baton Rouge that they do not necessarily share with Shreveport?

A. Absolutely. And let me just -- I'll give you just a couple -- one is the petrochemical industry that I mentioned earlier, particularly as it deals with refining and

offshore oil drilling. And, you know, that -- in the northern part of the state, you have natural gas, but that's a different animal from the refinery and oil drilling petrochemical business.

In the southern part of the state, you also have the environmental concerns that come with those refineries, and I'm sure you've heard of cancer alley and those types of environmental concerns involved with, you know, air quality, water quality and that type of thing. That would -- that would be common to St. Landry Parish and to Baton Rouge.

Also, you have the issue of climate as it relates to the petrochemical industry, but you also have the issue of weather and disaster relief. In south Louisiana, disaster relief, congressional policy on disaster relief is critical, and Baton Rouge and St. Landry Parish would share that; whereas, the northern part of the state, particularly the northwestern part of the state, the northeastern part of the state has the river, Mississippi River. There are some flooding problems. There are some disaster relief issues that would effect that part, but the southern part, hurricanes are the thing and

it seems that every year we get hit with one, sometimes multiple hurricanes.

You may have seen in the news in the last couple of years there are some Congress people who are opposed to the federal government's aggressive response to disaster, FEMA's response, appropriations dealing with disaster relief.

In north Louisiana, you might be able to get away with being opposed to that -- those relief efforts. In south Louisiana, you are not going to make it through the next election if you are not supporting your people in that disaster relief.

Q. Are the crops the same for --

A. I was going to tell you one more. And this one's not as widely known, but I mentioned the sugar cane fields west of Baton Rouge. Sugar cane is an important row crop in south Louisiana and the issue of sugar supports. That's something a lot of people never pay any attention to. It's not as -- as widely known as maybe some of the other issues that I've -- I've mentioned, but the issue of sugar supports, price supports is critical in south

Louisiana and unimportant in -- in the northwestern part of the state.

Q. Bridging gears slightly, has your voting rights changed recently?

A. Yes, it did.

Q. How long was that change in place?

A. The change was in place from the beginning of 2021. So it was not in effect for the 2020 presidential election and it was in place for the most recent runoff election that occurred in April, but will not be in place for the November elections.

Q. Can you describe geographically what that change was?

A. The change was that it increased -- it decreased the number of precincts in St. Landry Parish.

So in my case, my prior polling place was roughly 1.2, 1.3 miles from my home in the town. The -- the polling place was in the Town of Washington. I live right outside the Town of Washington. My polling under the plan that's currently in place until November elections is 17 miles from my home. So fortunately, we have a car so we can do it, but

it's really extremely inconvenient.

Q. What was the response in the community for this change?

A. There was an uproar. That was a lot of -- a lot of people thought that it was -- and I believe it was done for -- to dilute minority votes. So what happened is that small, not small, but precincts that were predominantly African-American were combined with precincts that were majority white into much larger precincts. So it may have taken three precincts that were predominantly African-American, combined them with five that were majority white and those are the precincts.

So -- so in my case, for instance, those precincts were used during the redistricting process, and just coincidentally or not, they were in place basically only for during the redistricting process. So now my state representative, current state representative is the person who owns a business. He's a pharmacist -- a nurse practitioner. I'm sorry. He owns a business just a few miles from my home, much closer than my current precinct is, and I went to high school with his parents. And now

the center of the -- the state representative district that I'm going to be in, the -- the center of population for that is in Avoyelles Parish and I live a pretty long way from Avoyelles Parish. But that is the effect of -- of that precinct change, because in the redistricting process, one of the principles was he don't split precincts. If those precincts hadn't been enlarged, you would have a much different process than -- than what occurred.

Q. What do you understand to be the official reason for these precinct changes?

A. The asserted reason was that Mike Hefner went to the parish president and the council and told him there was a mandate from the secretary of state to reduce costs. That was the asserted reason. I can't vouch for the -- the truth of that assertion.

MR. WALE:

Your Honor, I'm sorry. I have to interrupt to Mr. Cravin's actual hearsay. He's responding for others.

MR. SHELLY:

I am most generously not offering these reasons for the truth of the matter

of why these precincts were changing. I wanted Mr. Cravins to testify on what he understood the reason. My next question is whether he found that reason to be credible.

THE COURT:

Well, your question was what -- I'll paraphrase -- was what was the stated reason for the precinct changes. I'm going to allow the question. It's a bench trial. It did call for previous, but your objection is overruled. Go ahead and ask the question.

BY MR. SHELLY:

Q. Mr. Cravins, did you find the -- the stated reason to be credible?

A. No. I don't find the stated reason to be credible because I was recently at a parish council meeting where that issue was on the agenda and there was no mention of cost and the parish is going back. I think the parish is actually going to wind up with one more precinct than there was before all these changes were made, so there are going to be 99 precincts in the parish I believe, up from 33 and up from the

1 98 before the 30 something precincts.
2 Q. I believe you alluded to this. Do
3 you know who was responsible for the change?
4 A. Mike Hefner was the demographer for
5 that.
6 Q. Are you familiar with Mr. Hefner's
7 role in this case?
8 A. I had read part of a report that was
9 prepared by Mr. Hefner.
10 Q. Submitted on behalf of the state?
11 A. Yes. Submitted on behalf of the
12 attorney general.
13 Q. What is the reaction in the way that
14 he describes the communities of interest?
15 MR. WALE:
16 Excuse me. I'm going to object,
17 Your Honor. He's clearly calling for the
18 opinion of a lay witness. Mr. Hefner has
19 been offered as an expert in this case,
20 not in this case as a fact witness, not --
21 THE COURT:
22 You're calling for opinion. What is
23 your response?
24 MR. SHELLY:
25 Mr. Cravins is testifying about his

knowledge of the communities of interest which is the subject of the report. I'm asking if that is consistent with his lay understanding of communities of interest where he lives.

THE COURT:

Sustained.

BY MR. SHELLY:

Q. Mr. Cravins, are you familiar with the illustrative maps that the Galmon plaintiffs submitted in this case?

A. Yes, I am.

Q. Do you believe they have communities of interest?

MR. WALE:

Again, Your Honor, I'm going to repeat the objection that this witness is a fact witness. He is not an expert and was not tendered in the subject.

MR. SHELLY:

He -- he testified of his understanding that where St. Landry fits as a community, which -- which communities it shares interest with. His -- I mean, I'm merely asking him to explain what is

his understanding as of --

THE COURT:

Well, but community interest is a legal test for which opinion testimony has been -- has been offered and accepted. You are calling for a legal -- you are not calling for a legal conclusion. You are calling for opinion testimony. It's far beyond lay testimony. Sustained.

MR. SHELLY:

Okay. I'll try one more time.

BY MR. SHELLY:

Q. Mr. Cravins, you testified to the educational, cultural and industrial connections that St. Landry shares with Baton Rouge.

Do you believe that the illustrative maps that you reviewed, do you believe that -- that those would allow residents of St. Landry Parish to have their policy interests heard?

MR. WALE:

Your Honor, again, I'm going to repeat my earlier objection that's again calling for opinion testimony that an expert should be giving.

THE COURT:

Well, this is a little different.
He's a resident of St. Landry Parish. The question is do the residents of St. Landry Parish look at these maps, do you think the folks in your -- in your parish have a chance at electing representatives. I'm going to overrule. You may answer the question.
THE WITNESS:
The map, are you asking about the 2022 map or the Galmon plan?
MR. SHELLY:
The Galmon maps.
THE WITNESS:
The Galmon maps would at least allow us to maintain the connection with Lafayette and Baton Rouge that I spoke of earlier as two of the three centers of influence that are important to St. Landry Parish.
MR. SHELLY:
I have no more questions at this time.
THE COURT:
Cross?

MR. WALE:

All right.

THE COURT:

Your name, sir?

MR. WALE:

Jeffrey Wale on behalf of the state, Your Honor.

CROSS-EXAMINATION BY MR. WALE:

Q. Hi, Mr. Cravins, I'm Jeffrey Wale. I'm going to be asking you a few questions this afternoon.

A. Yes, sir.

Q. First of all, I have to ask. We prepared a lot for the trial. I did not prepare anything on Zydeco, so you are -- you have a radio show that features Zydeco music?

A. Yes, sir.

Q. Okay. That's fantastic. What station did that come on? Is it on the radio?

A. 105.9 FM.

Q. 105.9 FM and --

A. Also available online.

Q. Also available online. Perfect. Does 105.9 FM, does that carryover into the Baton Rouge media market?

A. You -- it can be picked up in Baton Rouge, but we have a lot of online centers.

Q. Okay. So it's more online than -- than on the radio?

A. I wouldn't -- I -- I couldn't say that it's more online than radio. It's both. I just didn't want you to leave with the impression that it was strictly on air as a show.

Q. Sure. Sure. Because I -- I had heard some earlier statements about Baton Rouge is in the media market or Baton Rouge and St. Landry Parish share a media market or that it doesn't. Can you clarify whether you think they share a media market?

A. Are you referring to testimony before I took the stand?

Q. No. Your testimony earlier.

A. No. What I said was a media market is a term of art, so these organizations define media markets. St. Landry Parish is not part of the defined Baton Rouge media market, but there is a lot of consumption of Baton Rouge media in St. Landry Parish.

Q. I understand. And so just to confirm. Today, Mr. Cravins, you are not being

1 offered as an expert today, correct?
2 A. I'm being offered as a fact witness.
3 Q. Okay. Thank you.
4 And so everything that you are
5 testifying today is based solely on your personal
6 experience as a resident of St. Landry Parish?
7 A. Yes.
8 Q. You were a lawyer in St. Landry
9 Parish and you ran for district attorney?
10 A. Yes, sir.
11 Q. And you ran as a Democrat; is that
12 correct?
13 A. That is correct.
14 Q. So when you ran, you were the acting
15 district attorney, correct?
16 A. No, sir.
17 Q. What was your position?
18 A. I was the district attorney by
19 operation of law.
20 Q. But can you explain --
21 A. Not acting.
22 Q. Can you explain that to me?
23 A. In Louisiana, if you are a sheriff
24 and the sheriff's office is vacated, then by
25 operation of law, the chief deputy sheriff

1 becomes the sheriff. Doesn't become the acting
2 sheriff, they become sheriff.
3 If a district attorney, in the case
4 of a district attorney, the first assistant
5 district attorney in the event of a vacancy in
6 the office of district attorney becomes the
7 district attorney by operation of law.
8 Q. Okay. So you were the assistant
9 district attorney who took over as district
10 attorney on the resignation of the previous?
11 A. The retirement.
12 Q. The retirement -- excuse me -- of
13 the previous district attorney. All right. So
14 you had never been elected to that office
15 previously?
16 A. No.
17 Q. But you did run for the election in
18 2020?
19 A. Yes, sir.
20 Q. And you appeared on the ballot at
21 the same time as the presidential election?
22 A. That is correct.
23 Q. And -- and, at that time,
24 President Trump carried St. Landry Parish by a
25 margin of about 56 percent; is that correct?

A. I didn't really pay attention. I know he carried the parish. I couldn't -- I couldn't testify as to the percentage.

Q. But would you believe me if I told you that -- that he carried about 56 percent of the parish?

A. Yes.

Q. And in your result, your opponent, a Republican, received 52 percent of the votes and you received about 48 percent of the votes; is that correct?

A. Roughly, 51 point something, 48 point something.

Q. So as a Democrat, do you believe that you would have received -- based on what I just told you, that you would have received at least some crossover voters from Trump voters representing the plaintiffs again, some crossover voters for the -- representing the plaintiffs again, that people voted for both Trump and yourself?

A. Yes.

Q. All right.

A. Let me -- let me --

Q. So let's talk about St. Landry

Parish.

A. Let me -- let me amend that answer, and the reason I can't tell you, the reason is there was a large disparity between the number of votes cast in those two elections, so I couldn't tell you who voted for who.

Q. Okay. But let's discuss St. Landry Parish. There are about 90,000 residents in St. Landry Parish, correct?

A. 80 something thousand.

Q. 80 something thousand. I apologize. I'm rounding. I'm using rough -- rough numbers here. And is the minority population about 45 percent?

A. 43 percent.

Q. 43 percent. Again, I apologize for -- for rounding.

A. Well, when you say "minority," what are you -- what are you -- who are you classifying as minorities?

Q. By bare standard using voter registration statistics, black voters and any part black voters.

A. Okay. Black voters and any -- and any part black voters you said?

Q. Yes.
A. Is that on some kind of official registry?
Q. I'm sorry. I was using -- I believe I was using percentage of black voters from voter registration statistics.
A. Okay. It's not 45 percent.
Q. Okay. I apologize. So the majority, but you would say the majority of the parish is white, correct?
A. Yes.
Q. The majority of the population is white?
A. Yes.
Q. And what are the major cities of St. Landry Parish; would that be Eunice, Opelousas, Arnaudville, Krotz Springs, etc.; is that correct?
A. There are 13 municipalities in St. Landry Parish.
Q. Thirteen municipalities, right. And so would you say that Republicans specifically went there to visit the office in St. Landry Parish?
A. No.

Q. You would not say that?
A. No.
Q. All right. So --
A. Absolutely not.
Q. And so -- so as we discussed earlier, had President Trump won in 2020, as we said, it would be carried by a large margin?
A. Right.
Q. I believe Senator Cassidy, a Republican, carried that by a large margin at that same election, correct?
A. If you would allow me to finish answering your last question, the only Republican parish-wide elected official in St. Landry Parish currently is the Republican district attorney who won the race that I was involved in. There is no -- no other Republican was elected prior to him.
Q. And so to rephrase my question in another way, Republicans typically win elections held parish wide such as president, such as senator, such as congressman?
A. John Bel Edwards carried Louisiana, and to say that Republicans typically carry St. Landry Parish is not correct.

Q. Okay. And there are --
All right. Let's move on to talk about the congressional districts. What congressional districts are currently included in St. Landry Parish?
A. Right now, we have the district that comes up, the -- half of the parish is in the district that comes up the eastern up the delta region represented by Julie Letlow, and we have the -- let's see. That would be the eastern half of the parish. The western half of the parish is the district that is where Mike Johnson from Shreveport is currently congressman.
Q. So that's the 4th and the 5th Districts?
A. That's correct.
Q. All right. And so -- and can you clarify for me, is the 3rd -- the congressional 3rd District, is that a region of St. Landry Parish?
A. The 3rd --
Q. I'm sorry. District?
A. The 3rd District -- glad you asked me that question. The 3rd District contains one or two precincts in Cankton area, which is in the

southwestern part of the parish, south central to southwestern part of the parish that are in the 3rd Congressional District. At least that allows St. Landry Parish and its parish-wide elected officials to still have some voice with those representatives, that representative who represents the 3rd Congressional District. The 2022 map takes away that -- that small connection that the parish-wide officials would have to speak for their constituents.

Q. So you are familiar with the new parish map that the legislature enacted, correct?

A. That 2022 enacted map?

Q. The 2022 enacted map, yes sir.

A. Yes, sir.

THE COURT:

The parish map? I'm sorry. You said the new parish map?

MR. WALE:

Oh, the Congress map. I apologize if I misspoke.

BY MR. WALE:

Q. But to confirm your earlier testimony, what we just said, currently St. Landry Parish is part of the 3rd, 4th and 5th

Congressional Districts. What part are you familiar with, what districts is Baton Rouge currently made up of?

A. Baton Rouge is -- at least part of Baton Rouge is represented by the new congressman from New Orleans and I -- I know a Troy Carter.

Q. Sure.

A. And Garret Graves I think represents -- does he represent part of Baton Rouge?

Q. Well, normally we ask the questions, as I'm sure you're aware, but I will represent to you that Congressman Graves represents the 6th District, Congressman Carter represents the 2nd District --

A. Uh-huh (affirmatively).

Q. -- and both of those congressmen represent Baton Rouge. And my question to you is what part of St. Landry Parish, based on the current map, not the 2022 enacted map, but currently or previous map of this law, based on the map we used after 2011, what part of St. Landry Parish was a shared congressional district with Baton Rouge?

A. Although Baton Rouge currently from

2011 is not connected to St. Landry, it's not in the same congressional district as St. Landry. What I testified to earlier is that it is critically important for St. Landry Parish to maintain a connection with at least one of those centers of influence that allows St. Landry Parish to have some political voice. Those three centers of influence are Baton Rouge, Lafayette and Lake Charles, not necessarily in that order.

Right now, because of that small connection in the 2011 map that we have with the 3rd Congressional District, we are connected to Lafayette and Lake Charles. The 2022 enacted map takes away all those connections and goes out of its way because St. Landry Parish has a large African-American population to take St. Landry Parish away from those centers of influence.

Q. I'm sorry. I need you to clarify or repeat for me. What did you say the three centers of influence are?

A. Lafayette, Lake Charles and Baton Rouge.

Q. What are those, the three centers of influence of?

A. Of political influence. They also

have economic influence, social influence. We have a connection, we have some commonalities with those three areas that residents of the parish use to strengthen their voice as far as -- we are in here on a hearing, on an injunction matter, so my focus is about politics; and so from a political standpoint, St. Landry's connection with those areas magnifies St. Landry's influence.

Q. Now, are you saying those are the only three centers of influence in the state?

A. Excuse me?

Q. Are you saying those three cities that you named are the only three centers of influence in the State of Louisiana?

A. I don't think I said that.

Q. You said those are the three centers of influence.

A. That St. Landry Parish has common amounts of interest in.

Q. All right. So speaking of -- of commonality --

A. St. Landry Parish has no commonality of interest with Shreveport. Shreveport is an influence with the interests of the state.

St. Landry Parish has less commonality of interest with New Orleans than it does with Lake Charles and Lafayette.

Q. All right. Mr. Cravins, are you familiar with Interstate 49?

A. I am.

Q. Where does Interstate 49 take you, from where to where?

A. It takes you from Shreveport to Thibodaux and on to New Orleans.

Q. All right. Does it run through the center of St. Landry Parish?

A. It does.

Q. And so if I was going -- if I was driving from north Louisiana to the Baton Rouge area, what would be the quickest way for me to get to Shreveport?

A. What you would first do, if you knew where you were going and how to get there most expeditiously, is that you go down Highway 190 through all those sugar cane farms until you got to -- to Opelousas and then you would take a right and get on the I-49 and you would travel north and you would see those same sugar cane farms that I was talking about earlier on your

1 right and left as you were headed towards
2 Shreveport.
3 Now, if you headed south, if you
4 made a wrong turn to I-49 and you headed south,
5 you would also see those same sugar cane farms
6 and you would see some aspects of the offshore
7 drilling industry. If you continued north on
8 I-49, having made the correct turn, you would no
9 longer see those.
10 Q. All right. So you mentioned in your
11 declaration that St. Landry Parish, to use your
12 exact words, contains a petrochemical plant along
13 the Atchafalaya River in the eastern part of the
14 parish, correct?
15 A. Correct.
16 Q. That's how many -- that's how many
17 it has?
18 A. There's only one in St. Landry
19 Parish.
20 Q. There's only one. And so do you
21 know whether Caddo Parish has any petrochemical
22 plants?
23 A. People in St. Landry Parish, me
24 being one of them, are very unfamiliar with Caddo
25 Parish, so no, I don't.

Q. Would you believe me if I told you they did?

A. I doubt you would tell me that if it wasn't true.

Q. What about Calcasieu Parish?

A. Calcasieu Parish has several.

Q. And what about St. Charles Parish?

A. Yes. St. Charles has some plants. That's part of cancer alley, isn't it?

Q. So you would say that several parishes in Louisiana have petrochemical plants more so than St. Landry?

A. The petrochemical industry, as I discussed earlier, is not a monolithic industry. In St. Landry Parish, there is a refinery. In Lafayette and Lake Charles, there are refineries.

In north Louisiana, the petrochemical industry is more closely related to natural gas. It is not as related to offshore oil production, oil and natural gas production. It's based on land-based natural gas.

So those petrochemical plants are normally found on waterways and on the gulf, and you're not talking about the same type of industry or necessarily -- necessarily the same

interest either, pro jobs type interests or the same environmental concerns that you have in south Louisiana.

Q. Are you familiar with Evangeline Parish at all?

A. Yes, I am.

Q. How close is Evangeline Parish to St. Landry Parish?

A. It's a neighboring parish. It used to be part of St. Landry Parish.

Q. Yeah. It used to part of the parish and then it split at some point. Do you remember when that was?

A. Neither you or I was alive at that time.

Q. Fair enough. And so would you say that those communities have a lot in common between the residents of St. Landry Parish and Evangeline Parish?

A. The southern part of Evangeline Parish, you talking about two large geographic parishes. The southern part of Evangeline Parish in Ville Platte, Mamou have a lot of those -- a lot of similarities. For instance, there's a large Mardi Gras celebration in Mamou. When you

go up to the northern part of Evangeline Parish; Pine Prairie, Turkey Creek; that is very different country. That's -- you are starting to get -- Pine Prairie, for instance, is because of the pine trees. So then you are starting to get into the area where forestry is an important agricultural item, not so much row crops as they are in southern Louisiana and the southern part of Evangeline Parish, St. Landry Parish and on east to -- to the border of -- to the Mississippi River to Baton Rouge.

Q. All right. I understand.

MR. WALE:

Well, that's all the questions I have. Thank you, Mr. Cravins.

THE WITNESS:

Thank you.

THE COURT:

Any redirect?

MR. SHELLY:

No, Your Honor.

THE COURT:

All right. Mr. Cravins, thank you for your time. You may step down.

THE WITNESS:

Thank you.
THE COURT:
I have more time for another witness.
MS. KHANNA:
Your Honor, may I make one jury clarification before we call the next witness?
THE COURT:
If that's going to provoke all kinds of consternation, then please don't wait.
MS. KHANNA:
I hope it doesn't. I just want to make sure that I understand correctly that the fact that the defendants had purported to offer an expert report on the issue of communities of interest does not prohibit fact witnesses from speaking of their own personal observation of experience with their own community's interest. Is that -- is that a fair clarification?
THE COURT:
No. The court does not stand admonished. Thank you.
MS. KHANNA:

1 I -- I just wanted to make sure we
2 understood going forward. Thank you, Your
3 Honor.
4 THE COURT:
5 Next witness?
6 MS. SEDWICK:
7 Chris Tyson.
8 THE COURT:
9 Would you introduce yourself?
10 MS. SEDWICK:
11 Good afternoon, ladies and gentlemen
12 of the court. My name is Olivia Sedwick,
13 counsel for the Galmon plaintiffs, and my
14 last name is spelled S-E-D-W-I-C-K.
15 THE COURT:
16 And spell your first name for the
17 court reporter, please.
18 MS. SEDWICK:
19 Olivia, O-L-I-V-I-A.
20 THE COURT:
21 Olivia.
22 CHRISTOPHER JORDAN TYSON,
23 after having first been duly sworn by the
24 above-mentioned court reporter, did testify as
25 follows:

1 DIRECT EXAMINATION BY MS. SEDWICK:
2 Q. Good afternoon, Mr. Tyson. Thank
3 you for taking the time to testify for the court
4 today. Can you please state your full name for
5 the record?
6 A. Christopher Jordan Tyson.
7 Q. And where do you live, here in
8 Baton Rouge?
9 A. Here in Baton Rouge.
10 Q. And where did you grow up?
11 A. Baton Rouge.
12 THE COURT:
13 Let me take a second.
14 BY MS. SEDWICK:
15 Q. Mr. Tyson, how do you register and
16 identify?
17 A. Black.
18 Q. And, if you could, please tell me a
19 little bit about your educational background?
20 A. Yes. Born and raised here in
21 Baton Rouge, graduated from University Laboratory
22 School, attended, graduated from Howard
23 University with a bachelor's in architecture,
24 graduated from the Harvard Kennedy School with a
25 master's of public policy and the Georgetown

University law center with a JD.

Q. And did you have any internships while you were in school?

A. Yes. Interned in a number of places. Most notably interned for former Senator Mary Landrieu in her Washington, D.C. office, a position I started the day after Katrina struck, so I was very proud to serve the Senator in the State of Louisiana in those months and years after Hurricane Katrina.

Q. What do you currently do for a living?

A. I'm currently a law professor at the LSU Law Center.

Q. And you've run for an elected office, correct?

A. Yes. I was on the ballot in 2015 as secretary of state and spent two years running statewide all around the state in support of that campaign.

Q. And during your campaign, what were some of the things that you saw?

A. Well, just got to experience the diversity of the State of Louisiana, got to travel around and meet people engaged in -- in

1 politics and just regular issues in their
2 communities. It was truly an eye opening
3 experience and -- and one that I treasure.
4 Q. And, if you could, please tell me
5 about some of your other professional experience
6 in the last ten years?
7 A. Sure. In the last four years, I
8 served as CEO of the -- of the organization
9 called Build Baton Rouge, which is the
10 redevelopment authority in land bank for the
11 city. Prior to that, I was an attorney with the
12 law firm of Jones Walker.
13 Q. And can you tell me a little bit
14 about what is Build Baton Rouge?
15 A. Build Baton Rouge is the
16 redevelopment authority in the land bank for East
17 Baton Rouge Parish. It is a political
18 subdivision of the State of Louisiana that has as
19 its jurisdiction all of East Baton Rouge Parish.
20 It's focused on white remediation core land
21 development, neighborhood urban development.
22 Q. And what's the general demographic
23 of the community that Build Baton Rouge serves?
24 A. All of East Baton Rouge Parish is a
25 jurisdiction, and so that is roughly I think 48,

1 49 black and white with a number of other
2 ethnicities making up the balance.
3 Q. So, Mr. Tyson, how long has your
4 family been in Louisiana and under what
5 circumstances did they arrive here?
6 A. I traced my oldest ancestor to the
7 1860s census here in Baton Rouge. Like many
8 families and many black families in particular in
9 Baton Rouge, my family in -- on most sides
10 migrated here from Wilkinson County, Mississippi
11 in the early part of the 20th century kind of
12 moving down the delta to Baton Rouge as the
13 nearest big city.
14 Q. And, if you could, please tell the
15 court the role that race has played in your
16 family's experience since coming to Baton Rouge?
17 A. Certainly. Well, I think like many
18 black families in Baton Rouge, my family
19 experienced the days of segregation and Jim Crow
20 in this community. We had residents in old south
21 Baton Rouge and the Eden part easy town areas,
22 which were two, I would say, out of the three or
23 four areas prior to integration that -- that you
24 had black residents in -- in the metropolitan
25 area, others being Scotlandville and Valley Park.

1 And so my great-grandparents had a grocery store
2 in old south Baton Rouge that was in the path of
3 the interstate. Like many communities, our
4 interstate system dissected black communities as
5 it moved through Baton Rouge. My mother was in
6 the third class to integrate to Baton Rouge high
7 school. My father was one of the first black
8 graduates of the LSU Law Center, and so just a
9 number of -- of incidents that, you know, kind of
10 track black life in the city.
11 Q. And how has race shaped your life
12 experiences?
13 A. Certainly. I -- I grew up here in
14 the '80s and '90s. The year I started first
15 grade was the year, first year of forced busing
16 in Baton Rouge, 1981 in the kind of long, drawn
17 out school city segregation lawsuit that we had
18 here in Baton Rouge. And -- and when I look back
19 over my life, I don't think I realized it growing
20 up, many of the changes that were happening in
21 the city because of integration in Baton Rouge's
22 kind of long resistance to implementing the
23 mandates of Brown were reflected in my life, and
24 the changes that I would see in the city before
25 leaving for school and then coming back to find

really a tale of two cities narrative as we have talked about often at Build Baton Rouge, and I think residents that maybe grapple with the issues of race and class issues are here in Baton Rouge.

Q. So I want to shift gears a little bit. Have you had an opportunity to review the Galmon illustrative maps?

A. Yes.

Q. And, in your view, would it make sense to create a congressional district that connects Baton Rouge and the Delta Parishes?

A. Absolutely.

Q. At a high level, could you share with us the connections that you see between Baton Rouge and the Delta Parishes?

A. Well, Baton Rouge is here on the Mississippi River and Louisiana's history flows through the delta and Louisiana's black history flows through the delta in many ways. Black population is still centered around the river, which we know is the source of the plantation industry. And so we know that those connections exist through family, through faith networks, through cultural experiences, that the connection

to Baton Rouge throughout the delta and parts of central Louisiana included I think are felt in family bonds. I've seen it in my family through faith bonds and people travel for revivals and -- and other experiences throughout this region. There are strong connections, and I know many others whose families are connected to areas of the delta and spend weekends going home for dinner and can be back to Baton Rouge in the morning, so I think those connections are strong.

Q. Let's take a few of those in turn. So first, if you can kind of give us -- you've given us a little bit already, but the -- the familial ties, the educational ties between the Baton Rouge and the -- the delta parishes.

A. Yeah. Take those, first of all, the educational ties are strong. My family, as many others' grandparents and great-grandparents received education from McKinley Senior High School when that was the -- the only option for pursuing high school for black students in this region before Capital High School would come online I believe in the 1950s, and then we had slow school integration and other options. So the McKinley Senior High School people may not

1 realize was one of the only places to pursue
2 education after 8th grade for black students, not
3 just in Baton Rouge, but throughout the region;
4 and I've met people who -- elderly who talk about
5 coming to Baton Rouge to go to 9th grade and from
6 the rural areas of the delta, and so that is
7 strong.
8 We also know that Southern
9 University is here and also Leland College used
10 to be here as well, so you had two historically
11 black colleges in the region. Both of my
12 grandmothers attended both institutions, and
13 so -- and they were connected to others who
14 connected to those institutions and rose to
15 higher education and on to the middle class as
16 those institutions were very poor for black
17 access to the middle class in this region.
18 Familial, again, I know so many
19 people, including my own family, and look at
20 funeral programs and you see the connection
21 throughout the delta and many others who still
22 have parents and grandparents throughout the
23 delta that they visit and connect with on a
24 regular basis, even though they reside here in
25 the City of Baton Rouge or in the broader

1 metropolitan area.
2 Q. Now, what about from an economic
3 perspective the connections between Baton Rouge
4 and the Delta Parishes?
5 A. Well, Baton Rouge obviously is the
6 most urbanized area in the delta before you get
7 further down to New Orleans. The petrochemical
8 industry has a strong foothold here and that has
9 grown throughout the 20th century.
10 My great-grandfather was one of the
11 first black employees at Exxon, and so, you know,
12 those jobs provided some opportunities for black
13 people early on in the 20th century and continue
14 to do so today. And those are jobs that not only
15 exist in Baton Rouge but stretch up the river and
16 people who work in those industries live all
17 around and -- and commute from all around the
18 delta. So there's strong economic ties there, to
19 say nothing of the governmental base here in
20 Baton Rouge and the amount of travel that people
21 enjoy when they commute to work from rural areas
22 as -- as we like to do in Louisiana.
23 Q. Now, what about from a historical
24 perspective, you talked about the connection
25 earlier, the connection between Baton Rouge and

the Mississippi River. So from a historical perspective, what would you say?

A. The history of that again is the delta region, the plantation economy transforming into the petrochemical economy, black communities really never leaving the plantation geography of Louisiana, staying close to the river; and that's where we find population to this day literally throughout Louisiana.

Q. Now, shifting gears just a little bit, you've also seen the enacted map, correct?

A. Yes.

Q. And when viewing the enacted map, it is your understanding that District 2 links Baton Rouge and New Orleans together, correct?

A. Yes.

Q. And, in your experience, would you say that Baton Rouge and New Orleans are -- make sense as communities joined together?

A. No. In the way that it is -- it is constructed in CD -- in the existing CD2, you have in Baton Rouge and New Orleans the two population centers of the state. And while they are an hour and some change apart from each other, they are very different economies. They

have very different histories, and the scale and scope of New Orleans's economy and the issues it faces as it receives over 30 million visitors a year is simple for global tourism, very different from the state capital university town that Baton Rouge is.

I know from my experience in Senator Landrieu's office and Capital Hill, the importance of congressional representation to bring federal resources home to the district and home to Louisiana and the issues that New Orleans faces and the issues that Baton Rouge face are very different and require their own levels of or their own advocates in Congress to advance those issues.

And so linking people on Harding Boulevard and people on Bullard does not necessarily make sense to me because those are distinct communities linked by race, but there are other factors that I think need to be taken into consideration that justify having different representation in the Baton Rouge and delta region than you have in the Orleans region.

Q. Now, based on your experiences, how does grouping Baton Rouge and New Orleans

1 together in a congressional district effect the
2 voting power of black voters in Baton Rouge?
3 A. Well, I think it runs the risk of --
4 of subordinating the issues of black voters in
5 Baton Rouge, which again are black voters who
6 live in the state capital, so who live in the
7 shadow of Southern University and -- and gain the
8 tremendous impact Southern University has on --
9 on this community, who live in a decidedly
10 different urban context than those in -- in
11 New Orleans; and therefore, have different issues
12 that require advocacy and attention and priority
13 that I'm not sure always happens in -- in the
14 current construction.
15 Q. Could you give any examples of
16 suburban areas or areas outside of the larger
17 metropolitan area of New Orleans that have a
18 connection to New Orleans that also have a
19 connection to Baton Rouge?
20 A. You know, again, I think you can
21 look at the -- the River Parishes as -- as
22 having, you know, some connection, perhaps the
23 Northshore as well. But by and large, I think
24 that those -- you know, New Orleans is such a
25 specific urban context and the areas around it

that drain into New Orleans and support it feed off of its tourism industry. The Port of New Orleans differentiates it from -- from the Baton Rouge region.

Q. Again, based on your lengthy experience as a native Louisianian, does focusing on cultural similarities or cultural identifiers, such as food or music or any differences in those cultural identities, perhaps by focusing on those things, does it diminish the role that race should play in these conversations?

A. Yes. Look, I think you know we are Louisianians and we love our food, we love our culture, we love our music. It's so rich and a unique culture and we should take pride in it; and in some areas of the state, we use black pepper, some areas we say we use red pepper, and in all the state we had Jim Crow, right. In all the state we had a very rigid social hierarchy that was the dominant force impact in black life and particularly all lives in the State of Louisiana. And so it's great to revel in those cultural narratives.

We are all very familiar with the gumbo narrative, right? It's a collection of

1 cultures and it's mixing, but it's important not
2 to confuse that I think with what people's life
3 experiences have been and continue to be,
4 particularly around race. The role that that has
5 played in educational opportunity, economic
6 opportunity, social opportunity, your ability to
7 move, you know, your ability to live in certain
8 places, you know, where you went to school. And
9 so I don't think we should use that to kind of
10 minimize or kind of whitewash, if you will, that
11 very specific history that we all know and which
12 has cumulative impacts on the present.
13 Q. And in your living experience, do
14 you believe that it makes more sense to link
15 Baton Rouge with New Orleans in the River
16 Parishes than to link Baton Rouge with the Delta
17 Parishes?
18 A. No. I think, again, race is a
19 factor that we take into account. When we take
20 race into account with other urban dynamics, I do
21 not think it makes sense to link Baton Rouge and
22 New Orleans, two of the largest population
23 centers of the state, the two largest black
24 communities of the state and very different
25 economies and very different settings that

1 require representation. I think Baton Rouge is
2 naturally connected to the delta region and --
3 and I think the -- the history of black
4 settlement in Baton Rouge also reflects very real
5 and enduring connections to the delta region.
6 MS. SEDWICK:
7 No further questions, Your Honor.
8 MR. WALSH:
9 Good afternoon, Your Honor, John --
10 John Walsh on behalf of the secretary of
11 state.
12 THE COURT:
13 Go ahead, Mr. Walsh.
14 CROSS-EXAMINATION BY MR. WALSH:
15 Q. Good afternoon, Mr. Tyson.
16 A. Good afternoon.
17 Q. Mr. Tyson or Professor Tyson?
18 A. Either one. Chris is good too.
19 Q. As a fellow Cub, I'm going to keep
20 this short.
21 A. All right.
22 Q. Professor, when did you start at U
23 High?
24 A. Well, I enrolled in 1981, 1st grade.
25 Q. First grade?

A. So I was a 12-year senior.
Q. Well, we were there about the same time. I'm just within a decade ahead of you.
A. Yeah.
Q. You mentioned that when you started in 1981, that was the first year of the forced busing in East Baton Rouge Parish?
A. Yes.
Q. And are you aware now that the parish has achieved unity and has been released from its desegregation plan?
A. Yes.
Q. You also mentioned that, and you have very strong feelings you've expressed today, that the delta region, the Delta Parishes have a unique connection to East Baton Rouge Parish?
A. Yes.
Q. If that's true, then why would such a story, history and background, why haven't we had a congressional district from Baton Rouge running up into the delta with the exception of the 1992 that was ultimately struck down?
A. Yeah. I think we have had that in '92. You know, I cannot speak to the two cycles redistricting in between the '92 map, the '90 map

and the current map. Politics I think plays a role in that. But, you know, that -- that's all I could say on that.

Q. But prior to 1992, you're not aware of any other congressional maps that have ran Baton Rouge up into the Louisiana delta?

A. I'm not aware of it, no.

Q. And you mentioned you were a candidate for secretary of state --

A. Yes.

Q. -- in 2015?

A. Yes.

Q. Was that your first time running for an elective office?

A. It was.

Q. And you took the time, you filed all the ethics requirements, campaign finance, the whole nine yards?

A. Yes.

Q. And you mentioned you campaigned approximately for two years prior to the election?

A. Yes. I declared my candidacy in 2013.

Q. And you traveled throughout the

state?

A. Yes.

Q. When you were traveling throughout the state, how would you go from Baton Rouge to, let's say, Lake Providence, Louisiana?

A. I mean, I traveled -- you know, if I was going to north Louisiana, sometimes I went up 61 and came back over Natchez. If I was on I-20 and I was going to come back, you know, east after visiting Shreveport or getting to the Monroe area, it just depends on the trip because we took many trips --

Q. Sure.

A. -- all up and around the state.

Q. So you would go from Baton Rouge up through St. Francisville up through Woodville, Mississippi, have to go into Mississippi?

A. Sometimes, yes.

Q. Go to Natchez, cross over back into Vidalia?

A. Uh-huh (affirmatively).

Q. Up through Ferriday?

A. Uh-huh (affirmatively).

Q. Slow down in Clayton so you won't get a ticket and then right up --

A. That's right.
Q. -- right up through Tensas and -- and so forth?
A. Uh-huh (affirmatively).
Q. And about how long would a trip like that take from Baton Rouge to, let's say, Lake Providence, Louisiana?
A. Well, in many of those trips, we were stopping and -- and meeting with, you know, supporters along the way, so it's kind of hard for me to say kind of driving, you know, steadily.
Q. If I represent to you today it takes about 4 hours and 20 minutes without getting a ticket in Clayton, would you -- would you agree with that?
A. I guess you certainly could spend that amount of time being there.
Q. Were you running against an incumbent or it was a vacancy?
A. I was running against an incumbent --
Q. And he --
A. -- an incumbent, Mr. Schedler.
Q. Mr. Schedler. And he had -- he was

filling the unexpired term, at that point, he had been elected to fill the unexpired term of then Lieutenant Governer Gardner?

A. This was subsequent to that unexpired term, so he had actually been elected after filling Secretary Gardner's unexpired term.

Q. So would you agree that as the incumbent it's a little easier to run for office than as the challenger?

A. It can be. It depends on the office. Secretary of state, and I enjoy talking to past candidates and secretaries of state, Republican and Democrat, and it is a particularly hard race to -- to run for. So I know Mr. Schedler ran a campaign as -- as I did and so I have yet to meet anyone who has been secretary of state or is running for secretary to state that describes that as an easy position to run for.

Q. When you say "it's a tough position to run for," is it -- is it in terms of raising -- raising funds?

A. Yes.

Q. And did you -- did you loan your campaign funds from time to time?

A. Yes.
Q. But you were able to -- once you raised money, you were able to pay those loans back, right?
A. Yes.
Q. And in your campaign, would you consider your campaign more of a grass roots style campaign or was it heavy on the media?
A. More grass roots. You know, we didn't have tremendous resources to do a great media campaign, so more grass roots.
Q. Were you able to go on any broadcast TV in any of the -- the seven media markets but in the Louisiana major media markets?
A. We did not. I don't think we bought any media time in any of the projects we did.
Q. You probably -- but you did -- you did cut some spots and run them on Facebook --
A. Yes.
Q. -- and places like that?
A. Yes.
Q. You mentioned earlier that the I-20 crosses north Louisiana?
A. Uh-huh (affirmatively).
Q. Let's just say Madison Parish where

I-20 goes through right there, Tallulah, right there pretty close to the Mississippi River I believe?

A. Uh-huh (affirmatively).

Q. Is Madison Parish, is Tallulah right there? Is it closer to Jackson, Mississippi or to Baton Rouge at that point?

A. I don't know the mileage, so I wouldn't --

Q. If I represent to you it's less than 70 miles to -- to Jackson, does that seem right to you?

A. I'd certainly -- I'd have to see a map.

Q. How about Monroe, about how far from Monroe, Louisiana to -- to Madison Parish right there at I-20 would you say that is?

A. Not far.

Q. That's definitely closer than Baton Rouge?

A. It certainly is closer than Baton Rouge, yes.

Q. All right. And in your -- in your declaration, you mentioned that you know Baton Rouge would be a good anchor for a

1 congressional district that runs up the river?
2 A. Uh-huh (affirmatively).
3 Q. It seems that while Baton Rouge is
4 the state capital, wouldn't Alexandria, which is
5 located right in the middle of the state and is
6 closer to the Louisiana delta, be more of an
7 anchor?
8 A. No, I don't think so. I think that,
9 as I understand districting and the process of
10 drawing a map, there are a number of factors that
11 are being weighed, including; population density,
12 and so I don't think that that part of Louisiana
13 would have the density to be an anchor.
14 I would imagine Baton Rouge, given
15 its relative relationship in thinking about
16 communities of interest, the historical ties that
17 I've discussed would make it logical more of an
18 anchor.
19 Q. In your campaign of state secretary
20 of state, it was an open seat?
21 A. Yes.
22 Q. Governor was on the ballot?
23 A. Yes.
24 Q. Senator Vitter was on the ballot?
25 A. Yes.

Q. It was also an open seat for lieutenant governor I believe?
A. Yes.
Q. Former Mayor Holden, he was on the ballot?
A. Yes.
Q. Along with Mr. Nungesser, who ultimately ran and won the election?
A. Yes.
Q. So it was just you and Mr. Schedler?
A. Yes, it was.
Q. And you remember how you ran in East Baton Rouge; how did you do?
A. In East Baton Rouge, I think I got about 48 or 49 percent of the vote.
Q. If I told you -- you are right on it. It was 48 to 52.
A. Uh-huh (affirmatively).
Q. Do you remember how Mr. Holden did here in East Baton Rouge Parish?
A. In the primary?
Q. Yes, sir, the primary.
A. I don't exactly --
Q. If I represented to you that former Mayor Holden received approximately 58 percent of

the vote in East Baton Rouge Parish, would that sound right?

A. I trust you. I don't think you would tell me the wrong number.

Q. Governor Edwards, he won East Baton Rouge Parish as well?

A. Yes, sir.

Q. And they were both running as Democrats, correct?

A. Yes.

Q. And you ran as a democrat also?

A. Yes.

Q. And Mr. Schedler was a Republican?

A. Yes.

Q. If a new congressional district is formed with Baton Rouge as an anchor, are you a candidate?

A. No.

Q. Have you heard of anybody who's thinking about this race?

A. No.

MR. WALE:

Thank you very much.

THE COURT:

Any redirect?

MS. SEDWICK:

No redirect.

THE COURT:

Thank you. You can step down.

MS. MADDURI:

Afternoon, Your Honor. The plaintiffs call Dr. Maxwell Palmer.

THE COURT:

And your name, ma'am?

MS. MADDURI:

Lali, that's spelled L-A-L-I, last name, M-A-D-D-U-R-I, and I represent the Galmon plaintiffs.

DR. MAXWELL PALMER, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

Q. Good afternoon, Dr. Palmer. Can you please state your name for the record?

A. Maxwell Palmer.

Q. And you've been retained as an expert for the Galmon plaintiffs; is that correct?

A. Yes.

MS. MADDURI:

Plaintiffs would like to proffer Dr. Palmer as an expert in redistricting and data analysis.

THE COURT:

Is there any objection to tendering to redistricting and data analysis?

MS. MCKNIGHT:

I just want to understand the redistricting tender.

THE REPORTER:

Can you state your name, please?

MS. MCKNIGHT:

Kate McKnight.

THE COURT:

We're having a little problem with the mic.

MS. MCKNIGHT:

Pardon me. Can you hear me now?

THE COURT:

Yes.

MS. MCKNIGHT:

Would you like me to repeat myself?

THE COURT:

You said that you questioned the tender in redistricting?

MS. MCKNIGHT:

Correct. It's a fairly large category. I just ask her to be more specific.

THE COURT:

Do you care to be more specific? If that's your tender, that's your tender, but she's either going to stipulate or not and she can cross on the tender. You know how it goes, whatever you want to do. What say you?

MS. MADDURI:

Thank you, Your Honor. I think that's what we will tender him in.

MS. MCKNIGHT:

I'd offer that he's prepared a report on racially polarizing. He has not prepared a report on general redistricting.

THE REPORTER:

You've got to slow down.

THE COURT:

Yeah. And can you maybe pull the mic closer to you, Ms. McKnight?

MS. MCKNIGHT:

Thank you, Your Honor. He has prepared a report on racially polarized voting, not on redistricting in general, so I stipulate to him being an expert in racially polarized voting.

THE COURT:

However, the field's on racially polarized voting, but, then again, this is my first rodeo on this, so she's willing to stipulate to a tender in racially polarized voting.

MS. MADDURI:

Dr. Palmer is going to testify about more than just racially polarizing. That's why he wrote his report.

MS. MCKNIGHT:

As long as he's just testifying about his report, we will stipulate to that.

MS. MADDURI:

Certainly we will stipulate that he's and expert as to the content of his report.

THE COURT:

How about if we say redistricting

with an emphasis on racially polarized voting; does that satisfy everybody?

MS. MCKNIGHT:

That's fine, Your Honor.

THE COURT:

And data analysis, does that satisfy everyone?

MS. MCKNIGHT:

Yes, Your Honor.

THE COURT:

Okay. Dr. Palmar will be admitted by the court and may give opinion testimony in redistricting with an emphasis in racially polarized voting and data analysis. You may proceed.

MS. MADDURI:

Thank you, Your Honor.

DIRECT EXAMINATION BY MS. MADDURI:

Q. Dr. Palmer, you prepared two reports in this case; is that correct?

A. Yes.

Q. And those reports are GX-2 Record Document 47 and GX-37, which is Record Document 120-3, and I'm going to hand you a copy of your reports.

MS. MADDURI:

If that's okay, Your Honor, and defendant's counsel?

THE COURT:

You may.

BY MS. MADDURI:

Q. Dr. Palmer, is your CV included in your initial report, which is GX-2?

A. Yes.

Q. Is your CV a complete and accurate summary of your background and professional experience?

A. Yes.

Q. I'll briefly ask you a couple of questions about your professional background before we move to your opinions in this case.

First, can you briefly summarize your educational background?

A. I received my undergraduate degree in mathematics and government and legal studies from Bowdoin College in Maine and my PhD in political science from Harvard University.

Q. And where are you currently employed?

A. I'm currently an associate professor

of political science at Boston University.

Q. And are you tenured?

A. Yes.

Q. And what classes do you teach?

A. I teach courses on American politics, especially American institutions, including Congress, as well as classes on data analysis, data science and theory.

Q. And what are your principle areas of research?

A. My areas of research are on Congress redistricting and voting rates and local politics.

Q. And have you been accepted as an expert witness in cases involving redistricting before?

A. Yes.

Q. Have you ever been rejected as an expert by any court?

A. No.

Q. Is the list of cases in which you've served as an expert included in your expert report on page 2?

A. Yes.

Q. In how many of those cases have you

provided a racially polarized voting analysis?

A. In all eight.

Q. And have courts previously credited and relied on your analysis?

A. They have.

Q. Let's now talk specifically about the work you performed in this case. What were you asked to do?

A. I was asked to offer an expert opinion on the extent to which voting is racially polarized in Louisiana as a whole in each of the congressional districts under the newly enacted map. I was also asked to evaluate the performance of black voting candidates in their ability to win in the state in these districts.

Q. Were you also asked to evaluate the performance of the Galmon plaintiffs' illustrative majority black districts?

A. Yes.

Q. At a high level, what did you conclude about whether there is racially polarized voting in Louisiana?

A. I find strong evidence of racially polarized voting in Louisiana, and in each of the congressional districts I find that black and

1 white voters generally support different
2 candidates and the black supported candidates are
3 generally unable to win elections.
4 Q. And is that true statewide and
5 within each congressional district?
6 A. Statewide, black preferred
7 candidates were defeated in all of the contests I
8 looked at except for two. The two were the
9 governor. At the congressional district level,
10 black preferred candidates were generally
11 unsuccessful in every district except for the 2nd
12 Congressional District, which is the only
13 majority black district.
14 Q. And what did you conclude about the
15 performance of the illustrative majority-minority
16 districts in the Galmon plaintiffs' plans?
17 A. I found that the black preferred
18 candidates are generally the people that win
19 elections in the 2nd and 5th districts.
20 Q. Okay. Now, let's discuss the
21 racially polarized analyses. First, what is
22 racially polarized voting?
23 A. Racially polarized voting is when
24 voters of different racial or ethnic groups
25 prefer different candidates such that a majority

of black voters vote one candidate and a majority of white voters vote the opponent.

Q. Is it always the case that there's racially polarized voting in a particular jurisdiction?

A. No.

Q. And past cases, have you conducted a racially polarized voting analysis and found that there was no racially polarized voting?

A. Yes. For example, in Bethune-Hill in Virginia, which is a case about the Hudson Valley districts in Virginia, I analyzed racially polarized voting in a number of districts and found that in some districts there was racially polarized voting, but in other districts there was not.

Q. At a high level, how do you go about examining whether there's been racially polarized voting?

A. I use a statistical technique called ecological inference, which is often referred to as EI; and what EI does is it estimates the percentage of the voters of each racial or ethnic group supporting each candidate on a particular election; and then I can look at those numbers

with all the support to determine, first, if the group has a candidate of choice and that, if so, are those the same candidate of choice or are they in opposition to each other.

Q. Okay. At any point in -- as part of your rational /HAOE polarized voting analysis, do you attempt to identify the reason a particular group either votes for or against a particular candidate?

A. No. That's not a question that racially polarized voting analysis can answer. What this analysis does, it determines how voters are voting, what choices are they making but not why. It doesn't get any of the reasons behind the choices of which candidates are chosen.

Q. What geographic region did you examine?

A. I examined the state as a whole as well as each of the six congressional districts under the newly enacted map.

Q. And which elections did you look at?

A. I looked at two statewide elections from 2012 through 2020, and I heard today Louisiana has a different electoral system than most of the country. And so for each of the

elections, I look at the final round of voting in that particular context. So for that election that was decided in the primary, I looked at all the candidates that ran in the primary. For the election that went to a runoff, I just looked at the middle for the runoff election.

Q. And at a high level, what data did you use for the RPV analysis?

A. I combined a few different kinds of data. First, I have precinct level electoral votes for every election, so the total number of votes cast for each candidate, and then I combined that with precinct level data on voter turnout by race, which is provided by the secretary of state based on the state voter registration file. So I know for each precinct each election how many votes were cast for each candidate and then the number of voters of each race casting those votes. I also matched that up with the shape file map of the congressional districts to figure out which precincts fall into which districts, and those precincts vary a little bit from year to year, so I did that separately for each of the illustrative plans I examined.

Q. Now, getting into the EI. What does EI methodology do?

A. EI is a statistical technique to estimate group bubble behaviors from aggregate data, and so the challenge that we have is that we don't get to observe how individual people vote. What we do see is how for specific areas, precincts, the total votes for each candidate there and then the number of voters by race.

And so what EI does is it looks at that data across the geography, whether a state or a congressional district, and estimates the vote for each candidate.

Q. Is EI regularly used by scholars and experts to examine rachially polarized voting?

A. It is.

Q. Would you say that EI is the best available method for assessing racially polarized voting?

A. Yes.

Q. And is it your understanding that courts regularly rely on EI to evaluate racially polarized voting?

A. Yes.

Q. So what kind of results does an EI

analysis produce?

A. So when I run an EI, I run it separately. It's a model that's run separately for each election on a candidate. So I run it 22 times statewide and then 22 times separately for each of the districts as well. And for each separate run of the model, I get an estimate of the percentage of the group voting for each candidate as well as a 95 percent confidence interval, which is a measure of the uncertainty in the inference.

Q. Let's now assess your racially polarized voting. Overall, what did you find?

A. Statewide, I found clear evidence of racially polarized voting. In 18 of the 22 elections I examined, there was a clear black candidate of choice; and in 21 of the 22, there was a clear white candidate of choice. Overall across those 18 black candidates of choice, they received an estimated 91.4 percent of the vote from black voters and those same candidates received only about 20.8 percent of the votes from white voters.

Similarly, among the 21 white preferred -- white preferred candidates, I found

the average candidate received about 10.3 percent from the black voters and 81.2 percent of the vote from white voters.

Q. Of the 18 elections where black voters had a preferred candidate, in how many of those elections did white voters and black voters support different candidates?

A. In 17 of those 18 elections, black voters had candidates of choice, meaning there's strong evidence of racially polarized voting in those 17 contests. Among the candidates in those contests, black voter -- black voter candidates received about 92 percent of the vote from black voters and about 17 percent of the vote from white voters.

Q. Let's now look at GX-2, page 6, Figure 1, which is entitled Top Candidates For Black and White Voters. What does this figure show?

A. This figure is a graphical representation of the results of my statewide EI analysis. And so each row of the figure lists the elections I'm looking at with the name on the left side of the candidate receiving the most votes from black voters and on the right side the

1 candidates receiving the most votes from white
2 voters.
3 And as you see here, if you can zoom
4 in on the bottom of the figure, the last two
5 rows, this shows us the EI results for the 2020
6 presidential election and the 2020 Senate
7 election.
8 And so looking at the presidential
9 election, we see that Biden was the candidate of
10 choice for black voters, received almost
11 90 percent of the vote from black voters and
12 that's that black circle on the right in that
13 row. And in the white circle on that same row is
14 the extra percentage of the vote that I give to
15 white voters, somewhere in the teens.
16 So we can see there that a large
17 majority of black voters were supporting Biden
18 and only a small percentage of the white voters
19 are doing so. And then on the right-hand side,
20 we see essentially that exact same figure
21 flipped, and the reason is because there's only
22 two candidates; and so the voters are 100 percent
23 with that minus whatever I estimated for Biden
24 there. So we see that President Trump was the
25 clear candidate choice for white voters;

President Biden the clear -- President Trump getting a low share of the vote from black voters.

In the bottom row, we see a different case where on the right-hand side we see that Senator Cassidy was the clear candidate choice for the white voters. On the right, we see a clearly large share of the vote from white voters, a very small share of the vote from black voters; but on the left-hand side, we see that black dot for one of the Senate candidates, Perkins, right below 50 percent. And that's because there wasn't one clear black candidate choice in this election who was decided in the primary and there were two black candidates who received an ultimately large share of the black votes because there was no one single black candidate of choice; so I wouldn't say that in this particular contest then we have evidence of racially polarized voting.

And if we can zoom up to the figure, as a whole again, I think it's useful to look at individual elections, but it's more useful to look at the pattern overall.

And so if we look at the left-hand

side, the Top Candidate For Black Voters column, we see a general pattern in which the black dots are usually well to the right of the dotted line at 50 percent showing that, in most of the elections that I'm looking at, there is a clear candidate choice for black voters -- for black voters; and in most of the elections, the white support for that candidate is very low, way below 50 percent, and so we see a very clear general trend across the whole set of elections across the racially polarized vote.

Q. And to kind of sum up, what's the takeaway from Figure 1?

A. There's clear evidence for racially polarized voting at the statewide level.

Q. And does your report contain the precise numbers for the percentages that we were just looking at?

A. Yes. Table 2 has all the numbers listed in this figure.

Q. Did you run the same RPV analysis on a district-by-districts basis?

A. I did.

Q. What were the results of those analyses?

A. Generally, the same pattern. I find that black and white voters across all six districts have clear candidates of choice in those elections and aren't supporting the opposing candidates.

Q. And does your report contain the full support of those analyses?

A. Yes, in Table 3-3.

Q. Okay. So we are now wrapping up the section about the racially polarized voting analysis. Can you just sum up what your conclusions are from that analysis?

A. I find strong evidence of racially polarized voting both statewide and in each of the congressional districts.

Q. So after you determined the levels of racially polarized voting, what did you do next?

A. I then turned to the performance of the black four candidates identified in the previous analysis statewide and in each of the six districts.

Q. Is this part of the analysis commonly referred to as Gingles 3?

A. Yes.

Q. And how do you conduct this piece of the analysis?

A. This is just about aggregating election results. And so for the statewide analysis, I just add up the election results for the candidates in the elections I just analyzed to see if the black vote preferred candidate one the majority of the vote or not.

And for the congressional districts, I first identified which precinct is involved in which district and then aggregated the results up at the district level.

Q. So on the elections where you found racially polarized voting, were black voters able to elect their preferred candidates statewide?

A. No. Among the racially polarized elections, black preferred -- the black preferred candidate one only twice. Both times, that was Governor Edwards.

Q. And what about on a district-by-district basis of the racially polarized voting elections -- racially polarized elections, if we are looking at the individual districts, in how many of those elections did black preferred candidates get a majority of the

vote?

A. In the 1st District, the black preferred candidate lost every contest. In the 3rd, 4th, 5th an 6th Districts, they lost every contest except for one. In the 2nd Congressional District, the only majority black district, the black preferred candidate one every election in which there was a black preferred candidate.

Q. Okay. And, again, are the results of these analyses in your report?

A. Yes, in Table 9.

Q. Okay. Let's now turn to your analysis of the performance of the Galmon plaintiffs' illustrative majority-minority districts. What did your performance analysis examine?

A. I looked at the ability of the same black preferred candidates that we identified to win in the 2nd and 5th Congressional Districts under the four Galmon plaintiff illustrative maps.

Q. And how did you conduct this analysis?

A. The exact same way I did the other former analysis except I used the shade files

from the illustrative maps to find out which precincts fell into which districts.

Q. And what did you find about whether black preferred candidates would be able to win an election under the Galmon plaintiffs' illustrative majority black district?

A. I find that under all four maps, black candidates of choice are generally able to win elections in the majority black district.

In the 2nd Congressional District, under all four maps, black preferred candidates one 17 of the 18 elections and averaged about 69 percent of the votes.

In CD5, black preferred candidates won 15 of the 18 under maps 1 through 4 and 14 of the elections under Map 2 averaging in the mid to high 50 percent range.

MS. MADDURI:

Let's turn briefly now to GX-2, page 9, Figure 3, which is entitled Vote Shares of Black Preferred Candidates Under the Illustrative Maps.

TRIAL TECH:

(Complied.)

BY MS. MADDURI:

Q. What does Figure 3 show?
A. Figure 3 shows the estimated vote share of the black preferred candidates for each of the elections in which there was a black preferred candidate under the three initial illustrative maps for the 2nd and 5th Congressional Districts.
The black circles correspond to cases where the black candidate has won and the white circles show where the black candidate of choice lost.
Q. Okay.
MS. MADDURI:
Okay. We can go ahead and take this down.
BY MS. MADDURI:
Q. And shifting gears a little bit now, you also submitted a rebuttal report in this case in response to some of defendants' expert witnesses, and I'd like to ask you about some of those topics now.
First, did you review Dr. Alford's report?
A. I did.
Q. Are there any aspects of your

1 reports that Dr. Alford agrees with?
2 A. Yes. Dr. Alford reviewed the data
3 and methodology I used and agreed with it and
4 relied on my numbers and my estimates in his own
5 -- in his report, and he also agreed that there
6 is racially polarized voting; that is, black and
7 white voters prefer different candidates.
8 Q. What -- what is Dr. Alford's primary
9 point of issue with your reports?
10 A. Dr. Alford argues that the racially
11 polarized voting that we observe is based upon
12 partisan polarization rather than racial
13 polarization, so he is trying to explain why
14 voters are voting the way they do, but we are in
15 agreement on how they are voting.
16 Q. Are you familiar with Table 1 in
17 Dr. Alford's report which highlights, first of
18 all, the RPV analysis for just the last three
19 presidential elections?
20 A. Yes.
21 Q. What is your response to that table
22 and the conclusions that Dr. Alford draws from
23 it?
24 A. So in that analysis, Dr. Alford is
25 comparing the performance of the presidential

1 candidates from 2012, 2016 and 2020; and he
2 argues that because Barack Obama, a black
3 Democrat, received a smaller share of the vote
4 than Hillary Clinton, a white Democrat, in the
5 elections that might be evidence of partisan
6 polarization rather than race because black
7 voters didn't support the black preferred
8 candidate at the same high rate.
9 And while he's correct in looking at
10 these three elections alone, I think his targets
11 are useable in looking at the full set of
12 elections that I analyzed.
13 Across the 18 elections where
14 there's a black preferred candidate, in 9 of
15 those elections the black preferred candidate is
16 black and in 9 of those elections the black
17 preferred candidate is white. And if you average
18 across that full sample, I find that white voters
19 support white -- black preferred candidates by
20 about 10 percent more of the vote than they
21 support the black preferred candidate when that
22 candidate is black.
23 Similarly, black voters also support
24 the black preferred candidate with a slightly
25 higher voter share, about 4 or 5 percentage

1 points when the candidate is black than when the
2 black preferred candidate is white.
3 Q. Did you also review Dr. Lewis's
4 report?
5 A. I did.
6 Q. Dr. Lewis conducted an RVP analysis
7 of the 2020 presidential election; is that right?
8 A. Yes.
9 Q. How did the results of Dr. Lewis's
10 RVP analysis compare to the results of your
11 analyses?
12 A. Dr. Lewis is using a similar
13 methodology and the exact same data, but he's
14 looking at a different geography. He's looking
15 at the boundaries of the illustrative maps rather
16 than the enacted ones, but he uses the same
17 psychological approach as I am, and we had very
18 similar results. He also finds evidence of
19 racially polarized voting, though he's only
20 looking at one election.
21 Q. Dr. Lewis also offers some
22 hypothetical scenarios in his report. Are you
23 familiar with those?
24 A. Yes.
25 Q. What is your response to those

1 hypotheticals?
2 A. Dr. Lewis looks at a very extreme
3 hypothetical case in which there is no white
4 crossover voting in support of a black preferred
5 candidate; and I'm not quite sure what the
6 relevance of this means for understanding the
7 performance of the illustrative maps because, in
8 fact, there is some white crossover voting, but I
9 also think the way he goes about the analysis
10 relies on a very strong assumption that I don't
11 think is necessarily justified.
12 So what Dr. Lewis does is he first
13 estimates the percentage of the black and white
14 voters according to Biden and Trump in the 2020
15 president election, and then he says suppose all
16 the white voters who were supporting Biden
17 switched their vote and all of the said voters
18 voted for Trump instead, so there is no crossover
19 voting because all the voters are changing their
20 votes. In that case, he says it is not generally
21 performed.
22 But that's just one way of thinking
23 of black -- of crossover voting. We can also
24 imagine another alternative, which is suppose
25 those white voters who voted for Biden just said

I'm going to stay home and not vote at all in this election. There would be no white crossover voting then too, but in that case, he says the voters are performing if either all but one of them were supporting Biden overall.

So I'm not sure why -- whether this is a useful hypothetical, but to the degree it is, I don't think that Dr. Lewis's approach is necessarily justified.

Q. So, in your opinion, what is the relevance of these hypotheticals to evaluating whether or not plaintiffs' illustrative districts would perform for black preferred candidates?

A. Well, we know they perform for black preferred candidates when using the actual election results, and Dr. Lewis's own calculations match up with mine when he doesn't do his hypotheticals.

Q. Did you review Dr. Solanky's report?

A. I did.

Q. Do you recall Dr. Solanky's analysis of East Baton Rouge -- East Baton Rouge Parish and his conclusion that, quote, Based on the voting pattern in East Baton Rouge for the 2020 presidential election, it does not appear that

1 white voters are voting as a block to beat the
2 black preferred candidate."
3 A. Yes.
4 Q. So does Dr. Solanky mean there is a
5 no racially polarized voting in East Baton Rouge
6 Parish?
7 A. No. There is strongly racially
8 polarized voting in East Baton Rouge Parish. I
9 estimated -- in my prior report, I estimated RVP
10 in East Baton Rouge Parish alone for the 2020
11 presidential election, which is the only one that
12 Dr. Solanky looked at, I estimated that 92.5 of
13 the black voters were for Biden; whereas only
14 23.7 percent of white voters voted that, so
15 that's strong evidence of racially polarized
16 voting there.
17 Q. And then, finally, did you review
18 Dr. Blunt's reports?
19 A. I did.
20 Q. Dr. Blunt conducted some simulations
21 analyses; is that right?
22 A. Yes.
23 Q. Do you have any concerns with the
24 way that he conducted those simulations?
25 A. Dr. Blunt uses a standard

1 redistricting package that's widely available and
2 one that I've used a lot in my own academic work;
3 and when you simulate districts in the software,
4 the person running it can set different
5 constraints and different goals.
6 And Dr. Blunt uses some very, very
7 strict constraints, which he uses some very
8 strict population constraints and very strict
9 compactness constraints; and then in his initial
10 report, there are very strict constraints that
11 only six parishes total with a massive reduction
12 could possibly fit into any of those maps. And
13 so when you run the models under these really
14 strong constraints, you don't get maps that look
15 like maps that are every actually in effect or
16 are drawn for Louisiana.
17 Q. Do Dr. Blunt's simulations account
18 for all of the traditional redistricting
19 principles?
20 A. No. They don't take into account
21 areas of interest or --
22 MS. MCKNIGHT:
23 Your Honor, insert an objection, an
24 objection here. Pardon me, Dr. Palmer.
25 This is not anything related to

Dr. Palmer's work. We've gone beyond the scope of it.

THE COURT:

Okay. You may redirect it.

MS. MADDURI:

Your Honor, it is in the rebuttal report and, on direct, I thought it would be helpful.

THE COURT:

Can you point it out to me?

MS. MADDURI:

Sure. In GX-27, which is in Dr. Palmer's rebuttal report, paragraph 11, he discusses the various limitations of the constraints.

MS. MCKNIGHT:

So in paragraph 11, he identifies one constraint at issue, which is the number of parishes split. He did not address traditional redistricting criteria she was just asking him about. He did not address population or compactness.

MS. MADDURI:

I would also submit legislative defendants submitted a reply report for

1 Dr. Blunt after an untimely filing for
2 reply reports, and so I believe Dr. Palmer
3 should be able to respond to that as well,
4 to that report.
5 THE COURT:
6 Objection is overruled.
7 BY MS. MADDURI:
8 Q. Dr. Palmer --
9 THE COURT:
10 Ask the question again, please.
11 BY MS> MADDURI:
12 Q. As you described some of the
13 constraints that were overly strict in
14 Dr. Blunt's report, are there also constraints or
15 criteria that are missing from the analysis?
16 A. Yes. So these models don't take
17 into account things like communities of interest,
18 things like the MSAs that we heard some of the
19 mapers talk about earlier, core retention
20 incumbents, things like that.
21 MS. MCKNIGHT:
22 Pardon me. Just for the record, I
23 need to re-assert the objection that this
24 goes beyond the scope of what he
25 identifies in his rebuttal report. He had

Dr. Blunt's report at the time he prepared his rebuttal report and he's gone beyond the scope of that.

THE COURT:

Your objection is noted. You may continue.

BY MS. MADDURI:

Q. Dr. Palmer, what are the criteria Dr. Blunt found valid?

A. The maps that he generates and simulates don't look like maps that are actually used in practice in Louisiana, in particular, you know, his initial set was only a six parish split at the most. That doesn't look like any of the maps that we've discussed are the ones that were actually implemented or passed by the legislature.

And the patterns he has, all of those are maps that don't actually look like anything realistically being employed here, so I think by example they don't tell us anything about what the maps should actually look like or what the statistics should actually be.

MS. MADDURI:

Your Honor, I don't have any more

1 questions for Dr. Palmer at this time, but
2 I would like to confirm that we move into
3 evidence his two reports, which are GX-2
4 and GX-30.
5 THE COURT:
6 Subject to objection?
7 MS. MCKNIGHT:
8 No objection, Your Honor.
9 THE COURT:
10 Okay. Cross-examination?
11 MS. MCKNIGHT:
12 Thank you, Your Honor. My name is
13 Kate McKnight.
14 THE COURT:
15 It's the court's intention to finish
16 this witness tonight, so just so you-all
17 know.
18 MS. MCKNIGHT:
19 Thank you, Your Honor. My name is
20 Kate McKnight for legislative intervenors.
21 CROSS-EXAMINATION BY MS. MCKNIGHT:
22 Q. Good afternoon, Dr. Palmer. I
23 believe I took your very first deposition in
24 Bethune-Hill, but it's so nice to see you at this
25 time again.

A. Nice to see you.
Q. Could I start with when you were first contacted about doing work in Louisiana for this redistricting cycle?
A. Mid to late March.
Q. And who called you?
A. Lali.
Q. And when were you engaged for this work?
A. Mid to late March.
Q. Did you do any work related to Louisiana prior to March?
A. No.
Q. Let's go to your report, your first report at GX-2.
MS. MCKNIGHT:
And we will start at page 2, Mr. Lansing.
TRIAL TECH:
(Complied.)
BY MS. MCKNIGHT:
Q. So in your report, Dr. Palmer, paragraph 6, you state that you found strong evidence of racially polarized voting across Louisiana. Now, you did this in a statewide

analysis, correct?

A. State and congressional districts.

Q. Okay. And you did not do any regional-specific analyses, did you?

A. Not within the congressional districts.

Q. And when you are referring to the analysis you did for the congressional districts, that was limited to recompiled election analysis where you took those congressional districts, the plan, the as-drawn, and filled them in with election data from past elections; is that correct?

A. I'm sorry. Could you repeat the question?

Q. Sure. Let me break it down. Let me go a little more slowly. Did you study racially polarized voting within specific regions of the State of Louisiana?

A. As I said, only the congressional districts.

Q. Now, can you give any testimony about whether or not polarization levels in Louisiana varied across regions in the state?

A. Just at the district level.

Q. At the congressional district level?
A. Yes.
Q. Okay. Now, I want to say something, and tell me if you agree with it. You can have strong evidence of racially polarized voting but still have meaningful white crossover voting; would you agree?
A. Yes.
Q. Let's go to paragraph 7. The third sentence here, you say "When taken on a district-by-district basis." You're referring only to the congressional plan here, correct?
A. Yes.
Q. Okay. This does not take into account the Louisiana legislative black caucus with dozens of representatives and state Senators in the Louisiana legislature, correct?
A. That's right. I only looked at RPV at the congressional district level.
Q. Now, let's go to paragraph 9. Here you note that you examined statewide and congressional elections in Louisiana from 2012 to 2020, but that's not quite accurate, is it? You did not examine congressional elections, correct?
A. You're right. That's an error.

1 That should say just statewide elections.
2 Q. Okay. And in examining the
3 congressional plans, you recompiled statewide
4 elections within those districts in the
5 congressional plan, correct?
6 A. I'm not sure recompiled is the right
7 term, but I took statewide elections and then
8 determined which precincts for those elections
9 fell into which districts.
10 Q. Okay. So you did not analyze any
11 actual congressional elections to tell this court
12 how a congressional election would behave,
13 correct?
14 A. No, because there -- I have not seen
15 any congressional elections under this plan, and
16 I don't think you can combine election results
17 from different districts into the new boundaries
18 in the same way that you can in a statewide
19 election or a same candidate in the precincts.
20 Q. Thank you.
21 MS. MCKNIGHT:
22 Let's go to page 10. This is still
23 on page 2.
24 TRIAL TECH:
25 (Complied.)

BY MS. MCKNIGHT:

Q. You write that you relied on and downloaded turnout information by race. Do you see that?

A. Yes.

Q. But you did not report turnout information in your expert report in this case, did you?

A. I'm relying entirely on the turnout information, but I don't report the turnout statistics, no.

MS. MCKNIGHT:

Okay. Let's go to paragraph 18, and I believe this is on page 4.

TRIAL TECH:

(Complied.)

BY MS. MCKNIGHT:

Q. Here I see you note that the average candidate of choice for black voters garnered 20.8 percent of the vote from white voters; is that right?

A. Yes.

Q. And this is an average, so we could expect that there was a higher or lower percentage in some other -- in some parts of the

state, right?

A. So this is a statewide estimate. It's an average of statewide estimates, so we expect some of those statewide estimates to be higher and some to be lower.

Q. Okay. Did you come to any understanding about where that figure would be higher in the state?

A. Only from looking at the congressional districts, so the analysis was to look at the statewide levels.

Q. Okay. So you just said that you came to an understanding of where that rate of votes from white voters might be higher on average. Could you explain to us what that understanding was?

A. If we look at the congressional district results, it seems like in some districts, such as District 1, the radio support for black preferred candidates tends to be lower; and in District 2, for example, it's a little bit higher.

Q. Okay. And now on average, one fifth of white voters in Louisiana vote for the black preferred candidate, correct?

A. Yes.
Q. Let's go to Figure 1 on page 5.
A. (Complied.) I'm sorry. District 5, they vote for black preferred candidates. I just want to make sure I have that right.
Q. I think we got that right. Yeah. Thank you, Dr. Palmer.
A. Okay.
Q. So what I'm looking at in this image, I just want to make sure it's clear that I'm looking at the column on the left, Top Candidate For Black Voters.
When I see the white circles on the left, they indicate white vote share for a candidate of choice for black voters, correct?
A. Yes.
Q. Okay. So the horizontal axis below indicates the percentage vote share, correct?
A. Yes.
Q. And the vertical dotted line represents 50 percent, right?
A. Yes.
Q. So looking at the column Top Candidate For Black Voters, whenever we see the white circle to the right of the vertical zero

line, that means that there is crossover voting, correct?

A. That means the majority of white voters are voting the black preferred candidate. I think we were just talking about crossover voting as any white voters voting for the black preferred candidate. When you say 20 percent crossover voting, that's not the preferred candidate, right?

Q. Okay. Well, I'm -- I'm just asking you about this column here and the percentage vote. You indicated that the white circle shows the vote share for white voters for the black candidate of choice, right?

A. Yes.

Q. Okay. So in looking at that, whenever I see that white circle to the right of zero, that means there are white voters voting for the black candidate of choice, correct?

A. To the right of zero?

Q. Yes.

A. Yes.

Q. Okay. And when white voters vote for black candidates of choice, that is defined as crossover voting, isn't it?

A. I think that's a fair definition.
Q. Thank you. Now, white crossover voting in Louisiana elections is so common that you called it an extreme hypothetical, and just earlier on the stand you called it very extreme to have no white crossover voting; isn't that right?
A. Yes. I've -- I've never run an RPV anywhere where there isn't at least some white crossover voting.
Q. Okay. Now, understanding your findings on white crossover voting, let's turn to page 23, Table 16.
A. (Complied.)
Q. A so, again, to orient the court and everyone, this is your table showing vote shares of black preferred candidates under the illustrative maps. So Map 1 refers to Galmon plaintiffs' Illustrative Plan 1, Map 2 and 3, so forth.
A. Yes.
Q. And what you've done here, you've just focused in on the two majority-minority districts that -- that Galmon plaintiffs have argued are in these illustrative plans being CD2

and CD5; is that right?

A. Yes.

Q. Okay. And when I'm looking at this chart -- I'll just look at Map No. 1 at CD2 and CD5 -- I see a range of winning vote percentages where the black preferred candidate garnered between 50.09 percent up to 79.1 percent. Do you see that?

A. Yes.

Q. Okay. Now, do you recall off the top of your head the any part black voting age population number for CD5 in Map 1?

A. No.

Q. Okay. Let's refresh your recollection, so I can instruct this discussion.

MS. MCKNIGHT:

If we can pull up GX-1B at page 10.

TRIAL TECH:

(Complied.)

MS. MCKNIGHT:

Pardon me, Your Honor. I do have a cold. It is not COVID, I promise, but I will be very careful. I've tested multiple times, so that's why I've been wearing a mask in here. I can wipe down

the microphone when I'm done.

BY MS. MCKNIGHT:

Q. Okay. So here we have -- this is from Dr. Cooper's report prepared by Galmon plaintiffs, and it identifies the 18 plus votes for the voting age population for all any part black. And do you see that for District 5 it's indicated at 50.04 percent?

A. I'm sorry. Which column? Oh, yes, I do see that.

Q. Okay. So now that we understand that Illustrative Plan 1 for District 5 is 50.04 percent any part black, let's return back to your report.

MS. MCKNIGHT:

And here we will go to page 5 of GX-2. Pardon me page 23. Pardon me, Mr. Lansing.

TRIAL TECH:

(Complied.)

BY MS. MCKNIGHT:

Q. So now understanding that under Map 1, CD5 has been drawn at a level of 50.04 percent any part black population, do you have an understanding of how much of this vote

1 percentage, of these winning vote percentages for
2 CD5 are made up of white voters?
3 A. It ranges, but usually a few
4 percentage points would be my guess.
5 Q. And what do you base that guess on?
6 A. Well, in some of them, the
7 percentage is below that number and so I don't
8 know to the degree that that's white crossover
9 voting versus a different level of support from
10 black voters. There could be variation in both
11 dimensions and some is higher and so the same
12 problem, so we don't know exactly from this table
13 what the percentages are.
14 Q. Okay. So you can't tell this court
15 what the percentage of white vote share is for
16 the CD5 victories, correct?
17 A. Not necessarily.
18 Q. Okay. Is it true that CD2 and CD5
19 could likely be drawn at below 50 percent BVAP
20 and still elect black preferred candidates?
21 A. Based on this table, yes.
22 Q. Thank you. Now, finally as an
23 expert in this case, Dr. Blunt used a methodology
24 for simulating redistricting plans. You were
25 just discussing it on the stand. He used the

Redist package in R to simulate 10,000 redistricting plans. This is a standard approach to simulate redistricting plans, correct?

A. The package is commonly used, but there's not just one approach in how to use the methods. There's many different ways to use it.

Q. And it's been used by those scholars and testifying experts?

A. That's my understanding.

Q. And this package is reliable enough that you've used it in your own academic research, correct?

A. Yes, but it's not a simple thing to run. There is a lot of different ways it can be run, a lot of different settings to -- to sort of tune and adjust when trying to make the simulations.

MS. MCKNIGHT:

Thank you very much, Dr. Palmer. I have no further questions. And pardon, Your Honor. I do want to wipe this down.

THE COURT:

Thank you for your cross. Any redirect?

MS. MADDURI:

Just a couple of brief questions, Your Honor.

THE COURT:

Okay. Give her a chance to try to keep everybody healthy. Thank you, Ms. McKnight.

REDIRECT BY MS. MADDURI:

Q. Dr. Palmer, you've testified as an expert in RPV in a number of cases; is that right?

A. Yes.

Q. And in all of those cases, the court has credited your RPV analysis?

A. Yes.

Q. Have you ever encountered a case where -- in which 100 percent of white voters voted against the black preferred candidate?

A. I don't believe so.

Q. Is it your understanding that the existence of any level of white crossover voting negates the existence of racially polarized voting?

A. Not at all.

MS. MADDURI:

No further questions.

THE COURT:

Okay. You may step down. Thank you, sir.

Okay. That concludes our testimony for day one. I want to thank the parties. It went really smoothly and you-all were extremely prepared. Well done, one and all.

There was nobody in Courtroom 5, which the court had designated as an overflow courtroom. I don't anticipate that we are going to have more people on day two, so the court's going to let the IT people take down the video in Courtroom 5 unless you-all think there is no reason to do that. No raised hands.

All right. We will commence tomorrow morning at 9:30 a.m.

(The proceedings concluded at 5:23 p.m.)

REPORTER'S PAGE

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(B) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the record;

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talkovers; that same is the proper method for the court reporter's transcription of a proceeding, and that dashes (--) do not indicate that words or phrases have been left out of this transcript; also, that any words and/or names which could not be verified through reference material have been denoted with the phrase "(spelled phonetically)."

CHERIE' E. WHITE, CCR (LA NO. 96002)
CSR (TX NO 10720)
CSR (MS NO. 1514)
RPR (NATIONAL NO. 839452)

REPORTER'S CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original seal on this page.

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, do hereby certify that the transcript set forth in the foregoing 350 pages; that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or the parties herein, nor am I otherwise interested in the outcome of this matter.

CHERIE' E. WHITE, CCR (LA NO. 96002)
CSR (TX NO. 10720)
CSR (MS NO. 1514)
RPR (NATIONAL NO. 839452)

1 This is day two of the injunction hearing.
2 THE COURT:
3 Good morning. Be seated. Welcome
4 back to day two hopefully we won't have a
5 situation of fire and ice like we had
6 yesterday, and I'm referring to the
7 temperature in the courtroom. Okay. Do
8 we know what the clock -- how the clock
9 remains? Do you-all want to put that on
10 the record so we are on the same page?
11 Ms. Khanna?
12 MS. KHANNA:
13 Yes, Your Honor. Plaintiffs have
14 taken up 190 minutes and the defendants
15 have taken up 140 minutes.
16 THE COURT:
17 Plaintiffs, 190 and defendants, 140.
18 MS. KHANNA:
19 Yes, Your Honor.
20 THE COURT:
21 Okay. All right. Next witness?
22 MS. BRANNON:
23 I have to because I haven't entered
24 an appearance yet. Sarah Brannon,
25 B-R-A-N-N-O-N. And plaintiffs call

1 Dr. Lisa Handley.
2 DR. LISA HANDLEY,
3 WITNESS ADDRESS, WITNESS CITY, LOUISIANA
4 WITNESS ZIP, after having first been duly sworn
5 by the above-mentioned court reporter, did
6 testify as follows:
7 MS. BRANNON:
8 We have agreed to stipulate to the
9 expertise of the witnesses, so I would
10 like to ask for a stipulation that
11 Dr. Handley is an expert in an expert
12 witness in district -- in redistricting
13 with an emphasis on racially polarized
14 voting. Is there an agreement.
15 THE COURT:
16 Is there a stipulation?
17 MR. FARR:
18 Good morning, Your Honor, Tom Farr
19 from the law firm of Nelson Mullins. I'm
20 here representing the secretary of state
21 and we have no objection to that
22 stipulation, Your Honor.
23 THE COURT:
24 Thank you, sir.
25 MS. BRANNON:

1 Your Honor, may I approach the
2 witness?
3 THE COURT:
4 Yes. And the court will accept
5 Dr. Handley and allow opinion testimony in
6 the area of witness experience in racially
7 polarized voting.
8 You may approach.
9 MS. BRANNON:
10 Your Honor, I just somehow have
11 realized that I cut my foot.
12 THE COURT:
13 Are you bleeding all over?
14 MS. BRANNON:
15 I am. Can we take a five-minute
16 recess?
17 THE COURT:
18 We can take a recess while you call
19 EMS. Okay. We will take five minutes.
20 (Whereupon, a short recess was taken at
21 a.m.)
22 THE COURT:
23 Okay. Be seated.
24 MS. BRANNON:
25 I'm recovered.

THE COURT:

Good. And if you feel light headed from the loss of blood, we will take another recess. Maybe somebody brought cookies.

MS. BRANNON:

Okay. So we are going to return. For the record, I have given Dr. Handley a binder with a copy of her expert materials in this case and we are going to walk through all of those and introduce them as we discuss them.

THE COURT:

Okay. Proceed.

EXAMINATION BY MS. BRANNON:

Q. Dr. Handley, did you prepare a report in this case?

A. Several, yes.

Q. Can you turn to the first page of your binder?

A. Is that a copy of the preliminary report you prepared.

A. It is.

Q. For the record, Dr. Handley's preliminary report is Exhibit PR-12.

1 THE COURT:
2 Record Document 41. -- dash 3,
3 right?
4 MS. BRANNON:
5 Yes.
6 BY MS. BRANNON:
7 Q. Dr. Handley, is your CV attached to
8 your preliminary report?
9 A. It is.
10 Q. Is this a complete and accurate
11 summary of your background and professional
12 experience?
13 A. It is.
14 Q. Dr. Handley, what do you do for a
15 living?
16 A. I am a consultant.
17 THE COURT:
18 Ma'am, I think you might need to
19 adjust your mic right, yeah, right there.
20 Just adjust it.
21 THE WITNESS:
22 Just put it closer?
23 THE COURT:
24 Got it. Now we can hear better.
25 BY MS. BRANNON:

Q. I'll re-ask. Dr. Handley, what did you do for a living?

A. I am a consultant here in the United States and overseas. I also am a part-time academic in the U.K.

Q. Can you provide us some examples of some of your clients for your consulting business?

A. I have worked, as I mentioned, the UM. I worked for scores of states and local jurisdictions. I worked for the redistricting for the Department of Justice for several civil rights organizations, including the ACLU.

Q. Can you briefly describe some of your academic work you have done on the topic of redistricting and minority vote delusion?

A. Almost all of the articles that you'll see listed in my CV, that includes books, articles, peer review journals, law review articles, chapters in books deal with my minority representation, voting redistricting with the subjects of this case.

Q. All right. And have you testified before as an expert witness?

A. I have.

Q. Approximately how many times have you performed a racial block voting analysis as an expert witness?

A. As an expert witness, scores of times.

Q. Okay. And have you been -- have you been accepted as an expert witness before to testify about redistricting and racially polarized voting?

A. I have.

Q. Approximately how many times?

A. Scores.

Q. Dr. Handley, what were you asked to do in this case?

A. I was asked to conduct an analysis of the voting patterns by race in Louisiana and to evaluate proposed districts that is the enacted plan and several illustrative plans to ascertain the opportunity for black voters to elect the candidates of choice in the .

Q. And were you asked to analyze voting patterns in the State of Louisiana specifically?

A. Yes. I analyzed voting patterns statewide, I analyzed voting patterns in 16 congressional districts and in the enacted

1 congressional districts.
2 Q. Can you provide us a general summary
3 of the opinions that you reached with respect to
4 your analysis as to whether there's racially
5 polarized voting in Louisiana?
6 A. Yes. There is racially polarized
7 voting in Louisiana. There is quite stark
8 racially polarized voting in Louisiana.
9 Q. What is your definition of racially
10 polarized voting?
11 A. Thornburg versus Gingles tells us
12 that voting is polarized in black voters and
13 white voters vote differently. In other words,
14 if black voters voting alone elected different
15 candidates than white voters, then the contest is
16 racially polarized.
17 Q. What statistical techniques did you
18 use to analyze whether voting in Louisiana is
19 racially polarized?
20 A. I used three standard techniques:
21 Homogeneous precinct analysis, ecological
22 regression, and ecological inference, technically
23 I used four because there are two variants of
24 ecological inference.
25 Q. We heard details yesterday about

ecological inference, but can you provide a brief summary of homogeneous precinct analysis and ecological regression.

A. Homogeneous precinct analysis simply compares the voting patterns of precincts that are overwhelmingly one race compared to precincts that are overwhelmingly in another race. So in this case, you are comparing precincts that overwhelming white to precincts that overwhelming black. It's not actually a statistical technique. It's simply comparing these two precincts. We call it an estimate because, of course, not all voters live in homogeneous precincts and might vote differently than the voters who live in more diverse precincts.

Q. Why do you use all three methods?

A. Two of the methods have been around for a very long time. When Thornburg v Gingles was decided homogeneous precinct analysis and ecological regression was used by the plaintiff's experts and the court approved those methods. Since then ecological inference was developed by a professor at Harvard by the name of Gary King and courts have accepted that.

Now, this is three different

1 techniques to arrive at estimates. If you -- if
2 the estimates are more or less the same, despite
3 using three different techniques, we are certain
4 that we have grasped what the voting patterns
5 are.
6 Q. Have courts accepted your expert
7 testimony using these different statistical
8 methodologies in voting cases before?
9 A. Yes. Now, again, ecological
10 inference is more common. I've only been using
11 that for maybe 20 years, but the others for
12 40 years, a long time.
13 Q. Okay. Let's look at your analysis a
14 little bit more in detail. Can we see
15 demonstrative Exhibit 1.2. Did you analyze
16 statewide elections?
17 A. I did analyze statewide elections.
18 Q. How many statewide elections did you
19 analyze?
20 A. 15 statewide elections.
21 Q. Are you familiar with this table
22 that's demonstrative Exhibit 15.12?
23 A. Yes. These are the 15 contests that
24 I analyzed.
25 Q. Why did you choose these elections?

A. These are all recent elections from 2015 on. They all include black candidates.

Q. Let's walk through your analysis of a statewide election. Can we see demonstrative Exhibit 1.3. Dr. Handley, do you recognize this spreadsheet?

A. I do.

Q. Is this spreadsheet part of your preliminary report as appendix A?

A. It is.

Q. Can you explain what this spreadsheet shows by walking us through the portion that has been highlighted?

A. Yes. So this is a particular contest. In this case, it's the attorney general in 2019, October 2019. You can see the two candidates, Jackson and Jeff Landry. You can see their party, you can see their race. And the next column is the actual they received. Below that is the black turn out and the white turn out figures. And then the next set of four columns are the estimates derived by the four different techniques of the percentage of black voters who voted for each of these candidates.

So, for example, see 90.6 is the EIR

times C estimate, 91.2 is the EI two times two, 94 percent is the ER and 87.7 is the homogeneous precinct estimate of percentage of black voters who supported pipe Jackson. And then you see the same information for the white voters. So like EIR times 49.4 percent of the white voters that supported pipe Jackson by EI two times two, it's 10.1 by ER, it's 9.2; and by HB, it's 12.2. So all of them are quite comparable. For example, the estimate that the percentage of black voters who voted for Jackson was similar between 87.7 percent and 94 percent.

THE COURT:

Dr. Handley, one second. Will you help her with her mic? See if maybe we can adjust it.

THE WITNESS:

The problem is I'm leaning forward.

THE COURT:

Right. What we will do is she will -- she will just see if we -- Mr. IT is here too, so we are well. We are over prepared.

THE WITNESS:

This is going to be too far away.

You can still hear?

THE COURT:

No. That's better and you can certainly adjust it. I'll stop. We may be give you some assistance, okay? Please carry on. I'm sorry I interrupted you.

BY MS. BRANNON:

Q. Dr. Handley, what are competent intervals?

A. So the EIR times C estimates, the column next to that, we have competent intervals. You can think of those as sort of the margins of error that you see in a survey that were 95 percent certain that the true estimate, the estimate being 90.6, that the true estimate is somewhere between 90.3 and 90.9.

Q. And why do you include competent intervals only for your EIR times C calculation?

A. Those are the only competent intervals that are generally accepted by experts in my area for -- for these kinds of estimates.

Q. Does the -- this appendix A also provide information about voter turn out?

A. It does. The italicized lines and the attorney general race, it says black turn out

slash, black VIP. That's the percentage of black voting age population that actually turned out for that particular office and the same for white turn out of white VIP. So 35.2 percent of black voting age of the eligible black voting age population turned out to vote and 45.2 percent of the whites.

Q. Would you characterize this 2019 attorney general election as a polarized contest?

A. I would.

Q. Why?

A. The vast majority of black voters voted Jackson. If they had voted alone, Jackson would have one overwhelmingly. The vast majority of white voters supported Landry, and if they alone would have voted, he would have one overwhelmingly. In fact, he did win.

Q. Does the race of the candidates need to be different to determine if there's racially polarized voting?

A. No. The point is that black and white voters are for different candidates. No. It so happens in the contest that I looked at with at least one or two exceptions, the black candidate was the black preferred candidate, that

is the candidate preferred by black voters, but there are exceptions to that in the elections that I looked at.

Q. Does appendix A show the same type of data for the rest of the 14 statewide elections that you analyzed?

A. Yes. So all 15 are in this and I just described one. They are all read the same.

Q. What, if any, conclusions did you reach about racially polarized in Louisiana in statewide elections based on your analysis with these 15 elections?

A. All 15 contests were polarized. In every instance, black voters and white voters would have elected different candidates if they voted separately.

Q. You already explained how you looked at voting patterns in congressional elections. Why?

A. Of course, it indicated that endogenous elections, that is elections for the office at issue, are more probative than exogenous elections.

Now in this case, you are looking at proposed plans. There were no elections under

it, but congressional elections in general would still be more probative and would be particularly so in Louisiana where the districts didn't change that much from the enacted plan from the current plan.

Q. Can we see demonstrative Exhibit 1.4? Do you recognize this table?

A. This -- yes. This is a list of the congressional election contests that I looked at. Again, this is from 2016 to the most recent contest and it was the contest that included black candidates. There were no contests in District 1 that included black candidates.

Q. And is the analysis of these congressional districts described in your reports?

A. Yes.

Q. Can we see demonstrative Exhibit 1.5? Dr. Handley, do you recognize this table?

A. Yes.

Q. Was there a version of appendix B attached to your preliminary report?

A. Yes.

Q. Did you make any corrections?

A. I updated it by adding three elections that occurred in 2021. There were two congressional elections in District 2 to replace Cedric Richmond and there was an election in District 5, and so this has been updated to include those elections. I also changed the date of the elections from October to correct a date, which is November, and I had to correct one of the competent intervals because of a typo.

Q. Was revised appendix B included with your rebuttal report?

A. Yes.

MS. BRANNON:

For the record, Dr. Handley's rebuttal report is Exhibit PR-87.

BY MS. BRANNON:

Q. Did any of these changes impact any of your opinions in this case?

A. No.

Q. Is the data as reflected in revised appendix B that's on the screen similar to the data that is reflected in appendix A we were just discussing?

A. If by data you mean precinct information that is both the demographic

information and the election returns, it's the same. If you mean reading the charts, it's read the same as well.

Q. Yeah. Reading the charts?

A. Reading the charts.

Q. Reading the chart is the same. This chart would be read the same as appendix A that we have walked through?

A. That's correct.

Q. Okay. What, if any, conclusions did you reach about voting patterns and congressional elections in Louisiana based on your analysis?

A. The elections in Districts 3, 4, 5 and 6 were all white polarized. The elections in District 2 less so. In fact, most of them were not polarized in District 2.

Q. All right. Can we see demonstrative Exhibit 1.6? Dr. Handley, did you conduct any analysis of the voting patterns in the newly enacted congressional map related to HB-1?

A. I did. Of course, no election has occurred. So this reflects recompiled results using the precincts that the old elections occurred in and sort of re-running the elections as they would have occurred -- they would have

occurred in the enacted congressional districts.

Q. Do you recognize the tables on this demonstrative?

A. Yes.

Q. Is there a version of appendix C attached to your preliminary report?

A. Yes.

Q. Did you make any changes?

A. Yes. So it turns out that we had an old version of what's called a block two district equivalency file for the enacted plan, and when we discovered that it was old and we needed to fix it, I then in a burst of caution re-ran all of the analyses for the enacted districts using the new block to district equivalency.

Q. Does this demonstrative demonstrate your original appendix C and your updated appendix C?

A. That's correct.

Q. Did your new analysis of congressional districts in the enacted plan of congressional district, this is Congressional District 2, correct?

A. Yes.

Q. Did any of your opinions change?

A. No. The -- the block equivalency file was only off by about 2 percent of the population. So we moved the 2 percentage into the correct districts and it changed the estimates barely maybe by a percentage point, if it changed them at all. As you can see, voting is still quite polarized.

MS. BRANNON:

And for the record, the updated appendix Cs are provided with plaintiff's Exhibit PR-92.

Can we see PX-1.7?

BY MS. BRANNON:

Q. Did you do an analysis of the enacted plan for congressional districts other than Congressional District 2?

A. Yes. I did look at voting patterns in all of the enacted districts that overlaid illustrative District 5, that is the additional black opportunity district offered by the illustrative plan. And as you can see, it overlaps Districts 2, 3, 4, 5 and 6.

Q. So --

A. So those were the -- those were the congressional districts that I looked at. It

1 does not overlap 1, so I did not look at 1.
2 Q. And you recognize this map?
3 A. Yes.
4 Q. And it shows the overlay you were
5 just describing?
6 A. That's correct.
7 Q. All right. Did you make any further
8 changes to your analysis for the other
9 congressional districts besides CD2?
10 A. Do you mean because of the block
11 equivalent? I did it.
12 Q. Yes.
13 A. Yes. I re-ran all of the analyses.
14 Q. And those are all included in the
15 corrected materials report that we filed in this
16 case?
17 A. That's correct.
18 MS. BRANNON:
19 Which for the record is PR Exhibit
20 PR-92.
21 BY MS. BRANNON:
22 Q. Did any of your opinions change as a
23 result of redoing this analysis for all five of
24 the congressional districts you looked at?
25 A. No. As I said, the changes were

mostly less than a percentage point, and voting still very polarized in these congressional districts.

Q. We can take this one down.

What -- when conducting your analysis of these congressional districts in the enacted plan, what conclusions did you reach?

A. If voting was polarized in all of the districts that I looked at, there was some variation in that there was more white crossover vote in enacted District 2 than there was in 3, 4, 5 and 6, which were quite starkly polarized.

Q. What do you mean when you say white crossover voting?

A. I'm talking about white voters who are voting for the black preferred candidate.

Q. Let's turn now to your analysis of black voters opportunities to elect candidates of their choice in the illustrative maps and the enacted congressional map. Did you evaluate the opportunity of black voters to elect their candidate of choice in the enacted map?

A. I did.

Q. And what methodology did you use?

A. Of course, no elections have

actually occurred in either the illustrative or the enacted plan. So I used -- I relied on what I called recompiled election results looking at how previous elections would have faired, how the candidates of choice in previous elections would have faired under the proposed districts.

Q. Have you used this method of recompiling election results when providing other expert opinions that have been accepted by courts before?

A. Yes.

Q. Why do you think it is useful to form this evaluation?

A. The only way to know if a proposed plan will provide black voters with an opportunity to elect their candidates of choice since no elections have occurred is to do something like this: To look at recompiled election results, determine if the black preferred candidates would win, and how many elections they would win.

Q. Did you also perform this recompiled election results analysis on illustrative map 2A that was drawn by plaintiff's expert, Tony Fairfax?

A. I did.

Q. Can we see demonstrative Exhibit 1.8? Do you recognize these tables?

A. Yes.

Q. Can you explain the information provided on these tables starting with the enacted plan on the right side of the screen?

A. Yes. Now, when you are trying to figure out if a district is going to provide black voters with an opportunity to elect the elections that you want to look at are elections in which black voters and white voters agreed on who they would elect. And that happens to be the case in all 15 elections that I looked at. So here, what I did was I determined how many of those 15 elections with a black preferred candidate either win with the majority of vote or win enough votes to go on to the runoff. So that's my effectiveness score one. It's just the percentage times the black preferred candidate would win if there were a runoff.

The second column, the effectiveness or two, is what would happen if they made it to the runoff and there were now just two candidates, would they win the runoff, and this

is the percentage of times they would win the runoff. So, for example, in District 2, the black preferred candidate in all 15 contests would have either won or proceeded to the runoff, and in the two -- two candidates in the runoff, they would have won 100 percent of the time.

Now, in the other districts in the enacted plan, although the black preferred candidates in some of these districts would have proceeded to the runoff in about 25 percent of these elections, none of them would have actually won the runoff. So in the other districts, the black preferred candidate would have not ultimately prevailed in any of the elections.

Q. So can you please explain?

A. All right. So this is a little different than how I usually do this because you have a system that is -- well, it used to be unique. I think maybe some other states are adopting it, but you have a primary system and it includes both Democrats and Republicans, and the election might actually end there without a general election, while in most states you have the -- you go on and you have a general election with two candidates, a Democrat and Republican.

Sometimes here you go on and you have an election with two Republicans, so that makes it a little bit different and that's why I -- that's why you see these two columns.

Q. Would you characterize any of the congressional districts an enacted plan other than congressional District 2 as an opportunity district?

A. I would not.

Q. And then can you just briefly explain the analysis that is reflected in Table 2 on the left side of the map about illustrative district -- illustrative map 2A?

A. So again, I used exactly the same methodology, did exactly the same thing, but this time you can see that District 2 is also 100 percent of the time the black preferred candidate wins. In District 5, 86.7 percent of the contest produced the black preferred candidate as winning or proceeding to the runoff, and in 77.8 percent of the runoffs also, two candidate contests, the black preferred candidate prevails in District 5.

Q. Would you characterize any of the congressional districts in illustrative map 2A as

1 opportunity districts?
2 A. Yes. Districts 2 and districts --
3 and District 5 both provide black voters with an
4 opportunity to elect their candidates of choice.
5 The other districts, 1, 3, 4 and 6, do not.
6 Q. Is the information in Table 2
7 reflected in your reports in this case?
8 A. Yes.
9 Q. What conclusions, if any, did you
10 draw about the ability of black voters to elect
11 their candidates of choice in this illustrative
12 plan versus the enacted plan?
13 A. There is one black opportunity
14 district in the enacted plan and there are two in
15 the illustrative plan marked map 2A.
16 Q. Bringing together your racial
17 polarization analysis and your effectiveness
18 analysis of the enacted plan and the illustrative
19 maps, how does the racially block voting in
20 Louisiana effect voters opportunities to elect
21 their candidates of choice?
22 A. Because voting is racially polarized
23 black voters can only elect their candidate of
24 choice if the district is drawn that gives them
25 this opportunity.

MS. BRANNON:

I also move for admission of all of Dr. Handley's materials that have been in this case, but for the record, it's PR-12, PR-87, PR-91 and PR-92.

THE COURT:

Any objection?

MR. FARR:

No objection, Your Honor.

THE COURT:

Admit.

BY MS. BRANNON:

Q. Dr. Handley, did you also look at the expert report of defendant's expert, Dr. Solanki? I think I'm saying that correctly, Solanki.

MR. FARR:

That's correct.

THE WITNESS:

I did.

BY MS. BRANNON:

Q. Do you think it was appropriate for Dr. Solanki to offer voting opinions about the voting patterns in East Baton Rouge from the analysis of just one election?

A. Certainly, you would look at a pattern of voting over more than one election. You would look at as many as you could.

Q. Can we see demonstrative 1.10? And Dr. Solanki did an evaluation of East Baton Rouge Parish, correct?

A. Yes.

Q. Do you recognize this map?

A. Yes.

Q. Do you think it was appropriate that Dr. Solanki looked just at East Baton Rouge Parish?

A. No. For two reasons: Number 1, East Baton Rouge Parish is not large enough to be its own congressional district that the population is too small. You would have to add neighboring parishes to it. Thus he pointed out the voting patterns in neighboring parishes is different. And number 2, you can see from this map that in any case, East Baton Rouge is not wholly contained within any congressional districts, either in the enacted or the illustrative maps. It is divided between two districts.

Q. Would it be possible to draw a

1 congressional district just with East Baton Rouge
2 Parish?
3 A. No. The population is too small.
4 Q. So even if Dr. Solanki's conclusion
5 was correct, that the voting patterns in East
6 Baton Rouge -- about the voting patterns in East
7 Baton Rouge, do you think that that analysis is
8 relevant to questions about performance in an
9 illustrative District 5?
10 A. No. Again, you have to add
11 population. As he himself points out the
12 population, the voting patterns in the parishes
13 neighboring East Baton Rouge Parish is different.
14 Q. Did you also look at the report of
15 Dr. Alford?
16 A. I did.
17 Q. Did Dr. Alford offer any criticism
18 of the methodology in your report?
19 A. No.
20 Q. Dr. Alford's report -- Dr. Alford,
21 in his report in addressing the cause of voting
22 patterns in Louisiana, does an evaluation as to
23 whether there is racial -- excuse me, Your Honor.
24 Can I start again?
25 Does any evaluation of whether there

is actual racially polarized voting involve in an evaluation of the causes of the voting patterns that have been analyzed?

A. No. The Voting Rights Act, I believe the Voting Rights Act was specifically amended to focus the inquiry on the electoral consequences of different voting patterns and to not -- the reason for those intent was specifically taken out of the equation, the intent of the legislators as well as the intent of the voters.

Q. Do you agree with Dr. Alford's suggestion in his report that the fact that black voters support Democrats and white voters support Republicans in Louisiana means that voting is not racially polarized?

A. When you determine voting is racially polarized, you do it the way that I have done it. This is the way that experts have done it for over 50 years. You look at the voting patterns of blacks and whites, and you compare to see if they are voting the same candidates or different candidates. This is how it is done. This is how you determine if voting is racially polarized.

MS. BRANNON:
Nothing further, Your Honor.
THE COURT:
Cross?
MR. FARR:
Thank you, Your Honor. Can everyone hear me?
THE COURT:
Yes, sir. Did you need to -- did you need to remain seated? I can't remember --
MR. FARR:
I just want to tell Dr. Handley nice to meet you. And through the graciousness of Your Honor, I've got a back condition, so she's agreed that I can examine you from counsel's table and I'm grateful to her for doing that. Please let me know if you can't hear my questions and I'll try to rephrase them.
THE WITNESS:
Okay.
THE COURT:
Let me ask this: Would it be helpful -- you may be seated sir. Would

it be helpful to be able to make eye contact? I mean, is there somebody that I can move, either counsel table move out of the way or does it matter?

MR. FARR:

I can see Dr. Handley if she can see me.

THE COURT:

Can you see her -- him?

THE WITNESS:

I can see, yes. I don't have my glasses on, but other than that.

THE COURT:

All right. Well, then that's fine. We just want to make sure that you-all communicate well.

THE WITNESS:

Okay.

THE COURT:

Go ahead, sir.

CROSS-EXAMINATION BY MR. FARR:

Q. Dr. Handley, we haven't met before, but I've reviewed some of your prior testimony in some cases that involved our firm and it's an honor to meet you here today.

THE COURT:

And state your name for the reporter. You may have already done that, but I just need it.

MR. FARR:

Yes, ma'am. I'm Tom Farr and I'm from the law firm of Nelson Mullins and I'm here representing the secretary of state.

BY MR. FARR:

Q. So, Dr. Handley, when were you first contacted about Louisiana redistricting in this cycle?

A. It's difficult to say. I was working with the ACLU in another couple of states before we started talking about Louisiana.

Q. That's not a memory test, Dr. Handley.

A. Okay. I'm sorry. I don't remember exactly when. Certainly, less than a year ago.

Q. Okay. Well, let's see if we can clarify that a little bit with some questions I'll ask. Do you remember who called you about working on Louisiana redistricting?

A. No.

Q. When were you actually engaged to work on Louisiana redistricting?

A. Oh, that's also a tough question because I am not even sure that I have a contract with the ACLU with Louisiana, so I can't actually answer that question.

Q. And do you know who engaged you?

A. No.

Q. Okay. You don't know the person that engaged you?

A. Well, I suppose ultimately, it would have been Daily Hope and I had conversations with him earlier, and this is the head of the voting rank division -- the voting section of the ACLU.

Q. Yes, ma'am. I know Mr. Daily. I -- I think very highly of him, so thank you for that answer. Did you do any work on Louisiana prior to the Louisiana legislative process?

MS. BRANNON:

Your Honor, I'm just going to -- she can answer that question, but I want to put an objection on the record to the extent it's seeking what we would consider being work product leading up to litigation, but anything that relates to

not leading up to litigation, you can answer.

THE COURT:

Your objection is noted. It may be a little premature, but you-all know that she thinks you are going in the wrong direction; so there you go.

MR. FARR:

Your Honor, I'm not going it ask her about work product, but that's what I'm -- when she's part of work

THE COURT:

Okay. There's no objection to your current question, so if you want to restate it?

MR. FARR:

Yes, ma'am.

THE COURT:

Go ahead.

MR. FARR:

Thank you, Your Honor.

BY MR. FARR:

Q. Ms. Handley, do you remember when you started working on matters related to Louisiana congressional redistricting in this

cycle? Let me try -- let me try it off a little bit.

A. I'm sorry. I -- I can't remember.

Q. That's all right. I understand. Do you think you began working before the legislative process started?

A. I have no idea. I don't know when the legislative process started.

Q. Okay. I heard you mention something. Could it have been that you were working on Louisiana redistricting sometime within the last year?

A. Yes.

Q. Okay. And you just didn't start when the plan was enacted?

A. That's correct.

Q. Did you give any input on your theories and calculations to the legislature during the legislative process?

A. Did I? The legislature never contacted me or asked me to do any work, no.

Q. But you didn't voluntarily give any of your research to the Louisiana legislature while they were considering congressional plans?

A. I personally?

Q. Yes.
A. No.
Q. Did you talk to anybody who gave information about your plans or any advice that you may have transmitted? Did you talk to anyone who may have provided that information to the Louisiana legislature?
A. Possibly.
Q. Do you know who that would have been?
A. No.
Q. And did you perform your polarization studies that we talked about today before the plan was enacted?
A. It depends on what you mean by "enacted."
Q. Why don't you --
A. So my understanding was it passed, but then it was vetoed and then the veto was overridden. I analyzed the plan after it was passed by the legislature.
Q. Okay. And your report's got analysis of statewide polarization rates?
A. I'm sorry. Could you repeat that?
Q. Yes, ma'am. In reading your report,

it appears that you have -- you've done polarization studies on statewide elections?

A. That's correct.

Q. Did you do those before the congressional plan was enacted?

A. I don't remember in time. I'm not exactly sure what you mean by "enacted." I did it most likely before the veto was overridden.

Q. Okay. So before the initial plan was ever written, you think sometime before then you did your statewide polarization studies?

A. I probably had started them.

Q. Okay. All right. Thanks.

Now, I want to ask you some questions about what you mean by "polarization," and we can go to your report if that will help you, but when I read your report on page 1 -- well, let me pull up PR-12 on the screen. Are you there?

A. Yes.

Q. So during your testimony, you said several times that voting in Louisiana is racially polarized. Is that a fair recitation?

A. Yes.

Q. And then on page 1 of your report,

you make a statement that voting in the State of Louisiana is racially polarized. You see that?

A. Yes.

Q. Now, turn to page 8. It looks like it's the second, full paragraph where it says "congressional elections." Do you see that? You see that paragraph?

A. Yes, I do.

Q. Okay. And is it fair to say that your report that elections in the 2011 version of Congressional District 2 were probably not racially polarized?

A. Although the statewide elections were polarized, the congressional elections, I think it was most of them, not all of them, were not polarized.

Q. Okay. So that's -- that's where I want to ask you some questions, Dr. Handley. You've been doing this for a long time and you know way more than I do. Is there a difference between legally significant, racially polarized voting and just simple polarized voting?

A. Now, I've written on this, but I'm not a lawyer, so I don't really know that you want me to answer this.

Q. Well, I'd like you to because I think you've explained it before. Is there a difference between significant racially polarized voting and substantial racially polarized voting?

MS. BRANNON:

I'm just going to object. I'm going to object to the extent that calls for a legal conclusion.

MR. FARR:

Your Honor, I'm just asking her for her opinion as an expert in the area of racial polarization. She understands the two different types of racial polarization.

THE COURT:

Well, the question on the floor right now, is there a difference between significant racial polarization and substantial racial polarization, you did rephrase your question. You removed the word legally sufficient, so I'm going to overrule the objection. So the question is, is there a difference between significant racial polarization and substantial racial polarization, if you

have an opinion on that.
THE WITNESS:
Between significant and substantial?
THE COURT:
Is that's -- isn't that your
question, sir?
MR. FARR:
Yes, it is.
THE COURT:
Okay.
THE WITNESS:
I can't think of one.
MR. FARR:
Okay. Let me pull up a deposition
that Dr. Handley gave in the Ohio Randolph
Institute case on December 12th, 2018.
BY MR. FARR:
Q. Can you see that on your screen,
Dr. Handley?
A. I can.
Q. And were you an expert witness in
that case?
THE COURT:
You need to know the case again?
THE WITNESS:

I need to know which case this is.
BY MR. FARR:
Q. Well, it says it's your deposition on the front page, correct?
A. Yes. I believe this is my deposition and I believe I know what case it is.
Q. Yes. And you remember being cross-examined by my law partner, Phil Strach, in that case?
A. I do not.
Q. Okay. Well, let's turn to page 104 of that exhibit. And I'll represent to you, Dr. Handley, this is a series of questions that my partner, Phil Strach, asked you in this deposition. I'm going to read the question and I'd like for you to read the answer. Would that be all right?
THE COURT:
Give us a line reference.
BY MR. FARR:
Q. I'm going to start with line 21. Are you ready?
A. Yes.
Q. So the question is all right, thank you. Are you aware of the difference between

statistically significant racially polarized voting and legally significant racially polarized voting, and your answer is --

MS. BRANNON:

Your Honor, I'd like to object. I think this is improper impeachment. I don't think he's laid the foundation.

THE COURT:

Sir, you want to respond? Did you hear her objection.

MR. FARR:

I think I did and I don't know really what the substance of the objection is, I'm impeaching the witness on a previous deposition that she gave to significant racial polarization versus substantial racial polarization.

THE COURT:

She's correct. It is improper foundation. It is not -- it's improper impeachment. It is not a prior inconsistent statement. The questions are different and you made them different. Objection sustained.

MR. FARR:

Your Honor, may I try again?
THE COURT:
You may, but take the deposition down.
BY MR. FARR:
Q. Dr. Handley, do you agree that substantively significant racial polarization means that the minority and the whites are voting for different candidates?
A. Yes. Yes.
Q. Do you agree that it would rise to the level of legal significance if the minority preferred candidate usually lost?
MS. BRANNON:
Again, Your Honor, I'm going to object. That calls for a legal conclusion.
MR. FARR:
I'm not asking for a legal conclusion. I'm asking for her -- the way she understands racial polarization.
THE COURT:
The question is legally significant. That is a legal question. That is a question of a legal opinion. The

1 objection's sustained.
2 MR. FARR:
3 Well, may I ask the question again,
4 Your Honor? I'll take the word legal out.
5 THE COURT:
6 And you did that and you are going
7 to research the same result, you are going
8 to have improper impeachment. You can try
9 again, but if the word legally is in the
10 prior question, it's you're not -- it's
11 not a prior inconsistent statement.
12 MR. FARR:
13 I'm sorry, Your Honor. I apologize.
14 THE COURT:
15 Okay. No worries. Go ahead.
16 BY MR. FARR:
17 Q. So my question is would polarization
18 rise to the level of significant polarization if
19 the minority for a candidate usually lost?
20 A. Polarization is -- let's see. Let's
21 see how -- I suppose you could say that one
22 contest being polarized is less significant than
23 more contests being polarized.
24 Q. Which if the -- if the white
25 candidates did not vote in sufficient numbers to

1 defeat the black candidate preferred candidate of
2 choice, would you consider that to be significant
3 racial polarization?
4 A. I think it would depend on the
5 circumstances. So if you had a district that --
6 I can't really answer that as a hypothetical.
7 Could you give me --
8 Q. Let me try again. Explain why you
9 concluded that voting in the State of Louisiana
10 was racially polarized while also saying that the
11 voting in Congressional District 2 was not
12 racially polarized?
13 A. So in the 15 contests that I looked
14 at statewide, in every case the black and white
15 voters would have elected different candidates.
16 In Congressional District 2, in many cases the
17 white voters supported the incumbent black
18 candidate, Cedric Richmond.
19 Q. So the white voters in Congressional
20 District 2 did not vote as a block and defeat the
21 black voter, the preferred candidate?
22 A. In Congressional District 2 when
23 Cedric Richmond was the candidate, that's
24 correct.
25 Q. Okay. And whites are the majority

in Congressional District 2?

A. I beg your pardon?

Q. Are whites the majority in Congressional District 2?

A. They are not.

Q. Okay. Are there areas in Louisiana where the level of polarization is higher and lower?

A. That the what -- I'm sorry. Repeat the question.

Q. Yes, ma'am. You reported on statewide polarization rates for statewide elections; is that correct?

A. Yes.

Q. Are there some areas of the state where the polarization rate is higher than in other areas of the state?

A. It depends on what you mean by polarization rates. You mean the number of contests that --

Q. No.

A. -- are polarized; is that what you mean?

Q. I mean the difference between the number of whites and blacks who vote for the

1 black preferred candidate of choice.
2 A. It is the case that there is more
3 white crossover vote in Congressional District 2
4 than anywhere else that I looked in the state.
5 Q. Okay. And could there be other
6 areas of the state where the crossover vote is
7 higher than the -- than the average?
8 A. Not at the congressional level or
9 statewide. There may be pockets.
10 Q. Okay. When you did your study on
11 racial polarization, you did not do a parish by
12 parish study on polarization rates?
13 A. That's correct.
14 Q. Okay. I'll move on to another
15 subject now, Dr. Handley.
16 When you talk in your report about
17 voting age population for African-Americans, are
18 you referring to any part black voting age?
19 A. It depends. I report of any part
20 black and the DOJ definition of voting age
21 population in my rebuttal report and in the
22 supplemental report.
23 Q. Okay. So let's turn to PR-12.
24 A. I'm sorry. To what?
25 Q. I'm sorry, ma'am. Your initial

report, which I think is labeled PR-12?

A. Oh, okay.

Q. And -- and can you turn to Table 3, which is on page 10?

A. (Complied.)

Q. Are you there?

A. I am.

Q. And you see on footnote 14, you say, "Black voting age population has been calculated by counting all persons who checked black or African-American on their census form"; is that correct?

A. Yes.

Q. And in making that footnote, were you referring to any part black?

A. Yes.

Q. Okay. Thank you. And using the census category part black, did that result in a higher black percentage in the districts you are looking at than if you used a single race black?

A. Yes.

Q. Now, I want to move to some questions about your appendices. And I think this is kind of refresh or review of appendix A was your study of statewide elections; is that

1 correct?
2 A. Yes.
3 Q. Appendix B was your study of
4 percentage of black and white vote for each
5 candidate in congressional elections from 2016 to
6 2020?
7 A. Ultimately, 2021.
8 Q. Okay. That was in your report you
9 just gave us; is that correct?
10 A. Yeah.
11 Q. All right. Fair enough. And that
12 was under the plan that was enacted in 2011?
13 A. The congressional elections were,
14 yes.
15 Q. Okay. And then in appendix C
16 through G, you do a polarization study on all of
17 the districts in the plan that was enacted in
18 2022; is that correct?
19 A. Almost. I didn't look at
20 District 1.
21 Q. Oh, you didn't look at Congressional
22 District 1?
23 A. That's correct.
24 Q. I was going to ask you just out of
25 curiosity, why didn't you look at that?

A. Because it doesn't overlap. It supplies no voters to illustrative District 5.

Q. Okay. And you didn't report a similar analysis for Mr. Fairfax's illustrative -- illustrative plans, did you?

A. I'm sorry. Repeat that.

Q. Did you do a similar report for the illustrative plans that Mr. Fairfax has proposed in this case?

A. A similar report? I'm sorry.

Q. Yeah. As to what you did for the 2011 congressional districts, did you do something like that for the districts in Mr. Fairfax's illustrative plans?

A. No.

Q. You didn't report that. Did you ever do that and not report it?

A. No.

Q. Okay. Now, I want to go through some terms to get the question I want to ask you, Dr. Handley. Is it fair to say a majority black district, as the U.S. Supreme Court has defined it, means a district where the black voting age population is an actual majority?

MS. BRANNON:

Objection. Again, Your Honor, isn't that a legal conclusion?

THE COURT:

Sir?

MR. FARR:

May I rephrase it?

THE COURT:

You may.

BY MR. FARR:

Q. Dr. Handley, have you read the vertical decision?

A. Many years ago.

Q. Do you recall how the court defined the majority black district in that case?

A. I believe so.

Q. And how did they define it?

A. A majority black district would be a black district in which the voting age population was majority black at least 50 percent plus 1 percent.

Q. Okay. And a crossover district is a -- is what?

A. A crossover district you'll have to tell me.

Q. Okay. Is it fair to say a crossover

1 district is a district where the black population
2 is not in the majority, but they can elect their
3 preferred candidate with the help of white
4 crossover voters?
5 A. I don't use that term. I think it
6 might have come out of some recent case. If you
7 want to define it that way, you can.
8 Q. Okay. Well, are there districts
9 where black voters are able to elect their
10 candidate of choice, even if they are not a
11 majority?
12 A. Yes.
13 Q. And in those instances, do they --
14 is the candidate of choice selected because there
15 are white voters crossing over to help elect the
16 black candidates preferred -- the black minority
17 group preferred candidate?
18 A. Yes.
19 Q. All right. Now, have you -- have
20 you written about something called an effective
21 district?
22 THE COURT:
23 I'm sorry. I missed that. The what
24 district?
25 MR. FARR:

1 I'm sorry, Your Honor.
2 BY MR. FARR:
3 Q. Have you written or described some
4 districts as being effective districts?
5 A. Yes.
6 Q. And can an effective district be a
7 district that has less than 50 percent black
8 voting age population?
9 A. Yes.
10 Q. And an effective district means that
11 the -- that the district provides the black
12 community an opportunity to elect their candidate
13 of choice; is that correct?
14 A. Yes.
15 Q. And that said, even when they are
16 not a majority of the district, it could be?
17 A. It could be the case, yes.
18 Q. Now, in other cases, Dr. Handley,
19 have you ever done something called a functional
20 analysis to determine whether a district could
21 provide African-Americans with the opportunity to
22 elect their candidate of choice with a black
23 percent that's under 50 percent?
24 A. Yes.
25 Q. And did you do such a study in this

case?

A. I did not.

Q. All right. I want to turn now to some questions about your rebuttal report. Please feel free, ma'am, to pull that up in front of you if it will be helpful. I don't know that I'll be quoting any pages, but feel free to respond to that if that helps your testimony, all right?

A. Yes.

Q. Now, you are familiar with the report Dr. Lewis submitted for the defendants analyzing crossover voting in the illustrative plans?

A. I read Dr. Lewis's report.

Q. Okay. And just for the record, I believe that's Exhibit Ledge 2 is the report I'm referring to. So you had an opportunity to review Dr. Lewis's report?

A. I read Dr. Lewis's report, yes.

Q. And in your rebuttal reports, correct me if I'm wrong, the only experts you provided rebuttal testimony to are Dr. Solanki and Dr. Alford; is that correct?

A. Yes.

Q. And more specifically, you did not submit a reply to Dr. Lewis's report?

A. Correct.

Q. So if someone in this case asserted that districts with the black voting age population below 50 percent was -- will give the black community an equal opportunity to elect their preferred candidates of choice, you have no basis to disagree with that statement, do you?

A. If you mean Dr. Lewis convinced me of that, I would have to disagree with you. No, he did not convince me that a district with less than 50 percent was necessary was.

Q. But you yourself have not done a study to see if the district was less than 50 percent would provide an equal opportunity to elect a black for a candidate; is that right?

A. In this case, that's correct.

Q. So you've testified about Mr. Fairfax's illustrative plans; is that right?

A. Yes.

Q. Have you studied the plans drawn by Mr. Cooper?

A. No.

Q. Okay. I'll -- let's turn. I just

have a few more questions, Dr. Handley, and I'll be done. Could you turn back to your original report, which is PR-12, and I'd like you to look at Table 1 on page 6.

A. (Complied.)

Q. Are you there?

A. Yes.

Q. And you selected the statewide races that you would study in your report and there's 15 races are listed there; is that correct?

A. The 15 races listed there are the contests that I analyzed, that's correct.

Q. Okay. And you didn't include Governor Edwards' election in 2015 or 2019; is that a fair statement?

A. That's correct. There were no black candidates in those contests.

Q. But -- but do you think that Governor Edwards was the preferred black candidate of choice for the black community?

A. Yes. I saw Dr. Alford's report that produced Dr. Palmer's numbers, so yes.

Q. Okay. And then also, you didn't include in one of the races you studied the 2016 presidential election involving Secretary Clinton

and Senator Cain; is that correct?

A. That's correct.

Q. Please bear with me, Dr. Handley. I'm trying to find one of your charts. I think we can look at Table 4 on page 11. Are you there?

A. Yes.

Q. You say, Dr. Handley, in order to determine the effectiveness of congressional districts in the enacted plan, and then I think moving over, you did the same thing on page 13 for the illustrative plan; is that a fair statement?

A. Yes.

Q. And so all your report is who won or lost the election?

A. No, not exactly. The percentage of cases that -- the percentage of elections are in the first column in which the black preferred candidate either out right or would have proceeded to a runoff.

Q. Okay. And then what was the second column?

A. The percentage of two candidate contests in which the black preferred candidate

1 won obviously with more than 50 percent of the
2 vote.
3 Q. And you didn't report the vote
4 totals or the margins of victory in any of those
5 elections; is that a fair statement?
6 A. No. It's not -- it's not listed in
7 these tables, but it's certainly listed in my
8 appendix.
9 Q. Okay. I'm sorry. I missed that. I
10 apologize. Did you report the relative fund
11 raising by the candidates in the elections that
12 you selected?
13 A. Did you say fund raising?
14 Q. Yes.
15 A. No.
16 Q. Have you ever talked for about it's
17 better to use a more highly visible race to
18 calculate racially polarized voting than one
19 that's not visible?
20 A. I probably have. I agree with that
21 statement.
22 Q. Okay. So what would be more visible
23 to judge racially polarized voting, the
24 governor's elections or the secretary of state
25 election?

A. I would use both.
Q. Excuse me?
A. I would use both. If they had a black candidate, why would I have to choose one or the other?
Q. Would you have an opinion on which is more visible to the voters of Louisiana?
A. I would not, not if one, for example, included a black candidate and the other did not.
MR. FARR:
Okay. That's all, Your Honor.
Thank you.
THE COURT:
Any redirect?
MS. BRANNON:
Yeah, just some brief redirect, Your Honor.
RE-EXAMINATION BY MS. BRANNON:
Q. First, can we call up demonstrative Exhibit 1.11? Dr. Handley, are you familiar with this table?
A. Yes.
Q. Does this show the voting age population for all parts black and then also the

1 voting age population under the DOJ definition in
2 illustrative District 2?
3 A. Yes.
4 Q. Was your analysis any different
5 about the effectiveness of illustrative District
6 2, depending on the definition used for the black
7 population?
8 A. No.
9 Q. Was your analysis any different
10 about the effectiveness of the congressional
11 districts in enacted -- the enacted map,
12 depending on what definition of black is used?
13 A. No.
14 Q. Okay. And counsel asked you about
15 performing a functional analysis. Why didn't you
16 perform a functional analysis at this time in
17 this case for your report?
18 A. I did perform a functional analysis.
19 A functional analysis is simply looking at how
20 black preferred candidates would -- whether they
21 would have an opportunity -- whether black voters
22 would have an opportunity to elect candidates of
23 choice, depending on the voting patterns of
24 blacks and whites, as opposed to just the voting
25 age population. That's what this is. Not this

1 chart what the effectiveness tables were.
2 Q. You can take that down.
3 A. I'm sorry.
4 Q. And did you do that for an analysis
5 of the illustrative plan?
6 A. I did a functional analysis of the
7 several illustrative plans, as well as the
8 enacted plan.
9 Q. Correct. And we have already
10 discussed that that information is in your
11 chart -- in your report, correct?
12 A. Yes.
13 Q. And as part of the -- your analysis
14 of the enacted plan, do any of the populations in
15 the enacted plan have a voting age population of
16 over 50 percent besides Congressional District 2?
17 A. In the enacted plan?
18 Q. Yes, in the enacted plan.
19 A. No.
20 THE COURT:
21 Under either definition or which
22 definition?
23 MS. BRANNON:
24 Under either definition.
25 THE WITNESS:

No.
BY MS. BRANNON:
Q. Do any of the congressional districts in the enacted plan perform to allow black voters to elect their candidate of choice besides Congressional District 2?
A. No.
Q. Can we turn back to the appendix C? Not -- appendix C, revised appendix C.
MS. BRANNON:
Just bear with me a minute, Your Honor. It is illustrative District 1 point -- Exhibit 1.6. And actually, can you turn to revised appendix C in your report, which is in your binder? We can take this down. And for the record, that's exhibit PR-92.
BY MS. BRANNON:
Q. In looking at appendix C that's in the report, can you just refresh your recollection as to exactly what is contained in that document?
A. You mean corrected appendix C?
Q. Yes.
A. So this is statewide elections

recompiled reconfigured to conform with the enacted district boundaries and racial black voting analysis of the five districts that would contribute voters to the illustrative District 2, illustrative -- additional opportunity district in illustrative plan two or plan 2A?

Q. Is it an evaluation of the enacted plan?

A. Yes.

Q. Okay. Can you go through that, the review of that document, and maybe we can pull it up on the screen, appendix C from Exhibit R 92, PR-92? Keep going and then keep going.

Okay. Yeah, appendix C. There. That's the right thing. This is from your report, correct?

A. Yes.

Q. Okay. Can you explain whether all of these elections are polarized or not in your analysis of the enacted plan?

A. They are all polarized for all of the districts, I believe, including District 2. If you could turn that, they are all polarized for all enacted districts, including District 2.

Q. And would a BVAP of less than

1 50 percent allow black voters to elect their
2 candidate of choice in Congressional District 2
3 in the enacted plan, or not the enacted plan, or
4 just based on your analysis, would --
5 MS. BRANNON:
6 Let me rephrase the question,
7 Your Honor.
8 BY MS. BRANNON:
9 Q. Would a BVAP of less than 50 percent
10 allow black voters to elect their candidate of
11 choice in Congressional District 2?
12 A. I don't know. The district was
13 58 percent. Now -- oh, in enacted District 2,
14 it's still 58 percent. So I can't answer that
15 for that; but in the illustrative plan, it's
16 50 percent and it still allows the black voters
17 to elect their candidate of choice.
18 Q. Do you think a BVAP of less than
19 50 percent in Congressional District 2 would
20 allow black voters to elect their candidate of
21 choice?
22 A. It's possible.
23 Q. Okay. And in looking at this
24 analysis, maybe can we go back to appendix B,
25 revised appendix B, which is in 92 -- 91?

MS. BRANNON:

I'm sorry, Your Honor. No.

BY MS. BRANNON:

Q. Can we go to Exhibit PR-87? And then could we go to revised appendix B at the end of this document?

A. (Complied.)

Q. Maybe we don't have it. This is just -- and can we go down to look at the next page and just looking at, for example, at Congressional District 3, can you just briefly describe the white crossover voting that you found when looking at Congressional District 3?

A. So the black preferred candidate in 2020 was Ryland Harris. He received somewhere between 64 and 69 percent of the black vote, and he received somewhere in the neighborhood of 1.7 to 6 percent of the white vote.

Q. So that's a low amount of white crossover vote?

A. That's very low amount of white crossover vote, yes.

MS. BRANNON:

Your Honor, I have no further questions.

THE COURT:

Okay. Dr. Handley, thank you, ma'am. Okay. We are going to stay on the record until 11:30. The court has a pretrial conference at 11:30, so let's plow through. If somebody needs to use the restroom, you can. Certainly, you are not going to bother me.

MS. OSAKI:

Morning, Your Honor, I'd like to also enter an appearance. My name is Samantha Osaki. That's O-S-A-K-I for the American Civil Liberties Union for the Robertson plaintiffs. The Robertson plaintiffs will now call Dr. Dorothy Nairne.

DR. DOROTHY NAIRNE,

WITNESS ADDRESS, WITNESS CITY, LOUISIANA WITNESS ZIP, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

THE COURT:

Good morning, ma'am, you'll need to adjust the mic.

MS. OKAKI:

Good morning.
THE WITNESS:
Good morning, can you hear me?
THE COURT:
Yes, ma'am.
EXAMINATION BY MS. OSAKI:
Q. Dr. Nairne?
A. Good morning.
Q. To start, could you please state your name for the court?
A. My name is Dorothy Nairne.
Q. And how identify racially Dr. Nairne?
A. I am black. I am African-American.
Q. What town and parish do you live in, Dr. Nairne?
A. I live in Napoleonville, Assumption Parish.
Q. And how long have you lived at your current address?
A. It's a family home that I've visited all my life and I've been there full-time since 2017.
Q. And before 2017, how long have you and your family traced your roots in Louisiana?

A. For generations, my mother's mother's mothers and fathers were enslaved here in Louisiana in Assumption Parish.

Q. Could you please tell us briefly about your education and career history, Dr. Nairne?

A. I had the benefit of going to the University of Wisconsin, go Badgers, and then I went to -- I studied journalism and African-American studies, then I lived at Atlanta and went to Clark Atlanta University where I have a master's degree in African-American studies and a PhD in international affairs and economic development.

Q. And could you please describe what you currently do for a living?

A. I have a start-up business here in Louisiana that is focusing on glass recycling and taking the glass, turning it into sand and doing stormwater management and Mardi Gras beads so that we can create jobs for people coming out of prison.

Q. Thank you, Dr. Nairne. Do you belong to any civic, nonprofit or political groups?

A. I'm very active with the NAACP, with the urban league, with climate -- weather for climate and also with other start-up organizations, like Fund 17 and there's one called Flight and Together Louisiana and Together New Orleans.

Q. So do you consider yourself to be active in your community?

A. I am very active.

Q. Dr. Nairne, could you please describe the role that race has played in your family since your family has lived in Louisiana?

A. So first, my grandparents were on -- they were sharecroppers on different plantations in Assumption Parish and so my grandfather could read. So he used to read to all of the other sharecroppers who couldn't read and also help them with their money. So my grandmother used to tell stories about how on the plantation they would pay with jitney, so they would try to pay people different money so you could never get off the plantation. So I've got that long background where my grandmother always wanted to get off the plantation and my mother did. My family, her family poured into her where she was able to go

to school beyond the 6th grade all the way in New Orleans because there was no school in Assumption Parish for black children. So they had to walk from grades 1 until 6 probably 5 miles each way and the white children who were in school the bus, all of these public schools. So my mother would tell gross stories of being spit on from the school bus and then having to go all the way to New Orleans to go to school beyond the 6th grade.

Q. Are you a registered voter, Dr. Nairne?

A. I am a registered voter.

Q. Are you registered to vote at your current address?

A. Yes, I am.

Q. Do you regularly vote in congressional elections?

A. I vote, yes.

Q. Do you plan on voting in future congressional elections?

A. Yes, I do.

Q. Thank you.

I'd next like to discuss your involvement with this case. What motivated you

to be a plaintiff and a witness today?

A. I grew up with the notion that where much is given, more is expected. I have been completely privileged in having an education and knowing people in Assumption Parish in Napoleonville who haven't had those opportunities. So for me, it's a moral imperative to give as much as I can for the people who live around me who want justice, who want rational equality, and who want opportunities.

Q. Thank you, Dr. Nairne.

Let's talk a little bit about your current congressional district. Do you know what your current congressional district is?

A. I am in District 6.

Q. And who is your current representative?

A. Graves, Garrett Graves.

Q. What is your understanding of your Congressman Graves?

A. He is a white man.

Q. In general, do you follow your congressman's actions?

A. I follow him and I have contacted

his office on several occasions.

Q. In your affidavit, you note that you believe that your congressman does not advocate for your communities' needs. What did you mean by that?

A. I'm very active, as I stated, in my community and also participating widely on Zoom or for policy conferences, and I haven't seen him at any events, whether for King Day, Juneteenth Day or just to discuss the plight of the black community.

Q. Have you seen him campaigning in your community?

A. No. No. No, I have not seen him campaigning during the several elections that I've been around for.

Q. Thank you, Dr. Nairne.

I'd now like to discuss the enacted maps. Can we pull up the enacted plan, which has been moved as Plaintiffs' Exhibit 1, which is on page 48? Dr. Nairne, are you familiar with this map?

A. Yes, I am.

Q. Do you know which district you reside in under this map?

A. It's still unclear, so there's one election where I went from school to school to school looking for, you know, am I voting, can I vote, where am I voting and they turned me away. So I learned that I was in District 6 and I'm right there on the cusp, so some of my neighbors vote in District 2 and some in District 6. So it's confusing, it's chaotic and it doesn't help us to organize or plan.

Q. What do you mean by "on the cusp"?

A. So my house is like literally where my neighbors across the street are in District 2. So they were able to vote, but I wasn't.

Q. May we please zoom in on that area? It's Assumption Parish in Congressional District 6. Thank you.

Dr. Nairne, based on your living experiences, looking at this map, what is your impression of your district, Congressional District 6?

A. So as small as Assumption Parish is, it's a big land mass but small community. We are not able to organize or able to mobilize or able to voice our and organize our voice in Assumption Parish.

Q. And could you describe geographically what areas your community in Assumption Parish convenes with in Congressional District 6 of this enacted map?

A. Sure. So a lot of the work that I do is within people of the river parishes; St. John, St. James, St. Charles and Jefferson and Orleans Parish, and so when it comes time to discuss candidates and voting, I'm silent. I have nothing to say because they are in one district and I'm in another.

Q. So under Congressional District 6, you're the -- can you describe some of the parishes that you would be linked with here?

A. So St. Mary's, Iberville, I have absolutely no alliance there, no community members there in those parishes.

Q. I'd like to talk a little bit more about that. Based on your living experiences, how would you describe some of those communities that are included on circling here?

A. So a lot of the communities work that I do is with the river parishes where we do a lot of work around environmental justice and racial justice and looking at cancer alley and

1 looking at just what's happening with people's
2 living experiences, as well as with HIV, with
3 crime and with how we improve each other's lives.
4 So I don't work with people within Terrebonne or
5 the other parishes, so I'm kind of a sore thumb
6 standing out there because we work together, but
7 then we don't vote together.
8 Q. I see. So it sounds like you are
9 saying you are not as familiar with these that
10 you are included with?
11 A. Yes.
12 Q. Okay. Now, under this enacted plan
13 and based on your living experiences as a
14 resident of Congressional District 6, do you
15 believe your interests would be fairly
16 represented?
17 A. I do not believe that my interests
18 are represented.
19 Q. And why is that?
20 A. I feel like I'm alienated, that I
21 don't have associations and groups that I would
22 work with. I would have to start over really to
23 see who's where and doing what given be this map
24 that I'm looking at right now.
25 Q. Thank you, Dr. Nairne.

I'd now like to discuss one of plaintiffs' illustrative maps. Could we please pull up one of the plaintiffs' illustrative maps, which has been moved into Plaintiff Exhibit PR-15 on page 47. Dr. Nairne, are you familiar with this map?

A. Yes, I am.

Q. Under this illustrative map, are you aware of what district you live in?

A. I would know -- I know where I live, but I would know what district that I am in sure enough. Me and all my neighbors would be in District 2 according to this map.

Q. May we please zoom in to Congressional District 2 on this illustrative map? Thank you.

Dr. Nairne, geographically, what areas would you be linked with in this Congressional District 2 of this illustrative map?

A. In this map, I would be with the people that I'm working with currently along with the river parishes all the way into Orleans and Jefferson Parishes. This maps makes sense to me.

Q. Do you have any personal connections

with any of those other parishes?

A. I have personal connections, family, friends, colleagues in all of this -- this entire area.

Q. How would you describe communities in these areas, these river parish areas, based on your personal knowledge?

A. 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.

Q. What did you mean by that, trying to improve your health?

A. This area is known as cancer alley, and just so I work somewhat with the cancer index and looking at just neighbors across the street, next to me, even my own mother who had a tumor the size of a soccer ball in her belly. And so, you know, just cancer is everywhere and, you know, if it's in my own house and is it in me too, so it really requires us to do quite a bit of work together.

Q. Can you describe some of the

health -- health inequities that are similar along the river parishes? What about issues, are there industries that are similar along these communities?

A. Well, the sugar cane industry defined this area, this region, but now the sugar cane is mechanized, so people don't have those jobs any more. So there's a lot of not much to do going on in Assumption, St. James, St. John and St. Charles.

Q. Now, under this new -- under this illustrative plan and based on your living experiences, do you believe that your communities' interest would be fairly represented?

A. Under this map, yes.

Q. Why is that?

A. It would give us a base so that we can mobilize and so that we can organize, and that we have one collective voice so that we would have action together so we can move forward and improve, but not our communities, our households, but our entire state.

Q. Based on your living experiences in Louisiana, does it make sense culturally,

1 socioeconomically, historically or otherwise for
2 your community to fall under this illustrative
3 map's congressional District 2 alongside these
4 other river parish communities?
5 A. To me, it makes complete sense that
6 we are in this district.
7 Q. Thank you.
8 Finally, Doctor Nairne, how would
9 feel if a map like this illustrative plan, that
10 is a map that enacts a second majority black
11 congressional district, were to be enacted into
12 law?
13 A. I know exactly the households that
14 I'm going to knock on their doors should this
15 happen. There were a number of people. So
16 during the census and leading up to the elections
17 for 2020, I was a block captain for Together
18 Louisiana. So there were a couple of households
19 that I knocked on their doors and they were like,
20 oh, good, you mean change is coming for us. So
21 then when they see that change is not real, their
22 hopes are dashed. They are feeling like yet
23 again, you lied, some bad sense. No, I didn't
24 lie to you. This process just takes a while.
25 So I know I would go to his home.

1 This is somebody I've known all my life and just
2 to see that, you know, he's weathered and worn
3 out and just to have him have a little bit hope,
4 wow, would that make my year, my day, my hour.
5 So that's where I would go and say, look, change
6 is coming even here to Assumption Parish so we
7 have some happy people who would have hope again
8 in Louisiana.
9 Q. Thank you, Dr. Nairne.
10 MS. OSAKI:
11 No further questions, Your Honor.
12 THE COURT:
13 Cross?
14 CROSS-EXAMINATION BY MR. WALE:
15 Q. Excuse me. Hi, Dr. Nairne.
16 Jeffrey Wale. I'm an attorney for the state.
17 I'll be asking you a few questions today.
18 Dr. Nairne, you said you moved to Louisiana in
19 2017; is that correct?
20 A. Yes, it is.
21 Q. So where did you live before that?
22 A. Well, I lived in South Africa.
23 Q. And so where did you grow up; is
24 that where you grew up, in south Africa?
25 A. No. I grew up between Milwaukee and

also between Louisiana where I would come every summer.

Q. So you would visit in Louisiana, but you wouldn't come here full-time?

A. Correct.

Q. So when did you register to vote?

A. I registered to vote I think in 2017.

Q. And you are a registered Democrat, correct?

A. Yes.

Q. And earlier you said something about being confused about where to vote. Did you find out where to go vote?

A. I did.

Q. So you are aware of the Geaux Vote app that the secretary of state uses to let people know where to vote?

A. Yes, I am.

Q. Okay. And you live in Congressional District 6 currently, correct?

A. That's correct.

Q. And your current congressman is Garrett Graves?

A. Yes.

Q. And he is a Republican, correct?
A. Yes.
Q. And you testified earlier in your declaration that you are highly engaged, so you attend redistricting workshops around the state?
A. Yes, I did.
Q. And you've written letters to your congressman, to Congressman Graves; is that correct?
A. I went to him regarding the environment, so yes.
Q. And you've spoken about your advocacy and your work in the community. Irrespective of the results of this litigation, will you continue to be engaged with the elected representatives who represent you?
A. Yes, I will.
Q. And you will -- and regardless of what the map looks like, the congressional map looks like now or will look like, you will continue to advocate for issues you care deeply about, correct?
A. Yes.
Q. In paragraph 11 of your declaration, you've stated that you have donated to

1 congressional candidates. Can you tell me which
2 candidates you donated to?
3 A. I donated to several candidates $5
4 here and $10 here.
5 Q. All right. And what is the
6 affiliation of those candidates, the political
7 affiliation?
8 A. Some are independent, a couple of
9 Green Party and a few Democratic candidates.
10 Q. All right. Do you recall, have you
11 ever donated to the Democrat congressional
12 campaign committee?
13 A. I'm not sure. Help me understand.
14 Q. Sure, sure.
15 MR. WALE:
16 Your Honor, if I may, I'm going to
17 be -- please use this --
18 THE COURT:
19 You can use the document camera.
20 MR. WALE:
21 Document camera, okay. Mr. Wale,
22 tell us what you are going to put up there
23 before you just throw it up there, okay?
24 MR. WALE:
25 Okay. Yes, ma'am. I'm going to

show a document from the official government website from the FEC, Federal Election Commission, if I can get the -- did you turn it on?

BY MR. WALE:

Q. All right. Let me try again. Dr. Nairne, do you remember donating to a group called Act Blue?

A. I think I did donate to them, yes.

Q. Okay. So you would believe me if I said you had donated to Act Blue and that contained an earmark for the DCC, also known as the Democratic Congressional Campaign committee?

A. (No audible response.)

Q. Okay. Going back to your voting registration, you said that you are a regular voter, correct?

A. Yes.

Q. Did you ever miss an election?

A. There are so many, but I try to vote, especially locally.

Q. So it's possible that you have missed a few elections?

A. I'm pretty good at voting.

Q. Okay. And so again, we still don't

have a --

Q. Okay. And I'm going to ask you, Dr. Nairne, if you remember voting in the December 2018 election that was for the Louisiana Secretary of State. It was an election between Secretary of State Kyle Ardoin and Gwen Collins?

A. I don't remember honestly.

Q. You don't recall voting in that election?

A. No. I don't recall not voting because that was a statewide election, correct?

Q. Correct.

A. Yeah. So I would not have been turned away from voting during that election.

THE COURT:

Just give us a second, Mr. Wale. She's contacted IT, so they can trouble shoot it for us. Do you have any other questions you can go to?

MR. WALE:

No, Your Honor. All right. It looks like there is light. Excuse me.

BY MR. WALE:

Q. Dr. Nairne, I'm going to show you a document from the Louisiana Secretary of State's

office and I'm going to see if we can -- all right. We'll zoom --

THE COURT:

If you quit your day job --

MR. WALE:

Thank you.

BY MR. WALE:

Q. So, Dr. Nairne, I realize the first line over here is a little bit difficult to read in script, but can you read that for us, please?

A. Sure. "As Secretary of State of the State of Louisiana, I do hereby certify that the annex hereto is true and correct voter registration information from the Secretary of State David Moore for Dorothy Evelyn Nairne." And that's me.

Q. Thank you so much.

A. Uh-huh (affirmatively).

Q. And so I'm going to show you another page in here. And can you tell me what the top two lines say?

A. Did not vote 2021.

Q. Oh, I'm sorry. At the very top of the page?

A. Oh, okay. Assumption Parish.

Q. And even prior to that?
A. "Louisiana Secretary of State voter election history report for parish: Assumption."
Q. Okay. And you see about eight election dates there?
A. Uh-huh (affirmatively).
Q. And do you see how many where it says you did not vote?
A. I see.
Q. All right. And how many elections did you not vote in?
A. So I voted in one, two, three, four, five, I did not vote in November 2021, July 2020, so I did not vote in three elections.
Q. Okay. And then the election I was asking you about in, I'm sorry, in December of 2018, that was the election that was discussed earlier by the expert. It was for secretary of state between Kyle Ardoin and Gwen Collins, Green-Up. You did not vote in that election, correct?
A. Well, I see now.
Q. Yes. And Kyle Ardoin, who won that election, is the defendant in this suit, correct?
A. Yes.

Q. So you did not participate in the election which the defendant of this suit was elected?

A. Okay.

MR. WALE:

All right. That's all the questions I have. Thank you very much.

THE COURT:

Any redirect?

MS. OSAKI:

No redirect, Your Honor. Thank you.

THE COURT:

Okay. You may step down. Thank you for your help today, ma'am.

Okay. We are going to be in recess until 1:30.

(Whereupon, the court is now in recess at 11:23 a.m.)

THE COURT:

Okay. Please be seated. Good afternoon, everyone. Why don't we say who we are calling as your next witness needs to put it on the record.

Go ahead. Put it on the record who your next witness is and who you are, sir.

Good afternoon, Your Honor. Our next witness is Traci Burch and making my appearance today, I am Amitav Chakraborty on behalf of the Robertson plaintiffs.

THE COURT:

Okay. And we are waiting on the Zoom. Dr. Burch, can you hear us? Not yet. Dr. Burch, can you hear us?

THE WITNESS:

Yes.

THE COURT:

You need to un-mute yourself I think.

THE WITNESS:

Can you hear me now?

THE COURT:

Yep.

Okay. Your witness, sir. Wait. We need to swear her in. Sorry.

DR. TRACI BURCH,

WITNESS ADDRESS, WITNESS CITY, LOUISIANA WITNESS ZIP, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

THE COURT:

Now, your witness.

MR. CHAKRABORTY:

Thank you.

EXAMINATION BY MR. CHAKRABORTY:

Q. Good afternoon. Can you please state your --

A. Good afternoon.

Q. Can you please state your full name for the record?

A. Dr. Traci Burch.

Q. And what is your educational background, Dr. Burch?

A. I am -- I first completed my undergraduate work at Princeton where I majored in politics and got a certificate in African-American studies, and I finished my PhD at Harvard in the physical degree program in government policy.

Q. And what is your current occupation?

A. Currently, I am associate professor of political science at Northwestern, as well as a regents professor at the American Bar Foundation.

Q. And how long have you been a professor, Dr. Burch?

A. Since 2007.

Q. What are your principle areas of research?

A. Sorry. My principle areas of research include political behavior, political participation variance to voting and race ethnic politics, and I also focus on the ways that interaction with the government can effect all those things, such as participation, and I specifically have focused on how the federal justice system can effect various things.

Q. Thank you. And have you been published on any or all of these subjects?

A. Yes, I have been.

Q. Have you previously served as an expert witness?

A. Yes. I have testified at trial in four cases and in -- at a deposition in an additional case.

Q. Did any of those cases in which you testified involve claims brought under the Voting Rights Act?

A. Yes.

Q. And was your testimony credited or accepted by the court in each of those cases in

which you testified?

A. Yes.

MR. CHAKRABORTY:

Your Honor, pursuant to Federal Rule 702 and the situation between the parties, the Robertson plaintiffs would like to call for Dr. Burch as an expert in political behavior, political participation and various voting.

THE COURT:

Is there no objection?

MS. MCKNIGHT:

No objection, Your Honor.

THE COURT:

Okay. Dr. Burch will be accepted and be able to give testimony in the areas of political behavior, political participation and barriers to voting, correct?

MR. CHAKRABORTY:

Yes, Your Honor.

THE COURT:

You may proceed.

BY MR. CHAKRABORTY:

Q. Did Burch, did you submit an expert

report as part of your work in this case?

A. I did. And could you excuse me for a few minutes? I just need to close my door. Sorry. Thank you. Yes, I did. I did.

Q. No worries at all. I'd like to bring up on the screen, and just let us know if you are not able to see it, what has been premarked as PR-14.

THE COURT:

I don't know that you can screen share.

MS. MCKNIGHT:

We are. We are supposed to be able to.

THE COURT:

Okay. I'm going to let you disregard my technical input.

MR. CHAKRABORTY:

Sorry. Dr. Burch, give us one second.

BY MR. CHAKRABORTY:

Q. Dr. Burch, are you able to see a report on your screen?

A. Not yet.

MS. MCKNIGHT:

Okay. Wait. Let's see.

THE COURT:

IT is coming. Is there any way you can do a little bit with Dr. Burch until IT gets here?

MR. CHAKRABORTY:

I can do a couple of questions.

THE COURT:

Okay. Great.

BY MR. CHAKRABORTY:

Q. Dr. Burch, just jumping into it a brief bit before we tackle the technical difficulties, did you submit a report for your work in this case?

A. I did.

Q. I'll show you briefly what has been premarked as PR-14 and it will be your expert report. What did you set out to evaluate in your expert report?

A. So in my expert report, I was asked to evaluate the set factors of relevant to this case in Louisiana, particularly Senate factors five, six, seven, eight and nine.

Q. Thank you. And what materials did you rely on to reach your conclusions about those

factors?

A. A wide variety of materials, including my own analysis of the census data, such as the data from the plaintiff census and the American Civil Liberties Union, various agencies of the court, demography literature; the legislative record, including hearings, videos, hearing of testimonies and road shows; other documents, such as amendments and bills that were submitted, various news reports and other public speeches by public officials.

Q. Thank you, Dr. Burch.

MR. CHAKRABORTY:

I'd just like to pause there until we fix the issues.

THE COURT:

Do you think she's got a copy of her report that she could look at while you examine her because I have her report here? I can follow along.

MR. CHAKRABORTY:

We do and I believe Dr. Burch does, but we were going to bring up a demonstrative.

THE COURT:

Oh. Help is on the way, Dr. Burch, give us a minute.

MS. MCKNIGHT:

I'm sorry. Your Honor, we are going to try to log into the Zoom -- we are going to try to log into Zoom at the same time to avoid a delay later on. Thank you.

THE WITNESS:

All right. I've got it.

BY MR. CHAKRABORTY:

Q. Thank you for your patience, Dr. Burch. So I'd like to jump back and -- and I know you were just talking a minute ago about the Senate factors that you examined. Are those factors displayed for you on the screen?

A. Yes, they are.

Q. And just as a reminder to the court and everybody here, which factors were those?

A. So I reviewed Senate factor five, the extent to which members of the minority group are suffering from the effect of discrimination in areas of education, employment and health that effect participation. Senate factor six, racial appeals and political campaigns. Factor seven,

which is minority group representation in public office. Factor eight, which is about whether there's a lack of responsiveness of the elected officials as to the /TARL likewised needs of the group. And factor nine, which is whether or not the state of the policy or practice is to take the position of --

A. Thank you, Dr. Burch.

Q. I'd like to start with Senate factor five. Which specific areas of disparity did you evaluate as part of this factor?

A. I examined education and other aspects of socioeconomic status as employment and income. I looked at health, I looked at presidents and housing, and I also examined the criminal justice system.

Q. Thank you. Dr. Burch, I'd like to begin by talking about education.

Matthew, can you please turn to the next slide?

Dr. Burch, what does this slide display?

A. So this -- this slide displays a couple of the charts from my report in which I am documenting contemporary disparities in

education, and on the left this slide shows the difference in scores on standardized tests for Louisianians who are in 8th grade over time, and for each map, for each graph, I'm sorry, the top one is for mathematics and the bottom is for English. And the white students are at the top in the red dots and the blue dots -- the blue crosses are black students, and as you can see, there's a specific decline over time in terms of the -- the students' scores on the achievement tests and that gap is pretty persistent over time.

Q. And what's displayed on the right here?

A. And so on the right, as you can see here, I -- this is just part of one of the charts that I have that shows educational attainment by race scores 25 and older, and white Louisianians are much more likely to have earned a bachelor's degree or higher than black Louisianians.

Q. Thank you, Dr. Burch. Based on these selected examples and other citings in your report, what were your conclusions about the existence extent of educational disparities that exist in Louisiana between black and white

populations?

A. Yes. So I concluded that there were still great disparities in education and educational attainment between black 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.

Q. Thank you. Next slide please, Matthew.

Dr. Burch, what does this slide show?

A. So this slide shows more evidence of disparity with respect to socioeconomic status between black and white men, and consistent with the prior set of graphs, white Louisianians are shown here in the print and black Louisianians are shown here in the teal, and as you can see on all of these factors, black Louisianians are worse off than white Louisianians unemployment rates. The unemployment rate is nearly double from black Louisianians. Family poverty is nearly three times as high for black Louisianians

1 than for white Louisianians. White households,
2 Louisiana households on average, median household
3 income is tens of thousands of dollars higher
4 than that of black Louisianians' households, and
5 there's definitely a disparity from the -- as to
6 ethnicity vehicle and black households are more
7 than four times or, sorry, three times as likely,
8 almost four times as likely in black households
9 than white households.
10 Q. And based on these conclusions in
11 your report, what was your conclusions about
12 socioeconomic disparity between white and black
13 Louisianians?
14 A. Again, I concluded that there are
15 significant socioeconomic disparities that exist
16 today and that those disparities relate to
17 contrary and historical disparities between black
18 and white Louisianians.
19 Q. Next slide, please. Dr. Burch, what
20 information is displayed on this slide?
21 A. So this slide shows some of the
22 information that I wrote about with respect to
23 disparity in housing.
24 Q. And what types of examples or
25 disparity did you examine in your analysis of

this factor or of this issue?

A. So in particular, I looked at disparity in residents and where people live because it's so important to policies and political participants. And so here you can see in the map on the left, I had a historical map that was used by the Home Owners' Loan Corporation since the 1930s and 1940s. And several cities of Louisiana that -- and this map was used to determine lending and the risk of lending. Red areas typically are those that were high risk and not suitable for lending and happen to be neighborhoods where black people lived. And so looking at these maps and these areas of segregation and -- and these historical maps as continues to present day, as you see on the left where it shows that there is still metro areas and cities in Louisiana that are highly -- high segregation by race and that includes New Orleans, the New Orleans-Metairie metro area, Baton Rouge, the Shreveport-Bossier City and Lake Charles and those cities are highly segregated by race as well.

Q. Thank you, Dr. Burch. Can policies effect -- I know you just talked about the

1 government. Can government policies effect the
2 level and placement of segregation between black
3 and white Louisianians in housing?
4 A. Yes. Even present contemporary
5 policies are just decisions on where and how to
6 build, especially as I give an example in my
7 report of decisions about how to rebuild after
8 Katrina. That coupled with other issues, such as
9 seeing the pace at which disaster relief was
10 given in effect, the ability of black people to
11 rebuild in areas that have been hurt by a natural
12 disaster, for example. So these areas -- so
13 housing matters in several areas.
14 Q. Thank you. Please turn to the next
15 slide, Matthew.
16 Dr. Burch, what's on this slide?
17 A. So these -- this slide discusses
18 several of the disparities in health that I
19 talked about in my report. And in particular, we
20 can see here in the left chart that mortality for
21 black Louisianians from diseases, such as cancer,
22 cardiovascular disease and diabetes, is higher
23 than that of those mortality rates for white
24 Louisianians. Overall, as in the second slide,
25 the disparities in health translate into a

1 disparity in life expectancy. So on average
2 white Louisianians, white Louisiana men are
3 about -- expected to live about seven years
4 longer than black Louisiana men. And with
5 respect to women, there's a large gap as well.
6 White Louisiana women are expected to live about
7 five years longer than black Louisiana women.
8 Infant and child mortality for blacks versus
9 white Louisiana children is higher as well.
10 Q. And can environmental factors
11 contribute to racial health disparities such as
12 these?
13 A. Yes. So in my report, I talk a lot
14 about both the fact that natural disasters can
15 have differential effects and have had
16 differential effects in terms of mortality of
17 black versus white Louisianians. And I also talk
18 about disparity related to exposure to pollution,
19 particularly in the area of Louisiana known as
20 cancer alley, which is between Baton Rouge and
21 New Orleans. And research has shown that for
22 black residents in those areas that higher
23 exposure to environmental pollution and the like
24 is related to higher rates of COVID-19, asthma
25 and cancer.

Q. Thank you. So on this topic would you say that black Louisianians have worse outcomes overall than white Louisianians?

A. Yes.

Q. Next slide. Dr. Burch, what does this slide display information regarding?

A. So this slide discusses disparities with respect to the criminal justice system in Louisiana, and as you can see in the graph on the left, black Louisianians remember about -- about a third of Louisiana's overall population but are overrepresented among prison protection and parole populations. In fact, black representation in Louisiana's prison and parole population is double their representation in the overall population.

Q. And so what are your conclusions about the kinds of disparities that exist between black and white Louisianians in the realm of criminal justice?

A. 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 factors, these disparities can't be explained by

1 just crime rates alone. And, in fact, are
2 related to those that they are both historical
3 and contemporary discrimination in the criminal
4 justice system.
5 Q. And just to confirm, I know you just
6 mentioned for criminal justice there, but would
7 you say that all of the disparities that you
8 talked about today, you know, education, health
9 socioeconomic status and criminal justice, all
10 are tied to historical trends, but also are
11 exhibited currently and are existing disparities?
12 A. Yes. So for all of the disparities
13 that I mentioned, the research shows that both
14 historical discrimination as well as contemporary
15 discrimination by the state enacted and
16 contributes to those areas.
17 Q. And finally, last question on this
18 topic, Dr. Burch, all of these disparities, how
19 do they effect political participation in black
20 Louisianians in the state?
21 A. So and I've done it for each factor
22 in my report, but overall, if you think about the
23 fact that political science thinks about the
24 decision to participate in politics to effect a
25 rational choice, we think that voters weigh cost

and benefits these disparities, the disparities of these factors tend to make voting much more costly. So it would effect the education. For instance, 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 or a household that has access. The criminal justice system effects political participation because of loans and franchise laws. 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.

Q. Thank you, Dr. Burch.

I'd like to move on to the next slide, Matthew.

I'd like to move on to ask you about your analysis of racial appeals in political campaigns, and before we get to this slide, what is a racial appeal?

A. So a racial appeal in a political campaign is an aspect of either a speech or a --

1 a campaign ad, for instance, that would prime
2 voters to think about racial concerns when making
3 decisions about candidates in policy. And those
4 can be either implicit, which means that race
5 isn't mentioned, but you could see code words or
6 black exemplars, for example, that would prime --
7 would still prime voters think about race to make
8 political decisions or they can be explicit,
9 which means that they refer proximity for this
10 race.
11 Q. And based on your experience and
12 review of the relevant literature, are appeals
13 effective or do they effect voting behavior?
14 A. Yes. Racial appeals are both
15 explicit and implicit have been shown to oth
16 heighten the ways voters pay attention to or
17 think about a race, and it also effects how
18 voters think about candidates when they think
19 about this issue.
20 Q. Did you examine the racial appeals
21 in Louisiana?
22 A. Yes. I looked at the -- a recent
23 statewide campaign, which is the 2019
24 gubernatorial election.
25 Q. And what did you conclude about this

1 race?
2 A. I found evidence of several of --
3 sorry. I'm getting feedback. I found evidence
4 of several campaign ads and statements that could
5 be characterized as a racial appeal.
6 Q. Can you give us some of those
7 examples?
8 A. Yes. So a prominent one still here
9 from a campaign ad that was run by the
10 Eddie Rispone for governor campaign ad and in it
11 there's several aspects that mathematically, they
12 characterize racial appeal. So, for instance,
13 you have there in the middle picture a mug shot
14 of a black that infers activate a particular
15 serial type, such as black commonality. You have
16 an image of a candidate with all white
17 constituents and also you have the use of
18 language, such as sanctuary city, and crimes that
19 have been shown in particular to crime, racial
20 ads among others.
21 Q. Thank you, Dr. Burch. What were
22 your conclusions about the existence of racial
23 appeals as it exists in Louisiana?
24 A. Based on the several examples that I
25 found from that political campaign that racial

appeals or -- or that there are still racial appeals that characterize these things in a political campaign.

Q. Thank you.

Next slide, Matthew.

I'd like to ask you about your examination of Senate factor seven, which is the extent to which black Louisianians have been elected to public office. Which elected offices did you evaluate in reaching your conclusions?

A. I evaluated several -- several offices, as well as offices at the state and local levels as well.

Q. Let's start at the federal level. What did you find with respect to federal positions and black representation in those?

A. As shown up here, I found that there have been reconstruction, no black Senators and only four black Louisianians elected to Congress at the federal level.

Q. And what about state and municipal positions?

A. Similarly, there have been no black governors or lieutenant governors in Louisiana, and as with respect to the state legislature,

1 currently, about a quarter of state legislative
2 seats are held by black members. Louisiana mayor
3 are less than a quarter of all black -- black
4 mayors are less than a quarter of all Louisiana
5 mayors. State court judges are about
6 20.1 percent of all state court judges and a
7 quarter of the elected court members are black as
8 well.
9 Q. Thank you. What were your
10 conclusions from the analysis of this factor of
11 the extended representation of black Louisianians
12 in office?
13 A. Given that about a third of the
14 population and it seems to be there is no -- none
15 of the offices that I examined has there been a
16 black representation, it's measured a third of
17 that body or that group.
18 Q. Thank you. Next slide, please.
19 Dr. Burch, did you look at the responsiveness of
20 elected officials to the needs of black
21 Louisianians?
22 A. I did.
23 Q. And which sources of evidence did
24 you look to as part of that analysis?
25 A. I looked at my examination of that I

1 conducted for Senate factor five, as well as
2 really the voices of black Louisianians
3 themselves as represented in the road shows.
4 Q. I know we already covered your
5 Senate factor five evidence. What have you
6 learned from the latter that you reviewed the
7 testimony of these road shows?
8 A. Consistently across different areas
9 of the state, black Louisianians stood up at
10 these road shows and discussed their concerns
11 about race representation in their state and
12 talked about how they felt, like they have been
13 /SKWRAOUT knee. I have some examples here that
14 have been pulled from my report that comes from
15 the road shows where people stood up and talked
16 about how they felt as though they weren't --
17 they were overlooked, they weren't represented
18 fairly and they were concerned about the lack of
19 representation and concern for in effect the
20 government policies that would help them
21 throughout the state.
22 Q. Thank you. And so what were your
23 conclusions based on these sources that you
24 reviewed in response to the elected officials to
25 the needs of the black Louisianians?

A. 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 elected officials were not in responsiveness.

Q. Thank you, Dr. Burch.

Next slide, Matthew. Dr. Burch, did you look at Senate factor nine?

A. I did.

Q. And what is Senate factor nine?

A. Senate factor nine examines whether the legislature has proper justification for HB-1 and SB-5.

Q. And what source did you examine to draw conclusions on this factor?

A. I looked at the legislative record, the hearings the for to date the road shows to build the amendments themselves and as many as examine some public.

Q. And have you conducted an analysis for state records, either in your academic work or in other cases?

A. Yes. Both.

Q. So based on your review of

1 legislature statements, what are your conclusions
2 about this factor?
3 A. So I concluded that there were
4 several factors that I laid out in my report that
5 were advanced and various points. It's important
6 for justification that the legislature was
7 considering when discussing HB-1 and SB-5. Those
8 would be the minimizing the population deviation
9 across districts, such as keeping parishes --
10 parishes and precincts together, and getting
11 fewer -- no -- no splitting previews when
12 splitting a parish's compactness. They did say
13 at first that they were interested in these
14 traditional legislative principles. However,
15 when they were presented as maps that performed
16 better on those traditional legislative
17 principles, that did not have -- that contained
18 few majority-minority districts. They either for
19 the record backed off from some of those
20 traditional legislative principles or said that
21 they were left.
22 Q. Thank you. I think you briefly
23 touched on it. Can you provide just one example
24 of such a shifting justification perhaps on the
25 slide?

A. Yes. So, for instance, when with respect to the population deviation, here chairman Sklefani did one of several examples that I list talking about making the population equal to position and getting down to the close and nearest person as possible to the annual possible district. When later in the process when presented I believe by -- in amendments 88, as well as in amendment 91, with maps that were actually lower population deviations but contain to majority-minority districts, for instance, made the statements backing away from those -- a commitment saying that well, it's not -- you know, yes, this map is lower in terms of population, but that's not -- that's not as important as -- that's not the thing that matters, like just difference business isn't as important.

Q. Thank you.

You can take the demonstrative down and put up what has been premarked as PR-15.

Dr. Burch, I'd like to close by asking you a couple of questions about your supplemental report. Do you recognize this document?

A. Yes.
Q. And what is it?
A. It is the supplemental report that I submitted.
Q. What does your supplemental report examine?
A. I was asked to examine the relationship between race partisanship.
Q. And what did you review in order to reach your conclusions on this topic?
A. The scholars -- the scholars and literature, as well as some -- as well as an examination of registration of patterns, voter registration by race.
Q. And based on your review, did you reach any conclusions about the historical length between race and party and/or the contemporary relationship between the two?
A. Yes. So the literature itself tend to locate the link that there is -- that there is a link between race, racial attitudes and partisanship, and the contemporary or the current, the substantiation of that starts with the assignment real line up of parties beginning in The New Deal and solidifying in the 1960s and

1 result of civil rights, and over time that
2 realignment, particularly the realignment of
3 white southern away from the Democratic party
4 into Republican party, is a hallmark of politics,
5 obviously the civil rights throughout. Moreover,
6 I conclude that there's growing strong evidence
7 in the literature that that relationship between
8 partisanship and race and racial attitudes is
9 getting stronger and has been getting stronger
10 since 2008. Any phenomena the data show as well
11 as the shows that trends are happening in
12 Louisiana as well.
13 Q. Thank you, Dr. Burch.
14 MR. CHAKRABORTY:
15 Your Honor, at this time, I'd like
16 to introduce PR-14 and PR-899 into
17 evidence. They are Dr. Burch's main and
18 supplemental expert reports.
19 THE COURT:
20 Any objection?
21 MS. MCKNIGHT:
22 No objection.
23 MR. CHAKRABORTY:
24 And no further questions,
25 Your Honor.

THE COURT:

Cross-examination?

MR. CHAKRABORTY:

Thank you, Dr. Burch.

CROSS-EXAMINATION BY MS. MCKNIGHT:

Q. Good afternoon Dr. Burch. I'm not sure if you can see me.

A. Yes, I can see you.

Q. I'm sorry. This is a bit awkward. It's an honor to meet you. I'll have a few questions for you this afternoon. I'm sorry I can't look you in your face.

A. I'm just grateful you guys were able to accommodate me.

Q. Absolutely. So, Dr. Burch, I'd like to start with something you've written in the past, which is that voters in a given racial or ethnic group cannot be assumed to share policy preferences. You wrote that, didn't you?

A. You'll have to show it to me.

MS. MCKNIGHT:

Okay. Let's bring up this would be Burch 1, Mr. Williamson.

BY MS. MCKNIGHT:

Q. Do you recall writing a book

1 entitled Creating a New Racial Order?
2 A. Yes. I -- that was my co-authored
3 book.
4 Q. Okay. And that I think I'll wait
5 for him to bring up the cover of the book for
6 you, Dr. Burch.
7 A. Uh-huh (affirmatively).
8 Q. I think Mr. Williamson just needs to
9 share his screen.
10 THE COURT:
11 Can you give me the quote again?
12 It's voters --
13 MS. MCKNIGHT:
14 Sure. Voters in a given racial or
15 ethnic group cannot be assumed to share
16 policy preferences.
17 THE COURT:
18 Thank you.
19 MS. MCKNIGHT:
20 Hold on one moment, Your Honor.
21 THE COURT:
22 That's okay. We are going to be
23 patient today.
24 MS. MCKNIGHT:
25 Thank you, Your Honor.

BY MS. MCKNIGHT:

Q. Dr. Burch, we have before you an electronic version of your book entitled Creating a New Racial Order. Do you see that?

A. I do.

Q. And if we can flip to the next page, here's a copyright page for this book. Does this look right to you, Dr. Burch, copyright 2012 by Princeton University Press?

A. Yes.

Q. Now, Dr. Burch, this is an electronic version. So you can see at the bottom, there are a number of pages because it's electronic, but if we turn to the next page, find the quote page with your quote on it, I'm not -- I've highlighted the section for you to see. Are you able to read that, Dr. Burch?

A. Yes.

Q. Okay. So, Dr. Burch, thank you for your patience. In the highlighted section, it's three lines down, "Voters in a given racial or ethnic group cannot be assumed to share policy preferences." Do you see that?

A. Oh, wait. I'm sorry. You were -- I'm sorry. You put something over the whole

quote that if you could just remove that bottom line so I can see it.

Q. Sure.

A. Oh, yes. That is definitely what I thought.

Q. You can take that down.

Does that refresh your recollection that you thought in the past, voters in a racial or ethnic group cannot be assumed to share policy preferences?

A. Yes. I agree with that.

Q. Now, your report in this case does not examine whether a black voter in rural Louisiana will vote the same way as a black voter in urban Baton Rouge, correct?

A. No. I examined research that looked at voting patterns by race.

Q. Okay. And your report does not examine white crossover voting, that is white voters who vote for the candidates of choice of black voters, correct?

A. No. I'm looking at both party registration as well as the other people research as to those kind of questions.

Q. Okay. Now, turning to your report,

this is PR-14 at page 25 through 28.

MS. MCKNIGHT:

Mr. Williamson, we can just go to page 25, the header of the section. Pardon me. I think you need to go PR-14, page 25. Unfortunately, the numbers are -- there you go.

BY MS. MCKNIGHT:

Q. So, Dr. Burch, I heard you testify on direct that you believe there are still racial appeals that characterize elections in Louisiana. Did I hear you right?

A. Yes.

Q. Okay. So in reviewing the section Senate factor six, racial appeals and campaigns, over the past 30 years, you identified only one candidate who made a racial appeal in an election, correct, and that candidate --

A. No. Could you switch to -- could you go to the next page, please?

Q. Sure.

A. So I have both during this gubernatorial campaign in the middle, I'm talking about Eddie Rispone here; but also, if you go to the next page, I also have here racial appeals

that targeted -- that were run by the Louisiana Republican party and, for instance, the quotation at the bottom of that page that's from the party, not from Eddie Rispone, and the next page is another racial appeal that was made by a different candidate.

Q. Okay. Let's turn to the next page so I can understand what you meant by that third example.

A. Uh-huh (affirmatively).

Q. And so the third example was which other candidate, Dr. Burch?

A. So here Conrad apple was talking about -- that making the appeal that African-Americans should support Republicans better than Democrats because of issues regarding racial -- concerns about racial.

Q. Okay. And going back a page, those racials appeals had to do with a candidate for governor, Rispone; is that right?

A. I think that the one for the second one was probably more general, but it probably referred in general to support of black people for Democratic parties.

Q. So I just want to make sure I

1 understand that the second one here I'm seeing
2 reference to candidate Rispone here, then 2019
3 gubernatorial race, are you referring to
4 something else?
5 A. No. What I'm saying here is that in
6 the -- the RNC, the Republican -- the Louisiana
7 GOP coalition is with respect to
8 John Bel Edwards, but the quote on the next page
9 is more general.
10 Q. I see. And so are you aware whether
11 candidate Rispone won or lost his election?
12 A. I believe he lost.
13 Q. And do you know whether the last two
14 elections for governor whether the candidate of
15 choice for black voters won?
16 A. Yes. John Bel Edwards did win.
17 Q. Now, let's turn to Senate factor --
18 Senate factor nine. Now, I understand that
19 Senate factor nine you studied whether the
20 legislatures rationale for drawing its
21 congressional plan was supported by the evidence
22 or if it was quote, unquote, tenuous; is that
23 right?
24 A. Is that an exact quotation from
25 somewhere?

Q. Well, the word tenuous is a quote from Senate factor nine; is that right?

A. Yes.

Q. Okay. And so in doing your work on this report for Senate factor nine, you developed an opinion that the legislature's rationale for drawing its congressional plan was tenuous, correct?

A. I don't know if I used those exact words. Can you show me where I said that exactly?

Q. Well, let me step back. Is it your position that their rationale was not tenuous?

A. My position is that the rationale was not supported by evidence or that would back off certain rationals, but I don't believe I ever said that whether it was tenuous or not.

Q. Okay. Okay. Well, I think it may make sense to just get to factor nine so you can understand my questions. You've written a very thorough report. I just want to make sure we are understanding each other.

So if we would turn to PR-14, page 32. And so here, you begin your section on Senate factor nine tenuousness. Do you see that?

A. I do.
Q. Okay. In here, you write that the sponsors and advocates of two bills provided several justifications and you go on to show that you believe their proper justifications lack support; is that right?
A. Empirical support, yes.
Q. Okay. And now in preparing your report, you studied the legislative record related to redistricting this year in order to develop your conclusions, right?
A. I did.
Q. In fact, studying legislative history is part of your research practice. You've identified it in another parts of your report in your background, correct?
A. Yes.
Q. Okay. And let me step back. When studying a legislative record to understand legislative intent, you don't want to cherry pick certain pieces of the record and ignore legislative priors that have been repeatedly stated because you want to get a full picture of the record; would you agree with that?
A. Yes.

Q. And your report quotes from the legislative record, correct?
A. Yes.
Q. You reviewed the state government affairs committee hearings, correct?
A. Yes.
Q. And you reviewed the Florida Bates, correct?
A. I did.
Q. And during the committee hearings and Florida Bates, the legislature repeatedly described the plan as a continuity of representation plan; isn't that right?
A. Not repeatedly. That actually started to enter the record at the end and I believe I do have quotations to that effect in the report.
Q. Okay. Let's start with where you have quotations that effect in the report and then we will get to repeatedly. So can you identify in your report where you have those quotations?
A. So I'm going to refer -- I have my report here, so I'm going to flip through it and look.

Q. Take your time.
A. So on page 39, I have some information to that effect.
MS. MCKNIGHT:
Mr. Williamson, would you mind turning to page 39 so we can all follow along?
BY MS. MCKNIGHT:
Q. Is this the page 39 you are referring to or is it the exhibit number below?
A. It's the page yes this is 39.
Q. Okay. Great.
A. So I write here during the, I believe it's the Florida debate, which might be the one -- which I think might be the final or close to it or represented that he was presenting the bill that day, he said that the primary criterion for drawing the congressional districts have become, quote, the honor traditions as best as possible to mass people. And so he -- and then later on in that moment, he said that if one HB-1 was designed to, quote, maintain traditional boundaries. So yes, I do talk about the fact that that has become a part of the priority .
Q. Okay. So you quote Representative

Mickey, but where do you talk about that as becoming a priority?

A. So on page 39, I said by the end of the process, the quarter of one particular had shifted their legislative priorities instead of compactness or other measures. Representative Mickey stated a primary criteria for drawing congressional districts had become both the honor of traditional methods as possible to create this message was equally representatives of PB-1 prioritized the traditional ballots after looking at all the other criterias.

Q. Okay. And do you know when the legislative session redistricting session began in Louisiana?

A. You mean the road shows?

Q. The legislative redistricting session.

A. So they started holding road shows and hearings back in 2021, but do you mean such as when the border started --

Q. Correct.

A. That was in February.

Q. Would you have any reason to disagree with me if I told you it was

February 2nd?

A. I accept that. That's fine.

Q. Okay. So just to tie this up, is this the only place where you reference traditional boundaries on page 39 of your report?

A. Let me see. There may be some other areas in which I talk about reference to traditional boundaries, but that's the one that comes to mind.

Q. Okay. None others come to your mind at this moment?

A. In the report?

Q. Yes.

A. As far as that being a priority, no. Again, they had in each place they started out with a list of priorities up until the end, number 1, was always the litigation of interest and other kinds of -- and the other traditional redistricting format.

Q. Okay.

A. Again, the priorities and here the priorities by the end of this legislative -- legislative session shifted to when they were then emphasizing the appearance to the primary. The primary criteria was now honoring traditional

1 boundaries; so yes, that priority.
2 Q. I see. So since you were concerned
3 about the end of the process, let's go to the
4 beginning of the legislative session on
5 redistricting and bring up PR -- well, before I
6 do, let me share with you the parties have
7 stipulated to transcripts of certain hearings,
8 committee hearings and floor sessions. And so
9 what I'm about to bring up for you is an exhibit
10 that is a transcript that has been prepared by
11 plaintiffs of the special session SGA committee
12 transcript dated February 2, 2022. We are going
13 to pull up PR-52 at page 7. And now, Dr. Burch,
14 I'm looking at lines 9 through 16.
15 A. Uh-huh (affirmatively).
16 Q. And I'll offer for you that the
17 speaker during this hearing is president of the
18 Senate, Page Cortez. In here he states, "The
19 third tenant or principle was as best possible
20 to maintain the continuity of representation.
21 What do I mean by that? It means that if your
22 district elected you and you've done a good job,
23 they also have a right to reelect you.
24 Conversely, you don't get to choose who your
25 population is. They choose you. If you didn't

do a good job, they have the right to un-elect you." Do you see that?

A. I do.

Q. And does that refresh your recollection about whether the legislature identified continuity on representation on the first day of legislation?

A. Yes. I said I could recall that; but again, if you see here in the quotation he cited, it's not the top priority. It's third. So as I said before, those priorities shifted.

Q. I see. Well, let's go down to lines 23 through 25 on this same page. So this reads by President Cortez, "So the next principle that I tried to adhere to was with something you-all heard on the road show many times called compactness." So does this refresh your recollection about whether President Cortez and the legislature discussed continuity of representation before they even addressed compactness on the first day of the legislative session on redistricting?

A. Yes. They did.

Q. Okay. Thank you.

I'm going pull up another exhibit

for you. This exhibit is a transcript stipulated by both parties to the special session SGA committee transcript dated February 3rd, 2022. It's exhibit PR-54 at page 4. And here I'm starting at line 13 and going down into the next page, the line 1. Dr. Burch, we will highlight it for you and then let us know if you need us to zoom in at all.

I'm going to read the first line and then paraphrase the rest. I -- I will stop so you can have a chance to review it, but here I'll represent to you that the speaker is chairwoman of the Senate redistricting, first Senator Hewitt, and she said on the floor or in this committee, "At that time, we talked about continuity representation a lot in these hearings and we heard again at the road show one of the kind of talking points was elected officials should not choose their voters. Voters should choose their elected officials, and to that again I would respond by saying I respect the voters in this state and know that they are in the best position to vote an elected official in or out of office based on their performance. Dr. Burch, does this refresh your recollection about whether

1 legislature considered notion of continuity early
2 in the legislative session?
3 A. I never said they that didn't
4 consider it early. I said it wasn't the top
5 priority. So if you look at it again, you didn't
6 show me what -- like before you didn't show me
7 what came before that and what order it talked
8 about continuity in the legislative session, so I
9 don't really know -- so I can't really -- so I
10 don't really know if I could agree. Like I said,
11 before that they prioritized what they had done
12 and then they shifted priority.
13 Q. I see. And so let me do one more
14 example, Dr. Burch, and then we can start moving
15 on. If we could bring up PR 71. Dr. Burch, this
16 is a special session Senate full floor debate
17 dated February 8, 2022. And again, this is a
18 Senate full floor debate and I'm looking at
19 line 16 through the next page on line 4, but we
20 can just start on page, sorry, on page 88 at
21 line 16. And so here I'll just read the first
22 few lines, the next principle, "Preserve the core
23 of the prior districts to ensure continuity of
24 representation. You know we heard many times on
25 the road show and the president spoke to this a

little bit earlier on the bill," and then it goes on to reiterate points about voters being able to vote in or out their elected officials. Do you see that, Dr. Burch?

A. I do.

Q. Okay. And would it surprise you to know that the phrase "continuity" appears more than 35 times in 13 days of transcripts in this case?

A. No.

Q. Okay. So in reviewing these hearing transcripts that are dated February 2nd, February 3rd, February 8th and that you are not surprised that continuity was references more than 35 times in 13 days of legislative transcripts, does that refresh your recollection about the fact that the legislature repeatedly described the plan as a continuity of representation plan?

A. Again, it's not -- I never said that I didn't recall that they talked about continuity representation. What I said is that that priority shifted across time. Even the last quotation you showed me, it began with the next as if that wasn't the first thing they talked

about. And as I said here, by the time we get to the end, that traditional redistricting principle aspect was -- what they arrived on as the top priority, but that was only after all the other ones, such as compactness, and even the example that I gave the absolutely deviation was again supplanted by or plans that had two majority-minority districts actually performed better on the metric. So I stand by what I wrote in my report that again, that -- those priorities shifted and by the end that had to come and those quotations you showed me, those were early on. They were talking about other principles before they actually got continuity of representation.

Q. I see. And even if it was a third principle on the very first day of the redistricting session, you did not examine continuity of representation and whether the legislature fulfilled their goal of continuity representation, correct?

A. I looked at both the plan that was there as well as the -- the full plan and of course the boundaries had to change a little bit, but as far as whether they got as close as possible to the old boundaries, no, I didn't look

at that. And I don't believe there was any discussion as far as whether that was the plan that brings these changed the boundaries of all the plans that were available. So it wasn't -- it's not in my report is a recollection of is an issue it's that they didn't really compare bills based on, you know, whether that was a -- that was a statement that in terms of like how closely that -- that plan came than, say, a different bill that they might have observed.

Q. I see. So I'll represent to you that we have experts in this case who have submitted reports that the core retention score in this plan has been calculated to be 96 percent. I'll also represent to you that that is a higher score than any of plaintiff's illustrative plans. My question to you relates to the Senate factor of tenuousness. I understand from your earlier testimony that you were trying to understand the legislature's priority in drawing its plan and trying to study whether those priorities played out in the ultimate plan in the past. I understand from your testimony just now that you did no examination of continuity of the representation

in your report, correct?

A. Right. That's not -- those figures aren't in the record.

Q. Okay. And you did not include in your report that the legislature's rationale to draw a continuity of representation plan was, quote, unquote, tenuous, right?

A. No. I said that those plans lack empirical support and that the references you just made are in the record.

Q. Okay. But you would agree with me that the references I just made to the legislature describing continuity of representation as a goal, those are in the record, correct?

Q. Yes. In the way that I described beside?

Q. And I'm going to share a fact with you. Tell me if you agree or disagree or have knowledge about it. Priority plan drawn in 2011 was pre-cleared by President Obama's Department of Justice, correct?

A. That was in the record.

Q. So you would agree with me that that's a fact?

A. Yes.

Q. Now, in this case you did not study whether the so-called tenuous was due to political as opposed to racial choices, correct?

A. The only references that I have in this section with respect to race are I do have a discussion about the extent to which there was a new census redrawing of two majority-minority districts. Also, I reference race when I talk about dispersions that the Senators and members of the house made with respect to what they thought about minority voting or different parts of minority positions.

Q. Okay. So I think you answered a different question and so pardon me for repeating. I believe it is just a yes or no. Yes, you did not study whether the so-called tenuous us that you found was due to political as opposed to racial choices, correct?

A. Yes. I believe I talked about ways in which they were discussing race.

Q. Okay. We will move on. Dr. Burch, you believe that the legislature should have drawn maps identifying black voters as a community of interest, correct?

A. I believe what I wrote is that black voters and other people themselves said that they constituted a community of interest.

Q. Okay. Is it your position that the legislature could use race as a proxy for a traditional districting criterion?

A. It's my understanding that based on the need to ensure representation that the legislature had to consider race.

Q. Okay. But you don't have an understanding about whether race it be used as a proxy for traditional districting criterion?

A. I never made that point. The only point that I'm making is that on the record that was brought up on the record and I believe I had some point to which the legislators agreed, so my -- my point really was to just put on the record that that was discussed.

MS. MCKNIGHT:

Okay. Thank you very much, Dr. Burch. I have no further questions.

THE COURT:

Any redirect?

MR. CHAKRABORTY:

Yes, Your Honor.

RE-EXAMINATION BY MR. CHAKRABORTY:

Q. Dr. Burch, just a couple of brief questions. Can we pull up PR-52, Matthew? And can we please turn to page 7? Dr. Burch, that middle area there, the third tender principle, do you recognize that as the portion that Ms. McKnight was representing earlier with you?

A. Yes.

Q. Great. Thank you. Can we please turn to page 5? And do you see, Dr. Burch, at the very top of this page where it reads let's start with Senate bill offered by President Cortez?

A. I do.

Q. And then you see President Cortez, the Senate president, start his remarks that ultimately lead on to the portions that Ms. McKnight read out to you?

A. Yes, I do.

Q. And do you have any reason to doubt that Senate bill one actually deals with state legislative redistricting?

A. I -- well, yes that's -- that is HB-5.

Q. Right. It doesn't deal with

1 congressional redistricting, such as SB 5 or
2 HB-1?
3 A. That's right.
4 Q. Change your basic conclusion on
5 Senate fact for nine that the justifications
6 afforded by legislators were tenuous?
7 A. No. Nothing that I put forward here
8 changes what I wrote.
9 MR. CHAKRABORTY:
10 Thank you. No more questions.
11 THE COURT:
12 Okay. Thank you, Dr. Burch. Let's
13 take a 15-minute recess.
14 (Whereupon, a short recess was taken at
15 3:00 p.m.)
16 THE COURT:
17 Okay. Be seated. Next witness?
18 Good afternoon, Your Honor. Making my
19 first appearance, I'm Jonathan Hawley,
20 H-A-W-L-E-Y. I represent the Galmon
21 plaintiffs and next witness called will be
22 Dr. Allan Lichtman will be joining us via
23 Zoom.
24 THE WITNESS:
25 Good afternoon.

DR. ALLAN LICHTMAN,
WITNESS ADDRESS, WITNESS CITY, LOUISIANA
WITNESS ZIP, after having first been duly sworn
by the above-mentioned court reporter, did
testify as follows:
EXAMINATION BY MR. HAWLEY:
Q. Can you hear me okay, Dr. Lichtman?
A. I hear you fine. I'm a little deaf,
so speak slowly and clearly.
Q. I will do that.
MR. HAWLEY:
Your Honor, again, the plaintiffs
wish to tender Dr. Lichtman as an expert
in American politics, American political
history, voting rights and qualitative and
quantitative social science analysis.
THE COURT:
Any objection?
MR. BRADEN:
My name is Mark Braden, defendant
intervenors for the legislature, and we
have no objections.
THE COURT:
Okay. Dr. Lichtman will be accepted
by the court in the fields of American

1 politics, American political history,
2 voting rights and qualitative and
3 quantitative social sciences, and
4 Dr. Lichtman may provide opinion testimony
5 in those fields.
6 BY MR. HAWLEY:
7 Q. Thank you, Your Honor.
8 Dr. Lichtman, will you please state your full
9 name for the record?
10 A. Allan J. Lichtman. That's
11 A-L-L-A-N, J period, L-I-C-H-T-M-A-N. I'm
12 getting an echo.
13 Q. We are okay on our end,
14 Dr. Lichtman, can you hear me?
15 THE COURT:
16 Mr. Hawley, would you like to turn
17 the podium?
18 MR. HAWLEY:
19 No. This --
20 BY MR. HAWLEY:
21 Q. Can -- you can still hear me okay,
22 Dr. Lichtman?
23 A. I hear you fine now.
24 THE COURT:
25 Okay. Dr. Lichtman --

THE WITNESS:

I'm still getting an echo. Maybe if I turn my --

THE COURT:

Turn yours down.

THE WITNESS:

-- commuter volume down a little, that might help. Let me try it.

All right. Let's try it now.

BY MR. HAWLEY:

Q. Okay. Dr. Lichtman, how about now?

A. Much better.

Q. Okay. Thank you. Dr. Lichtman, you've been retained asan expert for the Edward Galmon plaintiffs; is that correct?

A. Yes.

Q. And you prepared --

A. Yes.

Q. Thank you. And you prepared a report in this case?

A. Yes.

Q. For the record, that is Exhibit GX-03, which is Record Docket No. 48.

Dr. Lichtman, do you have a copy of your initial report in front of you now?

A. I do.
Q. And you also prepared a rebuttal report in this case?
A. Correct.
A. Correct.
Q. And for the record, that is exhibit GX-31, Record Document 120-4.
Dr. Lichtman, do you have a copy of your rebuttal report with you as well?
A. Yes.
Q. And, Dr. Lichtman, is your CV included in your report?
A. Yes.
Q. And I'll say for the record, that is at page 99 of GX-3 Record Document 48. Dr. Lichtman, is your CV a complete and accurate summary of your background and professional experience?
A. Yes.
Q. I'd like to ask you a few brief questions about that. Can you please summarize your professional background?
A. I graduated in 1967 with a BA from Brandeis University in history, but I've been a science major for three years before turning to

1 history my senior year, which may explain my
2 interest in social science and qualitative
3 methodology. I then got my PhD from Harvard
4 University in 1973 with a specialty in American
5 political history and quantitative methods.
6 Q. Where are you currently employed?
7 A. I am employed at American University
8 in Washington, D.C. and I'm not sure if I'm
9 pleased or embarrassed to say next year will be
10 my 50th year of science.
11 Q. And I assume that means you are
12 tenured?
13 A. I have been tenured since about
14 1980. In 2011, I was appointed distinguished
15 professor, so I made office of university rank.
16 It's a rank above full professor. There are only
17 a handful of us out of many hundreds of faculty
18 members at the university.
19 Q. And what are your principle areas of
20 research?
21 A. I would say American politics,
22 American political history, voting rights,
23 quantitative methods, qualitative methods,
24 political prediction.
25 Q. Have you previously served as an

1 expert witness in voting rights cases?
2 A. Probably close to a hundred, and if
3 you count civil rights cases in general, north of
4 110.
5 Q. And do those include redistricting
6 cases?
7 A. Yes.
8 Q. Have you served as an expert in
9 redistricting cases in Louisiana?
10 A. Yes.
11 Q. And does that include the Terrebonne
12 Parish litigation?
13 A. Yes.
14 Q. In that case, did you undertake a
15 Senate factor's analysis?
16 A. I did.
17 Q. And did the court in that case
18 credit your Senate factors analysis?
19 A. It did.
20 Q. And did other courts previously
21 credited and relied on your analysis?
22 A. Not every time, of course. There
23 have been over a 110 cases, but most of the time,
24 including the United States Supreme Court in its
25 landmark 2006 decision in the Texas congressional

1 redistricting case, LULAC versus Perry, the court
2 relied on my work, my analysis and doing
3 something quite unusual; and that is, it
4 invalidated a district, a congressional district
5 in southwest Texas based on my work on the
6 grounds that it polluted the votes of Hispanics.
7 Q. Dr. Lichtman, what were you asked to
8 do in this case?
9 A. I was asked to examine the nine
10 Senate factors that relate to totality of
11 circumstances in the State of Louisiana facing
12 the opportunities for African-American voters who
13 participate fully in the political process and to
14 elect candidates of their choice, and I was also
15 asked to respond to any material presented by
16 defendants.
17 Q. And what methodology did you employ
18 as part of that analysis?
19 A. I employed standard methodologies in
20 my fields of research. Over these many decades,
21 I analyze sources like surveys, scholarly
22 articles, books, journals, particular articles,
23 governmental reports, demographic information,
24 election returns and similar data to reach my
25 conclusions, and I applied quantitative methods;

in this case, mostly fairly simple quantitative methods. For example, just looking at percentage differences to gauge racially polarized voting in Louisiana or just looking at percentage and differences to engage socioeconomic disparities between African-Americans and whites in Louisiana and then, of course, like any historian, I analyzed documentary materials. I've written a book on historical methodologies.

Q. And what are your overall conclusions?

A. My overall conclusions are that essentially all of the nine Senate factors applied in the State of Louisiana contemporarily to impede the opportunities for African-American voters to participate fully in the political process and to elect the candidates of their choice, and I also find that these are not isolated factors separated into watertight compartments, but that one factor synergistically influences the other to expand the impediments that I discuss.

Q. Did you read the expert report submitted by the defendants in these consolidated cases?

A. I did.

Q. And did anything in those reports change your conclusions about the Senate factors in Louisiana?

A. Not only did nothing in those reports change my conclusions, they strengthened my conclusions. None of the reports directly address the Senate factors or even mention my report by name. None of the information presented in my report was refuted by any of the expert reports submitted on behalf of defendants. Two of the expert reports, one by Dr. Alford and one by Mr. Heffner, and -- and one by Mr., I hope I get his name right, Solanki indirectly addressed some of my Senate factors, two and nine, and to the extent there was information in those reports to bust.

Q. Dr. Lichtman, we're going to go through cover two /EL. Key points and the key areas of your analysis and conclusions and we will start with Senate factor one. Does the State of Louisiana have a history of voting discrimination against its black citizens?

A. It not only has a history. It has an ongoing history and that history relates not

1 just to direct voter discrimination. For
2 example, the use of large elections when the
3 /SRAEUBLGT of polling places for
4 African-Americans, but it also relates right up
5 to the present of discrimination in three areas
6 that significantly impact voting; that is, law
7 enforcement.
8 Discrimination in law enforcement
9 significantly impacted voting for a couple of
10 reasons. Number 1, Louisiana has some pretty
11 strict felony /TKEUS /EPB France /KHAOEUZ laws.
12 You can't vote while you were incarcerated. You
13 can't vote while you were on parole or probation,
14 and there's no automatic restoration of your
15 voting rights. After five years, you have to go
16 through a process. Secondly, as I point out in
17 my report, once you've been incarcerated, your
18 integration into a fully functioning member of
19 society, including a voting member in political
20 participation, becoming all that much more
21 difficult. Second area would be the area of
22 education. And all this color /HRAR /HRAOE
23 research indicates that education is a prime
24 /TKERPLT ant of political participation and, of
25 course, levels and proficiency in education

1 effect almost everything in the course of the
2 lifestyle of proficient education in
3 pro-efficiency in education. It contributes to
4 other socioeconomic factors which have an impact
5 on voting.
6 Finally, there is racial segregation
7 and the literature I cite in my report indicates
8 that segregation purpose waits circle the of
9 poverty. It expands, multiplies socioeconomic
10 disparities that have a direct impact on the
11 ability of African-Americans in Louisiana to
12 participate in the political process and to elect
13 candidates of their choice.
14 Q. On the topic of discriminatory
15 voting practices, in particular, you mentioned
16 just now at large judicial elections and closing
17 of polling places. Are those examples of efforts
18 that have continued into the present day?
19 A. That's correct. Those are examples
20 that continue into the 20th century and we can
21 also talk about as actually doing the context of
22 another factor what I believe to be the
23 discriminatory redistricting plan in the
24 post-2011.
25 Q. Let's move on to Senate factor two.

1 Dr. Lichtman, does Louisiana have racially
2 polarized voting?
3 A. Louisiana, as I point out in my
4 report, has extreme racially polarized voting;
5 that is, African-Americans vote almost
6 unanimously for Democratic candidates and
7 Republican candidates choice of African-American
8 voters, and this racial divide between black and
9 whites voting Democratic and Republican is
10 inextricably tied to race. Party labels by
11 themselves are meaningless. They are just
12 labels. What matters is what those labels
13 represent.
14 We know for the 19th century and
15 well into the 20th century blacks in the south
16 are voting Republican. The party of Lincoln and
17 whites were voting Democrat, the party of
18 redemption that changed particularly after the
19 Voting Rights Act of 1965. It wasn't an
20 immediate process, but over time and certainly up
21 to our own time, the party images and
22 representations shifted. Democrats came to
23 represent the party of civil rights and black
24 interests and Republicans the opposite. I
25 document this change in many ways in my report.

First of all, I cite scholarly literature on what they call the co-joining of race and party in recent years. Secondly, I look at political leadership and I look at two advocacies; the NAACP, the oldest advocacy group in the country; and the leadership conference on civil and human rights; and they have legislative score cards to what extent legislators represent black and minority interests, and they both show the same thing, that there is extreme polarization between the positions taken by Republican leaders, legislators in the Congress and a position taken by Democrats. It's extreme polarization, as I document in my report, that matches the extreme polarization of the voting -- voting of blacks and whites.

Second, a third area I look at is the rank and file; that is, what are the attitudes with respect to race of Louisianians who are Republicans and Democrats. Again, I find extreme polarization on issues squarely related to race and I document this in two respected studies; the cooperative congressional election study, a standard source; and here in Louisiana, the Riley Center study. They ask different

1 questions, but they come to the same answer.
2 Again, it's the polarization reflecting the
3 polarization in the vote.
4 Finally, and this is important, I
5 look at the actual results of election.
6 Republicans are quite dominant in Louisiana
7 winning almost all statewide elections, winning
8 essentially all legislative elections in white
9 districts, and what is consistent in my findings
10 is that Republicans in all of these areas have
11 not sponsored any winning black Republican
12 candidates. All of the statewide executive
13 offices are owned by whites. Both U. S. Senate
14 offices that are voted statewide are held by
15 whites. Whites win in the white majority
16 districts in the state house of representatives
17 and in the state senate. I even drilled down for
18 more fine grain level, the level of mayoral
19 elections; that is, I looked at mayoral elections
20 in municipalities and ten war in Louisiana and
21 no blacks are elected in any majority white
22 municipality, only blacks are elected in majority
23 black municipalities and there are no black
24 Republicans. So I document this at the level of
25 scholarship, at the leadership level, at the rank

and file level, at the level of the actual results of elections.

Q. Ultimately, Dr. Lichtman, as between race and party, which do you consider to be the driving, causal mechanism of Louisiana's polarized voting?

A. The driving mechanism is clearly race as I explained. Party by itself doesn't explain anything. As I said, at one time, racially voting patterns were reversed. It is because of what the parties represent that I document in some ways that's driving voting. In other words, blacks are voting Democrat in Louisiana; whites are voting Republican, and this is not related to Louisiana, by the way, not in spite of race, but because of race, race is at the center of all of this. I also cite scholarship by Dr. Bromage explaining how race is at the center of Republican political strategy that comes down to the --

Q. You mentioned reports written by Dr. Alford in this case, correct?

A. Correct.

Q. Did anything in Dr. Alford's report change your conclusions about racially polarized

voting in Louisiana?

A. No. It strengthens it. Let me explain. All of the analyses of Dr. Alford performed show the same thing my report showed, extreme polarization between African-Americans and whites in terms of blacks voting Democrat, whites voting Republican in very large majorities.

Now, Dr. Alford states or at least implies that the driving force is party not race, but he stops cold there. He never explains or attempts to justify that conclusion. He doesn't look at my analysis history, doesn't look at my analysis of leaders, doesn't look at my analysis of rank and file, doesn't look at my analysis or any analysis in these areas of the actual results of elections. In fact, what's interesting and telling is Dr. Alford looks at, I believe, something like 28 Republican candidacies in his analysis and not one of those Republican candidacies involved a black candidate. Dr. Alford also ignores that part of my initial report that looks at whether or not race can influence voting when the polar party is not an issue.

1 I looked at the 2008 primary,
2 Democratic primary where overwhelmingly blacks
3 participate and that involved Barack Obama, the
4 African-American, and Clinton, the white
5 candidate, and a few other white candidates and
6 what I found is that African-Americans voted 86
7 percent for Obama, only 30 percent of whites
8 voted for Obama. So within the same party, it
9 was a sharp where.
10 I also looked at the subsequent 2008
11 general elections and found that black Democrats
12 voted 98 percent for Obama, but white Democrats
13 only voted 38 percent for Obama. So when there
14 isn't the critically and inextricably bipolar
15 party, you can see voters responding on race.
16 Again, Dr. Alford does not consider those results
17 or present any comparable results of his own.
18 Q. Moving to Senate factor three,
19 Dr. Lichtman, does Louisiana employ any voting
20 practices that enhance the opportunity for
21 discrimination?
22 A. It does. It employs one of them
23 that's explicitly listed under Senate factor
24 three; and that is, the use of the majority vote
25 requirement and subsequent runoff elections.

Q. What effect does the majority voter requirement have black and black preferred candidates?

A. Well, it means is even if a black candidate gets a plurality in the first round, as a result of a split among more than one ambitious white candidate, that does not elect that black candidate, but rather that black candidate has to face off one -- one on one against a white candidate. And clearly in statewide in Louisiana where white voters dominant, in that kind of contest, the African-American candidate has little chance of winning and I gave three examples of that in my report.

Q. You -- what are those three recent examples?

A. Yeah. We have the 2015 election for lieutenant governor. The black candidate won the first round by 3 percentage points, so it was close but not eyelash, and the candidate lost 55, 45 in the runoff. We had a 2017 election for treasurer. Black candidate won the first round even more decisively by seven points and was defeated even more decisively in the runoff 56 points. And finally, we have the 2017 election

1 the secretary of state, the black candidate
2 didn't win the first round, but came really
3 close, came within 10,000 votes or so, but got
4 shroused by 59 percent in the runoff.
5 Q. When was the majority vote adopted
6 in Louisiana?
7 A. It was first adopted in 1975 and the
8 most famous runoff, of course, was in 1991
9 between the Ku Klux Klan candidate, David Duke,
10 and I think it was Edwin Edwards who was against
11 him.
12 Q. So was the majority vote requirement
13 adopted in response to the U.S. Supreme Courts
14 foster decision?
15 A. No. It was adopted more than two
16 decades before and, as I said, kind of a
17 highlight runoff election that got major national
18 attention occurred several years before that in
19 1991.
20 Q. Moving to Senate factor four,
21 Dr. Lichtman, what are your findings on candidate
22 slating in Louisiana's congressional elections?
23 A. Well, I found something rather
24 interesting, that the way Louisiana set up its
25 congressional redistricting plan, it kind of made

slating irrelevant and unavailing for black candidates; that is in District two, which is overwhelmingly packed with blacks and Democrats, slating is irrelevant. It's going to elect a black governor; whereas, the other five districts that are overwhelmingly white and Republican slighting is equally irrelevant because a black candidate has no chance essentially to win in districts that are R plus 20 or more, according to standard political analysis, by the way. That's the partisan voting index that measures the partisan strength of the district and it's in my report.

Q. Next to Senate factor five, Dr. Lichtman, what effect does the history of discrimination you described before have on black Louisianians today?

A. It has profound effects on black Louisianians today. I document in my report that there are major today socioeconomic disparities between African-Americans and whites in Louisiana and that extends to almost every area of significance for -- and for political participation and voting. It extends to income, to unemployment, to poverty, to dependence upon

1 welfare, to homeownership, to the availability of
2 vehicles, the availability of broadband internet.
3 It extends to educational attainment and
4 educational proficiency, all these between
5 African-Americans and whites in Louisiana in the
6 present day, and it extends to various measures
7 of health as well.
8 Q. And do these inequities impact black
9 political participation?
10 A. Yes. As I explain in my report,
11 first of all, they -- this isn't the only one,
12 but first of all and the most obvious is that
13 they impact the participation rates of blacks
14 versus whites in terms of turn out, and I present
15 data in my report showing differentials between
16 black and white turn out in recent elections in
17 Louisiana that can extend into the double digits
18 and that hadn't really ameliorated itself in
19 recent elections. Other information presented by
20 one of the experts for defendants bolsters that.
21 Q. Are you referring to the report
22 Dr. Solanki and his voter turn out statistics?
23 A. I am. Dr. Solanki presents two
24 tables on voter turn out. I think they are
25 Tables 2 and 4 in his report. One of the tables

1 looks at statewide turnout and finds substantial
2 disparities. I did between blacks and whites in
3 their turnout rates. Similarly, he wrote that
4 every congressional district, all six of them,
5 and found that invariably in every one of those
6 six congressional districts, black turnout lagged
7 white turnout sometimes up into the double
8 digits.
9 Q. Is reduced political participation
10 demonstrated in other ways?
11 A. Yes. As I explain in my reports, a
12 lack of sources, lack of educational
13 pro-efficiency attainment impedes participation
14 in other ways. I give two examples: One is
15 lobbying of public officials, very important for
16 participating in the political process and
17 influencing the outcomes, which has we see, you
18 know, quite different whites and blacks in
19 Louisiana, and I present survey data showing that
20 whites are substantially more likely in Louisiana
21 to contact public officials. Again, a
22 recollection of all of these many socioeconomic
23 differences.
24 The second area is political
25 contributions. Not surprisingly, the disparity

in resources evident between blacks and whites in Louisiana manifests itself. And again, I present survey data, recent survey data on this, that whites are far more likely than blacks to make political contributions. And of course, I didn't actually present tables on this, but it certainly makes sense that groups that have lower levels of education, fewer resources makes it more difficult to find candidates to run and to run political campaigns. So while turnout is the most obvious, there are other very important ways in which these disparities reflected discrimination impact the ability of African-Americans in Louisiana to participate fully in the political process and elect candidates of their choice.

MR. HAWLEY:

Mr. Mortenson, will you please pull up page 85 of GX-3?

THE WITNESS:

Wow. I actually see it.

BY MR. HAWLEY:

Q. Excellent. Dr. Lichtman, does this table look familiar to you?

A. It does. It's right from the

appendix of my report.

Q. And what does it show?

A. It shows that in critical areas according to the U.S. news state rankings, these are not outlined, but in other rankings you have similar answers in critical areas are very important to a group that's vulnerable like African-Americans and has the burden of very significant socioeconomic disparities. Not only are they facing these present day disparities, but they are dealing with a state that ranks at or near the bottom in critical areas, 45th in health care, 48th in education, 49th in economy, 50th in opportunity, 48th in infrastructure, 50 in crime and corrections, 43rd in fiscal stability 50 in quality of life, 50 overall. This shows the impediments faced by African-Americans in Louisiana, and it also documents the present day ramifications of historical and ongoing discrimination in Louisiana.

MR. HAWLEY:

Thank you, Mr. Mortenson. We can pull down GX-3.

BY MR. HAWLEY:

Q. Moving to Senate factor six, Dr. Lichtman, have Louisiana's campaigns been marked by racial appeals?

A. Yes. They have been marked by both subtle and -- and overt racial appeal, and almost all my examples, except for maybe one, are 21st century examples. I'm not going back to the old year of Jim Crow, the old ones from the 1990s. And these examples go all the way up to 2022 and they don't just involve French candidates. You are talking about some of the leading Republican politicians in the State of Louisiana, David Vitter, Mike Foster; Steve Scalese, one of the members of the Republican leadership; U.S. Representative Mike Johnson, U.S. Senator John Kennedy, as well as important Republican affiliated organizations in the State of Louisiana.

Q. Is it safe to say then racial appeals have been employed by winning campaigns in Louisiana?

A. Absolutely. David Vitter employed this in 2010, and he certainly had a lengthy campaign. Steve Scalese has consistently been winning in Louisiana. Mike Johnson is a sitting

U.S. representative. John Kennedy is a sitting U.S. senator.

Q. Moving down to Senate factor seven, have black Louisianians historically been elected to public office?

A. Not historically and --

Q. Dr. Lichtman --

A. I'm sorry. I lost your question there. You -- somehow the technology fail and you blacked out.

Q. Perhaps it was me and not the technology, so I'll go ahead and ask it again. Have black Louisianians historically been elected to public office?

A. Not historically. Really since reconstruction and not at present.

Q. Is there a disparity between the black share of Louisiana's population and their representation in Congress and the state legislature?

A. Yes. When you look at the voting representation of blacks in Louisiana, it's a little bit north of 31 percent and there's a wide disparity in terms of black representation. Now, I want to be clear. I'm not making a legal

1 conclusion here. In fact, throughout my
2 testimony in the report, I'm never making legal
3 conclusions to the extent I look at things like
4 briefs or court decisions, so substantive to draw
5 a conclusion. So I'm not legally saying at all
6 that any group, including African-Americans, must
7 have proportional representation. I am simply
8 responding to the impact of this query, which is
9 to consider the extent to which black
10 representatives have been elected to public
11 office in Louisiana.
12 And there is a vast discrepancy
13 between black voting age population and black
14 representation. No black is elected to any
15 statewide executive office in the State of
16 Louisiana. That's a 0 percentage. No black is
17 elected statewide to a U. S. Senate position.
18 That is a 0 percentage. When you look at the
19 state legislature, blacks are underrepresented by
20 something like four to nine in Senate and house
21 seats are only being elected in majority black
22 districts, which really shuts off and limits
23 their ability to expand their representation.
24 And in terms of the supreme court and other
25 judicial positions in Louisiana, blacks are also

1 substantially underrepresented. And as I
2 mentioned and same thing in -- as I mentioned
3 previously, these are not black despite the
4 political strength of Republicans, they are not
5 electing black Republicans.
6 Q. Dr. Lichtman, have any black
7 candidates been elected to office since
8 reconstruction?
9 A. Not that I'm aware of.
10 Q. Moving down --
11 A. I think there were five during
12 reconstruction and none since.
13 Q. Thank you. Moving to Senate factor
14 eight, based on your analysis, has the State of
15 Louisiana been responsive to the needs of its
16 black citizens?
17 A. Well, I looked at responsiveness in
18 five areas that are fundamental and especially
19 important to a group like African-Americans that
20 already bears the burden of socioeconomic
21 disparities; things like income, poverty,
22 education, homeownership. So I looked at
23 education, health care, I looked at economic
24 opportunity, and I looked at environmental
25 pollution and found that in all of those five

1 areas, the state has not been responsive to the
2 particular rights and needs of its
3 African-American residents.
4 Q. And are these inequities in some
5 cases caused by official government policy?
6 A. Absolutely. As I point out in many
7 of these areas, all of these disparities, all of
8 these issues are part and parcel of government
9 policies and government policy with regard to
10 polluting industries in heavily black areas or
11 the long delay in adopting Medicaid expansion,
12 something critical to the health of
13 African-Americans and so many failures in
14 criminal justice.
15 Q. Dr. Lichtman, would you consider
16 these findings to be either limited or
17 subjective?
18 A. It's certainly not limited. These
19 are areas of fundamental importance to a
20 vulnerable group like African-Americans, and they
21 are the kinds of things social scientists would
22 look at the well-being and life chances of
23 African-Americans are fundamentally effected by
24 criminal justice, health care, education,
25 economic opportunity, and all the problems I

1 document for health with environmental pollution.
2 And they are not subjective; that is for each of
3 these five areas, I provide specific information.
4 I just don't throw out opinion, and it is
5 relevant I think that as with the rest of my
6 report, no expert for defendants challenge any of
7 the information that I provided under factor
8 eight in my initial report.
9 Q. Lastly, Dr. Lichtman, Senate factor
10 nine, can the absence of a second black
11 opportunity congressional district be justified
12 by core retention?
13 A. Core retention is a criteria,
14 criteria of choice. It's not legally required.
15 It's not like one person, one vote conformity
16 with the voting rights. As a general matter,
17 states certainly could adopt that as one of their
18 redistricting criteria, but here's the problem:
19 Here in Louisiana by adopting that, the district
20 is heard as fundamental criterion redistricting
21 that freezes in the existing packing and cracking
22 under the previous plan; that is, the previous
23 plan, as I explained at length in my report,
24 packs African-Americans into Congressional
25 District 2 far beyond what is necessary for

1 African-Americans to elect Congress persons of
2 their choice and then cracks African-Americans
3 into overwhelmingly white Republican districts
4 where they have no chance whatsoever no matter
5 how unhappy they might be with their white
6 Republican representatives, they have no chance
7 to vote them out of office. They are freezing in
8 the inequities that you had previously
9 established. In fact, if core retention was the
10 fundamental talisman for redistricting as opposed
11 to other requirements, then there never would
12 have been a remedy for a discriminatory
13 redistricting plan. You would just be
14 replicating that plan over and over and over
15 again like you are doing here.
16 Q. Dr. Lichtman, are you aware that the
17 previous 2011 congressional plan was pr- cleared
18 by the U.S. Department of Justice?
19 A. Absolutely. But all that means is
20 that the plan was not retro-aggressive. That
21 means that it did not go to 0 African-American
22 opportunity districts, as objection letters make
23 it crystal clear, are letters not interposing an
24 objection. A pre-clearance does not mean that a
25 plan is free of violating the Voting Rights Act.

It simply means that the plan was not retro-aggressive with respect to the previous plan.

Q. Can the current congressional plan be justified by an interest in compactness?

A. Absolutely not. As I point out in my original report, by freezing in essentially the same district that you had in the post 2010 redistricting plan, you are freezing in place a district that cannot be justified on the traditional ground of compactness. In fact, the district is highly non-compact, as I explain in my report. It reaches out a long finger. It is -- has areas of intrusions that are not smooth or symmetrical and, in fact, it closely represents from way back when the Elbridge Gerry: Salamanderian that brought on the term gerrymandering in the first place. It was nothing about this district that's frozen in place that could be justified by creating a compact district. That's not surprising when you are packing African-Americans into a district and then cracking them elsewhere. It's not surprising that the district does not conform to the /PHR-FP conceivably. In other states, other

1 circumstances, you can have a packed district
2 that would pack that, but not here. That's not
3 what was done and the plan cannot be justified on
4 that basis.
5 Q. And just to clarify, the district
6 you are referring to there is the second
7 congressional district, the mass majority black
8 congressional district?
9 A. That's correct. It's overwhelmingly
10 black, overly Democratic. It's the packed
11 district and all the other districts are the
12 crackers.
13 Q. Is the current age of that district
14 needed for the black voters there to elect their
15 preferred candidates?
16 A. Absolutely not. It's way beyond
17 what is necessary for blacks to elect candidates
18 of choice. I think an analysis that I present,
19 it represents the fourth highest black population
20 in the country. African-Americans are winning
21 that district by an average of 80 percent or
22 more. No chance that an African-American
23 candidate of choice would not win that district.
24 As I said, the Cook Political reforms in terms of
25 their partisan voter index that measures partisan

1 strength has that district about a D plus 25.
2 That means it's 25 percent more, 25 percentage
3 points more than the average Democratic vote in
4 the last two presidential elections, both of
5 which were majority Democratic.
6 And so -- and if you look also
7 nationwide, as I point out in my report, black
8 candidates of choice almost invariably win, even
9 in districts below 40 percent to the 50 percent,
10 and the reason is very simple that in the
11 40 percent range, blacks dominate the Democratic
12 primary get to nominate a candidate of their
13 choice. They then vote overwhelmingly for that
14 candidate in the general election that you don't
15 need much in the way of crossover then for that
16 candidate to win in a district that's within the
17 40 percent range.
18 Q. Dr. Lichtman, did you review the
19 report prepared by Mr. Heffner in this case?
20 A. I did.
21 Q. How does Mr. Heffner attempt to
22 analyses communities of interest?
23 A. Yeah. Mr. Heffner indicates in his
24 report that he can't give us a hard and fast
25 objective, specific definition of what

1 constitutes a community of interest, in fact, he
2 says to a great extent up to the perceptions of
3 the people that we are looking at in a given
4 area. He just ticks off some general boxes like
5 politics, economy, culture, residents,
6 occupation, then in order to analyze communities
7 of interest in the existing plan, I presume
8 though, he doesn't address my report to say that
9 it wasn't tenuous because of the respective, he
10 looks at five broad regions. These regions are
11 much too broad to analyze what's going on within
12 a congressional district, which of course cuts
13 across these regions. In addition, it's not good
14 enough to look at regions as compared to one
15 another because they are so big, five of them to
16 the whole state, you've got to look within. This
17 is the standard social science within differences
18 as compared to between differences.
19 So I took, for example, one of his
20 regions anchored in the City of New Orleans, and
21 I looked at the extent to which blacks and whites
22 in the City of New Orleans according to his
23 criteria basically comes to a community of
24 interest. And of course, they don't share a
25 common history of discrimination, they don't

share a common ancestor, they don't share common politics or political values, they don't -- it -- let me see. They don't have the same occupations and I drilled further. I looked at do they share the same residence and do they go to the same schools beyond all of these other factors. In other words, to what extent are they really integrated within the City of New Orleans as a community, and I looked at the measures of segregation and found that the measures of segregation were quite extreme in New Orleans. More than 60 percent of blacks would have to relocate during integration and that there was also similar lack of integration for the school. So we look at the City of New Orleans, an anchor of one of the five regions. We see blacks and whites have very little in common to constitute within that region a community of interest.

Q. And did Mr. Heffner show that black and white Louisianians in the five majority white districts in the congressional map share commonalities?

A. No. His analysis couldn't possibly show that because again, it's based upon these broad regional -- these regional areas, which

1 congressional districts cut across and what he
2 doesn't analyze within as opposed to between. So
3 I looked at the commonality between whites and
4 blacks across, and again, they don't have common
5 ancestry, they don't have common politics, they
6 don't have common experience in the history
7 discrimination, they don't have commonality in
8 terms of the failure of states to meet their
9 particularized needs. I also looked at
10 residential and school segregation across
11 Louisiana and found that blacks and white, they
12 don't live together, they don't go to the same
13 schools. I also looked at a variety of other
14 indicators highlighted by Mr. Heffner. I found
15 that across Louisiana blacks and whites don't
16 have the same family structure, they don't have
17 the same levels of income or poverty or
18 dependence upon welfare programs or unemployment.
19 They don't live in the same kinds of homes with
20 African-Americans far more likely to be renters
21 than homeowners. There don't have the same
22 access to vehicles or broadband internet, they
23 don't have the same educational attainment and
24 they don't have the same educational
25 pro-efficiency and they don't work in the same

1 jobs and occupations. So there is no basis for
2 Dr. Alford doesn't analyze it and look any
3 deeper. There is no basis for claiming that in
4 these five white Republican-dominated districts
5 that the African-Americans in those districts
6 share a community of interest with whites.
7 Q. At the end of the day, Dr. Lichtman,
8 how many of Senate factors support a finding of
9 vote delusion in the Louisiana essentially all of
10 them with when I look at the slating factor and
11 it's important to understand the thing I alluded
12 to earlier in my testimony. That these factors
13 do not operate in isolation. They are suited
14 just -- they combine to impede the opportunities
15 for African-Americans to participate in the
16 process and elect candidates of their choice. So
17 this horrible and ongoing discrimination leads to
18 socioeconomic disparities which in turn lead to
19 impediments for African-Americans to participate
20 in the voting process and elect candidates of
21 their choice some to the majority vote runoff
22 requirement contributes to that and in turn that
23 contributes to a lack of representation in a
24 government dominated by whites at every level in
25 Louisiana which in turn leads to the failure of

1 the states to meet the particularized needs of
2 African-Americans and in turn leads to the
3 adoption of a redistricting plan that freezes in
4 place a plan that packs African-Americans into a
5 non-compact district and then cracks
6 African-Americans into other districts where they
7 have no chance to elect candidates of their
8 choice standard vote delusion packing and
9 cracking. So you can't just look at these
10 factors in isolation you have to see how they one
11 impacts another?
12 Q. Thank you Dr. Lichtman Your Honor
13 I'd like to move exhibits GX-3 and GX-31 into
14 evidence those are Dr. Lick man's initial report
15 and his rebuttal expert report?
16 THE COURT:
17 Is there any objection? Tom balance
18 balance no objections Your Honor.
19 MR. HAWLEY:
20 I have no other questions at this
21 time Your Honor.
22 THE COURT:
23 Cross-examination mark mark my name
24 is Mark Braden.
25 A. I lost you.

THE COURT:

We still have you.

THE WITNESS:

I don't see you for some reason.

Our camera may be -- just give us a

second.

THE COURT:

Is that better.

THE WITNESS:

Much better thank you.

THE COURT:

Spell your last name counsel mark

mark B R A D E N and I represent the

defendant intervene other legislature

groups. Dr. Lichtman good to see you

again.

A. Good to see you again always a

pleasure.

Q. Thank you. I'm sorry that you were

not able to attend in person we certainly would

have enjoyed your testimony in person here rather

than remote. I try not to ask?

A. Thank you.

Q. Too much of the rest of your

afternoon but I do have some specific questions.

If we could go to your report in page 28 of your report if we could bring that up that's GX-3 or GX-3 or 003. And if we could go to page 28.

A. Okay.

Q. So and I believe you just testified to this but let me just simply confirm. It's you testified as to white crossover voting earlier I believe?

A. I testified both to black cohesion and white crossover voting, isn't that correct.

Q. So on your report here you're projecting in some races what crossover in excess of 25 percent or more than a quarter?

A. I'm not projecting. These are exit poll results subsequent to the election. They are not a projection on these elections.

Q. Okay. That's correct. And you have a chart showing this too, I believe? This would be chart one?

A. Sure you want to go to that.

Q. You should absolutely go to that. If we could bring that up.

A. What page?

Q. I believe that is is 0068, chart one. So?

A. Got it.
Q. So it's your -- it's your view that the record shows white crossover voting ranging from 20 percent to 26 percent in the three elections on the chart?
A. That's correct.
Q. Okay. So and you also believe if you go to page 62 of your report and I also believe you just testified to this but let me just confirm it. That the black candidate of choice can win in a district as low as 40 percent minority population?
A. In the 40 percent range. You know maybe not quite at 40 but certainly in -- below 50 percent in a 40 percent range, absolutely. And the crossover and cohesion numbers bear that out so you would have 45 percent African-American voters in a district I could do the math for you.
Q. Uh-huh (affirmatively)?
A. As soon as I get on my.
Q. Please do.
A. Yeah. Okay. So we got 45 percent times 95, that's 42.75 then we can round that off to 43 to make it easy. Okay. And then we have 55 percent non black and by the way the non black

1 would include not just blacks you got to
2 understand that it would also include Hispanics
3 and others but let's just assume it's just blacks
4 and it's 25 percent. So that's 13.75 and round
5 it off to make it simple an even 13 that's
6 56 percent of the black candidate of choice.
7 Q. Okay. So if I understand those
8 numbers right, there would be no compelling need
9 for the State of Louisiana to create districts of
10 more than 50 percent to elect a black candidate
11 of choice in congressional analysis?
12 A. Well you would have to do the
13 district specific analysis. This is just generic
14 but if you could -- in my view and this is
15 generic I haven't done the detail district
16 specific analysis but, for example, in my North
17 Carolina testimony in the Covington case where
18 the court accepted it I pointed out indeed
19 African-American candidates could win in the
20 40 percent range. And that was particularized
21 analysis of each district but I certainly
22 wouldn't rule out if the state could create two
23 districts about a 45 percent in African-American
24 in their voting age population given that there's
25 going to be Hispanics and others in that district

who do tend to vote Democrat but again depending on the district specific analysis that could give African-Americans an opportunity to elect candidates of choice again I'm speaking in narrative.

Q. Thank you. Dr. When were you first contacted about working on Louisiana congressional redistricting this cycle?

A. I really don't remember. I've been involved in maybe ten cases in this post 20 thousands several months ago at least.

Q. Okay. Do you know if you were working on this prior to the legislative session that resulted in the passage of the first plan and second plans the veto override plan do you?

A. Refresh me is this February 2022.

Q. Yeah. February were you working in February on it?

A. I'm sure I was working in February.

Q. Okay. And do you know who contacted you in regards to that?

A. The alliance attorneys.

Q. Okay. And did you play any role or play any information to the legislature during the process?

A. No.
Q. So is this a little like do have a view with you weren't you the expert witness in 1990 on the Louisiana congressional redistricting?
A. I don't remember it very well but that was one of those short cases when working for the United States Department of Justice and I think it was a very different clearly it was 30 years ago.
THE COURT:
Just a minute. Okay. We -- she wasn't able to take any of that testimony. Dr. Lichtman is there a possibility that you are interfering maybe with your microphone or something because we -- the court reporter none of us could make out any of that any of your last answer.
A. Oh. I didn't hear anything. I can turn it down more if you want.
THE COURT:
No, I don't think it's.
THE WITNESS:
I'm 75 and technology logically challenges is it better Your Honor.

THE COURT:

Yes, it seems better.

A. I'll try it again let me know if works I'll try to replicate it.

THE COURT:

If you have.

THE WITNESS:

So as I said I don't remember but I remember it well but I believe by the United States Department of Justice to defend their policies and I don't believe that we were plaintiffs in that case. We might have been defendants and you know like that whole round of short cases.

THE ATTORNEY:

Q. You don't?

A. Defendants had very little chance.

Q. Might you have been hired by the Democrat leadership of the state let's say the governor the legislature the defendants in the case?

A. Anything is is possible. I know for some of those cases I was hired by justice. I don't remember because it was 30 years ago who I was hired in this case. I kind of assumed it was

justice, but I don't recall.

Q. I would represent to you and to the court my understanding is that you were an expert for the defendants which was the State of Louisiana a the least that's the way?

A. I know I represented the defendants I don't know if I was hired by the State of Louisiana or by justice. I won't argue with you because I don't have a recollection.

Q. Yeah?

A. So whatever you say I'm not going to disagree.

Q. Do you remember that you were arguing on behalf of a plan a 1990s plan that had seven districts of which two were black and five white?

A. I don't remember. I don't remember that detail. But again if you want to represent that.

Q. Okay?

A. I'm not going to argue but I don't recall the specific composition when you say two are black would that be majority black.

Q. Yes two?

A. Or 40 percent black I don't

remember.

Q. Yes two black majority there were more congressional districts one more in that cycle so at that time my understanding of reading the record and is that you were working as an expert for the defendants trying to defend the two black districts in the 7th District plan and that the court held that the plan was an institutional gerrymander; does that ring any bells with you?

A. Not all of this, but definitely I truly that case like all the other cases. I.

Q. And now that you are in the court here with the plaintiffs who are arguing for two black seats in a six member district plan, correct?

A. I have not examined any plans presented by plaintiffs, but I presume that's what we are doing.

Q. Okay. And you don't remember whether or not the court in the Hayes case versus the State of Louisiana in 1993, you don't remember whether or not the court credited your testimony?

A. I'm sure they didn't. We lost the

case.

Q. Yeah?

A. Normally when you lose a case work was not credited your testimony but that's all I remember.

Q. Yes. If we could -- I think maybe I can refresh your recollection. If you go to -- we can bring up a copy of the heys versus State of Louisiana. It's at 839 fed sup 1188. I wish I could hand you a copy of it but I believe we can bring it up on the screen and just really quickly I believe there's a footnote 48 H A Y S. 48 at page 1203 if I've got to right. So if you could take a minute and look at paragraph 48, footnote 48 and see whether or not that refreshes your recollection as to the court's view on your testimony.

A. I don't see it. I'm sorry. I don't see the heading.

Q. Okay. There's a footnote 48 either on I believe it's -- bring up page 46 of 50. I'm sorry I'm looking at this item in my hand and it doesn't do you any good I printed a copy out here for you but it doesn't do you much good to try to hand you a printed copy I presume.

There we are. That's footnote 48.
Could you just highlight it for him and bring it
up and make it larger he has probably the same
eyesight I do.
A. Okay. Now, I can see it.
Q. Okay. Great and it's easy to pick
out there's a couple of references to you which
have been italicized.
A. Let me read it.
Q. Yeah.
A. Because I don't remember it.
Q. Great?
A. But I'm sure this will help refresh
my memory but I need a minute or two.
Q. Oh absolutely.
A. I old and slow.
Q. Absolutely.
A. Got it.
Q. Okay?
A. It doesn't refresh my memory
particularly but I understand it the same so you
can ask me questions.
Q. So?
A. It's pretty self explanatory.
Q. And it should be I believe here that

1 the court rejected your expert testimony in
2 support of a plan with two black seats am
3 consider correct?
4 THE COURT:
5 You have to.
6 A. That's correct but that's the
7 compact opposite of what we have here where the
8 defendants have packed blacks into a single
9 district far beyond what was necessary to elect
10 black candidates of choice so I don't see how
11 this criticism I'm not disputing what the court
12 says relates to the current situation in
13 Louisiana.
14 THE COURT:
15 Counsel Mr. Hawley is about to
16 internally come bust. Hawley Hawley I'm
17 sorry. Mr. Braden, do you have another
18 copy of the --
19 THE COURT:
20 Mr. Hawley we can't hear you Hawley
21 Hawley I'm sorry. I was just asking
22 Mr. Braden for a copy of the demonstrative
23 braid braid my apologies I actually should
24 have given it to you up front. Hawley
25 Hawley thank you.

THE COURT:

Okay. Emergency averted you may continue. Mark mark and so you don't remember holding this case rejecting the plan as a racial gerrymander had two black seats you just don't have any recollection of that.

A. I do remember the state lost the case. I don't remember the details of the finding but it probably was a racially gerrymandering I think the same case as what the state is doing now.

Q. If you can't remember, we will just move on from there.

In -- in your report in this case, do you provide any geographic analysis showing whether or not the black population has become more compact in the case or geographically concentrated since the 1990 has the geography?

A. I've not analyzed plans.

Q. Okay?

A. In this case so.

Q. It's really more?

A. I can't answer that question.

Q. Okay?

A. One way or the other you have to ask the plan drawers.

Q. I really wasn't asking you about the plans I was asking you about the dispersion of the black population in the State of Louisiana. Do you have any familiarity with that?

A. I didn't look at that.

Q. Okay. And I just let me use Maryland as an example. So maybe this will enable you to answer the question as to whether there's been a change in that. In Maryland the black population is essentially concentrated in in one or two urban areas depending how I do define urban areas the Washington Baltimore corridor and the rest is predominantly white?

A. Washington although it's not quite the corridor because you have in the Washington suburbs two very large counties Prince George's county and Montgomery county so not necessarily the corridor and Prince George's county is very heavily back and while Montgomery County is not majority black it has a very substantial black population as well. And it's very big. It's got over a million persons in large geographic so it's certainly not true that in my home state the

1 African-American population is very narrowly
2 concentrated in confined geographical areas.
3 Q. So you wouldn't -- you don't believe
4 that a majority of the black population in
5 Maryland lives in -- in what we would be
6 considered to be urban or surburban areas?
7 A. It's you know Montgomery you can
8 call urban it's really surburban certainly there
9 is a correlation between geographic area and
10 black population, absolutely. There certainly is
11 a degree of concentration there that can effect
12 the drawing of districts.
13 Q. So?
14 A. But it's not just confined to a very
15 narrowly circumscribed city.
16 Q. And so you don't understand -- I'm
17 going to waste your time here for just a second.
18 You don't understand or not you didn't opine in
19 any way that the -- that Louisiana is different
20 than many other states in the sense that it has
21 large urban black populations in a couple
22 locations but very dispersed rural black
23 populations in virtually every parish in the
24 state?
25 A. I can't answer your question as I

1 told you that's beyond the scope.
2 Q. Beyond the scope?
3 A. Of my expertise.
4 Q. So do you happen to know how many
5 black elected officials there are in the state?
6 A. Not for every jurisdiction but I can
7 tell you there is no statewide, none in the U. S.
8 Senate, one in Congress and something like 34
9 maybe in the legislature and something like seven
10 in the I forget how many but over 20 close to 30
11 mayoral situations and municipalities.
12 A. Mr. Braid again I'm going ask that
13 you speak up or use the microphone I'm having
14 trouble hearing you and I know Dr. Lichtman says
15 he is a little bit challenged in his hearing mark
16 mark my apologies.
17 THE COURT:
18 Thank you.
19 THE ATTORNEY:
20 Q. Now, as to gubernatorial elections
21 in Louisiana did the candidate of black choice
22 win?
23 A. In which elections.
24 Q. The last two gubernatorial races?
25 A. In the majority race s.

Q. Last two races for governor in the State of Louisiana?

A. Oh, yes of course John Bel Edwards you know one swallow does not make a sprig and he's not black.

Q. Okay. And you talked about racial from the 1990s, the runoff race between the clan candidate and Edwin Edwards and I guess would could come up with some colorful descriptions of that race but we won't go that way but my understanding is you testified that it showed the impact of slating but didn't the black preferred candidate win in that race too?

A. I did not testify at all about that race as an example of slating. I simply said in a different factor, factor relating to runoff and at large elections and it's factor three not factor four that that was an example of a runoff election that caught nationwide attention that was well before the foster decision. I didn't put it in the context of slating at all.

Q. And so I heard you say that -- that black candidates don't win at large elections. Do you know whether the mayor I don't think I can see it. I don't think we are in East Baton Rouge

I think we are in Baton Rouge parish. I could be wrong about that but my understanding is that the mayor of East Baton Rouge is black. Do you know that?

A. Let me check. I might have that information. I'm not sure.

THE COURT:

We are in East Baton Rouge Parish and the mayor of the Baton Rouge metropolitan greater Baton Rouge is African-American.

THE WITNESS:

You are talking about the mayor of Baton Rouge city.

MR. BRADEN:

The judge graciously answered the question for us.

THE COURT:

No. I didn't answer you that we are not in east Baton Rouge parish. There's an East Baton Rouge Parish and the Mississippi River and one bridge connects those actually bridges I guess.

THE ATTORNEY:

Q. And I understood from you that the

mayor of East Baton Rouge is black wit I can answer you yeah Baton Rouge is a black city and likely a black mayor that's exactly my point blacks can win in black jurisdictions and they are getting shut out in white districts statewide and white justifications and none of the blacks are Republicans?

Q. Is it your position that it's a majority black parish?

A. I didn't look at the parish. I looked at the city.

Q. Okay. No further questions Your Honor?

THE COURT:

Okay. Is there any redirect?

Hawley Hawley it's brief Your Honor, thank you. Dr. Lichtman just a few moments ago Mr. Braden asked you about some of the particular of of your expert testimony in the Hayes case in the '90s. Do you recall that.

A. I recall the questions, yeah.

Q. Yes?

A. And it did help me refresh a bit on heys which I didn't remember in detail.

Q. Here I will represent to you since we no longer have it on the screen that the core characterized the defendants objective in that case as to quote prove that factors other than race could explain District four. My question is that the inquiry you were asked to undertake in this case to explain what factors explain a challenged district?

A. If you correctly I don't remember but I assume you correctly characterized that my query here is quite different.

Q. And what is your inquiry here?

A. Well, my inquiry here is to look at the factor and look at effectiveness fact ares to determine whether the five white majority districts established communities of interest between blacks and whites to assess the rational of maintaining continuety of districts and to assess the rational with respect to the traditional redistricting requirement of the packs all the A L S Senate tact for related to the different matter s.

Q. And ultimately the Senate factor inquires a Senate. Whether the particular legal claim or particular district at issue is that

fair to say?

A. I don't want to give you a legal opinion Y can say I have done Senate factor analyses under very different cases and situations.

Q. Thank you. Dr. Lichtman. No further questions. Thank you?

THE COURT:

Okay. Thank you Dr. Lichtman we are going to let you go for the afternoon. Okay. It's.

THE WITNESS:

Thank you Your Honor.

THE COURT:

Thank you, sir. It's quarter to five have we got any other witnesses that we can go until 55 yes, sir Your Honor my name is. This is my first appearance before the court.

THE COURT:

And you last name spell it for the court R-I-Z-Z-U-T-O.

THE COURT:

Okay Mr. Rizzuto your witness.

THE ATTORNEY:

Q. Plaintiffs call on Dr. R Blakeslee Gilpin, G-I-L-P-I-N?

R. BLAKESLEE GILPIN,

WITNESS ADDRESS, WITNESS CITY, LOUISIANA WITNESS ZIP, after having first been duly sworn by the above-mentioned court reporter, did testify as follows: Rizzuto

Q. Yep. My name is Robert Blakeslee Gilpin the standard spelling of Robert Blakeslee, B-L-A-K-E-S-L-E-E, G-I-L-P-I-N?

THE COURT:

Go ahead, counsel.

THE ATTORNEY:

Q. Good afternoon, Dr. Gilpin. Could you please introduce yourself to the court?

A. Yes. My name is Dr. Robert Blakeslee Gilpin. I am an associate professor of history at Tulane university and the director of graduate studies at the history department there.

Q. Can you tell us about your educate o'clock background?

A. Yes I received my B A M A simultaneously in Yale university in 2001 in American history an M fill if from canal bridge university in 2002 in British history and then an

M fill from PhD Y. From jail in 2009.

Q. And you mentioned that you were at Tulane. Could you speak to your role there?

A. Yes. So I teach a variety of classes on American history, U.S. history in law, civil construction, southern intellectual and cultural history and mentor and advise undergraduate and graduate students.

Q. And do any of those courses you just mentioned cover Louisiana's history of official discrimination against black voters?

A. Yes all the courses touch directly on that subject.

Q. Have you ever written anything that has covered the history of voters registration in Louisiana?

A. Yes I've written chapters and volumes about the reconstruction period moving into the 20th century that deal directly with that subject matter.

Q. Professor Gilpin is in your first time testifying as an expert witness in a case?

A. It is indeed.

Q. Your Honor we in southern history?

THE COURT:

1 Any objection.
2 MS. MCKNIGHT:
3 We have no objection.
4 THE COURT:
5 Okay. Dr. Begin pin with be the
6 allowed admit.
7 THE ATTORNEY:
8 Q. PR 1388?
9 THE COURT:
10 You may. Rizzuto.
11 THE ATTORNEY:
12 Q. Now, professor Gilpin I just handed
13 you what is marked as PR 13 and PR 88 do you
14 recognize those?
15 A. Yes, I do.
16 Q. What's PR 13?
17 A. PR 13 is the main report I was asked
18 to produce for this case.
19 Q. And PR 88?
20 A. Is the supplemental report I was
21 asked to produce.
22 Q. Now, let's start with your first
23 report PR 13. Can you speak to its purpose?
24 A. The purpose of the report was to
25 talk about the State of Louisiana's long history

1 of discrimination against its black citizens and
2 specifically how that history fed into voter
3 discrimination particularly after the franchise
4 was granted in the late 18 '60s.
5 Q. Un a what was the scope of your
6 inquiry in that report?
7 A. So my report began in pre American
8 Louisiana which is really when the racial
9 categories that are going to later be useded by
10 the State of Louisiana both pre suffrage and post
11 suffrage were created and sort of hone bid the
12 state and were used up until the present day.
13 Q. Broadly speaking what were your
14 conclusions?
15 A. So from the very beginning, the
16 state has been quite seriously invested in
17 categorizing its citizens by race and
18 specifically to used those categories to
19 discriminate against black freedoms and after the
20 18 '60s particularly or specifically against the
21 right to vote. So that was really the target of
22 a huge number of efforts by the State of
23 Louisiana throughout the post 1868 period.
24 Q. I'd like to start from the beginning
25 of that history Dr. Gilpin can you speak to the

1 historical roots of official discrimination in
2 Louisiana?
3 A. Yeah. So as I was just mentioning
4 that process began with categorizing an its
5 citizens and there was a period of fluidity
6 before the state became much more rigid about
7 defining who was black and who was white and
8 there was a middle category that began to be
9 erased in 18 '40s and '50s when the state became
10 very concerned with the influx of immigrants that
11 didn't really fit any of the categories they had
12 and that was when the State of Louisiana created
13 a lot of methods and tools that they would use to
14 disenfranchise black voter the so property
15 requirements poll taxes, and things like this
16 literacy tests were actually developed in the 18
17 '40s and '50s and then repurposes later so so
18 that's really the antebellum roots of modern
19 voter discrimination in the State of Louisiana.
20 Q. What's the purpose within your
21 report of letting out this antebellum history?
22 A. Well as I was just mentioning the
23 sort of connection between these things is often
24 quite concrete so literally the white elite the
25 in the post bellum period simply just sort of

1 went back into their own history to find these
2 tools and repurpose them but basically that the
3 -- the found foundation of both racial
4 categorization and voter discrimination itself is
5 really firmly established in the antebellum
6 period and then carried through very
7 intentionally in the post bellum period.
8 Q. Now. Moving forward in history to
9 efforts of before how did official discrimination
10 against black voters discrimination after is a
11 sore?
12 A. So in the first constitutional
13 convention which actually happens in the middle
14 of the civil war is the first effort by white
15 Louisiana to kind of re fashion old laws and
16 maintain some of the racial hierarchies that they
17 established in the antebellum period the black
18 codes that were written in 1865 are the first
19 examples of that and really fight explicitly
20 understood as as common much of slavery rules
21 that they could. It's not until the 18 '90s that
22 those take a much more ex politically form and
23 most notably with the grandfather clause which
24 was created by Louisianians in 1898 that
25 establishes a rule where black voters have to be

able to trace their ancestry of either a father or grandfather they had to voted before January 1st of 1867 which was an illogical impossibility because black couldn't vote before that date so it was an effective way of taking blacks out of politics at the time of the grandfather clause they represented by 44 percent of the elect at in Louisiana which has never been reached since then within two years that was below one percent because of the effectiveness of the grandfather clause so it took black voters from 130,000 down to 2000 in just two years.

Q. And the tactics like the grandfather clause and the you mentioned continued into the 20s century?

A. Yes the grandfather clause was struck down in 1950s but the Louisianians developed in the 1850s tests poll /TAGSs understanding clauses and really invests a lot more power in registrars of voters was really something that was the weight of the state was putting behind that so to the degree you could have a white registrar or if they could not count the number of jelly beans in a jar that was at the polling station.

Q. Now, moving a bit farther into the 20th century, how did voting fair after the Voting Rights Act was passed in 1965?

A. So it's not so much the discrimination change especially in terms of magnitude or the determination by the State of Louisiana to disenfranchise its black voters what the Voting Rights Act really did was make both citizens and the state the federal government aware of these attempts to disenfranchise black voters and this is particularly through the pre-clearance clause that made it possible for the sort of kind of dizzying extent of these efforts were kind of brought to light and then also gave a possibility for those efforts disenfranchise black voters to actually be contested in court.

Q. Can you speak about any of these section two violations that you note in your report?

A. Yeah. So I think the one that I find most compelling is the -- is the criticism versus reasonable err case of 1991 because it bears such a strong re semblance to things that have happened in the last calendar year in the

1 State of Louisiana or west Monroe value value so
2 these are the exact same theme 30 years apart the
3 first one we were made aware of because of
4 pre-clearance the second one is just through the
5 doggedness of I'm sure some of the people in the
6 this room to actually bring those kind of things
7 to the light because the determination of the
8 state has remain basically un altered the America
9 immaterial of making us aware of them has
10 drastically changed after 2013.
11 Q. Now, turning to your second report
12 PR 88 what was the purpose of that report?
13 A. So that report is the purpose was to
14 talk about the history of racial classification
15 by the State of Louisiana. Again, stretching
16 back to the pre American Louisiana which is when
17 these racial categories sort of started to be
18 formulated but particularly after the tread way
19 case of 1910 which is when the State of Louisiana
20 adopted this one drop rule if anyone could be
21 proven to have one percent ancestry they were
22 going to be considered black by the State of
23 Louisiana.
24 Q. Now, how long was this one drop rule
25 on analog in lieu allow?

A. So that remained in place until 1970 when it was replaced by the 13 second law that was very vigorously contested in the 19 '70s actually by white Louisianians or people who considered themself white who sued the state to try and be reclarified that law was changed in 1983 to try and lower the standard by which what the state would accept although during that case I think quite interestingly the state was citing ancestry going back to Mobile, Alabama in 1860 to prove that the person was black. It's really interesting how much they have vested the State of Louisiana is in those categories and how were they used quite to disenfranchise voters.

Q. Stepping back a moment what was your conclusion in your report?

A. Most particularly that those categories have been used over -- certainly over the course of the 20th and 21st centuries to disenfranchise black voters but overall that there is just such a basic absurdity to racial categorization because there is real no science behind it but the state remains very invested in making those distinguishing categories so that they then can be used in cases like this.

Q. Did you find anything related to how the history may effect the ways that multi racial Louisianians might identify today?

A. Yeah. Well I think one of the things you have to take into consideration we are talking about over 300 years of history and Louisianians of all colors are keenly aware of the consequences of what their category is both in terms of theirself identification and how the state identifies them. And so there's just -- there is an enormous amount at stake in terms of what they are identify as and what the state identifies them and they are very aware of that and that sort of guides a lot of the aid going forward.

Q. And just to be clear this history time to the history you discussed in your original report?

A. Yes. I mean I think it is it's pretty much it's a real corner stone of everything that's discussed in the first report is what I'm discussing in the second report.

Q. Dr. Gilpin how would you respond to the proceed that your reports don't include enough of examples of race discrimination?

A. Well I disagree pretty fundamentally with that premise. Most particularly because after the Voting Rights Act was renewed in 1982 to me everything that's come since then and we are talking about the last four decades I in recent history and also particularly I recall that because of the remarkably consistently with which white Louisianians have attempted to disenfranchise black voters this is not something that stopped at any given point but it's really been a threw line in the entire history of Louisiana even if we are talking about pre suffrage but particularly we are talking about post 1928 the state is just -- displayed a remarkable degree of continuity doggedness determination to stop black people from voting.

Q. Could you please outline for the court one of the examples of recent discrimination that you outline in your report?

A. Sure. I mean I mention a few minutes ago the west Monroe bald win can which I think is probably the most frequent scream that's used by the Louisiana politician to try and disenfranchise black voters that is that mentioned in west Monroe the hardy versus educate

card case is also a very very recent example we are talking about in the last calendar year of these -- of a variety of schemes basically whatever people can come up with in order to disenfranchise black voters that's always the goal and it's really whatever tools are at their disposal to do that they will try to utilize.

Q. Dr. Gilpin, in your view, are discriminatory practices against black voters a thing of the past?

A. I would say they are very much the defining characteristics of Louisiana politics past, present and certainly it looks like the future.

MR.

Thank you, Dr. Gilpin. At this time, we move PR 13 and PR 88 into evidence.

THE COURT:

Any objections.

MS. MCKNIGHT:

No objection Your Honor.

THE COURT:

PR 13 and PR 88 admitted any Rizzuto thank you Your Honor.

THE COURT:

Any cross.

MS. MCKNIGHT:

Yes, ma'am. Good afternoon Dr. Gilpin. I'm indicate McKnight with legislative intervenors and I have a few questions for you this amp or this evening.

A. Okay.

Q. Let's start with PR 13 your report in this case we are going to start on page 39. Does he need to be switched? So Dr. Gilpin you include in your report a section titled voting rights in Louisiana, 1982 to 2013 do you see that?

A. I do.

Q. Okay. And in this section you study case law developments related to the Voting Rights Act, right?

A. Yeah. I think that's one of the things that are examined in this section.

Q. Okay. Now, during this time period following the 1990 census Louisiana tried to comply with a Voting Rights Act by drawing two majority minority congressional districts,

1 correct?
2 A. I mean, I am aware of this I'm not
3 sure it's discussed at any length in the report.
4 Q. Okay. And Louisiana's effort to
5 draw a second congressional district after the
6 1990 census was struck down by courts as a racial
7 gerrymander, correct?
8 A. Again, I'm not sure if that's in the
9 scope of this report. I'm dimly aware of this
10 otherwise.
11 Q. Okay. So a Voting Rights Act case
12 in the early 1990s would not be within the scope
13 of your report which includes a section titled
14 voting rights in Louisiana 1982 to 2013?
15 A. No. I mean it would fall under that
16 heading perfectly comfortably but it may not have
17 been included for whatever reason.
18 Q. And what might that reason be?
19 A. Possibly that I overlooked it
20 possibly that the report was getting quite long.
21 I'm not entirely sure.
22 Q. Okay. So I understand that in your
23 report you do not address Louisiana's effort to
24 comply with the Voting Rights Act by creating a
25 second majority-minority district following the

1990 census, correct?

A. I mean, if you didn't find it, I'm not sure that it's in there.

Q. Okay. And, in fact, you do not even you cite a lot of case law but you did not even cite one of the Hayes cases in the heys line of cases?

A. No I don't believe I cited any of the Hayes cases.

Q. Okay. Thank you. Let's move onto page 45 in your report.

A. (Complied.)

Q. Dr. Gilpin you note toward the end of the 4 th paragraph the one that starts the hotly contested, you note quote the changes to the V R A in the wake of shell bee county meant that states were no longer under the burden of proving their laws to be non discriminatory, do you see that?

A. Yes, I do.

Q. Okay. So before shell bee county, which was a 2013 supreme court opinion, Louisiana was under a burden of proving its voting laws to be non discriminatory, correct?

A. Yeah. That's my understanding of

1 the Section 5 pre-clearance.
2 Q. Okay. And in 2011, so before shell
3 bee county, Louisiana's congressional map was pre
4 /KHRAER, correct?
5 A. I'm not sure that I discuss that in
6 this report. I mean I heard it in the courtroom
7 today.
8 Q. Okay. So you understand that to be
9 true?
10 A. Sure.
11 Q. Okay. Thank you no further
12 questions. Dr. Gilpin.
13 THE COURT:
14 Any redirect? Rizzuto no redirect
15 Your Honor.
16 THE COURT:
17 Okay. Thank you. Dr. Gilpin you
18 may go. Or you are released next witness?
19 Good afternoon Your Honor I'm making my
20 first appearance I'm sad am /SA F a that's
21 S A V IT T on behalf of the Robertson
22 plaintiffs and we would like to call
23 Ashley Shelton.
24 DOROTHY NAIRNE,
25 WITNESS ADDRESS, WITNESS CITY, LOUISIANA

WITNESS ZIP, after having first been duly sworn by the above-mentioned court reporter, did testify as follows: /SA F /SA F /SAOUZ /SAOUZ and would you please state your name and spell it for the record please

A. Sure my name is Ashley A S H L E Y S H E L T O N.

Q. Good afternoon Ms. Shelton?

A. Good afternoon.

Q. Could we please pull up PR Exhibit 11 and do you recognize this document Ms. Shelton?

A. I do.

Q. And what is it?

A. It is my declaration.

Q. Okay. Thank you very much. We can put that down. Ms. Shelton where do you live?

A. In Baton Rouge.

Q. And how long have you lived in Baton Rouge?

A. My whole life.

Q. Okay. And thank you and what is your current job title?

A. I am a president and CEO for the power coalition of equity and justice.

Q. And what does the power coalition do?

A. We work: Historically /TKEUS /EPB franchised communities throughout Louisiana engaging helping connect them back to their voice their vote and their power.

Q. Thank you and would you say you focus on communities of color in your power /KAOGZ?

A. Yes.

Q. And Ms. Shelton why are you are you hear /TAOD?

A. I am hear today because we did a ton of work working across communities State of Louisiana I participated in redistricting last cycle and I probably could have shot a /KAPB none through the capital and not hit one important and this particular power coalition engaged over a thousand citizens across the state that participated in this process from census all the way to the road show understand a then the special session and so I am here today to represent the folks that consistently asked for a fair and equitable redistricting process and did not receive that.

Q. Thank you Ms. Shelton and you mention that the power coalition /WORBGZs predominantly with communities of color based on your experience working with power coalition do black voters face discrimination related to voting?

A. Yes.

Q. And could you describe that discrimination?

A. Sure. I mean. You know, Gosh, so for you know just in our own experiences, we during COVID so 70 percent of the deaths from COVID early on were African-American people so /TKEUS proportionately black people were dying from COVID and in that -- you know in that process of you know, the then the secretary of state then put into place during the primary several reasons that votes could you know could request an absentee valid especially if they have underlying conditions but when we got to the general election they did not want those reason to stand and so we ended up having to organize and sued the secretary of state and the governor did stand with us even though we had to name him in that lawsuit that at the end of the day with

so many African-American votes dying early on in had COVID with the continued this was before vaccines before we understood how it was going to continue to grow and change we were able to ensure that black voters that /TKEUS purport /HRAOE had underlying conditions had access to their vote also there is an example in baker baker is right outside it's one of the many incorporated areas of Baton Rouge right outside and during the 2020 election there was a white man who sat in his chair with a very large gun outside of a black precinct he was you know 600 yards away or feet away which is the law but clearly sitting there with a large gun in proximity to a black -- black precinct you know was alarming and very squarely the police were called FBI state troopers I mean everyone was there but no one you know took action. Because it clearly was you know voter intimidation but nobody took action on that and so basically multiple you know -- multiple you know police groups just kind of sat and watched him instead of removing him which black voters were comfortable making their vote.

Q. Thank you and was power coalition

and its constituents present at that baker roll eight poll?

A. Yes we were there had two staff members and several mens of the community and we had to move them back so they could be in a safe distance as the police kind of worked out what was going on but again he was able to sit there for a good bit of the day.

Q. And so is it fair to say that you didn't feel like your needs were adequately responded to by the Louisiana officials?

A. They were not.

Q. Thank you. In your experience, are there greater obstacles for black voters than for white voters?

A. Yes.

Q. Could you describe some of them?

A. So in you know in Louisiana we have transportation issues you know if you like even New Orleans which probably has our best transit system still lacking you know in many ways Baton Rouge has a system that is not -- you know that works but is not meeting the needs of our entire city and Shreveport has even less of an transit system those are our three largest metros

with Jefferson but you know but Jefferson has none either and so the idea that black voters have to like we provide ride to the polls so that we can ensure that black voters can actually vote in elections but again black voters /TKEUS portion at /HRAOE experience poll enclosures and poll changes they also too whenever they have a polling location they also experience that their polling locations also have issues with disability accessibility and so for us the ability to be able to engage black voters in a sure black voters and ensure that they have access to their voice and their vote is really critical for us and one of the things that I love in New Orleans we get to work with a funeral home that they have a whole vehicles that they donate to the process not the /HURTSs so people understand the importance of getting people to vote and in the rural communities it's even harder but we do work with partners and churches across the state to make sure that people can access their right to vote.

Q. So is it fair to say that lack of access to transportation makes it harder for black Louisianians to participate in the

1 political process?
2 A. Yes.
3 Q. And Ms. Shelton does power coalition
4 work to contact Louisianians by voting?
5 A. Yes.
6 Q. Can you describe some of power
7 coalitions efforts in that front?
8 A. Absolutely so we work we basically
9 build what we call a universe and usually for
10 statewide elections about 500,000 people and we
11 do text messages phone phone banking phone calls
12 as well as candidacies where we are door knocking
13 and talking to communities we also do candidate
14 surveys and candidate forums.
15 Q. And Ms. Shelton do black voters need
16 this extra out each in your experience?
17 A. Yes.
18 Q. And why is that?
19 A. One of the things that we found in
20 our work is that nobody was talking to black
21 voters or brown voters or indigenous or A B I and
22 that the work that you know we know that of our
23 universe of voters that we are reaching we are
24 sure you know historically /TKEUS /EPB franchised
25 communities that we can get about 65 to

65 percent of our universe to turn out to vote which proves to me that no one was addressing them no one was addressing them no one was including them in the process and a lot of our work is reconnecting people to an agency as voter.

Q. Thank you. In your experience working with power coalition are there technology barriers that make it difficult to reach black voters?

A. Yes we I mean many folks have talked to and it's no secret that broadband is an issue throughout urban communities but it's also an issue in the urban communities we work on votes file phone numbers change constantly folks are dealing with housing security and other issues and certainly it's certainly an issue of access and you know whether or not they can afford a cell phone a house /TPAOEPB or whatever some of those other ways that we would try and contact them.

Q. Thank you Ms. Shelton and you mentioned the impact of poll enclosures on the communities you served are you aware of poll closures that resulted from precinct

consolidation?

A. Yes.

Q. Could you speak to that issue?

A. So I mean, we have one you know instance you know that kind of comes to clearly to mind in New Orleans east they were closing and consolidating a polling location that was predominantly African-American and in that polling location you know, we tried to work with the secretary of state to make it make sense for the -- for the voters that were chronic voters many of them in that area and what ultimately you know their argument was well we are just moving it a couple of miles but in moving it a couple of miles meant that the community would have to you know cross a dangerous highway and so again, on paper it doesn't look like it is this big deal but to those voters that are are trying to access their vote and used to walk to the polls can no longer do that in a safe way if they have got to cross a major interstate to access their vote.

Q. Thank you Ms. Shelton I'd like to shift gears could you please provide a brief overview of power coalition activities relating to the 202 on redistricting process?

A. Yes we started our process and worked all over the state to engage rural community /TPH-S the power census in being counted try to address some of the fear and fear monitoring that was happening about what did it mean to take the census and we did that work throughout the census process and then shifted gears you know shortly thereafter to start teaching people what redistricting was so we held redistricting where we taught folks cracking packing other definitions and we also worked with them learned Mapitude they learned how to drew their own maps we also have three redistricting fellows that also did trainings across the state I think they did had three trainings in individual small clusters different parts of the state and I think most importantly we supported people to participate in the road shows and so I mean again there were at almost every road show there were at least a hundred people that came and testifieded at each stop and overwhelm /E /HRAOE the majority the testimony at every single road show white and black old and young is they wanted fair and equitable plan understand a they want add second edge majority district it was

clear it was real that people said this all over the State of Louisiana and they were ignored by house governmental affairs and Senate governmental affairs.

Q. Thank you Ms. Shelton hazard part of power coalitions did it submit that contained more than one majority black district?

A. We did.

Q. And why it was important to provide those maps to the legislature?

A. It was important for us to prove that it can could be done that you know again we lost five percent in white population we gained almost three percent in black and other you know populations so for us this was about honoring the fact that we have the second largest black population in the country and that actually that it could be drawn in many different ways to prove that it wasn't just an idea or something that you know that I wanted but that it actually was something that was possible and necessary for a fair and equitable maps in Louisiana.

Q. Thank you Ms. Shelton how did power coalition and its constituent /TKAOURGS the radioed shows and legislative sessions?

A. We were treated it was unfortunate because I think for many of the road shows you could see how /E Senate governmental affairs Senate affairs members doodling and not looking up people are telling their stories of voting generations work to ensure that their folks had a right to vote and folks are looking down and not paying attention and then when we went to the capital and we also we had over you know for the opening of the redistricting session there were over 250 you know people of color white alleys that shows up to say we are here we are watching you this is what we said we wanted and we are going to continue to say what we want and even in the legislative commute rooms legislators walking around not paying attention basically waiting to see when all the all the testimony would be done so they could vote not one map that included a second majority minority district get out of a committee we they wouldn't even allow it to be discussed on the floor.

Q. And Ms. Shelton were there any other instances that you felt that you were not heard by the legislature during that time?

A. Yes so on the day when they were

over /SRAOEUDing the receipt owe we were all at the capital we were in the house voted before the Senate you know the house voted I mean it came to down to a couple of votes right and at the end of the die we didn't you know the veto was over turned basically they knew in the house that it was over turned because the votes on the Senate side and once that happened once the vote was made they cheered they celebrated the vote was a long racial lines and then you walk across the hallway to the Senate chamber and it is like a funeral it is somber it is quiet the black Senators testified and said you know we can't change their mind us but this is the historical nature of what we are trying to do here and again, the vote of course the governor's veto was over turned.

Q. And just for the record who cheered?

A. The conservative members of the house and and members of the Senate because they both came to both sides.

Q. And could you please describe what it felt like to you and power coalition's constituents when the legislature over road the vet /AOE?

A. I mean consider think it's you know deflating and it's also /TPWEPB like a true sign of /TKEUS /EPB France /KHAOEUZ /-PLT so how is it thousands of people participate and they say specifically two key message understand a the message that I gave them the messages that were on their card that were messages that had you know like again a familiar /KWRAL fight for them around having their voice and their vote and to then you know, one get a community out crew cry for the governor to veto and then to have that vet /AOE over turned it just basically tells voters that we have worked so hard to give agency to as a voter and remind them that their vote and voice actually has power it just basically says to them it's politics as usually it doesn't matter and so they disengage and so it makes our work doubly hard.

Q. And following that Ms. Shelton how did the impact the power?

A. So for power coalition you know we have got mid terms coming up in the fall and so this current you know like so we do a lot of education work with our communities the historically /TKEUS /EPB franchised communities

in Louisiana and in the process of doing that work right like we have got to we have got to educate them on like what district do they live in what changes have happened and then also too engage them in the process of understanding you know what and when they are going to vote and I think the specifically for power coalition again we are -- we are doing touches right like you know last last year we did over I want to say over a million touches and when you talk about a million touches that means that you know we are touching voters at least three times so phone call door knock you know a text message or a whole bunch of other things and so the difference is me having to do double work because I'm dealing with /TKEUS /EPB franchised voters you told me that if we engage and we provided our voice that it would be okay and so they are deflated and disconnected and so again double work right versus working with a population and group of voters who don't feel /TKEUS /EPB /TPRAPB /KHAEUZed who do feel like they do have a voice in power and that they are going to be elect candidates of choice and we know that being able to elect a candidate of choice drives voter

interest and voter excitement in these processes and so on -- so again this map that is enacted I've got both a /TKEUS /EPB France /KHAOEUZed and /TKEUS inflated group of people who feel this system doesn't work.

Q. Thank you Ms. Shelton shifting gears you said lived in /TKPWRAOUPBLG your whole life?

A. Yes.

Q. Are there differences between north Baton Rouge and south Baton Rouge?

A. Yes.

Q. I think it's Baton Rouge is a tail of two cities basically /WEFR the worst and the best quality of life within a few square mail miles of each other north Baton Rouge being predominant African-American south Baton Rouge being white and the income certainly the south Baton Rouge is more and /PHOD re lat income and south Baton Rouge is a much more /WELTDZ /AOE community and then also too political Chi it's been interesting because basically voters in the State of Louisiana in the state city of Baton Rouge basically they have voted to success seed from north Baton Rouge is the best way I could put it it is currently in court but it

gives you an idea of how powerful that difference is or that division between communities in East Baton Rouge Parish?

Q. Thank you. And you mentioned that north Baton Rouge was predominantly people of color would you say that north Baton Rouge or the people of north Baton Rouge have common needs that go beyond race?

A. Yes.

Q. And could you speak to those please?

A. Yeah I mean I think that we have you know second we are the second etc. Poorest state I think maybe some of the data we saw today maybe we beat Mississippi to be the poorest state in north Baton Rouge we have got housing insecurity we have got food insecurity we have absolutely food deserts as well as no opportunities for economic -- you know economic growth and you know, and yeah.

Q. Thank you Ms. Shelton. Shifting gears again, the defendants argue that political party rather than race is responsible for voting patterns in Louisiana. In your experience as president and CEO of power coalition do you find that black voters vote for Democrats just because

they are Democrats?

A. No I think that vote for -- I mean I think they vote for who is going to care about theirself interest does that happen to be /TKPHREBGs most most of the time more than likely however I think it is also true that I don't think the black community is / EFRBed well by either side.

Q. Thank you Ms. Shelton just one more topic why is it important to power coalitions constituent to be an additional black majority district?

A. Because again I think that one of the things that was so beautiful when we started the redistricting journey as /APBZ /O RZ an trying to engage people very dense content it's not like anything that we have been talking about easy to understand and multiple /TK-FRPZs and so to be able to engage that many people in the process to have them show up at the capital every day and have them feel engaged and only powered and this was right the way that again there was several different ways that they could have gotten a second district and then to have the legislature tell them no at every turn from the

road show to the redistricting special session to the veto override and so the power coalition this is about voice and power and you know about black people being able to have -- to be elect candidates of choice and by packing us all into one district we basically minimize the ability of black voters to elect candidates of choice.

Q. Thank you Ms. Shelton no further questions?

THE COURT:

I have two just before cross if you don't mind ma'am. One is you mentioned the precinct consolidation in New Orleans east. You said it moved a few miles but across a dangerous highway can you tell me what highway that was.

A. I'm pretty sure it was -- it's I- 10 I think it's still I- 10.

THE COURT:

It's I- 10.

THE WITNESS:

Yeah.

THE COURT:

You said highway and I didn't know internist highway my other question was

you said two messages came through in these road shows from various people that power coalition encouraged to participate in the political process. You didn't say what those two messages were.

A. Oh sorry that they want add fair and equitable redistricting process and that they wanted a secretary majority maritime district to honor the change in population and shift in population.

THE COURT:

Okay. Thanks that may have provoked additional questions which I'm certainly going to allow counsel to have. Cross?

MR. SHELLY:

Thank you. Your Honor hi Ms. Shelton my name a Jeffrey Wale attorney for the state and I'll be asking you a few questions this afternoon.

A. My.

Q. How long has the power of /KAOLGDZ just?

A. Yes.

Q. And called power coalition?

A. Yes.

Q. Everybody refer to it as power coalition how long has power coalition existed in the state?

A. Gosh since so about 2015.

Q. 2015 okay?

A. And I think there's a little bit of gray because we did spin out of another nonprofit organization onto our own and so and so and also too we are physically sponsored by another nonprofit and so again probably within the you know secretary of state's registry that date might be different.

Q. What are that what is that nonprofit that you-all split from?

A. It's called one voice.

Q. One voice?

A. Uh-huh (affirmatively).

Q. And what's the nonprofit that you are financially sponsored by?

A. Public Alice Washington eyes.

Q. Public Alice Washington eyes /AUPBZ so from that is a that the sole sore source of your funding or you have other contributors and donors and things of that nature?

A. No they are our individual sponsor

and so we raise other funds from.

Q. Do you /STHRO your to your don't ignores?

A. It is released within public Alice Washington eyes within their 990 and I mean they have to still report our our grants and our information because we are a fiscally responsible project.

Q. Okay. And in I've been looking at you website on so I know you partner south of your organization what are some /THOERZ organize /-Z you partner with?

A. Yes power of coalition /E serve people in and to address policy add /SRAS issues you have to work with directly impacted people so voice of experience holds they all have specific content area expertise so vote works around criminal justice the Louisiana housing alliance around housing the I'm trying to think go around the table basically that works within the Vietnamese community in New Orleans east and so again it's a broad spectrum of groups that has specific area content expertise.

Q. And Louisiana budget project?

A. Yes yes and Louisiana partnership

for children and families as well as Louisiana policy institute. And women with a vision so yes there are several -- several different groups and the /PWEUPBLT project although not a base building group does provide found Alice Washington expertise on budget and testimony fiscal issues that impact poverty stricken communities across Louisiana.

Q. So in paragraph 15 of your declaration that you made in this case you state /TH-T your member board are directly impacted by vote delusion and so my question for are organization organizations do organizations have a right to vote?

A. Organization /-GZ do not have a right to vote I think what we are specifically talking about is that these organizations represent a base which means that they have a membership and so, for example, vote has several hundred members in New Orleans they have about a hundred members here in Baton Rouge they have got members in Shreveport and all over the state and so again it's not the individual organization it is the people /TH-T they represent and the people that they work with.

Q. So you had testified that you were engaged in the redistricting process and power coalition was engaged in the redistricting process?

A. In the most recent.

A. Yes.

Q. Redistricting session correct?

A. Right.

Q. And so at the road show understand an at the capital every member of the power coalition who attended could turn in a card in support or opposition to any bill proposed, correct?

A. Correct.

Q. And everyone had the opportunity to provide public comment at those events?

A. Most of the time I mean there were a lot of people some days and so we couldn't they had to break and we couldn't get to everybody especially on the first day, but for the most part.

Q. Okay. And does the power coalition typically engage in the legislative process?

A. We do.

Q. On many different issues?

A. Yes.
Q. And as far as legislative activity would that include encouraging the governor to vet veto bills than you were in opposition to?
A. Yes I mean it's add /SRAS you have the power we are the power coalition so we look for the path that will get people what they deserve and what they need.
Q. And in the future you would continue to fight for laws or bills that you support or oppose either support or oppose at the legislature correct?
A. Restate.
Q. So in the future let me restate that. If this enact -- the enacted map goes forward the enacted map is allowed you'll continue to fight for issues that the power coalition cares about, correct?
A. We will and I think the difference though that's very important that I want to continue to make is that am I working to you know move people that are excited and feel like they are living in a state that's listening to them and giving them equal voice or are they living or are they actually living in a state that like

1 does not do that so it's one about moving /TKEUS
2 /EPB franchised folks which is the work we have
3 done for years so it undermines and forces us to
4 have to do double work because we have got to
5 reconnect to their agency as a voter.
6 Q. So for the -- the past decade you've
7 had the previous congressional map that only had
8 one majority maritime district correct?
9 A. Correct.
10 Q. And the power coalition was able to
11 encourage individuals to register to vote under
12 that map?
13 A. Yes.
14 Q. All right. And you had attempted as
15 you had stated early you reached out and did text
16 messages phone calls encouraging both
17 registration and turn out, correct?
18 A. Uh-huh (affirmatively).
19 Q. And all right and you had said
20 something earlier about candidates of choice.
21 Are so the power coalition members does have
22 candidates of choice?
23 A. I mean, the members that live in
24 District two.
25 Q. All right. And District two they

do?

A. I mean in this yes that's a /PHAEURPBLGT African-American district congressional District two but I currently live in congressional District six and I do not have the opportunity to pick a candidate of choice.

Q. So you don't have an opportunity to elect a candidate of choice in District six that's your testimony?

A. Yes.

Q. And is your candidate of choice is that limited to any particular political party stated across way can your candidate of choice with be a conservative Republican?

A. My candidate anybody that is going to center the issues I care about I have a black mother I have a beautiful goofy son that's 64200 pounds his voting record does not vote for anything that care about including the infrastructure that just passed he voted against that and our city is our state is come /PWHREUPBG in terms of infrastructure. And so even when it made sense he voted against it.

Q. But you would say a candidate of choice could be conservative and could be

Republican?

A. Yes.

Q. And they could be white?

A. I mean it's not been my experience to date but I mean I guess it's possible.

Q. And just are one more question on for you on December 14th you wrote a letter stating we conducted an analysis of recompiled election result understand a /E are majority districts in the coalition maps CD2 and CD5 was re /HRAOE lie performed by a candidate to perform by black voters to prevail do you recall this letter?

A. Yes I don't -- I mean if you want to put it up.

Q. Yeah we can. It's Exhibit 9 if that helps at all my question is you mentioned analysis in there on page 2 of why was this /APBLGS never provided to the legislature?

A. So as we sat up in committee day after day throughout the redistricting process you know representative John self self you know asked that question and I think that part of what even in that space you know like I think it is the work is there right like maps were drawn by a

1 nationally recognized demography whom this court
2 has had the opportunity to talk to /E it's like
3 at the end of the day like why did we have to do
4 the state's work for them I mean at the end of
5 the day we were able to show what was necessary
6 for the record and what was necessary for them to
7 make a decision about whether or not you know,
8 whether or not these seven maps that met all of
9 the traditional redistricting principles that
10 showed a second majority minority district all of
11 those things were met and so.
12 Q. But you didn't feel the need to show
13 that to the legislature?
14 A. Again, I mean, we worked with lots
15 of partners and so I don't want to -- you know I
16 mean it wasn't my decision but I do think that at
17 the end of the day I do agree it's not our job to
18 to do every single part I mean like we have done
19 every single part of this process for the state
20 to fight for African-American communities to have
21 voice and the idea that like I got to also show
22 you my math and show you my homework even though
23 I do in the sense that there were seven maps
24 submitted with that letter that show that it's
25 possible for African-American for a second

majority maritime district to honor the /TKPWROEDZ in black population which is the purpose of redistricting which is to honor changes in population.

Q. You said the court had heard from that demography who drew that for you which one was that?

A. Well, I mean one of the two that's -- but either one of the two that spoke today I want to say it was Tony Fairfax but I -- but one of the two that were here today well yesterday.

Q. And just short just some couple more really questions how long have you lived in Baton Rouge /-FPL all my life I'm 46?

Q. All your life?

A. I'm 46.

Q. So /KWHURP here when kin holding was elected?

A. Yes.

Q. And Sharon broom was elected obviously?

A. Yes.

Q. And they were elected parish wide correct?

A. Yes.

Q. And was kin holding elected when East Baton Rouge Parish was a majority white?

A. I'm not sure.

Q. Okay. Thank you very much. That's all the questions I have.

THE COURT:

Any redirect?

MS. SADAVISAN:

No, Your Honor.

THE COURT:

All right. You are free for go. Thank you for your helping. It's almost 5:40. We will reconvene at 9:30, but before that can you give the court a sense of whereabouts you are it's looking like that you are going to make be able to close this thing out on Friday? I have I haven't counted heads so I don't have a sense in my mind how many how many -- how many witnesses we are into your witness lists.

MS. KHANNA:

I believe we will be fine to close out on Friday Your Honor tomorrow the plaintiffs will have I would say no more

than one to two relatively shortnesses and I imagine the defendants will being able to put on their case in chief in the morning.

THE COURT:

The plan tomorrow is we will convene at 930. Yeah that's correct. We will be able to convene at 930. We will break early tomorrow there's a court wide function that I'm really -- really need to go to. But I'll play it by ear I can go late I mean my goal would be to break around 3:30, but if we are in a spot where we need to go until 4:00 or a little after 4:00, we can -- we can do that, okay, but we do need to plan to break a few minutes early tomorrow. All right. Rest well. See you in the morning at 9:30 a.m.

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF LOUISIANA

3

4 PRESS ROBINSON, et al, CASE NO.
Plaintiffs,
5 3:22-cv-00211-SDD-SDJ
v
6
KYLE ARDOIN, in his
7 official capacity as c/w
Secretary of State for
8 Louisiana,
Defendant.
9 _____
EDWARD GALMON, SR., et
10 al, CASE NO.
Plaintiffs,
11 3:22-cv-00214-SDD-SDJ
v
12
R. KYLE ARDOIN, in his
13 official capacity as
Louisiana Secretary of
14 State,
Defendant.
15

16 PROCEEDINGS

17 INJUNCTION HEARING

18 Held on Monday, May 11, 2022

19 Before The

20 HONORABLE SHELLY DICK

21 Judge Presiding

22 Baton Rouge, Louisiana

23

24 REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
25 CERTIFIED COURT REPORTER

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P R O C E E D I N G S

THE COURT:

Okay. Good morning. Be seated. Okay. As a matter of housekeeping, we learned that one -- one of the lawyers who was a witness yesterday tested positive for COVID last night. The same rules apply. The court's general order is that you may wear a mask if you chose. You must wear a mask if you are not vaccinated. If you are unvaccinated and you are not wearing a mask, you are in violation of this court's general order.

Don't let the fact that I'm wearing a mask dictate what you think you should do. If you need to be wearing one to protect your own personal health and safety, I'm wearing a mask out of, you know, caution. I am fully vaccinated, so there we have it. Next witness?

MR. NAIFEH:

Your Honor, may I raise one issue this morning?

THE COURT:

I'm sorry. I didn't hear you.

MR. NAIFEH:
This is Stuart Naifeh for the Robinson plaintiffs. May I raise one issue?
THE COURT:
You may, but will you come to the podium where I --
MR. NAIFEH:
Yes.
THE COURT:
Just I need to be able to hear you.
MR. NAIFEH:
Your Honor, some of our co-counsel have concerns about COVID exposure and requested that they may be able to appear as Zoom attendees remotely, if possible?
THE COURT:
Is there any objection to that?
MR. WALSH:
Not from the defendants, Your Honor.
THE COURT:
No objection from the defendants. So let me understand. Your lawyers are going to be remote on videoconference and your witness is going to be in the

courtroom?

MR. NAIFEH:

Well, this would be for cross-examination, but yes. Well, I think some of the witnesses may be remote also.

MS. FREEL:

Your Honor, I'm just being honest --

THE COURT:

Ms. Freel, you want to introduce yourself?

MS. FREEL:

Yes. This is Angelique Freel with the defendant, Louisiana, State of Louisiana. There have been a lot of attorneys that have just appeared for the first time yesterday, so it's not even clear as to who is in this room. It's actually not clear who is a plaintiff's lawyer and who is an audience member. And if we can at least know who those people would be that may be questioning witnesses remotely, I would appreciate that consideration.

THE COURT:

Okay. Who wants -- who wants to

attend remotely? Because I'm not aware.
MR. NAIFEH:
John Adcock is the attorney who has requested that on our team.
THE COURT:
Okay. Granted. Anybody else?
MR. NAIFEH:
Not that I'm aware of at this time.
THE COURT:
All right.
MR. NAIFEH:
Thank you, Your Honor.
THE COURT:
There is somebody in the waiting room, Aaron Day.
MS. FREEL:
She is not an attorney in this case. She is an attorney for the state. I guess she just wants to observe, so if that's not allowed --
THE COURT:
Ms. Freel, I can't hear you.
MS. FREEL:
She's not an enrolled attorney with the -- in the case. She is an attorney

for the case. I assume she believes that she can observe. I'm familiar with the name. That's all. If she's not, I can let her know.

THE COURT:

I mean, it's a public hearing, but without permission of the court, I mean, what's -- what's her reason for being on -- on a video call?

MS. FREEL:

Well, probably to hear the testimony of the first witnesses the plaintiffs are calling.

THE DEPUTY:

We have it on audio. It's on audio.

MS. FREEL:

I don't know. I do not know. I don't know. You just asked if anyone knows the name, and I'm just letting you know I am familiar with the name.

THE DEPUTY:

We can provide the phone, the call-in number and the -- the access code for anyone who wants to participate to hear it on audio that wants to hear it.

MS. FREEL:

It's not necessary.

THE COURT:

Okay. So, for the record, the court has offered to provide the -- the attorney for the state who is unenrolled who has requested apparently or is in the waiting room and thus waiting admission via videoconference, the court will not grant videoconference admission to unenrolled counsel.

The state has advised by the court deputy that any -- there could be any observer in this matter including unenrolled counsel. They can either come to court, they can come to the overflow room, or they can participate and listen -- not participate. They can listen by audio.

With those provisions having been made available to them in public, we will not allow participation by video -- the court will not allow participation by videoconference.

Okay. Are there any -- oh, let me

say one other thing. If you have a witness -- I'm sorry, Ms. Khanna. If you have a witness who prefers to remain masked, when they take the witness stand, we can provide them with a shield when they testify, with a shield -- testify with a shield, so we can see their face and then, upon leaving the witness stand, they can resume with the mask. That's kind of our standard protocol. Thank you, Ms. Khanna.

MS. KHANNA:

Thank you, Your Honor. I just wanted to provide the time clock.

THE COURT:

Yes. Thank you.

MS. KHANNA:

I believe we have all agreed that the plaintiffs have taken up 383 minutes and the defendants have taken up 254 minutes as of close of business yesterday.

THE COURT:

All right. Thank you.

MS. KHANNA:

Thank you.

THE COURT:

All right. Any other housekeeping matters? Okay. Next witness?

MR. HAWLEY:

Good morning, Your Honor. Jonathan Hawley for the Glamon plaintiffs. Plaintiffs call for Mr. Matthew Block.

MS. FREEL:

Your Honor, this is Angelique Freel for the defendant intervenor for the State of Louisiana. I'd like to enter an objection on the record.

Your Honor indicated parties were to follow a witness list on Friday, April 29th, so that there would be time to do depositions, if desired. Mr. Block was not on the witness list and, in fact, he wasn't added until around midnight after this case already started trial on May 9th, 2022.

In addition, he's listed as a witness to testify regarding election administration. Because he was not listed timely, we are not allowed to do any

discovery, it's not clear as to how that's even possible because we have a separately elected constitutional officer in Louisiana that, pursuant to Louisiana Constitution Article 4, Section 7, specifically is charged with administering the election laws, so I just want to put that objection on the record.

THE COURT:

Mr. Hawley, do you want to address the objection?

MR. HAWLEY:

Yes. When the Galmon plaintiffs filed our initial witness -- witness list at the deadline, we indicated -- we included the possibility that we might include a to-be-determined election administration witness.

Given the speed of the proceedings, we wanted to ensure that we let the other side know that we might have such a witness. As soon as we confirmed Mr. Block's participation in these proceedings, we updated the witness list accordingly. On throughout these

proceedings, the way things have been moving, the witness and exhibit lists have been amended and we have been sort of going under that, but we made sure that we left this possibility open and that we informed defendants as soon as we could once we knew Mr. Block would be testifying.

As to his qualifications, I'm confident that is something that can come out on cross, so -- but as we believe Mr. Block is qualified to testify in this case, we disclosed his participation as soon as we could and would like to move forward with his testimony.

THE COURT:

All right. The objection is noted and overruled. Mr. Block, you may come forward.

MATTHEW BLOCK,

after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE COURT:

Okay. Two people came in after the

court -- I'm sorry, Mr. Hawley. Just give me a minute. Two people came in after the court discovered the current COVID situation that wasn't part of the court's business and was noted in the courtroom yesterday.

If you came in after I made my announcement, if you wish to wear a mask with that -- with that disclosure, please feel free to do so as you shall so chose -- you so shall chose or as you feel best protected for your health and safety.

And, Mr. Block, if you want to wear a shield, we will provide one for you. It's your call.

THE WITNESS:

I'm okay, Your Honor.

THE COURT:

All right.

EXAMINATION BY MR. HAWLEY:

Q. Good morning, Mr. Block.

A. Good morning.

Q. Could you please state your full name for the record?

A. Sure. My name is Matthew Block.

Q. And what is your current position?
A. I am Governor Edwards' executive counsel.
Q. And how long have you been the governor's executive counsel?
A. I've been his -- his executive counsel the entirety of the time that he has been officed -- in office. I believe that's since January 11th, 2016.
Q. And could you just generally describe some of your responsibilities?
A. Sure. I'm his executive counsel. I'm his chief legal counsel which, amongst other things, involves issues with the legislature and it's a -- it's a pretty broad portfolio of -- of issues that -- that I -- I cover with -- with the governor there. We have a fairly small team and we don't have particularly defined roles, so whatever the governor needs me to do is what I'm -- I'm going to do.
Q. And have those activities involved Louisiana's elections?
A. So in -- in a couple of different ways. The -- the governor is the -- the officer who calls special elections in the state, so at

1 least outside of the -- outside of legislative
2 elections, so those are all issues that come --
3 come across my desk and the governor calls
4 special elections from mayors to judges and --
5 and everything in between.
6 In -- in addition, we have had a lot
7 of work with the Secretary of State's office on
8 -- on issuing special election plans that have
9 come about as a result of emergencies or natural
10 disasters, and so that's something that we have
11 worked closely with the Secretary of State
12 because the Secretary of State has a role in that
13 as does the governor. It's ultimately the
14 governor's order that implements a -- a movement
15 of election dates or qualifying dates, whatever
16 it may be.
17 Q. And can you give some examples of
18 when elections, election dates, election
19 deadlines, have been moved in those sorts of
20 circumstances?
21 A. Sure. So by my recollection, it's
22 somewhere around -- there -- there are two
23 different procedures. There -- there's a
24 procedure that involves just the Secretary of
25 State and the governor and then there's a -- a

1 procedure which I know this court is very
2 familiar with that -- that involves a -- an
3 action taken by the legislature as well to
4 approve an emergency election plan that alters
5 voting -- voting regulations, etc. But for --
6 for the movement of dates or polling locations or
7 qualifying dates, that I believe that's -- that's
8 been done nine times since we have been in
9 office, the most recent being just last year
10 after Hurricane Ida.
11 Obviously there was widespread
12 devastation throughout the southeast Louisiana
13 and so the Secretary of State and the governor
14 worked together on moving the -- the October,
15 November elections to November, December of last
16 year; and so that requires a -- the secretary to
17 issue an emergency declaration. That emergency
18 declaration is then ratified by executive order
19 by the governor and the governor then, per his
20 order, moves the election dates. And so that was
21 done last year, again, moving the election dates
22 from October, November to November, December.
23 Q. You specifically mentioned that
24 alterations to polling places, moving some
25 deadlines; and can you give examples of other

1 election details that have been changed in
2 response to -- to disasters and other
3 emergencies?
4 A. So almost anything involving the
5 election then has to -- the dates have to be
6 moved. Qualifying dates can -- can be moved via
7 the same order, but the early voting dates can --
8 obviously by necessity need to be moved when the
9 -- when the election date is moved; and so there
10 -- I mean, for example, there have been times
11 where we have had to curtail early voting dates
12 because of certain issues we have -- we've had to
13 move early voting locations, all of which, again,
14 have been done in cooperation with the Secretary
15 of State's office and -- and through those two
16 separate orders done.
17 Q. So you mentioned that even election
18 dates have been changed in the past?
19 A. That's right. I mean, it's -- it's
20 been done on -- unfortunately, we've -- we have
21 had a lot of experience with this in the last two
22 years. And for in '20, the original April, May
23 elections of the spring of '20 were moved twice.
24 They were moved from -- from -- from April and
25 May to June and July and then from June and July

to July and August, so those were -- were obviously done as a result of the -- the raging COVID outbreak that we had in -- in the spring and the early summer of '20. And then, as I said, in just last year, we moved the election dates for Hurricane Ida.

Q. So if election dates have been changed, then certainly the pre-election deadline could have been changed as well?

A. That's correct. It's a -- when the Secretary of State issues his emergency declaration, the way this has been done in practice at least is that the secretary issues a written emergency certification that has a request for a number of different items to be moved normally in correlation to the exact dates that they would have otherwise been, but just the dates have been backed up and so then the governor's order essentially mirrors the Secretary of State's request. At least in -- in all of these -- in using this procedure, I can't remember a time where -- where there wasn't an agreement between the governor and the Secretary of State.

Obviously, there -- there was a

1 disagreement in -- in using the other procedure
2 for the -- for the fall '20 elections, but that
3 was done through the different procedure that
4 involve the legislature to actually approve of a
5 voting plan.
6 Q. And, in some cases, have these
7 changes been close in time to elections?
8 A. They have, and usually because we
9 are having to respond to some event that has
10 happened that is going to cause a -- a need for a
11 delay. So I believe that the -- the order for
12 the Ida elections happened in early September, at
13 least I think that hurricane came -- came and hit
14 on the 29th of August, so in the immediate
15 aftermath, we knew there was going to be an issue
16 and those elections were scheduled for October,
17 and -- and so we -- we needed to give a --
18 respond pretty quickly. So, you know, all of
19 these are done within a month or two of -- of the
20 election. It's not normally something we can
21 plan months and months in advance for.
22 Q. So in the past when deadlines have
23 been altered when other election details have
24 been changed, were -- was the state still able to
25 successfully administer these elections?

A. I believe so. I mean, the -- obviously, it's -- it's a huge challenge, but it's something that -- that we have a lot of experience with. And I say "we have a lot of experience with." The secretary has a lot of experience with, that the local election officials have a lot of experience with pulling these off. It's not -- not easy, but I -- I think for the most part that has been very successful in -- in getting those changes made and administered.

Q. The Secretary of State's office was able to implement those elections?

A. I've heard nothing to -- to be able to speak to that.

Q. And the Secretary of State's office was actually able to -- to inform voters of any changes?

A. I think that's correct, yes. I mean, I can't assure you that every single voter was -- was notified in the way they should, but I believe globally and generally and -- and that voters were given the information they need.

Q. And Louisianians had the ability to cast their ballots?

A. Yes.
Q. Did electoral chaos ensue?
A. Not that I'm aware of, no.
Q. Is it fair to say that the State of Louisiana has an election system that is able to adjust when things change?
A. Yes.
Q. Mr. Block, is the legislature currently in session?
A. They are currently meeting as we speak.
Q. Until when?
A. June 6th at 6:00 p.m.
Q. If required by this court to draw a remedial map, could the legislature do so during its session in the next three and a half weeks?
A. Yes. They -- they -- they are constitutionally authorized to do so and -- and there would be a time to do so. There's even a -- a bill that was -- was filed previous to the session beginning that by the chairman of the -- the house and governmental committee that's regarding redistricting of congressional maps.
MS. FREEL:
I'm going to object to this line of

1 questioning. He's an attorney. He's
2 evaluating allegations in this case. He's
3 essentially applying what he believes to
4 the correct framework, and I think that's
5 the appropriate job of the judge.
6 MR. HAWLEY:
7 Your Honor, Mr. Block is testifying
8 as the governor's legal counsel; and, as
9 he mentioned, he's had extensive
10 experience working with the legislature
11 and the other agencies of the state
12 government.
13 THE COURT:
14 Okay. The court considers the
15 testimony and the nature of an explanation
16 of the systems that are in place not legal
17 opinions in that regard. The objection's
18 overruled.
19 BY MR. HAWLEY:
20 Q. Mr. Block, if the legislature were
21 required to adopt a removal plan and did not
22 during the current session, could the governor
23 call an extraordinary session to accomplish that?
24 A. Either the governor or the
25 legislature itself could -- could call the

1 legislature into session for any reason that is
2 enumerated in the special session call.
3 MR. HAWLEY:
4 Thank you, Mr. Block. No further
5 questions.
6 THE COURT:
7 Cross?
8 MS. FREEL:
9 Angelique Freel here on behalf of
10 the defendant intervenor of the State of
11 Louisiana. Your Honor, I'm going to ask
12 permission to be a little liberal in cross
13 to the point that I was not allowed to
14 depose this witness and believe that he
15 does have information that is very
16 relevant to the -- the plaintiffs' claims
17 that are pending before the court.
18 THE COURT:
19 Okay. Well, I'm not -- I don't know
20 what you're asking for, so I'm not going
21 to grant anything right now. Let's see
22 how it goes. If they object, you can
23 respond to their objections.
24 MS. FREEL:
25 Thank you, Your Honor.

CROSS-EXAMINATION BY MS. FREEL:

Q. Good morning, Mr. Block.

A. Good morning.

Q. I'm sorry. When were you contacted by the plaintiffs?

A. I believe it was sometime last week. I mean, and -- and I -- I guess -- I'm not sure if you're asking me about plaintiffs' counsel. Is that what you're asking?

Q. Plaintiffs or plaintiffs' counsel, either one. If you can just --

A. I don't believe I've had any communications with the plaintiffs in this case that I'm aware of. I'm not even sure who all the plaintiffs in the case are. I can't tell you that for sure and -- and there might be some individual that I -- I was in contact with who I just don't know as a plaintiff in the case; but about my testimony here today, I was contacted last week, I believe.

Q. Okay. And who was it that contacted you?

A. Mr. Papillion.

Q. So since last week, you've had an idea that you may be called as a witness for this

case?

A. I -- that's when the discussion occurred about when potentially the need was for me to -- to be a witness in the case.

Q. Okay. Mr. Block, you have never served as an election commissioner; is that right?

A. That's correct.

Q. And you've never served as an election commissioner in charge, correct?

A. That's correct.

Q. You've never served on the parish board of election supervisors; is that correct?

A. I have not.

Q. You have never served on the state board of election supervisors?

A. I have not.

Q. You did serve on a local Democratic party for Lafourche Parish --

A. That's correct.

Q. -- is that right? And the Democratic State Control Committee; is that right?

A. That's correct.

Q. And you've never worked for the

clerk of court; is that correct?

A. I worked for the clerk of court when I was in high school in Lafourche Parish --

Q. Oh, okay.

A. -- but I -- I was not involved with elections.

Q. Okay. And you have not been -- worked for a registrar's office during elections?

A. I have not.

Q. Okay. So the governor, John Bel Edwards, he's a Democrat, correct?

A. He is.

Q. And we heard over several plaintiffs' experts over the course of two days that testified that Governor Edwards was a black candidate choice. Do you agree with that?

A. I -- I mean, I don't know if that's some -- some legal standard. I know what the -- what the polling showed and -- and what the results showed, that -- that the governor was overwhelmingly supported by -- by African-American voters.

Q. And then, would you agree that Governor Edwards makes an effort to be responsive to any needs of the black community?

A. I -- I think that the governor certainly does get along with trying to be responsive to the entire community, not just one community; but yes, I -- I agree. The answer's yes to your question.

Q. And one of his first official actions was to expand Medicaid to 420,000 citizens in Louisiana; is that correct?

A. That was done on -- on the second day he was in office. I mean, it's -- it's a lot more than 420,000 citizens at this point in time right now.

Q. And many of those citizens are black; is that right?

A. That is correct.

Q. And that was done around -- right when he came into office in 2016, so --

A. That's right.

Q. -- roughly six years ago?

A. That's right. His first -- first official act in office, I believe.

Q. And Governor Edwards is a big proponent of -- of criminal justice reform, is he not?

A. Yes, he is.

Q. And, in fact, he signed a bill in 2018 that restored voting rights to tens of thousands of felons; is that correct?

A. I can't assure you that the number of tens -- tens of thousands is correct, but -- but he did sign the bill you are referring to.

Q. And House Bill 265 in 2016?

A. Yeah. I believe that's the -- that's the voting rights bill you are referring to. I just don't know if the number is -- is correct. I've never seen a total.

Q. And that bill was passed even with a GOP led house; is that right?

A. That's correct.

Q. And he's -- and Governor Edwards supported the constitutional amendment that was passed for all citizens of the human race by requiring the unanimous jury verdict; is that right, he supported that?

A. Yes, he did.

Q. Okay. And even though the governor is a Democrat, he is moderate on some issues. Would you agree with that?

A. I don't know what the term "moderate" means. I mean, I -- I think that

1 would be a -- a general classification for that.
2 My -- my guess is that you and I
3 might have different meanings of what that word
4 might be, so I don't -- if you want to ask me a
5 specific position.
6 Q. Is Governor Edwards pro-life?
7 A. He is pro-life.
8 Q. And does he support the second
9 amendment right to bear arms?
10 A. He does.
11 Q. And Governor Edwards, was he in the
12 military, attended West Point; are those all
13 things that are important to him?
14 A. Yes, very much so.
15 Q. And in this time as governor, isn't
16 it true that the governor has appointed many
17 blacks to head his cabinets in high ranking
18 positions?
19 A. He has.
20 Q. And the head of the Department of
21 Health is a -- is a black female; is that
22 correct?
23 A. She is.
24 Q. And let me see. Her name is?
25 A. Dr. Courtney Phillips.

Q. And she administers the largest budget in the state, which is 14 billion for an agency; is that accurate?

A. I can't tell you if that exact number is correct, but it's certainly the largest budget unit in the state.

Q. And ultimately it falls within the executive branch, correct?

A. Yes, it does.

MS. FREEL:

Hold on. I'm going to turn this off. I'm sorry. I was going to refresh your memory on this, but it's okay. I'm not going to worry about it.

BY MS. FREEL:

Q. And then he also appointed a black female to head the department of revenue, Ms. Kimberly Robinson; is that correct?

A. Right. She is -- she is no longer the secretary of revenue, but she was secretary of revenue until early this year from 2016.

Q. And she left on her own accord to take a -- a very high position with LSU; is that accurate?

A. That is correct.

Q. And as the head of department of revenue, part of her job was preparing the state's budget; is that correct?

A. The -- the secretary -- like I -- I said at the beginning, we -- we don't have -- the governor does not have a lot of defined roles. That -- technically, the commissioner of administration is the one who prepares the -- the state budget, but the secretary is with a lot of other officials within the governor's cabinet who have significant roles: Secretary, Robinson -- Secretary Lewis, excuse me, in -- in particular had -- had a very large role as an advisor to the governor, but technically it's the commissioner of administration who prepares the governor's budget.

Q. But you would agree that as secretary Kimberly Robinson played an important role in the State of Louisiana?

A. I -- I can't -- I can't say enough of the -- the role that she played in the governor's cabinet.

Q. And the governor appointed Colonel Lamar Davis as the superintendent of Louisiana State Police, and he's a black man; is that

1 correct?
2 A. Technically, that -- that
3 appointment is made by the secretary of
4 corrections, but it was certainly the governor's
5 choice that -- that Colonel Davis be appointed to
6 that position.
7 Q. And the governor appoints the head
8 of department of corrections?
9 A. That is correct, yes.
10 Q. And the governor appointed a black
11 female to head the Louisiana Workforce
12 Commission; is that correct?
13 A. That is correct.
14 Q. And that's Ava Cates, and she's the
15 wife of a -- a New Orleans judge; is that right?
16 A. That is correct.
17 Q. And you're aware that under the
18 governor's leadership, the Department of Health
19 has programs for African-American health; is that
20 correct?
21 A. That's right.
22 Q. And under Governor Edwards,
23 Department of Health has the Bureau of Minority
24 Health Access; is that correct?
25 A. I believe that's right.

Q. And the governor declared Juneteenth as a holiday in -- in Louisiana; is that accurate?

A. He did.

Q. Okay. And he created a task force to track racial inequities in health care; is that correct?

A. Absolutely.

Q. And that -- and that task force was immediately assigned to make sure communities with health disparities are blanketed with good information on COVID-19 safety; is that accurate?

A. I believe that's one of the things that that task force was charged with.

Q. And also, they were charged with prevention of COVID, providing the medical community best practices and protocols for treating communities with underlying conditions in health disparities. Would you agree with all of that?

A. Yes.

Q. And ensuring that testing was available and that there was ease of access for all communities; is that accurate?

A. Yes. I mean, that wasn't -- that

task force was not the only one assigned with that responsibility; but yes, it was one of the many things that that task force was responsible for.

Q. And COVID vaccines were offered free of charge in general in Louisiana; is that accurate?

A. That is correct.

Q. And the state had a lot of initiative things to encourage people to get vaccinated; is that correct?

A. That continues to this day.

Q. And COVID tests were free in Louisiana; is that accurate?

A. That is true.

Q. And the Paxlovid anti-viral drug is available for people with healthcare coverage and -- and Medicaid and things of that nature for free; is that right?

A. It is.

Q. Okay. And -- and, in fact, the governor pushed for a regulation to add COVID-19 vaccines to the mandatory schedule of vaccinations for -- for school children; is that accurate?

A. Yes.
Q. And --
A. He did. I mean, it was -- I mean, I know we are -- I don't want to seem like it, but it's picky, but it was a rule passed by the Department of Health that the governor strongly supported.
Q. And -- and Louisiana is the only state besides California that's done that?
A. I don't know if that's true or not.
Q. Okay. And the governor declared a state of emergency for roughly two years for COVID; is that accurate?
A. He did, yes, roughly two years.
Q. And New Orleans is a majority black city; is that right?
A. I --I can't tell you if I know the exact numbers, but I -- I believe that to be the case.
Q. And the mayor is a black female, Latoya Cantrell; is that accurate?
A. That is correct.
Q. And Mayor Cantrell set her own -- set her own COVID restrictions which were even more stringent than that of the states; is that

accurate?

A. At times were more stringent than the state, yes.

Q. And you would agree that the -- the governor has aligned himself with a black office on a number of occasions while -- while he served as governor; is that accurate?

A. I -- I guess so. I'm -- I mean, certainly the governor's worked closely with the black caucus on -- on a number of different issues, so I guess that would mean he's aligned himself with them, yes.

Q. Okay. And he partnered with the black caucus to celebrate the -- the first black Governor P.B.S. Pinchback that the -- in honor of the retired supreme court justice Burnett Johnson; is that correct?

A. That is correct.

Q. And he recently partnered with a black caucus or -- or when they were upset with regard to the congressional maps and he vetoed House Bill 1 and Senate Bill 5; is that right?

A. He certainly did veto that bill, the two bills.

Q. And then -- I'm sorry. I didn't

mean to cut you off. And the reason for vetoing these bills he's stated on his veto statement on March 9th; is that right? We've got it right here.

A. I can't recall the exact date, but I assume that's the right date, yes.

Q. But in his letter, the reasons for the veto were there, correct?

A. Yes, correct.

Q. And, Mr. Block, you are familiar with redistricting having worked, you know, with the Democratic party and now with the -- the governor, right?

A. I -- I never worked redistricting before this -- this past session and the issues here, so I -- I don't believe I ever had anything to do with redistricting with the Democratic party.

Q. But, you know over the years there's been some lawsuits where I -- I talked to you about the Terrebonne case when it was going on here?

A. Yeah. Sure, sure. That was a redistricting case, but it certainly -- I'm -- I'm very -- I mean, I was counsel for the

governor in that case.

Q. Right. I get that. But could you -- you agree that incumbency is the factor that's taken into consideration for redistricting?

A. Taken into and factored by --

Q. By --

A. By the legislators?

Q. By the legislature when they are drawing?

A. Oh, certainly, yes.

Q. Okay. And when the legislature met to override the governor's veto this session, that was a GOP led House and Senate; is that accurate?

A. Yes.

Q. And -- and when there was a disagreement between the Secretary of State and the governor with regard to that emergency election plan for COVID, you would agree that one of the biggest issues was partisan office opposition to the -- the absentee mail ballot?

A. You mean that one of the biggest issues with -- in why we couldn't get an election plan to the governor approved?

Q. Yes.

A. I think that's right. I think that's what the secretary indicated, and I believe publicly that he -- he did not believe he could get the plan that was used in July and August, that -- that was approved by the legislature. I -- I believe he said publicly that he could not get that passed by the legislature for the -- the November presidential election.

Q. Because of the partisan opposition expanding by mail, the absentee by mail?

A. I think there's some other reasons, but that was certainly one of them, yes.

Q. And you talked briefly about the governor's role with regard to the Secretary of State and special elections and -- and so the -- the -- officially the Secretary of State issued a -- a written emergency certification and that triggers the governor's involvement; is that right?

A. Right. That's right.

Q. And you don't disagree that the Secretary of State administers elections pursuant to the constitution, correct?

A. I certainly do not.

Q. And you -- you indicated that the governor's order mirrors the Secretary of State's request?

A. I -- I can't think of a time where it did not mirror the secretary's request.

Q. And the Secretary of State contacts the governor's office and you-all work through these issues, correct?

A. That's right.

Q. And the Secretary of State does not talk to you at all about the issues for the congressional plan?

A. For the --

Q. With the -- if it were necessary to move an election, the Secretary of State hasn't come and talked to you about that, correct, the new certification plan?

A. You mean about elections for the upcoming elections for this fall?

Q. Correct.

A. No. That's correct.

MS. FREEL:

That's all the questions I have.

THE COURT:

Redirect?

MR. HAWLEY:

Thank you.

REDIRECT EXAMINATION BY MR. HAWLEY:

Q. Mr. Block, you and Ms. Freel just discussed a number of the appointments of black officeholders and black officials that Governor Edwards has made and other things he has done on behalf of the black community, correct?

A. I think -- I think that's a fair characterization of what we discussed.

Q. Who was Governor Edwards' predecessor in the governor's mansion?

A. Governor Bobby Jindal.

Q. Did Governor Jindal similarly appoint black cabinet heads and other black officials in his administration?

A. I -- I think he --

MS. FREEL:

Object on the grounds of hearsay. There's no -- no foundation that he -- he knows that. He was not part of that administration.

THE COURT:

Your objection as to hearsay, your objection is overruled.

1 THE WITNESS:
2 I would say that Governor Jindal did
3 appoint black officials. I'm not sure
4 that I can agree that he similarly
5 appointed black officials to -- to his
6 cabinet.
7 BY MR. HAWLEY:
8 Q. Did Governor Jindal or any of his
9 predecessors expand Medicaid as Governor Edwards
10 did?
11 A. No.
12 Q. Did Governor Jindal or any of his
13 predecessors make Juneteenth a holiday as
14 Governor Edwards did?
15 A. Not that I'm aware of.
16 Q. And is the governor the only
17 officeholder in office who deals with healthcare
18 and these other issues?
19 A. I mean, I'm not sure how to answer
20 that question. The Louisiana Department of
21 Health is an executive branch agency under the
22 governor's appointed power and authority, so, I
23 mean, it is Louisiana Department of Health that
24 is primarily responsible for that, but every
25 agency has some issues that they certainly --

over the last two years in particular, that they have dealt with involving health issues.

Q. Would you agree that the state legislature has a role to play in shaping health policy and other issues that effect Louisianians?

A. Sure, of course.

Q. And the state's delegation to the U.S. House of Representatives does the same?

A. Of course.

Q. Is it your view -- sorry. You mentioned with Ms. Freel that black voters in Louisiana tend to support Governor Edwards; is that a fair assessment?

A. I mean, that has certainly been a -- a big part of his two elections to the -- be governor.

Q. Is it your view that black Louisianians support Governor Edwards because of his party affiliation or because of all of the initiatives and things that he has done for the black community that you just discussed with Ms. Freel?

A. I -- I don't know how -- how to answer that question. I would -- I would think it would be globally they support him because of

who he is, what he's done. I'm sure some of it is because of his party affiliation as well. I think it's probably a -- a number of factors.

Q. The governor vetoed HB-1, the enacted congressional map, correct?

A. And as -- as well as the matching Senate bill, correct.

Q. What was the stated reason the governor gave for his veto?

A. I mean, it was a fairly lengthy veto message that -- that the governor provided, but essentially the governor believed that there should be a second majority-minority congressional district.

Q. Did the governor -- was the governor's position that the new congressional map violated the federal Voting Rights Act?

MS. FREEL:

Objection. That's leading.

THE COURT:

You want to rephrase that?

BY MR. HAWLEY:

Q. Did Governor Edwards give any legal justifications for his veto in his message?

A. Yes. Amongst other things, he

1 indicated that he did think it violated Section 2
2 of the Voting Rights Act.
3 Q. And did he previously state his view
4 on what a fair congressional map would contain?
5 A. On multiple occasions, yes, he did.
6 Q. And what was that?
7 A. That he believed that Louisiana
8 should -- should have a second majority-minority
9 congressional district.
10 Q. And the legislature overrode the
11 governor's veto?
12 A. That is correct.
13 MR. HAWLEY:
14 Thank you. No further questions.
15 THE COURT:
16 Thank you, Mr. Block. You may step
17 down. Next witness?
18 MS. KHANNA:
19 Your Honor, the plaintiffs rest
20 their case in chief now.
21 I just wanted to clarify. Normally,
22 we would want to take the opportunity to
23 confirm that all the exhibits that we
24 moved in are, in fact, admitted, but we
25 are happy to do that during a break, if

that's easier, as long as the record can stay open for that purpose.

THE COURT:

Yes. The court will leave the record open, subject to the plaintiffs conferring with the deputy pursuant to those being admitted; and we can try and work that out if there's some kind of discrepancy.

MS. KHANNA:

Thank you, Your Honor.

THE COURT:

Defendants, call your first witness.

MR. GORDON:

Hello, Your Honor. Phil Gordon for the State of Louisiana. Defense calls Thomas Bryan, Thomas Bryan, B-R-Y-A-N.

THE COURT:

Mr. Gordon, do you represent the Secretary of State or the state intervenors?

MR. GORDON:

The state intervenor.

THE COURT:

Thank you.

THOMAS BRYAN,
after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE DEPUTY:
And would you state your name and spell it for the record, please?

THE WITNESS:
Thank you. My name is Thomas Mark Bryan, T-H-O-M-A-S, M-A-R-K, B-R-Y-A-N.

THE COURT:
You may be seated, sir.

THE WITNESS:
Thank you.

MR. GORDON:
Thank you, Mr. Bryan.
At this time, I'd like to seek a specification as to the tender of Mr. Bryan as to demographics, redistricting and census data. Is there an objection?

THE COURT:
Demographics, redistricting -- I didn't hear the last word.

MR. GORDON:

1 And census data, Your Honor.
2 MS. KHANNA:
3 No objection, Your Honor.
4 THE COURT:
5 Mr. Bryan -- without objection,
6 Mr. Bryan is accepted by the court in
7 demographics, redistricting and census
8 data and may give opinion testimony in
9 those areas.
10 MR. GORDON:
11 Thank you, Your Honor. I ask to
12 move for admission of Mr. Bryan's report.
13 It is on page 102 through 119 of his --
14 his expert report, which is at
15 Document 108-1, if we could see that.
16 THE COURT:
17 Document 108-1. Any objection to
18 the CV?
19 MS. KHANNA:
20 No objection, Your Honor.
21 THE COURT:
22 Okay. The CV pages 108-1 and pages
23 102 through 119 is admitted.
24 MR. GORDON:
25 Thank you, Your Honor.

EXAMINATION BY MR. GORDON:

Q. Hello, Mr. Bryan?

A. Good morning.

Q. Thank you for being here today.

A. Thank you.

Q. So let's just go through some very basic preliminary matters. Where are you currently employed?

A. I currently own a company called BGD, BryanGeoDemographics. That's based in Richmond, Virginia, but the company works nationally for redistricting cases all around the United States.

Q. And you said you are the owner of that company?

A. Yes. I am the president and owner.

Q. And do you hold -- do you hold any advanced education?

A. Yes, I do. I've got a degree, master's with urban studies with my studies in demography and statistics, and I also have a degree in management and information systems technology from George Washington University.

Q. And where was that? I don't think I heard. Where was the master degree and the urban

studies degree?

A. That was in Portland State University in Portland, Oregon.

Q. Great. Now, we are calling Bryan Demographics BGD, which I think is an easier thing to say.

A. Yes.

Q. What other positions have you held?

A. I started my career in demography when I was a graduate student working for Oregon Data Center almost 30 years ago. After my graduate studies, I went to work for the U.S. Census Bureau from 1998 through 2001 in the area of population estimates and projections and also in the development of the American Community Survey.

After I left the Census Bureau, I went to work as a demographer for a software company named E-S-R-I or Esri, who was the company responsible for building and delivering probably the largest geographic information system software in the world.

Q. And what software do you use typically in your work?

A. It's called ArcMap or sometimes

called Arc G-I-S in the community.

Q. And who develops that software?

A. Who developed the software?

Q. Who owns or publishes that software?

A. Yeah. It's a privately-owned company by a gentlemen named Jack Dangermond. His entire career and company is built around GIS software.

Q. Okay. And so in total, how many years have you worked in the field of demographics using census data?

A. I studied demography and work actively as I was a demographer for 30 years. I have applied that in the field of redistricting for 20 years.

Q. Okay. And so let's begin to talk about any other cases you've testified in. Have you testified previous to -- to this occasion?

A. Yes, I have.

Q. And where was that?

A. That was in the case, the Singleton case in Alabama earlier this year.

Q. And -- and I think the procedure of that case is a bit different, but both Singleton and Caster, they were consolidated cases?

A. That's my understanding, yes.
Q. And what do you -- and if I refer to the Alabama case, you'll know what I'm speaking about?
A. I will, yes.
Q. Okay. Were you qualified as an expert in the Alabama case?
A. Yes, I was.
Q. And how much weight did the court end up giving your testimony in that case?
A. The court ended up giving what was reported to be little weight to my testimony in that case.
Q. All right. So let's talk about what you did in Alabama just briefly.
What were some of the things you analyzed in the -- the Alabama litigation?
A. Yes. I analyzed numerous things. We analyzed communities of interest, core retention, we did a compactness analysis and then we ran the demographic characteristics in detail of the state plan and other plans that were presented during the case.
Q. So what of those things have you done in this litigation?

A. Yeah. In this particular case, I was asked to just simply focus on the demographics. I did not do a community of interest, core retention compactness or other traditional redistricting principle assessment.

Q. And was Alabama the only other case you testified in prior to today?

A. Yes.

Q. So this is your second rodeo?

A. Yeah.

Q. Well, welcome to the show.

A. Thank you.

Q. So what is the current status of the Alabama litigation?

A. My understanding, it's been stayed and it's sitting with the U.S. Supreme Court currently.

Q. All right. So moving on to your reports in this case, how many reports did you provide here?

A. I provided two, an initial and a supplemental.

Q. So what is contained in your supplemental report?

A. Sure. The supplemental report was

1 delivered after I received another plan. I
2 received something called an Illustrative 4 plan,
3 and so I did the same analysis of that plan as I
4 had done for the enrolled plan and for the other
5 illustrative plans I had been presented earlier.
6 The supplemental report also
7 included some additional detailed information on
8 the measurement of the black population in
9 combination with other races as well as in
10 combination with the Hispanic ethnicity
11 measurement.
12 Q. And who's report were you responding
13 to in your supplemental report?
14 A. The supplemental report responded to
15 a plan presented. I believe Mr. Cooper was the
16 author of that. That's the Illustrative 4 plan.
17 I did not analyze any other plans in that
18 supplemental report.
19 Q. And Cooper -- and Mr. Cooper, excuse
20 me, was the witness for the Glamon plaintiffs?
21 A. I believe so, yes.
22 Q. And did you review -- Mr. Fairfax
23 also has presented us a -- a revised plan as
24 well. Did you review that?
25 A. No. I received no information about

the other revised Robinson plan. I did not look at it.

Q. And then you also produced recently, I think yesterday morning, a corrected appendix and supplemental report. Why did you do that?

A. Yeah. There's a -- an analysis of what we call splits. There's a split, detailed splits analysis we provided for all of the plans; and for one of the plans, the percent black share of the population in one of the cables was reported as the share of the population within that piece or that split of the city rather than as a share of the black population in this city. The -- the map is slightly different, but the conclusions are exactly the same.

Q. Okay. And so what were you asked to do? I think you testified to this earlier, but what were you asked to do in this case?

A. Okay. In this case, I was asked to do two things: I was asked to test and measure the performance of the enrolled plan and the illustrative plans in terms of numerosity and remedial to deeply understand if and how the different plans met the numerosity requirements for the black population for the

1 majority-minority district. And then I was asked
2 to, in the course of my analysis, come to an
3 opinion about whether race was the prevailing
4 factor in the design of the illustrative plans
5 that I was presenting.
6 Q. Okay. And so -- so just for all, I
7 want to go through some things that maybe you
8 didn't do and you can confirm those for us. Did
9 you do arraign analysis of communities of
10 interest in this case?
11 A. No.
12 Q. Did you do a racially polarized
13 voting analysis here?
14 A. No.
15 Q. Did you opine a population -- oh,
16 well, excuse me -- that the black share voting
17 population -- population is the correct or
18 preferred version for this case?
19 A. No.
20 Q. Did you look at the core retention
21 of districts?
22 A. No.
23 Q. And did you do any analysis of
24 traditional redistricting principles?
25 A. No.

Q. Okay.
THE COURT:
Mr. Gordon, can I just interrupt one second? I want to make sure that I understand the terminology that the witness is using.
You are saying "enrolled plan." Up to this point, we have been using the terminology, not me, the parties have been using the enacted plan as the terminology that's been used. Is that what you are referring to?
THE WITNESS:
Yes, ma'am.
THE COURT:
I think that's going to be very, very helpful for the record. So enrolled plan equals enacted plan.
MR. GORDON:
Yes, Your Honor. I'm sorry.
THE COURT:
I think we need to keep the record straight in what terms we use.
THE WITNESS:
And there the language is subtle.

There's also plans that were engrossed plans similarly named, so thank you for the clarification.

THE COURT:

Okay. I just wanted to make sure we all knew what we were talking about.

MR. GORDON:

All right. So now let's turn to the substance of your report, which is State's Exhibit 2; and I'm going to refer to page 18, and that's your table. Can you bring it up for me?

TRIAL TECH:

(Complied.)

THE WITNESS:

I can see it.

BY MR. GORDON:

Q. Great. I don't have to ask that what is this table of?

A. So this is a table that shows the percent of the black population by three different definitions for the enacted plan, the plan for the -- the HB-1, SB-5 plan.

Q. Okay. So what -- let's just get our terminology right so we are all clear.

Can you define for me what each of these three columns of black refer to?

A. Yes. So the black alone number is the share of the black not Hispanic, not in combination with any other race population. That's what we sometimes refer to as B-N-H, black not Hispanic alone. The next definition, what I call the black DOJ definition is from basically what I'll -- we will call 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.

The last definition, the any part black definition is the most liberal or the most expansive definition you could use to define a black population, and that definition includes black in combination with any other race, whether it is in combination with Hispanic or not. It is any part, literally any part black with any other race or -- and/or in combination with the Hispanic population.

Q. And for the purposes of the census, Hispanic is treated -- how is Hispanic treated as any differently from race?

A. Thank you. Hispanic is what we would refer to in demography as ethnicity. It's a separate construct from what we would call race, and the ethnic combination is something that we use frequently in combination with race to define populations. They can be both race and then whether or not they are the Hispanic, I think, origin or not.

Q. And even though that's not listed on this table, I think we will see some examples of it, what measurement of -- of whites did you use when you used the white measurement?

A. We used white not Hispanic population. It's the most exclusive of the definition of the white population throughout.

Q. Great. And then focusing just briefly on DOJ black, are you aware of a second set in the DOJ black process?

A. Yes. The direction provided by the DOJ in the document they published online provides two different steps. The first tier or the first step is, as I described, the black and the white in combination; and then the second step is they go into quite a bit more detail about black being in combination, potentially

being in combination or in combination with different races, you know, ethnic origins, and that can be open to demographic interpretation.

Q. So in -- in your view, is the second step of the DOJ black incorporated into your tables here?

A. Yes, it is. The most expansive definition of the second tier is what we call the any part black, and that's the definition that I've seen in -- that I used in my report and that I saw in other expert reports throughout the case.

MR. GORDON:

Thank you. And, Your Honor, first, I forgot to approach the witness to give him his report. With your permission, I'll do so.

THE COURT:

You may.

THE WITNESS:

Thank you.

THE COURT:

And, Mr. Bryan, will you just verify for the court and the opposing counsel that what's before you are only your two

reports?
THE WITNESS:
Yes.
MR. GORDON:
I will also represent for the court that includes the corrected Appendix 2 that was resubmitted as Exhibit 2C. It just substitutes for page 17 of his supplemental report.
THE COURT:
Okay. Thank you.
BY MR. GORDON:
Q. Okay. So now that we have sort of terminology straight, what does this table tell us about District 2 under the enacted plan?
A. Sure. So this table would tell us that we have one majority-minority district. The black alone definition would say that there are 56.3 percent blacks by the black definition of black alone. There's incrementally a slightly higher percentage, 57 percent, using the first tier DOJ definition; and then further when you use the any part black definition, the percentage goes up a little more to about 58.65 percent.
If you look at the other districts

in the plan, they -- they range from anywhere from 12 percent up to about 30 percent. Those two districts are right around 30 percent black population outside of the majority-minority District 2.

Q. So as you increase the leniency of who you include in the definition of black --

A. Yes.

Q. -- you increase the number of people; is that right?

A. Yes.

Q. So if we can switch now to Table 384 on page 19 of your report. See it on the screen?

A. I see it.

Q. Great. This is the Robinson first illustrative plan. Can you describe to us what this table shows?

A. Yes. So this plan has the same layout and the same math as the plan that you showed with me just a moment ago. This shows that there are two districts that have sizable black populations: There's District 2 and District 5.

In District 2, the black alone definition results in a black population that is

1 48.7 percent of the population of the VAP, voting
2 age population, VAP for that district. The DOJ
3 definition adds black in combination with white
4 non-Hispanic resulting in still not quite
5 50 percent, about 49.4 percent. And then when
6 you get to an any part black including any race
7 in combination, including with Hispanic, you get
8 over the 50 percent threshold, just about a
9 51 percent black population.
10 When I look at District 5,
11 District 5 has a majority black population, 50.6
12 by the black alone definition. If you look at
13 the black DOJ definition in first tier, again,
14 similar to the first plan, it goes up. It's
15 51.2 percent.
16 And then, finally, with the any part
17 black definition, the number of the majority
18 black number rises to just over 52 percent.
19 Q. All right. And then let's do one
20 more example of this. If you turn to page 20 of
21 the report, Table 385, the -- the top.
22 A. Okay. I see it.
23 Q. And this is, again, an illustrative
24 plan. What does this table show?
25 A. Thank you. Again, this table was

created with the same math and framework as the first two tables.

In this plan, it's notable because while Districts 2 and 5, in both districts, the black alone population does not rise to 50 percent, a majority threshold. The black DOJ first tier definition does not rise to a 50 percent threshold. Only when you get to an any part black, the most expansive definition, do you get to a majority status.

And that majority level or majority threshold for District 2 is approximately 50.2 percent and District 5 that majority would be 50.04 percent.

Q. Okay. And so I'm not going to go through all of these tables. We would be here for forever.

A. Sure.

Q. But generally speaking, what does the data show for the remaining illustrative plans that you reviewed?

A. All of the plans only achieve the two black majority-minority districts with the use of the most expansive interpretation of any part.

Q. And so just to make sure we are clear. Did any of the illustrative plans that you reviewed have two majority-minority districts go over the percent of the black voting population for the black alone or black DOJ formulation?

A. No.

Q. And I forgot to mention there was an amicus brief in this case that had a plan attached to it. Did you review that plan at all?

A. I heard there was. I did not analyze it. I was -- I was not -- I was not given the plan.

Q. All right. So let's switch gears a little bit to the second part of your report.

A. Okay.

Q. This is the Section B under your report, which is called District Boundaries and Parish Geographic Split, the Analysis. Generally speaking, what did you do in this section of your report?

A. Sure. So when you do a splits analysis, there's typically two pieces of that analysis. The first piece just goes to look at numerically how many pieces of geography are

split by a plan, and typically we would look at things such as parishes, places which can be either cities or towns. And then you would also look at VTEs, sometimes you look at other types of geography.

In Louisiana, those are the three that are relevant. So the first step is to simply measure the number of splits. The second step is then to do an assessment of the demographic impact of those splits; that is to say, if there is a split somewhere, how many or what kind of people are impacted by those splits. So those were the two types of analysis we did under what I call my splits analysis.

Q. And when doing the second part of that analysis, in paragraph 39 of your report on page 23, you say you use a methodology called "index of misallocation"?

A. That's correct.

Q. What is an index of misallocation?

A. Sure. An index of misallocation is a standard regularly used, a demographic tool to analyze the differences in population from what they are compared to what you would expect. It's a tool that is used regularly in assessing

population estimates and projections and other analyses such as federal fund allocation.

Q. And is this a type of analysis you've done during your normal work?

A. Frequently, yes.

Q. Now, let's start at the -- let's start at the beginning with the end.

What conclusions did you draw from the misallocation analysis you did in Section B?

A. Sure. The index of misallocation is a beneficial tool because what it enables us to do is to compare different plans and how much one plan splits or differentiates a population versus another one. There is no bright line, right number or wrong number. All it does is enable us to compare one plan to another plan.

So what I was able to do with an index of misallocation is simply say, using the enacted plan as a starting point, how much more do the other illustrative plans; that is, the Robinson illustrative plan and the other Edward Galmon one, two, three, four plans, how much more or less do they allocate or differentiate the black minority populations compared to the enacted plan.

Q. So I think it would be helpful for all of us if we look at an example to make this slightly more concrete.

MR. GORDON:

I'm going to show you Appendix 2 of your initial report.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay.

MR. GORDON:

And turn to page 38.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay.

MR. GORDON:

Great.

BY MR. GORDON:

Q. And so we are going to be talking about Baton Rouge quite a bit today, so let's start with the -- well, first, before we get there. What does this table generally show us?

A. Sure. So this is the -- this table reflects the second part of the splits analysis.

1 This is the after we counted how many splits
2 there were.
3 So you can see in this table that, I
4 think there's approximately 20, 19 or 20
5 different cities and towns in the enacted plan
6 that are split by the plan. And what this table
7 shows us is that when a town is split by the plan
8 into, in this case, two different districts, no
9 -- no towns or cities were split into three
10 districts with this plan. What this tells us is
11 how many of the total population went into each
12 piece and how much of the white population went
13 into each piece and how much of the black
14 population went into each piece, and this enables
15 us to study and examine and understand how much
16 differently a black population may have been put
17 into one part or another part of a split city
18 than the white population and then the population
19 as a whole.
20 Q. Now, are -- so this is the enacted
21 plan. Are all of these splits -- do all of these
22 splits contain at least one majority-minority
23 district?
24 A. There are a couple of the towns that
25 are split. For example, Eunice, the city, is

split between Districts 3 and 4, so not all of them are majority-minority splits for District 2.

Q. Okay. So let's look at one that does contain District 2, the current majority-minority district in Louisiana. Let's look at the city of Baton Rouge.

A. Okay.

MR. GORDON:

If you could, zoom in on that please, real quick.

TRIAL TECH:

(Complied.)

MR. GORDON:

Okay. So now we are looking at the City of Baton Rouge.

BY MR. GORDON:

Q. Can you describe for the court what these numbers tell us?

A. Sure. So in Baton Rouge in the enacted plan, it's split between two different -- two districts: District 2, the majority-minority district, 79,000 people in that split or that piece; and District 6 has about 148,000.

So out of the approximately 230,000 people in Baton Rouge, there's one-third are in

the majority-minority District 2 and two-thirds of the total population are in the non-majority-minority District 6, so it's very close to a one-third, two-thirds slope.

Q. Okay. And what numbers are you looking at to compare in order to formulate your opinions with respect to this section of your report?

A. I'm sorry. Can you rephrase the question?

Q. Sure. And forgive me if I'm misunderstanding this, but this table shows the allocation of percentage of population between the -- each of the districts as in terms of the whole number of persons in the city; is that correct?

A. Yes.

Q. Okay. And so what percentages do you -- are you focusing on when you are conducting your analysis of whether there was a racial foundation with regards to this or any of the other plans?

A. Thank you. So the reason that we include the -- the number of white non-Hispanic and the any part black population is to enable us

to look at how many of the white population, how many of the any part black population ended up in each one of these two pieces of Baton Rouge basically to, you know, roll up to this total population -- one-third, two-third total population of Baton Rouge.

So what we found is that in Baton Rouge, only approximately 5 percent of the white population in Baton Rouge were put into District 2 and approximately 95 percent were put into District 6. When we look at the -- the black population, there's about 57 percent that are in District 2 and about 43 percent that are in District 6, so there's -- there's some evidence there was some misallocation in Baton Rouge in this plan, some.

Q. And -- and so to arrive at that, are you comparing that 57.2 number for black voting age population percentage with the total population in the District 2?

A. Yes. That's comparing the 57 to the 34.7 percent number, yes.

Q. Thank you.

MR. GORDON:

And you can Zoom back out.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. Are the cities of Monroe or Lafayette split in the enacted plan?

A. No.

Q. Okay. So now let's -- now, let's look to some of the illustrative plans, turning to Appendix 2-B, which is the first Robinson illustrative plan, which is at 2D, page 39 of his report.

A. Okay.

Q. Great.

MR. GORDON:

And obviously, it's technologically complicated. If we could also pull up the -- the map of the split Robinson plan 1, which is at Appendix 4BB, page 82.

TRIAL TECH:

(Complied.)

MR. GORDON:

And this is the -- the -- that's Baton Rouge. Okay. So first, let's turn to your table and look -- and let's zoom in on the numbers for the City of

Baton Rouge under the -- sorry. I need the -- the ID of the second one there. Page 39 on the left side, please.

TRIAL TECH:

(Complied.)

MR. GORDON:

There we go. We will get the technology straightened up. Zooming out in the City of Baton Rouge under the First Robinson illustrative plan.

TRIAL TECH:

(Complied.)

THE WITNESS:

Yes.

BY MR. GORDON:

Q. Now, what does -- what does -- what do these numbers show us in terms of the City of Baton Rouge in the 1st Illustrative Plan for Robinson?

A. So there's a couple of observations here. The first is that this is the only illustrative plan which cuts Baton Rouge into three separate pieces. Two of these pieces we can see a -- are part of the black -- the black majority districts for this plan, Districts 2 and

5. District 6 is not. And so we can see that in total, there's about 15 percent of the population goes off into District 2, and then roughly equal parts two into Districts 5 and 6.

When we read across these lines and we look at the share of the white population, here you can see that the majority, 68.64 percent, of the white population ended up being excluded from Districts 2 and 5. That gets put into District 6. And what we can see here that what's notable is that if -- if all else was equal, if whites were allocated and blacks, for that matter, in the same way as the total population is distributed, you would expect the white number in District 6 and, for that matter, the black number at District 6 to be 40 percent.

What we find instead is that the white population is significantly over indexed as 28 percentage points more white than total and then proportionally it's lower shares in the two minority districts. Conversely, what we can see in Districts 2 and 5 is that, especially in District 5, there's proportionately significantly higher -- a significantly higher black population in District 5 than is represented for the total

population.

MR. GORDON:

Okay. And we can un-zoom that out and let's turn right now to the map of the plan.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. What does the map show in terms of the data you just showed us with regard to the population --

A. Sure.

Q. -- distribution of the districts?

A. Sure. So what this map shows us is a -- an outline of the -- the city boundaries. The black line that you see kind of crossing, you know, going across the -- the middle of the city, that kind of roughly follows Government and Florida Streets and the -- dividing the city north and south. So that -- that black line across the middle isn't a city boundary, it's just there to show you where the district boundary is and where the city is divided.

The colors that are used here, we look at the gray color, the zero percent, that

1 frequently just means that there's no population
2 there. Sometimes that could mean that that is a
3 100 percent white block, but that's very rarely
4 the case.
5 The other numbers are what we would
6 call in statistics quartiles. The orange
7 represents areas that are under 25 percent black,
8 yellow represents 25 to 50 and the 50 percent
9 number is important here because this is the
10 number where we need to understand which areas
11 are over 50 and contributing to a majority
12 district or which ones are under.
13 So the light green is then 50 to
14 75 percent and green, the dark green is
15 75 percent or more, what -- what we would call a
16 very high concentration black mirror there.
17 These data are shown for the 2020 census block
18 level geography, the highest detail created, or
19 HRV, we demographers have available to us.
20 Q. So it would be -- then there's a
21 yellow squiggly line box and -- and next to it
22 like a darker green squiggly line box, those
23 represent what?
24 A. Can you please state that again?
25 Q. Yeah. Sorry. I'm not describing

that well at all.

A. Sure.

Q. So there are orange and green for those you just described on these and some of them are next to -- to others. You were talking about the level of geography. What was that again? I'm sorry.

A. Yeah. They were -- this is shown at 2020 census block level geography. There's approximately 150,000 of them that comprise Louisiana.

Q. And that's data that's published by the Census Bureau, right?

A. It is.

MR. GORDON:

And then turning quickly, if we could, zoom out on this map and pull up just on the right side Lafayette, which is Appendix 4HH, page 90, and leave this table up, please.

TRIAL TECH:

(Complied.)

MR. GORDON:

Great.

BY MR. GORDON:

Q. This is the Robinson --
A. Yes.
Q. -- illustrative plan split.
MR. GORDON:
Can we zoom in on that map now, please?
TRIAL TECH:
(Complied.)
BY MR. GORDON:
Q. Now, what does this map tell you about the way in which the lines were drawn in the Robinson 1 plan?
A. Yes. Similar to what we see in the Baton Rouge illustrative plans, the line again through the middle is not a city boundary. That line through the middle is so where the split of the city is between Districts 3 and 5. So when -- when we look at the line, and you look at the areas that are green and dark green, you can see that the -- the map drawer -- and I don't know who the map drawer is -- drew a line through the middle of Lafayette here. It's down for some part of this. This is through a rail yard. It's a geographic feature that partially differentiates north and south of the city, but

most of -- most of the line from the north to the south of the city is drawn to the block precisely to the edge of where the majority black neighborhoods are and then to the south where there is very little to no black population.

MR. GORDON:

All right. Now, let's zoom out from that and we will change it up with turning to Appendix 2C on page 40 of your report, which is the first Galmon illustrative plan. And then, Steve, also let's bring up -- it's the map counterpart for Baton Rouge at F4CC, page 83.

TRIAL TECH:

(Complied.)

MR. GORDON:

Okay. Let's first zoom in on for the data for the City of Baton Rouge, please.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. Okay. And could you describe what this table shows for the City of Baton Rouge for the first Galmon plaintiff?

A. Thank you. The Baton Rouge number shows that in District 5 there's approximately a -- a two -- there's a two-thirds share of the total population in Baton Rouge that's in District 5 and just over a third of the population is in District 6.

When I read across, we look at the -- the white population and its contribution, you can see those numbers are basically flipped. There's about one-third of the white population is in District 5 and approximately two-thirds of the white population is in District 6.

When we read further across to the black statistics for Baton Rouge, you can see that the -- the overwhelming majority of the black population of Baton Rouge was put by the map drawer in District 5, although there were some black population in either districts.

MR. GORDON:

All right. If we can zoom out from that and to the map.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. And can you describe for us briefly,

same as you did last time, what this map shows to you about the distribution of people vis-a-vis the map drawing process?

A. Sure. Generally, generally speaking, this map shows that the -- the division of the city happens along Government Road (sic), Florida Road, north of which is significant black populations. The plan also loops down to the southwest, an area I would describe as kind of being around Buchanan Street, Buchanan neighborhood, and then taking some pieces of LSU further down to the outer edge with District 6.

Q. And what does it show you about the -- the map drawing choices that went into drawing the split?

A. The map -- I'll say that the -- the map and the -- the table talk to each other. It makes sense that when you look at the 80 plus percent of the black population in the table that's in District 5 and then you look at the map that shows District 5 and visually how much of the black, heavy black population in the city is in that district, the -- the table and the map are largely in agreement saying that District 5 has a large share of the Baton Rouge black

population.

MR. GORDON:

All right. And now, if we could, zoom out of the map and replace the map with Appendix 4II, page 91. And this is Lafayette for the Galmon Illustrative 1 Plan. Can we zoom in on that?

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. Now, just as we discussed with the -- with the Baton Rouge --

MR. GORDON:

Well, actually zoom this out, please. I'm sorry. And can we zoom out on Lafayette city on the table first? Let's see Lafayette.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. And describe what this -- what this data shows for the City of Lafayette?

A. Thank you. Similarly, with the Baton Rouge analysis, Lafayette is split 70 percent District 3, 30 percent in District 5.

When you look at the white population, virtually all of it, 88 percent, is in District 3. Very little of the white population, only 12 percent, remains in District 5. By comparison, one-third of the black population in this plan is in District 3 and two-thirds of the black population is in District 5.

So, in this case, there's a -- almost a 39 percentage point differential between the share of the total population in District 5 and the black share of the population that is in District 5.

Q. And so if the map drew -- was drawn to where it distributes the population evenly, what would the data show?

A. If it were drawn evenly race -- race blind, what you would find is there would be roughly equal amounts of the white and black population in District 3 and District 5 consistent with the total population. That's all else being equal.

MR. GORDON:

Okay. Zoom out on the data table and zoom out on the map, please.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. And just like we discussed before, what does the split in the City of Lafayette in Galmon Illustrative 1 tell you about what the map drawer did?

A. Yeah. Virtually, all of the illustrative plans -- all of the plans had just subtle differences in how they drew these boundaries north and south dividing the city between District 3 and District 5 on the ground.

Close-up examination of these lines show that they were drawn in a way that literally were very, very precisely drawn with blocks that were 50 percent or more black population on one side of the line and less than 50 percent, sometimes less than 25 percent of the population on the other side of the line being white population.

Q. All right. Thank you.

MR. GORDON:

Let's then move on to the second Galmon illustrative plan, Appendix 2D on page 41. And then on the right side, go

1 towards 4DD, page 84. I'm sorry.
2 Appendix 4DD on page 84.
3 TRIAL TECH:
4 (Complied.)
5 MR. GORDON:
6 Thank you.
7 BY MR. GORDON:
8 Q. And, first, let's look at the City
9 of Baton Rouge up at the top there, the data.
10 And can you describe to us what this data shows
11 for the City of Baton Rouge?
12 A. Sure. Similar to the -- my analysis
13 of the other plans, Baton Rouge is split 58,
14 42 percent, 58 percent in District 5. There's a
15 much lower percent of the white population in
16 Baton Rouge that is in District 5, and a much
17 higher 81 percent of the black population who is
18 located in District 5, so, again, significant
19 deviations of white and black from the total
20 population characteristics of the city.
21 MR. GORDON:
22 All right. Can you zoom out on that
23 and zoom in on the Baton Rouge map?
24 TRIAL TECH:
25 (Complied.)

THE WITNESS:

Okay.

BY MR. GORDON:

Q. And, once again, the same thing. What does the -- this map show you about the map drawer when they are creating the splits in the City of Baton Rouge in Galmon 2?

A. Yes. So, again, the black line through the middle of the city is not a city boundary. That's the line that divides District 5 and District 6, and that east/west line follows Government and Florida. And then what is notable, particularly notable in Galmon 2 and Galmon 3, is that when the district boundary turns south off of Florida, it goes down into this Buchanan Street near just above LSU; and a detailed examination of this shows literally block to block to block movement of the districts.

The -- the census data there show very high concentrations of black on certain blocks and one or two blocks over very white populations; and in an examination of that jagged line, you can see on this map it shows that the line was drawn to the block exactly precisely

1 dividing the black and the white populations
2 there.
3 Q. Okay. Thank you.
4 MR. GORDON:
5 You can zoom out on that.
6 TRIAL TECH:
7 (Complied.)
8 MR. GORDON:
9 And let's do one more. Let's go
10 with the data for the City of Lafayette.
11 TRIAL TECH:
12 (Complied.)
13 BY MR. GORDON:
14 Q. Just like before, what does this
15 data show for the City of Lafayette?
16 A. Oh, for Lafayette, sure. So, again,
17 this is a case where you've got a one-third,
18 two-thirds split of the population, total
19 population between 2 and 3. District 3 has
20 overwhelmingly a much higher share of the white
21 population and then the black population has very
22 -- a significantly higher share of District 2,
23 the -- the majority-minority district in the
24 plan.
25 MR. GORDON:

1 And then if we zoom out on that and
2 bring up Lafayette for a minute,
3 Illustrative Plan 2, which I believe is on
4 page 92, and it's 4JJ. And if you can
5 zoom out on this real quick.
6 TRIAL TECH:
7 (Complied.)
8 BY MR. GORDON:
9 Q. And what does this map tell you
10 about the line drawing process when it comes to
11 splitting Lafayette in Illustrative Plan 2 for
12 the Galmon plaintiffs?
13 A. Yeah. Again, the line through the
14 middle of the city differentiates the two
15 districts not the city boundary. This is notable
16 in that this particular plan was notable in
17 District 3, deviates a little bit from the other
18 illustrative plans insofar as it goes up just a
19 little bit north into the black neighborhoods of
20 District 2.
21 You can see there's like a little
22 piece of the neighborhood that is cut out there,
23 and then the line goes south rather than exactly
24 following the black neighborhoods, and then
25 captures a -- a couple of neighborhoods, I

1 believe it's called the -- locally it's called
2 the Saint neighborhoods because of the names of
3 the streets there.
4 The District 2 actually goes down
5 and grabs some of those more predominantly white
6 neighborhoods before the plan cuts back to the
7 east and begins following the black blocks and
8 black neighborhoods, okay.
9 Q. All right. And does the fact that
10 this plan incorporates a little dip into the
11 predominantly white areas, a little dip into the
12 predominant black areas, change your opinion in
13 any way?
14 A. No. The -- again, the table data
15 and the map talk to each other in showing that
16 the majority, a disproportionate majority share
17 of the black population is to the north in
18 District 2 and a disproportionate majority of the
19 white population is in District 3.
20 Q. Okay. Now, skipping ahead a little
21 bit, I just want to look at Monroe real quick --
22 A. Sure.
23 Q. -- before we wrap up here today.
24 MR. GORDON:
25 If you could, put up Appendix 4PP at

page 99 and Appendix 4QQ at page a 100.
Side by side for us, please.
TRIAL TECH:
(Complied.)
BY MR. GORDON:
Q. Okay. So what we have here is Monroe, the City of Monroe for the Robinson illustrative plan and Galmon Illustrative Plan 2. Do you see that on the screen?
A. Yes.
Q. And without digging back into the detail data, what do the maps here show us about the map drawing process when this came to Monroe?
A. Sure. Monroe, similar to Alexandria and other cities in Louisiana, has a very unusual city boundary. It zigs and zags and moves around. It's not a very clean geometric shape; but nonetheless, we took the boundaries as they are and then looked at where they -- these plans split the City of Monroe.
And what we found across each one of the different plans again is that there's a northwest to southeast split, right. So you have District 4 in the upper left-hand corner, the northwest corner of the city almost exclusively

1 white and very, very high number percent share of
2 white population in that part of the city, then
3 in each -- each one of the plans draws a line
4 vicariously, cuts that white population out of
5 the city and then conversely keeps all of the
6 black population, especially notably the far
7 south part of this city, the very heavily black
8 -- black part of the city is kept in the
9 majority-minority district away from the much
10 more white non-Hispanic District 4.
11 Q. All right.
12 MR. GORDON:
13 I think we can take these down.
14 TRIAL TECH:
15 (Complied.)
16 BY MR. GORDON:
17 Q. So, you know, rather than go through
18 the rest of the plaintiffs' plans that you
19 analyzed, is it fair to say that the remainder of
20 the plans we looked at which would be Robinson 1
21 and Galmon 1 through 4, they follow the same
22 trajectory that you discussed with the ones that
23 you just looked at?
24 A. They are very consistent with small
25 deviations by plan, but the conclusion and the

1 observations are the same.
2 Q. Okay. And so -- and so we looked at
3 a lot of tables and maps today, and thank you
4 everyone for preparing those here.
5 In the plaintiffs' split contained
6 in your report for the illustrative maps you
7 reviewed, is there any example where a place,
8 meaning a city or town, was split and -- and
9 where at least one majority-minority district did
10 not get more than it's share of black voting age
11 population?
12 A. In looking at all of the place
13 splits and all of the parish splits, there is not
14 one place that was split that was not in a way
15 that put a disproportionate majority share of the
16 black population into a majority-minority
17 district. There wasn't some of the places or
18 parishes, it was every one of them.
19 Q. Okay. And then what did you
20 conclude about the illustrative maps that were
21 produced by plaintiffs in this case that you
22 analyzed?
23 A. Yes. Focusing on my analysis of the
24 race and where the population is either over or
25 under 50 percent black, I arrive at the

conclusion looking at the -- the tables of data and the way the maps were very precisely drawn around these different levels of census geography, that race was a prevailing factor in the design of those plans.

Q. And really quick before I finish up, Mr. Fairfax takes issue with you in your supplemental report that you didn't take into consideration socioeconomic factors.

Did you look at those when drawing your analysis here?

A. No.

Q. Okay. And you believe what you did, it would not change anything about the conclusions in your report?

MR. NAIFEH:

Objection.

MR. GORDON:

I'll withdraw the question. No further questions.

THE COURT:

Okay. Before I tender, the court has three questions I want to ask because I want to make sure you are able to answer any questions that this may provoke on

redirect.

Mr. Bryan, was this misallocation theory or the misallocation analysis that you used here in this case, did you use that in the Alabama case?

THE WITNESS:

No.

THE COURT:

Was it ever -- have you ever used it before?

THE WITNESS:

Yes.

THE COURT:

And -- and used it in testimony or in private opinion that was ultimately used as the basis of your opinion testimony?

THE WITNESS:

Yes.

THE COURT:

And is it used by any other professionals in your field?

THE WITNESS:

Yes.

THE COURT:

Thank you.

MR. GORDON:

Your -- your Honor, if I may, based on your questions, I just want to clarify one thing.

THE COURT:

Well, since I asked questions, you can do it now or you could do it on redirect, but go ahead.

MR. GORDON:

I know. I just want to clarify one thing.

BY MR. GORDON:

Q. I just want to be clear that, other than today and Alabama, you've never otherwise testified in a case?

A. No.

Q. So that means you relied on a misallocation analysis that was advising other clients not in litigation, but in your job as a consultant?

A. Yes.

THE COURT:

Thank you.

MR. GORDON:

Thank you.

THE COURT:

Cross.

MS. KHANNA:

Your Honor, can I request a short break so I can consult with Robinson plaintiffs' counsel? I want to make sure I consult with them on their notes as well or I can do it after.

THE COURT:

That's fine. We can take a break right now. The court is now in recess.

(A short recess was taken.)

THE COURT:

Okay. Be seated. Next witness? Sorry, not next witness.

Cross-examination.

MS. KHANNA:

Thank you, Your Honor.

CROSS-EXAMINATION BY MS. KHANNA:

Q. Good morning, Mr. Bryan.

A. Good morning.

Q. I'm Abha Khanna, counsel for the Glamon plaintiffs. Good to see you again.

A. Good to see you.

Q. You've been retained as an expert for the State of Louisiana in this state; is that right?

A. Yes, the attorney general's office.

Q. Who reached out to you to ask for your participation in this case?

A. That would have been counsel for the attorney general, Jason Ferguson.

Q. Okay. And -- and when did you first get that outreach?

A. Between three and four weeks ago.

Q. Was it before or after the governor's veto of the map; do you know?

A. I believe it would have been after.

Q. So you mentioned on direct examination with Mr. Gordon that this is the second time that you've served as a testifying expert in court; is that right?

A. Yes, that's right.

Q. The first time was just a few months ago in the quote, unquote, Alabama case?

A. Yes. That's true.

Q. And, in fact, that's the last time you and I spoke to -- spoke to each other under rather similar circumstances, correct?

A. Yes.
Q. So your expert report in this case addresses two topics, as you state in your report first, is whether the plans meet the numerosity criteria for the first Gingles; and the second is if there is evidence that race appeared to dominant in a district any of the plans. Did I read that correctly?
A. That's correct. Yes.
Q. So I'm going to talk about that first topic first.
A. Okay.
Q. And that first topic is one that you did testify in Alabama about as well, correct?
A. Yes.
Q. And, in that case, just like in this one, you testified about the various possible definitions of who counts as black for purposes of the first Gingles project, correct?
A. Yes.
Q. And in the Alabama case, the judges there unanimously determined that the any part black metric was the proper metric for evaluating Gingles 1?
A. That's my understanding.

Q. Now, on page 17 of your report in this case, you refer to the U.S. Department of Justice guidelines under Section 2; is that correct?

A. Yes.

Q. And you discuss that same document in your Alabama report; is that correct?

A. Yes.

Q. And you would agree with me that those DOJ guidelines provide authority for the use of the any part black metric in the two cases, correct?

A. Yes.

Q. And those DOJ guidelines expressly cite the Georgia V. Ashcroft case from the United States Supreme Court; is that right?

A. I believe so, yes.

Q. And you cite that same case in your reproduction of the guidelines in your report; is that right?

A. Yes.

Q. Did you review that case in preparing your report?

A. No.

Q. Do you have any basis to disagree

with me that the Georgia v. Ashcroft case, specifically Footnote 1 as cited in both your report and the guidelines, instructs that where a case involves the examination of one minority group's effective exercise of the electoral franchise, it is proper to look at all individuals who identify themselves as black?

MR. GORDON:

Objection, Your Honor. This calls for a legal conclusion.

MS. KHANNA:

Your Honor, may I respond?

THE COURT:

You may.

MS. KHANNA:

Mr. Bryan includes this cite in his report. He has stated in his report that he relied on all of the data sources cited in his report. I think it's fair to ask him about the cases he cited.

THE COURT:

The preceding question asked him if he had -- had cited Georgia v. Ashcroft in his report and he indicated -- indicated that he did and it's in his report;

1 therefore, I'm going to overrule the
2 objection.
3 BY MS. KHANNA:
4 Q. Would you like me to repeat the
5 question?
6 A. Yes, please.
7 Q. Would you agree that the Georgia v.
8 Ashcroft case specifically Footnote 1 that is
9 cited indicated that it is proper to look at all
10 individuals who identify themselves as black
11 where the case involves the foundation of one
12 minority group effective electoral -- effective
13 access to the electoral franchise?
14 A. I'm not an attorney and I don't have
15 an opinion on whether the decision in Georgia v.
16 Ashcroft is generalized all to this case.
17 I reviewed the language in the DOJ
18 document carefully and it says two things in
19 deciding whether to use the any part black
20 definition or not, and one of the terms that they
21 use is "significant," you have to consider
22 whether it is significant or not; so I don't know
23 whether a finding of significance of Georgia v.
24 Ashcroft is relative to a finding of significance
25 here.

1 And, secondly, the document goes on
2 to discuss that if a significant population is
3 found, it's subject to a demographic process of
4 allocation; and it is not clear how that
5 allocation takes place. And neither I nor any
6 demographers I know what that allocation process
7 is, so I -- I cannot say that because that was
8 found to be the case, the definition of
9 significance in Georgia v. Ashcroft, that that's
10 relative or generalizable in this case or not. I
11 don't know.
12 Q. And what you just mentioned about
13 significance and allocations --
14 A. Yes.
15 Q. -- that's not coming from Georgia v.
16 Ashcroft, that's coming from the DOJ guidelines;
17 is that correct?
18 A. That's correct, yes.
19 Q. And isn't it true that in the
20 Alabama case, the court there found that you
21 conceded on the record that Georgia v. Ashcroft
22 indicated that it is proper to look at all
23 individuals who identify themselves as black at
24 least in that case; is that correct?
25 A. If it's a significant population,

then it is appropriate. I cannot defend what is or is not a significant population.

Q. Thank you. And your report does not cite a single Section 2 case that uses the -- the black alone metric in determining whether Gingles 1 is satisfied, does it?

A. No.

Q. Mr. Bryan, are you familiar with the one-drop rule?

A. No.

Q. Are you -- you've never heard of the term the one-drop rule in --

A. Correct. I've heard the concept. I admit I don't deeply know, understand the demographic or the historic context of the term.

Q. And you were here in court yesterday when Dr. Gilpin testified about the one-drop rule's use in Louisiana history?

A. No.

Q. Are you aware that the one-drop rule was historically the method by which the State of Louisiana defined people as black for purposes of discrimination?

A. No.

Q. Do you have any basis to disagree

with me that the one-drop rule was a very inclusive definition of who is black?

A. Not knowing, especially in the historic context of Louisiana what that is, I can't provide an opinion.

Q. You would agree with me, however, that the any part BVAP metric is an inclusive definition of who is black, correct?

A. I would agree with -- with that, yes.

Q. And I believe on your direct examination you characterized it as a liberal or an expansive definition?

A. Yes. There's numerous populations between the first tier DOJ definition of black and white non-Hispanic, and then as I point out in my report, there's numerous other combinations that ladder up to the -- the most broad or expansive definition of any part, although with different races or in combination with Hispanics.

Q. And do you know whether historically the one-drop rule was also a liberal or expansive definition of who constitutes -- or who, in fact, is black?

A. Again, since I'm not familiar, I

can't give an opinion.

Q. Mr. Bryan, you in the end offer no opinion or conclusion in your report that using the any part BVAP figure for analyzing Gingles 1 is at all improper; is that correct?

A. I do not arrive at a conclusion about what's the appropriate definition to use.

Q. And you do not dispute that each of the illustrative plans presented in this case contain two majority any part BVAP districts, do you?

A. Under the most expansive definition of any part black, all of the illustrative plans achieve two majority-minority districts and only under that definition.

Q. You analyzed Mr. Cooper's report in this case?

A. Could you please restate the question?

Q. Sure. In -- in creating your own report, you analyzed Mr. Cooper's report?

A. I did look at Mr. Cooper's original initial report and his supplemental report.

Q. And Mr. Cooper also provided, in addition to the any part BVAP metric, he also

provided the non-Hispanic single race black citizen voting age population for each of his illustrative plans; is that right?

A. I did see that he provided those statistics, yes.

Q. And you would agree with me that that is a far less expansive definition of who is black for purposes of Gingles 1?

A. I don't have an opinion whether a citizen voting age population or the voting age population is more or less expansive. It would depend on a very specific piece of geography and circumstances.

Q. You would agree that that metric only counts people who are eligible to vote both because of their voting age and their citizenship, correct?

A. That is correct.

Q. And --

A. Yes. Yeah.

Q. And it only counts the single race black or those black alone, as you've characterized them, correct?

A. That is correct.

Q. And it only counts people who are

not Hispanic as well, so only black alone without any Hispanic ethnicity, correct?

A. I -- I did not study the calculation of his black CVAP. It is possible to both include and exclude Hispanics as well as people of other races in that. I don't know how he calculated it or arrived at his conclusions, so I cannot comment on that.

Q. And, in fact, you provide no response at all to his calculation of that NHSRB CVAP in his report at all; is that correct?

A. Yeah. My experience is that we use the Census Bureau's public law 94171 data, the P1, 2, 3, 4 tables for the purposes of these types of cases; and I did not look at the CVAP data or analyze Cooper's CVAP data as part of the -- the limited time I had in this case.

Q. And, therefore, you don't -- you do not dispute that each of the illustrative plans contains two majority non-Hispanic single race black citizen voting age population districts?

A. I cannot offer an opinion. I'm not aware.

Q. Mr. Cooper and I believe Mr. Fairfax as well --

A. Uh-huh (affirmatively).
Q. -- also provided voter registration data for each of the illustrative plans; do you recall that?
A. I've -- I've heard that they did. It's not an area that I studied in the area of my examination.
Q. When you say "you heard that they did," it was actually included in the expert reports that you reviewed in this case?
A. Yeah. It was not an area that I studied. I'm aware it was in the reports. I didn't look at it, analyze it or consider it in my analysis.
Q. You anticipated my question. No response to that portion of the analysis, correct?
A. No, ma'am.
Q. And, therefore, you have no basis to dispute that each of the illustrative plans offered in this case contain two districts in which blacks comprise a majority of registered voters; is that right?
A. I do not know.
Q. I want to move on to the second

1 question that you address in your report. And I
2 believe going back to page 9 of your report,
3 which is State Exhibit 2, you say that that
4 second inquiry is if there was evidence that race
5 appeared to predominant in the design of any of
6 the plans; is that right?
7 A. Yes.
8 Q. And the way that you analyze this
9 question is by looking at splits of various
10 Louisiana localities, correct?
11 A. That's correct.
12 Q. And that includes parishes and some
13 cities, correct?
14 A. Yeah. The emphasis of our analysis
15 was on places, but that was generalizable the
16 findings we have for parishes as well.
17 Q. But you didn't include a splits
18 analysis of all census designated places,
19 correct?
20 A. We did not include CDPs, no.
21 Q. When you say "we", you are referring
22 to --
23 A. Yeah.
24 Q. -- your own -- your own analysis?
25 A. Yes.

Q. Was there anyone else that helped you with the analysis in this case?

A. I have a team of experts who work at my company that helped me with this, but it's my analysis.

Q. You don't dispute that all of Mr. Cooper's illustrative plans contained fewer parish splits than the enacted plan, do you?

A. I do not dispute that, no.

Q. And you don't dispute that all of Mr. Cooper's illustrative plans contained fewer municipality splits than the enacted plan?

A. That is also correct.

Q. You also don't dispute that Mr. Cooper's Illustrative Plan 4 contains zero precinct splits, do you?

A. I do not dispute that.

Q. Okay. Let's take a closer look at the -- at your geographic splits analysis, and I believe you testified on direct that you conclude from this analysis that race predominated in the drawing of the illustrative plan; is that right?

A. A combination of looking at the tables of data, the index of misallocation, other measures as well as a visual examination of those

maps is how I came to the conclusion.

Q. And the court asked you shortly before the break whether you had ever produced this type of analysis in court before. I just want to clarify. The answer to that was no, correct?

A. The indexing misallocation wasn't in court. It was -- it's been run in analyses for other cases.

Q. Other people cases?

A. Yes.

Q. And do you know whether it has ever been credited by a court?

A. I do not know whether an index of misallocation was a decisive measure or was credited by a court in their decision. I don't know.

Q. But certainly you have never offered your particular methodology of -- of performing a misallocation analysis that has been credited by a court, correct?

A. Not that I'm aware.

Q. All right. So looking at page 23 to 24 of your report, State Exhibit 2, I believe this is where you explain kind of how this

analysis works.

A. Okay.

Q. Do I have the right place?

A. I'm not sure. Is it supposed to be on my screen?

Q. I can pull something up in front of you.

A. Okay. Thank you.

MS. KHANNA:

Let's pull up state Exhibit 2, your report, page 24.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay.

BY MS. KHANNA:

Q. I believe this is where you kind of layout how this analysis works, but what the hypothetical example would be and things like that --

A. Sure.

Q. -- does that sound about right?

A. Yes.

Q. You also have your reports in front of you, feel free to look at them.

A. Sure. I got it.
Q. So let's go to -- I want to call out that top paragraph on -- on this page 24. Here you state in the first full sentence, "If the black population were distributed evenly around the city and a split were created randomly" --
A. Uh-huh (affirmatively).
Q. -- "we would expect the black population to be split the same as the total population." Did I read that correctly?
A. Yeah, uh-huh (affirmatively).
Q. So this baseline that you calculate of the expected black population in each part of the -- of a divided locality, that -- that expected metric is based on these two assumptions; is that fair to say?
A. It's a baseline.
Q. And that baseline is comprised from these two -- or is based on these two assumptions, correct?
A. Yes.
Q. Assumption one being if the black population were distributed evenly around the city, correct?
A. Yes. Yes.

Q. And assumption two being if the black population -- or, sorry, if the split was created randomly?

A. That does not preclude the use of an index misallocation, if you don't fulfill those two assumptions. It's still a valid and widely used measure because we know that very rarely are populations precisely exactly distributed evenly, and that's why we have this measure, to measure the amount of difference from what we would expect.

THE COURT:

With all due respect, her question was is that one of your assumptions. I don't know what that answered, but it wasn't a question. Was that one of your assumptions?

THE WITNESS:

Yes.

MS. KHANNA:

Thank you.

BY MS. KHANNA:

Q. Let's take a look at Baton Rouge, which I believe you and Mr. Gordon talked about during your direct examination.

A. Sure.
MS. KHANNA:
If we could turn to State Exhibit 2, page 81 from your report. We could zoom in on the map a little bit.
TRIAL TECH:
(Complied.)
BY MS. KHANNA:
Q. What does this map depict?
A. This is a map that shows the outline of Baton Rouge, and it has a black line and a regular line going across the central part of the city, which is shown to represent where the enacted plan divided the city into two pieces, District 2 to the north and District 6 to the south, with the guided shading to represent the percent any part black by block throughout the city and the surrounding area.
Q. So just looking at the -- what you call the thematic shading of this map from your report --
A. Uh-huh (affirmatively).
Q. -- would you say that the black population is distributed evenly around the city?
A. No. No, it's not.

Q. You wouldn't say -- you would agree with me that it's largely concentrated in the north, correct?

A. Sure.

Q. So that first assumption that we just talked about on page 24, if the black population were distributed evenly around the city, that just doesn't hold true at all for Baton Rouge, correct?

A. That does -- that is true. That does not mean that you would not use that analysis to measure how much more or less one plan splits Baton Rouge than another plan. It's a comparative metric that allows you to see how much more or less within plan splits than another plan. It doesn't mean you can't use the plan if you don't have that criteria.

Q. Okay. And now back to that second assumption --

A. Sure.

Q. -- whether the split was created randomly, looking again at this map again, this is the enacted map, correct?

A. Uh-huh (affirmatively).

Q. Looking at this map, would you say

that the split in Baton Rouge was created randomly?

A. No. There's clearly some parts of this plan which show that the black and white population are divided particularly in the Florida, Government, east/west road through the middle and down towards Buchanan and LSU area in the southwest.

What's notable about this particular plan is that the population -- the black population to the northeast still remains in District 6; whereas, the other illustrative plans kind of extend the Florida and Government Street boundary out to the east to make sure that that is captured in one of the majority-minority districts instead.

Q. Do you have any reason to believe that the Louisiana legislature split Baton Rouge randomly when it drew the enacted plan?

A. When I examined the existing congressional district boundaries, those congressional district boundaries are very similar to boundaries we see here, although I never saw it stated explicitly. It's my understanding that the enacted plan was what we

1 would call the least-change plan. So in knowing
2 that there is one black majority-minority
3 district and there has to be some boundaries
4 somewhere to have had that historically black
5 majority district, it's my understanding looking
6 at these maps and these data that there are some
7 places and ways in which some cities are split to
8 differentiate some black population.
9 Q. I'm just going to -- I'm going to
10 re-ask my question --
11 A. Sure.
12 Q. -- to make sure I got the answer.
13 A. Yeah. Yeah.
14 Q. Do you have any reason to believe
15 that the Louisiana legislature split Baton Rouge
16 randomly when it drew the enacted plan?
17 A. I do not. I believe they followed a
18 -- a least-change approach and followed the
19 existing boundaries as the primary guidance for
20 where they put the boundary here around
21 Baton Rouge.
22 Q. Do you have any reason to believe
23 that the Louisiana legislature, this cycle or
24 last cycle, ever had a goal of drawing district
25 lines randomly?

A. I do not know.
Q. And you just stated that you believe that the Louisiana legislature had a least-change plan in mind; is that correct?
A. In -- in analyzing the current maps, it looks like they followed a least-change strategy, although no one told me this and I don't know -- I'm not aware of that as the guidance for any of these plans.
Q. You just anticipated my next question. You are basing that -- that -- that your conclusion there is solely on your analysis of the map not on any history, guidelines or instructions that were given to you by counsel, correct?
A. Yes, ma'am. That's correct. Thank you.
Q. So going back to page 24 of your report, let's take a look at that page -- whole page again.
A. Okay.
Q. And you explain how you calculate the misallocation of a given area by subtracting out the actual black population from what you call the expected black population in each

portion of the district; is that right?
A. Sure. Yes.
Q. But at no point in your analysis do you provide any basis to know how much of the misallocation is because the black population is not evenly distributed across the city and how much is due to race being the predominant factor in the district's design; is that fair?
A. Could you please say that again?
Q. I understand. That's a long question.
A. No problem.
Q. Let me see if I can break this down. You arrive at a misallocation number in your data sets, correct?
A. Uh-huh (affirmatively). Yes.
Q. But at no point in your analysis do you provide the court with any basis to know how much of that misallocation is due to the fact that the black population is not -- is not distributed evenly across the city, how much is due to assumption one versus how much is due to assumption two, whether race was a -- a consideration or not?
A. No, I don't do that.

Q. Let's go -- let's zoom into the last paragraph, paragraph 41 on this page.

So here you discuss the extent to which the black population in Lafayette is misallocated in Galmon plaintiffs' Illustrative Plan 3; is that right?

A. Yes. It's a statistical term.

Q. Okay. And you take the expected black population based on those same two assumptions we already discussed, correct?

A. Yes.

Q. And then you subtract out the actual black population; is that right?

A. That's right.

Q. And you conclude in this paragraph that 14,508 blacks have been redistricted and split differently in Lafayette than you would expect if the plan had been drawn race blind.

A. Yes.

Q. Did I read that correctly?

A. Yes.

Q. But, again, you don't know how much of that misallocation is due to race blind line drawing and how much is due to a highly segregated population or rather -- sorry. Let me

1 repeat the question. I think I misstated it.
2 A. Thank you.
3 Q. You don't know how much of that
4 misallocation is due to race based line drawing
5 and how much of that misallocation is due to the
6 highly segregated black population, do you?
7 A. I arrive at my conclusion by looking
8 at the map and seeing where the concentrations of
9 the black population are; and if the person
10 drawing the map had drawn it race blind, then
11 they could have drawn the map in any way they
12 could to partition up any one of these cities,
13 Lafayette or Baton Rouge. You could have come up
14 with any number of combinations north, south,
15 east and west, and the outcome what we can see in
16 the maps is that the lines were actually drawn in
17 a way that were the most decisive, nearly the
18 most decisive they could be putting a line where
19 there was black and where there's not black
20 populations; and that's how I arrive at my
21 conclusion.
22 Q. You're speaking of your analysis of
23 the visuals of the maps, correct?
24 A. Yes. And common to how these
25 analyses talk to each other.

Q. And the misallocation analysis is the numerical analysis that you provide in your tables, correct?

A. Yes, that's correct.

Q. And the misallocation analysis, the one that we just discussed, relies on those two assumptions --

A. Yeah.

Q. -- correct?

A. Yes.

Q. And the misallocation analysis is the one that in your report results in this paragraph indicating a number of 14,508 black people -- black people, correct?

A. Yes.

Q. And you cannot tell me how much of that 14,508 is -- that how much of that misallocation is due to the fact that the black population is highly concentrated in a certain area and how much of that misallocation is due to race based line drawing, correct?

A. Yes.

MS. KHANNA:

Let's take a look at Lafayette.

And, if we could, pull up page 93 of your

report.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. What does this map depict?

A. Sure. So this is the Galmon 3 plan. Yeah, the Galmon 3 plan. So this is the very irregular city boundary outline of Lafayette, the black line through the middle. Again, it's not a city boundary, it's a district boundary dividing District 5 to the north and District 3 to the south, again, with the thematic shading of black population and white population concentrations by Census 1.

Q. Just to clarify, the -- the black line's kind of all around?

A. Yeah.

Q. That is the city boundary, correct?

A. Yes, it is, yes.

Q. And you're telling me that the black line in the middle is the district boundary?

A. That's where the districts divide the city north and south, that's correct.

Q. The same color line is used for both?

A. Yes.
Q. I just want to make sure it's clear.
A. Yes, that's correct.
Q. So just looking at, again, that thematic shading of -- of this map, would you say that the black population is distributed evenly across the city?
A. No. It's very heavily concentrated to the north, and the white is concentrated to the south.
Q. Again, your conclusion on page 24 that in this map, 14,508 blacks have been split differently in Lafayette than you would expect if the plan had been race blind, that does not factor in the segregated residential pattern of the city, correct?
A. Right.
Q. Is it your understanding that the enacted map was drawn race blind?
A. My observation of the enacted map is that it was drawn as a least-change plan. The -- the changes that were made to accomplish these least changes predominantly were in outside incorporated cities and towns where the changes for the illustrative plans were more prevalent.

Q. I'm going to ask it again.
A. Okay.
Q. Do you have any basis to believe that the enacted map was drawn race blind?
A. I do not know.
Q. All right. Now, let's take a look at Lafayette within kind of the broader context of Mr. Cooper's Illustrative 3, which is the one that you've used as an example here.
MS. KHANNA:
If I could pull up the same map side by side with GX-1C at page 11 on the right. And if we can, zoom in a little bit on the Lafayette Parish, Acadia Parish, St. Martin Parish, St. Landry Parish area in the middle.
TRIAL TECH:
(Complied.)
MS. KHANNA:
Thank you.
BY MS. KHANNA:
Q. Okay. So just to clarify, just so we are clear, I know that it may not be clear on the screen. On the left here, we see your State Exhibit 2, page 93, which is your illustration of

the Galmon plaintiffs' Illustrative 3 of the City of Lafayette; is that correct?

A. Yes.

Q. Okay. And on the right here is Mr. Cooper's Illustrative Plan 3, the portion -- and you can see the various congressional districts there. It kind of shows Lafayette in the broader context of the map that he drew; is that -- you see that?

A. I see it. I don't -- I'm not able to confirm or deny that I know that's what that plan is.

MS. KHANNA:

Okay. We can zoom out for a second on that right map just to make sure that you're aware.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay. Great.

BY MS. KHANNA:

Q. Illustrative Plan 3?

A. Right.

MS. KHANNA:

Zoom back in so we can make sure we

are looking at the same area of the state.

TRIAL TECH:

(Complied.)

THE WITNESS:

Okay. Thank you.

BY MS. KHANNA:

Q. You would agree with me that Lafayette is located in CD-5 under Mr. Cooper's Illustrative Plan 3, correct? Again, we can zoom out if that's easier.

A. Yeah. I'm not sure without the labels.

Q. Let's leave it there.

A. Yeah. It looks like 5 goes out to the north from Lafayette; so yes, I see that.

Q. And, again, I think you anticipated my next question.

You would agree that Lafayette is at the very bottom of CD5 in Mr. Cooper's Illustrative Plan 3, correct?

A. Yes.

Q. The district extends north from Lafayette?

A. Yes.

Q. So if Mr. Cooper were to start

drawing into Lafayette by assigning precincts adjacent to the rest of District 5, he would start at the north end of the city, correct?

A. I do not know whether Mr. Cooper started his plan in Lafayette and drew north or started up in the more normal part of the state and worked his way south. I don't know.

Q. You'll agree with me, however, that the precincts on the north side of Lafayette are adjacent to and remain in District 5, correct?

A. They are, yes.

Q. And you would agree that districts need to be drawn contiguously, correct?

A. Yes.

Q. Which means that when drawing them you would include neighboring precincts, correct?

A. Yes.

Q. If he just kind of grabbed precincts all over the city, that would not make for a contiguous city, correct?

A. Yes.

Q. If you had chosen randomly across the city, that would make for a higher irregular city, correct?

A. I don't know if he was drawing from

the more northerly part of his plan in District 5. You have obviously a wide variety of options going to the west, to the southwest, the south and this plan seems to have gone very specifically into Lafayette, the very heavily black population in the north part of that city.

Q. But you would agree with me if in drawing within Lafayette city, if he had chosen precincts or census blocks randomly all over the city, it would create a noncontiguous district, correct?

A. If you picked discontiguous ones, then that would have happened, yes.

Q. And if he had picked kind of a checkerboard pattern or a barely contiguous line of precincts around the city, it would create a highly non-compact district, correct?

A. Yes.

Q. Very irregular?

A. Yeah.

Q. You would also agree that if he had chosen to divide the city along a vertical line --

A. Uh-huh (affirmatively).

Q. -- that that would be creating a

1 non-compact extension where the rest of the
2 district is north of Lafayette, correct?
3 A. I don't have an opinion on how much
4 more or less compact a -- a different draw of the
5 city would end up being.
6 MS. KHANNA:
7 Okay. You can take this down.
8 TRIAL TECH:
9 (Complied.)
10 BY MS. KHANNA:
11 Q. Mr. Bryan, you concluded in your
12 report that the effective splits that we
13 discussed is to split the minority population
14 from the black population from the white
15 population across the districts; is that fair?
16 A. Yes, it is.
17 Q. That they, quote, segregate whites
18 from blacks leaving additional majority black
19 district?
20 A. Yes.
21 Q. You reviewed Mr. Cooper's report in
22 preparing your analysis, correct?
23 A. I'm sorry. Can you say it again?
24 Q. Sure. You reviewed Mr. Cooper's
25 first report in preparing your analysis here,

1 correct?
2 A. The first report, yes.
3 Q. If we could pull up Mr. Cooper's
4 first report, GX-1 at page 20, and specifically
5 paragraph 42. Here, Mr. Cooper explains that
6 under the enacted map, 31.5 percent of the
7 state's black voting age population lived in a
8 majority black district while 91.5 of the white
9 voting age population lives in a majority white
10 district. You see that?
11 A. Yes, I do.
12 Q. And you don't dispute these figures
13 in your report, correct?
14 A. Mr. Cooper's analysis in his first
15 report was done on what I later found out to be
16 the wrong plan, so I cannot confirm or deny
17 whether these numbers are accurate or not.
18 Q. Do you have a reason -- and you know
19 that Mr. Cooper corrected for the right plan by
20 the time he got to his supplemental report?
21 A. I have read the corrected version of
22 the plan, but I don't recall seeing a paragraph
23 like this in the corrected one that would fix
24 these numbers, so I don't know.
25 Q. And do you -- do you -- do you know

whether or not the corrected version, the SB-1 version -- HB-1, SB-5 version --

A. Uh-huh (affirmatively). Yeah.

Q. -- was the enacted version?

A. Yes.

Q. Is it very similar to the one that Mr. Cooper analyzed in this first report?

A. I believe it's similar.

Q. But you provide no analysis of these figures in your report; is that correct?

A. No.

Q. Mr. Bryan, would you agree with me that a map in which over 90 percent of the white voting age population lives in districts that are overwhelmingly white is -- appears to separate white voters from black voters?

A. There is separation of white and black voters in the enacted plan.

Q. I'm going to ask the question one more time --

A. Yes.

Q. -- just to make sure we are on the same page.

A. Yes.

Q. Would you agree with me that now in

1 a map over which 90 percent of the white voting
2 population lives in -- lives in districts that
3 are overwhelmingly white appears to separate
4 white voters from black voters?
5 A. Yes.
6 Q. You would not refer to such a map as
7 briefly diverse or integrated, would you?
8 A. No.
9 Q. And you would agree with me that
10 under Mr. Cooper's illustrative plans, more white
11 voters would live in more racially diverse
12 districts than they do under the enacted map?
13 A. Can you please restate the question?
14 Q. Absolutely. You would agree with me
15 that under Mr. Cooper's illustrative plans, more
16 white voters would live in more racially diverse
17 districts than they do under the enacted map?
18 A. Not having seen his corrected
19 numbers, not having that cable, I can't say that
20 with certainty. I'm sorry. I don't know.
21 Q. Okay. You would agree with me
22 hypothetically that a district that is -- in
23 which 100 percent of the voting age population is
24 white and zero percent of the voting age
25 population is black does not reflect racial

diversity or integration, correct?

A. Yes, I agree.

Q. And the same is true of the -- of the opposite; 100 percent black voting age population, zero percent white voting age population?

A. Yes. That's correct.

Q. A district that is 80 percent white and 20 percent black is a little closer, correct?

A. Yes.

Q. A little closer to being more racially diverse?

A. Yes.

Q. And that would be the same if it's flipped 80 percent black and 20 percent white, correct?

A. Yes.

Q. And perhaps even the most diverse would be if the district were 50/50 black and white, correct?

A. Yes.

Q. So the smaller the difference between the white population and the black population is an indicator of how integrated or diverse the district is; is that fair?

A. For the purpose of this case, our analysis was on the percentage and the concentrations of the black population not of the white population, so I don't have an opinion whether how much or how little white population is concentrated is the measure to determine diversity or the concentration of the districts.

I focused my analysis on the black -- different measurements of black population only.

Q. And I am not specifically asking about the analysis that you performed.

A. Oh.

Q. I'm asking based on the hypothetical we just kind of walked through, that the -- we talked about hundred and zero --

A. Yes.

Q. -- 80/20 --

A. Yes.

Q. -- 50/50, the smaller of the difference between white population and black population, the more diverse or integrated that district, correct?

A. Yes. Yes. That's right.

Q. Okay. Let's -- let's take a look.

1 You said you haven't had a chance to
2 review the numbers in the corrected version, so
3 let's take a look at the racial combination of
4 the enacted plan and the illustrative plan; and
5 I'm just going to use Illustrative Plan 1 for
6 sake of simplicity.
7 A. Sure.
8 MS. KHANNA:
9 Can we pull up GX-29, page 18, and
10 put that on top of the Table GX-1,
11 page 27, Figure 13.
12 TRIAL TECH:
13 (Complied.)
14 BY MS. KHANNA:
15 Q. Okay. So you -- I'll represent to
16 you that this first table on top is from
17 Mr. Cooper's supplemental report --
18 A. Okay.
19 Q. -- in which he used the correct --
20 the corrected data for the enacted plan.
21 A. All right.
22 Q. And you can see here he refers to
23 that plan as HB-1, SB-5?
24 A. Yeah. Let me just orient myself for
25 a minute.

Q. Absolutely.
A. Okay. I think I've got it.
Q. Okay. So what we are looking at here is the kind of the demographic breakdown of the enacted map on top and the demographic breakdown of the Illustrative Plan 1 on the bottom. Does that look right to you?
A. Yes.
Q. Okay. Let's compare District 2 in the enacted map. What is the BVAP of District 2 in the enacted map, the black voting age population?
A. Okay.
Q. The percentage, please.
A. Yeah. No. I'm just reading across. District 2, you are referring to the top table?
Q. I am, yes.
A. Okay. Great. So it looks like the percent any part black of the total population is approximately 61 percent and the percent any part black District 2, this is the number we replicated for -- was 58.65 percent.
Q. 58.65 is the BVAP of District 2 under the enacted plan?
A. Yes, I believe so.

Q. And what is the white voting age population of District 2 under the enacted plan?

A. It is -- it looks like about 179,000 or approximately 30 percent.

Q. Okay. So the BVAP is roughly 59 percent, the white VAP is roughly 30 percent.

Would you agree with me that the difference between the white VAP and the BVAP is approximately 29 percentage points?

A. Yes.

Q. Let's look at District 2 under Illustrative Plan 1. What is the BVAP of District 2 in that plan?

A. It is -- in District 2?

Q. Uh-huh (affirmatively).

A. District 2 is -- it's just over 50 percent, 50.16 percent.

Q. Okay. And what is the white voting age population of District 2 in the Illustrative Plan 1?

A. 37.4 percent.

Q. Okay. So my math, 50 -- the difference between 50 and 37 is approximately 13 percentage points?

A. Yes.

Q. Okay. So you would agree with me that the difference between the black population and the white population is smaller in the illustrative plan District 2 than it is in the enacted plan District 2?

A. I agree.

Q. By about 16 percentage points?

A. Yes.

Q. Okay. Let's look at District 5. What is the black voting age population percentage of District 5 under the enacted map on top?

A. It's 50.04 percent.

Q. On the enacted map?

A. Oh, no. I'm sorry. I apologize.

Q. That's okay.

A. District -- which district again, District --

Q. District 5?

A. -- 5. District 5 and the white non-Hispanic number again.

Q. Let's try it again.

A. Thank you.

Q. District 5 -- sure. The black voting age population percentage in District 5 in

1 the enacted map on top?
2 A. Sure. It looks like 32.91 percent.
3 Q. Okay. And the white voting age
4 population?
5 A. It is 60.29 percent of the
6 population.
7 Q. So that's a difference of
8 approximately 27 percentage points?
9 A. Yes. Yes, I agree.
10 Q. And what is the black voting age
11 population percentage of the Illustrative
12 District 5?
13 A. The black voting age percent is
14 50.04 percent.
15 Q. And the white voting age population?
16 A. 43.97 percent.
17 Q. That's roughly six percentage point
18 difference?
19 A. Yes.
20 Q. So you would agree with me that
21 District 5 in the illustrative plan, that is far
22 more racially diverse than District 5 in the
23 enacted plan, correct?
24 A. Yes.
25 Q. By about over 21 percentage points?

A. Yes.

MS. KHANNA:

You can take this down.

TRIAL TECH:

(Complied.)

BY MS. KHANNA:

Q. Going back to the second question that you asked in your -- your report or that you inquired into was if there is evidence that race appeared predominate -- appeared to dominate in the design of the illustrative plans, correct?

A. Yes.

Q. And you concluded that the answer to that was yes?

A. Yes.

Q. And that was based on the place splits analysis that we just walked through?

A. Yes.

Q. You included no analysis of compactness of evaluating racial predominance, correct?

A. I did not.

Q. So you don't know the extent to which any of the splits that you just mentioned or even that we discussed make a district more or

less compact?

A. I do not know that relationship for the enacted plan or any of the illustrative plans.

Q. You conducted no analysis in contiguity in evaluating racial predominance, correct?

A. I did do a quality control examination to ensure that all of the geography was contiguous, and they were in all of the plans.

Q. But you did no analysis to determine whether any of the splits that you discussed in your report made a land bridge narrower or wider?

A. No.

Q. You did not inquire into where incumbents lived in performing your racial analysis, correct?

A. I looked at the location of the incumbents and confirmed that all of -- in all of the plans, all of the incumbents were in their own districts.

Q. You provide no analysis of the extent to which any of the splits that you mention in your report are made to avoid drawing

1 out or pairing incumbents, do you?
2 A. Uh-huh (affirmatively). No, I do
3 not.
4 Q. You conducted no analysis of
5 communities of interest in evaluating racial
6 predominance; is that correct?
7 A. That's correct, I did not.
8 Q. You don't know the extent to which
9 any of the splits that you mentioned in your
10 report follow community of interest lines,
11 correct?
12 A. I did not.
13 Q. So -- and, for instance, you learned
14 in court when Mr. Tyson or Ms. Shelton testified
15 about Baton Rouge being the, quote, tail of two
16 cities?
17 A. I was not in court.
18 Q. So you didn't take any of that into
19 account in determining whether race appeared to
20 predominate in the division of Baton Rouge?
21 A. No.
22 Q. You mentioned that in Illustrative
23 Plan 1, in Mr. Cooper's Illustrative Plan 1, the
24 line -- the dividing line in Baton Rouge appears
25 to follow Florida Boulevard across; is that

1 correct?
2 A. Yes, that's correct.
3 Q. You had performed no analysis of the
4 history or surroundings of Florida Boulevard or
5 any kind of significance it has in reflecting
6 communities of interest in Baton Rouge?
7 A. No, I did not. My analysis was
8 completely demographic.
9 Q. So based on your place splits
10 analysis, you conclude that race was a prevailing
11 factor in the design of the illustrative plans,
12 correct?
13 A. Based on my demographic analysis, I
14 conclude that, yes.
15 Q. But you did not examine any other
16 traditional districting principles in making the
17 determination that race prevailed, correct?
18 A. No, I did not.
19 Q. I want to turn briefly back to the
20 Alabama case that we started talking about
21 earlier.
22 And, again, that was the most recent
23 case in which you testified and also the first
24 case in which you testified, correct?
25 A. Yes.

Q. Is it fair to say the court in that case placed very little weight on your testimony? I believe you testified to that on direct.

A. Yes.

Q. And, in fact, your testimony specifically about the issue of the appropriate metric for determining who is black caused the court to question your credibility as an expert witness; is that correct?

A. Yes.

Q. The court expressed concern about the numerous instances in which you offered an opinion without a sufficient basis or in some instances any basis; do you recall that?

A. Yes.

Q. The court also criticized you for opining on what you saw as a desire to divide voters by race in the illustrative plans offered there without examining all of the traditional districting principles set forth in the legislature's guidelines, correct?

A. Yes.

Q. The court further found your analysis to be partial, selectively informed, and poorly supported; do you recall that?

A. Yes.
Q. Last set of questions, Mr. Bryan.
What is the hourly rate that you are charging the State of Louisiana in this case?
A. 450.
Q. And that is an increase in the hourly rate that you charged the State of Alabama just a few months ago; is that right?
A. Yes. We had a change this year across my company.
Q. Approximately, how much have you billed for this case so far?
A. I have not added it up. I don't know.
Q. Do you have an approximate estimate about how many hours you spent on this case thus far?
A. Through my company, a couple of hundred.
Q. A couple of hundred hours?
A. Yes. Yeah. I don't know the exact number.
MS. KHANNA:
Thank you, Mr. Bryan.
THE WITNESS:

Thank you.

MS. KHANNA:

No further questions, Your Honor. I apologize, Your Honor. I had some notes from co-counsel.

THE COURT:

Okay. Go ahead. Go ahead.

BY MS. KHANNA:

Q. Mr. Cooper, you testified earlier that you had not reviewed the Robinson Illustrative Plans 2 and 2A; is that correct?

A. That is correct. I'm unaware of those two plans.

Q. Your unaware that they exist?

A. I've heard that there was a Plan 2. I have not heard that there was a Plan 2A. I don't know anything about them.

Q. So you don't know how many pieces of Baton Rouge are split in those plans then?

A. I do not know.

Q. You did no analysis of the allocation of black and white voters in the cities split in those plans, correct?

A. I did not do any analysis of those plans, no.

MS. KHANNA:

Thank you, Mr. Bryan.

THE WITNESS:

Thank you.

THE COURT:

Redirect?

REDIRECT EXAMINATION BY MR. GORDON:

Q. Thank you, Your Honor. Mr. Gordon again for the intervenor, State of Louisiana.

Hello, Mr. Bryan. Couple of brief follow-up questions and we will get you out of here.

In the State of Louisiana, is the population of any race evenly distributed?

A. Could you please restate that? I'm having trouble hearing.

Q. Sure. Sorry. I'll move forward. In the State of Louisiana, is any race evenly distributed throughout the state?

A. No, it is not.

Q. Anywhere in the United States, is there any race evenly distributed throughout any relevant piece of geography, any large piece of geography?

A. With very, very rare exceptions, no.

Q. When -- so speaking generally as a person who draws maps yourself, when drawing maps, is -- okay. Does a map drawer tend to have a working knowledge of the demographics of the state without having to look at, say, any specific data?

A. Yes, they would.

Q. And that would include the racial demographics generally of the state?

A. Yes, they would.

Q. Okay. So a -- a map drawer, if they are familiar with the state, could say, know generally where certain sets of a population lives to draw that population and do any relevant district; is that correct?

A. We would, yes.

Q. Do you have any reason to believe that proportional representation is required by law?

A. Please say that again for me, sir.

Q. Sure. Do you have any reason to believe that proportional representation is required by any state or law?

A. No.

MR. GORDON:

And I'd like to turn really quickly to Appendix 4 of your Exhibit 2KK. I believe my -- my friends over here just looked at that Lafayette down here on page 93. And we can just leave it on the map part there.

TRIAL TECH:

(Complied.)

BY MR. GORDON:

Q. And so -- and so as a map drawer, what reason do you think anybody would -- if they were drawing from the -- in other words, for example, stop right where this map draw -- map stops?

MS. KHANNA:

Objection. Calls for speculation.

MR. GORDON:

I'll rephrase, Your Honor.

THE COURT:

Thank you.

BY MR. GORDON:

Q. If you were drawing this map and you were drawing it from the north --

A. Uh-huh (affirmatively).

Q. -- and your goal was to -- not your

goal. Let me start over.

If you were drawing this map and you were drawing it from the north, what reason would you have to stop where this map stops between District 5 and District 3?

MS. KHANNA:

Same objection, Your Honor.

MR. GORDON:

I'm asking for what he would do, Your Honor.

THE COURT:

You are actually asking what reason would he have.

MR. GORDON:

So -- all right. Fair enough. All right. Let me try this one more time and we will see how it goes.

THE COURT:

Okay.

BY MR. GORDON:

Q. I'll be ready. As a map drawer, if you were drawing this map -- let -- let me back that out and make it more generalized.

Why are -- what are some reasons that you can use when you are drawing maps that

inform where you draw lines?

MS. KHANNA:

Objection. These are things I didn't go over when I cross-examined him.

THE COURT:

It is. It's beyond the scope of what he was engaged to do.

BY MR. GORDON:

Q. All right. Okay. So let's just focus directly on this picture right now. Based on your assessment today and your report and what you analyzed, what is your opinion as to why this line was drawn dividing these districts?

A. As we discussed shortly along, there's a variety of ways if you are drawing from the north to go down into Lafayette.

Without making highly irregular checkerboard strange divisions of the city, you can look at this and say the only thing you need to be able to do, if they are coming down from the north and they need to get population into a district is to draw that line which is relatively uniform east to -- east to west as you would draw that line dividing the city as far as south into the city as you would need just to get an equal

amount of population in that district, no more, no less.

So if I was the map drawer, I would look at this and I'd say there's a number of freeways, waterways, railways. There's other geographic features that I would look for to say is there kind of a natural place that you could divide Lafayette north and south in order to get your equitable population which is the most important requirement of drawing these plans.

So if I were a map drawer looking at this, I would say how far south do we need to go to draw a clean line to divide the city. The situation in this particular plan is that the map drawer went only exactly far enough south just to only include only the high density black population in the city. There's other geographic features in this city that the map drawer could have stopped short or the map drawer could have continued going further south into the city to divide it.

MS. KHANNA:

I apologize, Your Honor. Objection. This is beyond the scope of his testimony. He at no point identifies any other

geographic landmarks or anything in the district looking at this. I can't tell what any of those would be.

THE COURT:

He's been tendered and accepted in the field of demography, not map drawing, so I would sustain the objection. Do you have another question?

MR. GORDON:

Sure, Your Honor. Thank you.

BY MR. GORDON:

Q. As a demographer, if we were to split this district in half north/south, would that be a more even distribution of black and white population throughout Lafayette?

A. It would depend entirely on where the -- the split was, whether it's north or south of where this is right now. The further south you drew it, it would include more white population. If you drew it further to -- to the north, you would be excluding more black population. It depends.

Q. If you drew a vertical line directly north to south with the split dead center, it would be more black than white?

A. Then it would divide the population and get you much more closer to the equitable population between black and white in each one of those districts.

MR. GORDON:

That's all for me.

One matter before I release the witness, Your Honor. I'd like to move Exhibits 2, 2A and 2B into evidence for the State of Louisiana.

THE COURT:

Without objection?

MS. KHANNA:

No objection.

THE COURT:

Admitted.

MR. GORDON:

Okay. That's all, Your Honor.

THE COURT:

Okay. And we will take a recess until -- okay. We will take a recess until 1:30.

(A short recess was taken.)

THE COURT:

Next witness?

MS. NIEFEH:

Your Honor, pursuant to the request this morning to keep the record open while we establish that all the exhibits have been moved in, it appears that there is a discrepancy between the exhibit list that the court has and what we believe we moved in with respect to two exhibits, two plaintiff exhibits.

THE COURT:

Okay. Which ones?

MR. NIEFEH:

Those are PR-12 and PR-91. We believe the transcript shows that they were moved in and the court allowed them in, but the list that we have that the court has doesn't include them.

THE DEPUTY:

I fixed it.

THE COURT:

Okay. The record will reflect that PR-12 and PR-91 are in evidence and the Court will --

MR. NAIFEH:

Thank you.

THE COURT:

-- correct the record to reflect that.

Okay. Next witness by the defendants, please?

MS. RIGGINS:

Good afternoon, Your Honor. Alyssa Riggins for defendant, Secretary of State. We would like to call Dr. Tumulesh Solanky, please.

THE COURT:

And your last name is Wiggins, ma'am?

MS. RIGGINS:

Riggins, R-I-G-G-I-N-S.

THE COURT:

All right. Thank you.

TUMULESH KUMAR SINGH SOLANKY, after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

THE COURT:

Do you want to put a shield on?

THE WITNESS:

It's okay if I remove this?

THE COURT:

Yes, but we can give you a shield, if you would like it.

THE WITNESS:

No. I am vaccinated.

THE COURT:

Go ahead, ma'am.

EXAMINATION BY MS. RIGGINS:

Q. Dr. Solanky, can you please state and spell your full name for the court?

A. Sure. My full name is Tumulesh Kumar Singh Solanky, and it's spelled T-U-M-U-L-E-S-H, K-U-M-A-R, S-I-N-G-H, S-O-L-A-N-K-Y.

MS. RIGGINS:

And we intend to offer Dr. Solanky as an expert in mathematics and statistical analysis.

Is there a stipulation to that effect?

MR. HURWITZ:

No objection.

THE COURT:

Dr. Solanky will be admitted to give opinion testimony in the fields of

mathematics and statistical analysis.

BY MS. RIGGINS:

Q. Dr. Solanky, have you prepared an expert report in this case?

A. Yes, I have.

Q. Okay.

MS. RIGGINS:

And can we pull up a copy of that report? It's Exhibit -- and the last is 403.

TRIAL TECH:

(Complied.)

MS. RIGGINS:

And, Your Honor, may I approach to provide the witness with a paper copy as well?

THE COURT:

You may.

MS. RIGGINS:

Thank you.

THE WITNESS:

Thank you.

THE COURT:

Dr. Solanky, can you verify for the court and the opposing counsel that what

you have before you is your -- your report in this matter?

THE WITNESS:

Yes, Your Honor.

THE COURT:

Okay. Thank you.

BY MS. RIGGINS:

Q. And is your curriculum vitae attached to your report as Appendix 1?

A. That is correct.

Q. Okay. And is this a true and accurate copy of your latest CV?

A. Yes, it is.

Q. Okay. Dr. Solanky, what is your current occupation?

A. My current occupation is I'm a professor of mathematics, I'm the chair of the mathematics department at University of New Orleans, and I also serve as University of Louisiana System Foundation and Michael and Judith Russell professor in data/computational science.

Q. Okay. And how long have you been the chair of the math department at UNO?

A. I've been chair of the math

department close to 14 years.

Q. And how long have you taught at UNO?

A. I have taught close to 32 years at UNO.

Q. And can you describe a little bit some of the nonacademic work that you've also done?

A. Off and on academic work, I have provided my expertise, for example, USDA in interpreting in Baton Rouge, Louisiana. I have consulted with NASA regarding some of the ncache problems which were faced by some of the missions in Discovery and Challenger. It's a long -- I have provided my expertise to FBI in investigating and even prosecuting crimes. The list is long.

Q. Okay. And have you previously been qualified as an expert witness in statistics and mathematics in both state and federal court?

A. Yes, I have.

Q. And in the cases where you have been qualified as an expert, have you provided expertise to both plaintiffs and defendants?

A. That is correct.

Q. Have you also served as a

1 court-appointed expert?
2 A. Yes, I have. And recently in
3 Eastern District of Louisiana, I served as tech
4 support for the clerk of court looking at the
5 jury matters, looking at how some voters when
6 jury voir dires to figure jurors, what steps they
7 face, and I was the expert for the court; and
8 both the plaintiff and defendant had their own
9 experts.
10 And, prior to that, in the complex
11 litigation matter in Louisiana, this was State of
12 Louisiana versus Janssen Pharmaceuticals. The
13 judge had appointed me to help him understand the
14 complex litigation material, statistical model
15 datas which the plaintiffs and defense experts
16 had introduced in the case.
17 Q. Okay. And, Dr. Solanky, can you
18 briefly summarize what you were asked to do for
19 the defendants in this matter?
20 A. In this matter, I was asked to look
21 at the voting patterns in the State of Louisiana;
22 and, in particular, look into some of the
23 illustrative plans for District 5 and, in
24 particular, about East Baton Rouge -- East Baton
25 Rouge Parish.

Q. And, broadly, what did you find?
A. Broadly speaking, what I found was that in State of Louisiana, the voting, the particular voting varies. For the presidential races, it's the highest. For some other races, it could be very lower, maybe even quarter of what you would see for a presidential race.
I also found that East Baton Rouge Parish votes very differently compared to the other parishes which are being considered for the Congressional District 5. And, in some sense, I also found that you could have election on the same day for two different race seats and yet the voting pattern could -- could be different, meaning how people vote depends on the candidate of their choice.
Q. Okay. And in preparing your report in this case, you had quite a bit of data available to you; is that right?
A. That is correct.
Q. And is all of the data that you had available to you listed in your expert report?
A. Yes.
Q. Okay. Did you primarily rely on one particular data set in preparing your report?

A. That is true. Now, due to time constraints, I could not verify the validity of all the data sets which were provided to me and -- and one -- so the data sets which I relied upon are from the Secretary of State; and, in particular, I had requested off the Secretary of State office to supply to me some voting data telling me that these have been the registered voters for this particular election and how many of them by voter who voted, who did not vote, their race, their gender, parish, and that kind of thing. It's very voluminous data.

Q. Thank you. And so, Dr. Solanky, I'd love to be able to go through all of your expert report, but unfortunately I don't think my colleagues would appreciate if I took up all of the rest of our time for trial.

MS. RIGGINS:

So, Forest, would you mind pulling up Table 5 in Dr. Solanky's expert report which begins on page 6?

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. Dr. Solanky, can you give us a high

level of what this table shows?

A. This table, I'm looking at 28 parishes, which I found were associated with the proposed associated plans, to be associated with the Congressional District 5 in the illustrative plans. And what I have provided in this table is a breakdown by the race for each parish and indicating how many people in this -- in that parish of that race voted and how many did not.

Q. Okay. And is there anything in this chart that would show you the total number of registered voters broken down by race in each parish as of the November 2020 election?

A. Yeah. I'm sorry. I missed out. So I should have explained. This data, what you are looking at right now is just for the 2020 presidential election. And what stands out is that there is some variation from parish to parish and, of course, there is some variation between black and white percentage voters.

Q. Okay. So I'd like to look at a few parishes specifically, if we can, but I'd like to start with entry 17 which is on page 7 of Table 5; and that is East Baton Rouge Parish.

What does entry 17 tell us generally

about the voter make up of East Baton Rouge Parish?

A. So if you look at East Baton Rouge Parish and you count -- if you need to know how many voter -- registered voters they have, you have to add up the number under "no" that count of value and the count value number of "yes." So the sum of those two numbers will tell you how many registered voters are there. And if you add those for East Baton Rouge, you'll see that roughly -- I'm adding it as we speak right now, so 85 plus 46, so that would be significantly smaller than the number of white voters in East Baton Rouge Parish who are registered.

So the first thing is that total number of white voters in East Baton Rouge Parish is more than the total number of black voters, and what else is there is the total number of actual voters in East Baton Rouge Parish, which is 113,622, significantly larger than the 85,672 black voters who voted for this particular election.

Q. Okay. And let's look at the parish directly below East Baton Rouge Parish, entry 18; and I think that's East Carroll Parish.

What does entry 18 tell us about the voter make up of East Carroll Parish?

A. East Carroll Parish is different from East Baton Rouge Parish in the sense that if you add up the total voters, total registered voters, you'll find both among the registered and among those who actually voted, for example, in the 2020 presidential election, in this particular parish, there are 1,998 black voters who voted yes and there are 101,113 white voters who voted yes. So in terms of total registered and in terms of who total voted, this is a majority black parish.

Q. All right. And let's look down a little further still on this page. Entry 24 for Iberville Parish, what does entry 24 tell us about the voter make up of Iberville Parish?

A. Now, counting with the same mathematics, if you add up the total black voters, total white voters and add up the total white who voted yes or no, these two numbers are practically the same, meaning Iberville Parish in terms of registered voters is split quite evenly.

Q. Okay. And entry 33, Madison Parish, what does entry 33 tell us about the voter make

1 up of that parish?
2 A. Madison Parish, if you look at it,
3 the number of black who -- voters who voted,
4 2,726; number of white voters who voted, 1,967;
5 and this is for the 2020 presidential election.
6 So in terms of who we -- who voted in that
7 election and in terms of total registered voters,
8 majority black district, parish.
9 Q. Okay. And the chart continues on to
10 the next parish, I'd just like to look at two
11 more parishes there. Entry 46, this is
12 St. Helena Parish.
13 What does your chart tell us about
14 St. Helena Parish?
15 A. Same conclusion. This is also
16 predominantly black registered and black in terms
17 of who voted in that particular election,
18 majority black is registered in the parish.
19 Q. And entry 54, I'm sorry, Tensas
20 Parish, what does your chart reveal about Tensas
21 Parish?
22 A. Same conclusion. There are more
23 black voters, registered voters and there are
24 more black voters in that particular 2020
25 presidential election.

Q. Okay. Let's turn now to Table 6, which is page 9 and 10 of your report.

Dr. Solanky, can you please explain at a high level what Table 6 shows?

A. Now, in Table 6, I'm still considering the same 2020 presidential election; and I'm reporting how many votes President Trump, President Biden and other candidates by parish, and I'm also reporting how many total votes were casted by black voters, by white voters and other voters, and in the very last column, I also have the total votes for each parish.

Q. Okay. And so in the data that you received from the Secretary of State, did the data report how each person voted in each election or just that the person voted generally?

A. The latter. The data provides who voted in the election in general. And, of course, it does not say who they voted for, so -- but looking at the data, it was very clear that everybody who showed up to vote that particular day may not have voted for every single election being held on that day.

So I do cross tab those two data sets, and it turned out, if you count the total

voters, that was roughly -- roughly like -- for this 2020 election, it was .98 percent more, meaning less than 1 percent of the total voters who voted that day did not vote for the presidential race, presidential election.

Q. Okay. And so how did you account for that 1 percent difference and thereby assign a vote total based on race in your chart 6?

A. First of all, this percentage not voting is -- it's nominal, it's negligible, less than 1 percent; and how I assigned it was proportionally. So based on -- I assumed that whoever's voting on that particular day, the proportion by this who did not vote for presidential election is proportional. And that's how I have offered these three columns is how many black voters, how many white voters, and how many other voters, and this is based on the data which is available.

Q. And, Dr. Solanky, did you review reports by Dr. Palmer and Dr. Handley in this case?

A. Yes, I have.

Q. When you were reviewing those reports, did you see any mention of how they

accounted for the individuals who may have voted generally in an election but may not have voted in a particular race?

A. I don't recall reading that, how it was handled by them.

Q. Okay. Thank you.

MS. RIGGINS:

I'd like to look at page 10 of Table 6 at one particular parish in Louisiana, Iberville Parish, please, for us.

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. So, Dr. Solanky, what does your row of data here on Table 6 reveal about Iberville Parish?

A. So for Iberville Parish, if you look at the total votes President Trump got and President Biden got, for example, President Biden had 8,514 votes in his favor, and President Trump had 7,893; and of the total voters who voted, number of black voters were 7,749, so the number of black voters is almost 800 less than the number of votes President Biden got in this parish.

Q. So could President Biden have been elected without white crossover voters in Iberville Parish?

A. No. There are not enough black voters who voted in this election in this parish, so there must have been some votes passed to -- in favor of President Biden from white voters.

Q. Now I'd like to turn to Table 7, which is on page 11 of your report.

Dr. Solanky, can you give us a high level explanation of what Table 7 shows?

A. Sure. Give me one second. In Table 7, I'm looking at 19 parishes. In these 19 parishes, I looked at Mr. Cooper's Illustrative Plan No. 1, and these 19 parishes are associated with his Illustrative Plan 1.

So I have summarized the voting patterns in those 19 parishes and I have provided how many total registered voters are there in those 19 parishes. That's the first column, rather, the second column under total, and then what percentage of those totals are black voters, what percentage of those who are registered are white, so those are the next two columns.

And then I have also provided how

many votes in that parish the two leading candidates, President Trump and President Biden, got and I also provided who got more votes and by how many. So I have provided that by Trump's lead number of votes, so how many votes President Trump got over President Biden; and in the very last column, I have provided the election outcome in the parish.

Q. Thank you. And if we look at the election outcome by parish column, which parishes did President Biden carry in 2020?

A. So among those 19 parishes -- we are looking at the Table 7 -- President Biden won East Baton Rouge, he won East Carroll, he won Madison -- and I'm going down -- St. Helena, and Tensas. Those are the five parishes President Biden won.

Q. Thank you. And if you order those parishes in terms of the margin of demography that's reported in the last column on Table 7, where does East Baton Rouge Parish fall?

A. If you look at the last column, East Baton Rouge, President Biden won by 13 percent, and see this 13 percent is right in the middle. There are two parishes and those being Madison

and -- give me one second. So there are two parishes, Madison and East Carroll, so those two parishes President Biden won by a higher percentage. And the other, there are two more parishes, which are Tensas and St. Helena, which he won by less than 13, so his victory percentage was right in the middle of those five parishes.

Q. And of these five parishes that President Biden carried in the 2020 election, is there anything different in terms of voter make up about East Baton Rouge Parish?

A. Yes.

Q. And so what is that?

A. So out of these five parishes which President Biden won, four parishes are super black -- black majority parishes. The only parish which President Biden one which is not a super black majority parish is East Baton Rouge Parish.

Q. Thank you.

MS. RIGGINS:

Forest, can you pull up Figure 1, which is on page 12 of Dr. Solanky's report, please?

TRIAL TECH:

(Complied.)

MS. RIGGINS:

Thank you.

BY MS. RIGGINS:

Q. Dr. Solanky, can you explain what Figure 1 is, please?

A. Sure. Now, in Figure 1, I am explaining the trend which is observed in the 19 parishes. And if you think of it like you are moving the cursor from left to right, so as we go from left to right, the percentage of white voters compared to black voters is increasing.

And on the vertical scale, if you go from below to up, the vote difference between President Biden and President Trump is increasing, so it is Trump minus Biden voter percent; and I have proffered that for all the 19 parishes in Mr. Cooper's illustrative map.

Q. And there's a line that runs through this figure. What is that called?

A. This diagonal line is -- is what statisticians do routinely to establish a trend, and it's called a regression line.

Q. All right. And how did you create this regression line?

A. It's a very standard mathematical formula which is covered in all -- even the freshman statistical courses.

Q. And for those of us who struggled mightily with freshman statistical courses, can you give us a little flavor of how one would do that?

A. Absolutely. If you ignore that line for a second and just look at those dots or symbols, B and T, you'll see they literally follow a straight line. So the regression line is a mathematical representation of where these points fall. And if you look at the line and these dots around it, the closer the dots are to the line, meaning the better is the regression model.

Q. Thank you. And so the letters you have on Figure 1, what does do those represent?

A. So I have plotted each parish using the first part of this is the candidate who won that parish. So the P presents that this parish was won by President Biden, and T represents that this parish was won by President Trump.

Q. And for the letters that appear above the diagonal regression line, what does

that mean?

A. So this is the trend line, meaning this is the observed trend in the 18 parishes; and -- and the way you interpret this regression line is anything which -- any point which falls below the line, those are the parishes which are more supporting voting for President Biden compared to President Trump; and any point which falls above the line, that represents the parishes which are voting more for President Trump compared to President Biden based on the trend observed from those 18 parishes.

Q. And where does East Baton Rouge fall on Figure 1?

A. East Baton Rouge Parish falls significantly below the trend line, meaning in East Baton Rouge Parish for the 2020 presidential race, there was significant voting in favor of President Biden and against President Trump compared to the observed trend from 18 parishes.

Q. And, in your expert opinion, does this make East Baton Rouge Parish a statistical outlier from Mr. Cooper's Illustrative Plan 1 in the parishes that make up that plan?

A. That is correct.

Q. Okay.

A. And -- and if I may add. Now, in the field of statistics, we also compute confidence intervals; so for each value there, if you look at the confidence interval, that tells you how much of variation is there, how much error margin is there; in other words, how much could have happened by chance at all.

And so -- so I have to see if East Baton Rouge Parish falls within that confidence interval. If it had fallen within that confidence interval, then this variation would have been just by chance at all, but that is not the case. This was far below what could be attributed to by chance at all.

Q. Thank you, Dr. Solanky. Did you also prepare a supplemental report in this case?

A. Yes, I have.

MS. RIGGINS:

And I'd like to pull up the supplemental report, which has been marked as Secretary of State Exhibit 5, please.

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. Does this look like a copy of your supplemental report on your screen?

A. Yes.

Q. Okay. And is it also in the binder that I gave you behind a separate tab?

A. Yes. I have found that page.

Q. Okay. Thank you. So what did you look at in your supplemental report?

A. In my supplemental report, I have looked at other elections.

THE WITNESS:

And, Your Honor, due to time constraints, there was only so many elections I could look at -- in the data, look at when I submitted the original report. And in the recent reports, especially -- especially from Dr. Handley, she criticized me that I am drawing these conclusions, I am drawing these trends based on only one election. So I reached out and I analyzed as many elections as I could given the time constraints, and I've included those in this supplemental report.

BY MS. RIGGINS:

Q. Okay. And, just for clarity, did you also include the results of your 2020 presidential analysis in your supplemental report so that all eight exhibits -- eight elections that you needed, you looked at would be in the same report?

A. Yes, I did.

Q. Okay. And would those be found at Figure 1 that we just looked at?

A. That is right.

Q. Okay.

A. So the Figure 1 in the supplemental report is just imported from the original expert report.

Q. Thank you.

MS. RIGGINS:

And so I'd like to turn to Table 1 in your supplemental report, which starts on page 3.

TRIAL TECH:

(Complied.)

MS. RIGGINS:

Thank you, Forest.

BY MS. RIGGINS:

Q. Can you explain at a high level what

Table 3 (sic) shows?

A. Now, in Table 1, I'm looking at -- I'm summarizing those eight elections. So the first column indicates which election and what was the election date, and then in the second column, I'm looking at two types of collection of parishes for each election, all the parishes and then I look at the East Baton Rouge Parish.

I also provide how many total votes were casted in all the parishes and also in East Baton Rouge, and I provide information on how many votes each candidate got, how many votes they got and what percentage of the votes -- overall votes they got.

I summarized the election outcome by -- by how many votes they won and by what percentage of the votes they won, and then I have summarized the total votes that were casted for that election by race. And then I also summarize what percentage by date of the overall registered people voted, and I have also provided a column indicating what percentage of the votes that were casted by -- were from blacks and white. And in the very last column, I have summarized the candidates race.

Q. Thank you, Dr. Solanky. When you were preparing Table 1, did you make any observations about turnout for particular elections statewide in Louisiana?

A. Yes, I did. So that was very interesting to see; and in some way I expected that there is a significantly higher voter turnout for the presidential elections, and it decreases significantly.

So, for example, if you look at the very first block, the voter turnout for the 2020 presidential election, for black, again, the black voters, it was 62.4 percent; for white voters, it was 73.8. So this is for the presidential election, but if you look at some other elections statewide, the turnout could be literally a fourth of this.

Q. And which election statewide on this table shows an election turnout with a quarter of that of the presidential election for 2020?

A. Sure. So let's look at the next page. I think it's on the next page.

For example, look at the middle of the page for the Secretary of State election date December 8, 2018. So if you look at percentage

of black registered voters who voted,
16.5 percent. And I mentioned a few seconds ago,
for the presidential race, it was 64 point --
62.4 percent.
If you also look at the very first
entry, in this election, about half a million,
516,653, so roughly half a million people voted;
and if you go back to the first page for 2020
presidential election, the similar number is well
over 2 million, so half a million versus over
2 million.
Q. Thank you, Dr. Solanky. And when
mathematicians or statisticians are looking at
data like this, would you weight this
December 2018 election the same as an election
with higher turnout?
A. Now, this was a special election and
you have to take into account that how fewer
voters participated in the election.
Q. Thank you. And did you observe in
the same election a different turnout depending
on the race in any particular election?
A. Yes, I did.
Q. Okay.
A. So if you look at the next page,

1 page 5, and -- and if you look at the two
2 elections on this page I have, lieutenant
3 governor and attorney general, both these
4 elections fall on the same date, October 12,
5 2019. And if you look at the total votes that
6 were casted, you'll see a difference of a
7 significant number of votes.
8 So, for example, if you look at East
9 Baton Rouge, 132,589 for the attorney general's
10 election; 101 -- 131,535, so almost a thousand
11 votes less. And the -- when we go to vote, it's
12 the same ballot, people choosing to ignore one
13 election and vote for another. That is also
14 quite evident from this. And I can look at the
15 entire parish and draw the same number -- same
16 conclusion again.
17 Q. Thank you, Dr. Solanky. And did you
18 analyze the same 19 parishes in Mr. Cooper's
19 illustrative first plan that you discuss in your
20 first report for the new set of seven elections
21 that you looked at in your supplemental report?
22 A. Yes, I did.
23 Q. Okay. And are those results
24 reported anywhere in your supplemental report?
25 A. They are. So -- so I have provided

appendices for all of those dates for those eight elections.

Q. Okay.

A. So those are Appendix 1 through Appendix 8.

Q. And so I'd just like to look at some other type random samples.

MS. RIGGINS:

Forest, can we look at Appendix 2, please?

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. Dr. Solanky, can you explain at a high level what you found in Appendix 2?

A. In Appendix 2, I am looking at the 19 parishes which were part of Mr. Cooper's Illustrative Plan 1. And this is for the 2019 Secretary of State election; and I have provided for each parish how many total registered voters are there, how many total votes are going -- are obtained and how many votes were casted for Greenup, how many total white voters are there for that particular parish, how many black voters, who won, what was the lead by Ardoin for

each parish, what was Ardoin's vote percentage for each parish, Greenup's vote percentage.

And I've also provided two columns to look at, what was the composition of the voters in terms of disparity between black and white voters -- that's the very last column -- and then I have also provided the disparity between the percentage of the votes Ardoin got minus the percentage of the votes that Greenup got in this election.

Q. Thank you, Dr. Solanky. And I'd like to compare two specific parishes in this appendix, if we can. I'd like to compare East Baton Rouge Parish and East Carroll Parish.

So what does Appendix 2 reveal about East Carroll Parish?

A. East Carroll Parish was won by Greenup by -- by 29 percent -- by 35 percent of the votes. That meant she got 629 more votes than Ardoin in this election from East Carroll Parish.

The East Baton Rouge Parish was also won by Greenup, and she got 16,894 more votes than Ardoin in this parish.

Q. And could Ms. Greenup have carried

East Baton Rouge Parish without white crossover voting?

A. No. Let me explain. So if you look at how many votes Greenup got in East Baton Rouge, her total votes in East Baton Rouge were 85,981. And if you look at the number of black voters, that's 68,432, meaning even if she got every single vote from a black voter, she would still need 17 more thousand votes to reach up to the total of -- total number of votes she got in that election.

Q. Thank you. And was white crossover voting required for Ms. Greenup to carry East Carroll Parish?

A. No. So on the contrary, I'm asking if it is required then, so it is no. And the reason being, if you look at the number of votes, black voters in East Carroll -- give me one second, please. So there are 1,609 black voters, she could have easily won based on the black voters.

Q. Thank you.

A. So Ardoin got only 941 votes.

Q. Thank you.

MS. RIGGINS:

And I'd like to turn back to the main body of your report at page 7, Figure 2, please.

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. What does Figure 2 show?

A. Now, Figure 2 is a very similar analysis which I had provided in my original expert report for the -- for a different election.

In here, I'm looking at the Secretary of State election on November 16, 2019. And, once again, I have drawn a regression line to predict a trend and then I have specified the East Baton Rouge Parish. Again, if you look at it, putting all the mathematics aside, even by just eyeballing, you can see that this regression line fits the trend which was here in the 18 parishes.

Q. Okay. And where does East Baton Rouge Parish fall in Figure 2 relative to the trend line?

A. So, once again, the interpretation is very similar. If you -- if you're underneath

the trend line, that means that particular parish is voting more in favor of Greenup and against Ardoin, if you are below the trend line. And if you are above the trend line, then there are more votes for Ardoin compared to Greenup based upon the trend from the 18 parishes.

And, in this particular election, the East Baton Rouge Parish is significantly below the trend line, meaning the voting in East Baton Rouge Parish was significantly in favor of Greenup and against Ardoin compared to the trend from the 18 parishes.

Q. And so in this election that you've looked at, is East Baton Rouge Parish a statistical outlier compared to the other 18 parishes?

A. Yes. And, once again, we can do that by looking at the confidence interval regression line and seeing that for East Baton Rouge falls within that confidence interval or not, and it did not.

Q. Thank you.

MS. RIGGINS:

Forest, would you mind flipping to the next page, please?

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. There are two similar charts here. Did you observe any different trends than the two charts that we have already discussed today on these charts?

A. So I'm looking at two different elections here; 2019 governor, 2018 Secretary of State where we talked about the total vote percentage; and the trends are very similar.

East Baton Rouge Parish even for these two elections is voting significantly in favor of the minority preferred candidate and compared to the trend, which is the other 18 parishes.

Q. Thank you. And turning to Figure 6 on the next page. Which election did you analyze here?

A. So Figure 6 is looking at the presidential election from 2016, and a very similar trend.

First of all, the 18 parishes voting trend fits the regression model very well; and East Baton Rouge is significantly below the trend

line, meaning even in this election, meaning even in the 2016 presidential election, the percentage of votes casted in East Baton Rouge in favor of Mrs. Clinton and against President Trump is significantly different, significantly more number of votes for Mrs. Clinton and against President Trump.

Q. And when you were doing your turnout analysis that we talked about earlier in the first table in your report, did the 2016 presidential election have a relatively high level of turnout?

A. That is right.

Q. Okay.

A. So among the eight elections I looked at, the two elections that were particularly high turnout, meaning 60s or even -- or 70s were the two presidential elections.

Q. And so, in your professional opinion, is East Baton Rouge Parish also a statistical outlier in terms of the voting trends for the 19 parishes examined in Mr. Cooper's Illustrative Plan 1?

A. Yes.

Q. Thank you.

MS. RIGGINS:

I'd like to talk about the second table in your report, please.

TRIAL TECH:

Thank you, Forest.

BY MS. RIGGINS:

Q. Can you explain what Table 2 represents?

A. In Table 2, I have summarized those eight elections and I have specified which election -- that's the first column -- the election date, I'm sorry, that's the first column, the election date in the second column; and in the third column, I'm talking about the R square value.

So R square value is some sort of a metric which is routinely used to evaluate how good of a fit the model is. In simple terms, R square tells you that what percentage of the variation in the data the model is able to expect.

So, for example, for the first election, November 3, 2020 election, the regression model was able to explain 94.7 percent of the variation, which is a good number.

Q. All right. And so the closer to 100, the better number it is?

A. Right.

Q. Okay. And the trend lines that we were looking at earlier, is it true that the closer you get to a hundred for your R square value the tighter the letters would look visually on those figures?

A. Absolutely. I think that's a very nice way to state that.

Q. Those of us who start on the freshman statistics can be sufficient, but I can't do the numbers. Sorry.

A. So R squared would be hundred percent if every single point falls on the same -- exact same line, so nothing is even slightly above or below it.

Q. Thank you. And this last column in Table 2, the percent change in votes in East Baton Rouge Parish, can you explain these calculations, please?

A. So -- so in the figures which we looked at earlier, I had talked about how far below East Baton Rouge is compared to the trend line. So I have quantified that -- that -- that

1 disparity, that had East Baton Rouge also voted
2 similar to those 18 parishes, then the vote --
3 what the vote patterns have been, so that is to
4 summarize.
5 So, for example, the November 3,
6 2020 election, the East Baton Rouge voting
7 pattern -- the East Baton Rouge's voting compared
8 to the overall trends from 18 parishes is
9 21.5 percent away from Trump and in favor of
10 President Biden; and I have summarized that for
11 all the three elections here.
12 Q. Thank you, Dr. Solanky.
13 MS. RIGGINS:
14 I'd like to look at paragraph 20 of
15 your supplemental report, particularly the
16 second sentence.
17 TRIAL TECH:
18 (Complied.)
19 BY MS. RIGGINS:
20 Q. Can you read this sentence and then
21 explain what you mean here?
22 A. Okay. The second sentence?
23 Q. Yes, the one that starts "This
24 trend"?
25 A. Okay. So "This trend in favor of

the minority favored candidate is there for all eight elections irrespective of whether the black minority favored candidate won the election or not."

Q. Okay. And so -- and so what observation are you meaning there?

A. So meaning I looked at eight elections; and in some of the elections, the minority favored candidate won; in some of the elections -- but regardless of who won or who lost, East Baton Rouge Parish is significantly voting in favor of the minority favored candidate compared to the -- the trend observed from the 18 parishes.

Q. Okay. Thank you.

MS. RIGGINS:

And there's a footnote at the end of this paragraph, Footnote 7. I'd like to look at that.

TRIAL TECH:

(Complied.)

BY MS. RIGGINS:

Q. Can you explain what you mean in Footnote 7 when you say "The trend is statistically significant in seven of the eight

1 elections"?
2 A. So -- so the data for the trend is
3 statistically significant in seven of eight
4 elections presented. The only exception where
5 the trend is not statistically significant is the
6 November 21, 2015 governor election, and note
7 that the R squared value for this election is
8 also smaller.
9 So, as I explained earlier, there is
10 some variation due to chance; and in seven out of
11 those eight elections, East Baton Rouge's voting
12 trend in favor of the minority favored candidate
13 was statistically significant and not explained
14 by chance alone; and the only exception to that
15 was the 2015 -- November 21, 2015 governor
16 election where if you -- let me look at the table
17 -- it's underneath this.
18 So if you look at the November 21,
19 2015 governor election, so even in that election,
20 10.9 percent of the voters, so there was a shift
21 of 10.9 percent towards the minority supported --
22 favored candidate, but the 10.9 percent was not
23 large enough to be ruled out as by chance at all.
24 Q. Okay. And was the 2015
25 gubernatorial election, was that a unique

election?

A. That was very -- a very unique election.

Q. Okay.

A. I have lived in Louisiana 32 years and I have literally voted in every single election here, and -- and, in this particular case, the governor's election, we had two even candidates --

MR. HURWITZ:

Your Honor, I object to this. I don't think this is in the witness's reports, and I don't think he's been -- he hasn't been qualified as an expert in politics or in Louisiana politics or anything that varies on an opinion about whether a particular election was --

THE DEPUTY:

Would you state your name, please?

MR. HURWITZ:

Yes. I'm sorry. It's Jonathan Hurwitz, H-U-R-W-I-T-Z. I have not appeared previously for the Robinson plaintiffs.

THE COURT:

Ma'am?

MS. RIGGINS:

Yes, Your Honor. I was just asking him if he was aware of any reason why this election might have been different and the math did not follow the other trends, so that's all I was asking.

THE COURT:

Well, you didn't ask that. You asked did the math then follow those trends. You asked about the election, so I'll sustain the objection.

MS. RIGGINS:

Thank you, Your Honor.

BY MS. RIGGINS:

Q. So this November 2015 gubernatorial election, does it follow the trends of the other elections?

A. No, it did not.

Q. Okay. And are there other factors that go into elections specifically that effect turnout like we have talked about?

A. Absolutely. The kind of messaging or the kind of TV ads, I think they influence --

MR. HURWITZ:

Your Honor, I have the same -- exactly the same objection. This is outside the scope of his report and his expertise, Your Honor.

THE COURT:

You tendered him in math and statistics. We have been out of that field now for a few minutes.

MS. RIGGINS:

Okay. Thank you, Your Honor.

BY MS. RIGGINS:

Q. So, Dr. Solanky, in seven of eight of the elections, you found a statistically significant trend towards the minority preferred candidate in East Baton Rouge Parish; is that right?

A. That is correct. So that's a trend in all the eight elections that I looked at, the trend in favor of the minority favored candidate and away from the non-minority favored candidate, so that trend is there in all eight of them.

In one of the elections, the trend is not that large enough for me to classify it as -- as statistically significant.

Q. But the trend is still there

1 nonetheless?
2 A. The trend is still there.
3 Q. And, Dr. Solanky, after preparing
4 your first expert report and this supplemental
5 expert report, have you reached any broad
6 conclusions?
7 A. My broad conclusions are, first of
8 all, consistently election after election, East
9 Baton Rouge Parish votes very differently
10 compared to those other 18 parishes. It votes
11 significantly in favor of the minority favored
12 candidate than what is expected from the other 18
13 parishes.
14 And then the second conclusion,
15 broadly speaking, is if you look at some of the
16 elections, same election date, same ballot, the
17 base of the minority candidate is black in two of
18 the elections and yet a large number of voters
19 are not voting for a candidate, just choosing to
20 not vote, so meaning there are other
21 characteristics other than race which voters are
22 relying upon to vote or not vote.
23 MS. RIGGINS:
24 Thank you, Dr. Solanky. I believe
25 that plaintiffs probably will have a few

1 questions.
2 THE WITNESS:
3 Thank you.
4 THE COURT:
5 Cross? Sir, please make an
6 appearance one more time just so we have
7 got it on the record?
8 MR. HURWITZ:
9 Of course, Your Honor. And can I
10 take off my mask?
11 THE COURT:
12 Yes, as long as you are vaccinated.
13 MR. HURWITZ:
14 I am. Thank you, Your Honor.
15 Jonathan Hurwitz, J-O-N-A-T-H-A-N,
16 H-U-R-W-I-T-Z for the Robinson plaintiffs.
17 CROSS-EXAMINATION BY MR. HURWITZ:
18 Q. Mr. Solanky, good afternoon.
19 A. Good afternoon.
20 Q. First of all, am I pronouncing it
21 correctly, Solanky?
22 A. Yes, you did.
23 Q. Mr. Solanky, when were you first
24 contacted to participate in this case?
25 A. The first I was contacted was about

three, three to four weeks ago.

Q. Three to four weeks?

A. Less than four.

Q. Was that before or after the enacted plan became law; that is, before or after the --

A. I believe --

Q. -- governor's veto was overridden?

A. I believe after.

Q. And were you contacted -- apart from this case, did anyone speak to you at any time prior to that first contact about doing any analysis or any work in connection with the 2020 cycle congressional redistricting in Louisiana?

A. No, not in particular.

Q. Okay. Who contacted you?

A. Mr. Tom Farr.

Q. And you've been engaged by the Secretary of State; is that correct?

A. That is correct.

Q. What is the rate that you are charging the Secretary of State for your work in this matter?

A. My hourly rate is $250.

Q. $250 an hour. And approximately how many hours to date have you worked on this case?

A. Now, I have not added up my hours, but if you need a ballpark figure, last three weeks I've been literally working, I would say, five, six hours a day, so I would say ballpark, 70 to a hundred hours.

Q. And that's the total work you've done is 70 to a hundred hours on this matter, ballpark?

A. Approximately.

Q. And that's at the $250-an-hour rate?

A. Correct.

Q. Now, you have never testified in a case involving the Voting Rights Act previously, correct?

A. No, I have not.

Q. You've never testified in any election case, correct?

A. No. I have provided by expertise to Eastern District of Louisiana related to jury matters, jury selection, each voters who are registered, what person did vote; and I have done that even previously here in this courthouse in a different matter.

Q. You have never published anything in your academic life on issues of voting rights,

1 correct?
2 A. Correct.
3 Q. And you have never published
4 anything or testified on anything on issues
5 regarding an analysis of voting patterns,
6 correct?
7 A. That is right.
8 Q. And you have never testified in
9 court or written anything in your academic work
10 on the subject of racially polarized voting,
11 correct?
12 A. Correct.
13 Q. Are you familiar with the notion of
14 racially polarized voting as a field of study?
15 A. I am familiar with it. I have read
16 some of the reports, yes.
17 Q. You've read some of the reports in
18 this case, and that's how you are familiar with
19 it?
20 A. Correct.
21 Q. And, in this case, you did not
22 yourself conduct an analysis of racially
23 polarized voting, correct?
24 A. No, I have not.
25 Q. So you did not use the analytical

tools such as ecological inference that some of the other experts in this case have used such as Dr. Cooper and Dr. Palmer; is that right?

A. No. I -- I looked at some of those data sets and I looked at some of the ecological inference markers I saw.

Q. You saw, but you did not yourself engage in any ecological analysis, correct?

A. Let me finish this.

Q. I apologize. I didn't mean to interrupt you.

A. So some of the ecological inference markers I saw, they are based on the assumption that the voting from black and white voters is similar in all the parishes and -- and I attempted to see that, that is that the case.

So the work which I have presented here looks into that assumption by other experts which who have assumed that that voting by white voters, voting by black voters is same regardless of which parish you come from; so that I analyzed and I found it to be not true.

Q. You have not endeavored in this case to estimate the racial polarization in any jurisdiction of Louisiana, correct?

A. In some sense, I have reported that by reporting the black and white percentage voting in East Baton Rouge and contrasting it with others, and I have also scientifically studied the validity of the assumption that -- that could be just viewed as the white and black voters in those 18 parishes vote same in all -- and in Baton Rouge; and the answer is no.

Q. Is the position you're taking, sir, that the ecological inference method of estimating racial polarization is not a reliable method; is that the position you are taking?

A. No. I did not say that.

Q. Okay. Do you believe it is a reliable method for estimating racial polarization?

A. Ecological inference is a proven method. It has been used extensively, but what assumptions you base it upon need to be verified as well.

Q. Okay. I'd like to turn to your report, if I may. It's SOS 05.

Do you have that in front of you?

MR. HURWITZ:

And maybe we can pull up on the

1 screen page 12.
2 TRIAL TECH:
3 (Complied.)
4 BY MR. HURWITZ:
5 Q. I want do start with the conclusions
6 that you say in your report, you have written.
7 And you identify in paragraph 23 of your report
8 two conclusions, right?
9 A. Okay. This is my supplemental
10 report.
11 Q. I apologize. I'm in the wrong
12 document, but the -- let me start over again.
13 Your expert report is SOS 04. I apologize for
14 the confusion.
15 A. It's no problem.
16 Q. And your conclusions are shown on
17 page 14 at paragraph 30.
18 MR. HURWITZ:
19 Can we pull that up, Matthew,
20 please, SOS 04?
21 We are having some confusion about
22 the exhibit numbering, Your Honor, so
23 perhaps I can use the --
24 THE COURT:
25 And he has it in front of him, so --

MR. HURWITZ:
He has it in front of him?
THE COURT:
-- refer him to his and then if you put what you have on the Elmo, that will probably help, and then that way you are on the same page. So you are referring to his first report?
MR. HURWITZ:
I am. Yes, Your Honor.
THE COURT:
Okay. Do you have that before you, sir? Or you can put it on the Elmo.
THE WITNESS:
Okay.
THE COURT:
Because you want to make sure that he's showing you what he says he's showing you.
THE WITNESS:
Yes, Your Honor.
BY MR. HURWITZ:
Q. And in your -- we are looking at your opening report, paragraph 30. You have that in front of you?

A. Yes, I do.
Q. And the first of the two conclusions you identify is that, based on the voting pattern in East Baton Rouge for the 2020 presidential election, it does not appear that white voters are voting as a block to defeat the black minority preferred candidate. That's the first of the opinions that you offer in your -- the conclusions that you offer in your opening report?
A. That is correct.
Q. Now, to be clear, you did not offer an opinion in your opening report about whether or not for the 2020 presidential election white voters voting as a block were able to defeat the black preferred candidate in any congressional district under the enacted -- the 2020 enacted plan, correct?
A. No. I am reporting this by parish and reporting it by parish for the 2020 presidential election.
Q. So the answer to the question is yes, you did not look at any congressional district in the 2020 enacted plan, correct?
A. No. I have not looked at that, and

that would require me to break up some of these parishes by precinct and -- and significantly more work making it also a master file with almost 4 million entries.

Q. So looking -- okay. And you did not as well look at whether, based on voting patterns in any congressional district in any of the illustrative plans you saw for the 2020 presidential election, white voters voting as a block would be able to defeat the black minority the black or minority preferred candidate?

A. That's correct. I have looked at it by the parishes.

Q. And the only parish you offered an opinion about in that regard is the Parish of East Baton Rouge, correct?

A. That is correct.

Q. Okay.

A. So that is one parish which votes differently.

Q. And you are not -- votes differently from the other 18 parishes in the region that you looked at, correct?

A. That is correct.

Q. You did not reach any conclusion

about whether voting in East Baton Rouge is racially polarized, correct?

A. No. I'm just reporting what the data is. I'm just reporting what we have seen --

Q. Okay.

A. -- in eight elections. And while preparing this report, I also looked at -- I extended those 19 parishes to 28 parishes which I had in my original report, had very similar conclusions.

MR. HURWITZ:

Can I ask, Matthew, if you can bring up PR-92, page 3. And I'll shut this off.

TRIAL TECH:

(Complied.)

BY MR. HURWITZ:

Q. You've read the expert report of Dr. Handley, correct?

A. Yes, I have.

Q. And have you seen -- if you look on page 3 of her corrected report, corrected Table 4, Dr. Handley provides effectiveness scores for congressional districts in the enacted congressional plan. Do you see that?

A. No. I have not even this corrected

table.

Q. Have you seen an earlier table?

A. I have seen -- this does not look familiar, but I have seen her -- some reports, I mean, I believe the original report.

Q. Okay.

MR. HURWITZ:

Let's pull up that original report, which is PR-12, and let's look at page 11 and pull out Table 4, please.

TRIAL TECH:

(Complied.)

BY MR. HURWITZ:

Q. Have you seen Table 4 before?

A. I have seen the Table 4.

Q. And Table 4 shows that for the enacted District 5, the percent of contests that the black preferred candidate would win or advance to the runoff from the 15 elections that Dr. Handley looked at, 26.7 -- the black preferred candidate would either win or advance to the runoff in 26.7 percent; and in a two-person contest between the black preferred candidate would win zero percent of the time. Do you see that?

A. Yes, I see that.
Q. And you don't offer -- you don't disagree, you're not offering any disagreement with Dr. Handley's conclusions in that regard, correct?
A. No. I have no disagreement, but I do not have the time to verify this.
Q. Okay.
A. As a statistician being involved in numbers, I feel comfortable if I verify those numbers on my own.
Q. So you are neither agreeing or disagreeing with Dr. Handley's conclusions in that regard as shown in Table 4, correct?
A. That is correct.
Q. And, likewise, if we go to page 13 of the same document, Table 6, Table 6 has similar data but for congressional -- the congressional districts in one of the illustrative plans. Am I correct that you are not disagreeing with Dr. Handley's conclusions as shown in Table 6 either?
A. Correct. I have no opinion on the validity of these numbers or how these numbers are updated.

Q. Now, I want to turn back to something that you were asked about on direct. It's your opening report -- and I guess we have to use the Elmo -- Figure 1.

TRIAL TECH:

(Complied.)

MR. HURWITZ:

Oh, we have it. Great. Okay. Can we go to page 12 of that report, please?

TRIAL TECH:

(Complied.)

BY MR. HURWITZ:

Q. Now, you described some of this on direct. You said that the line represents the relationship between, on the one hand, the excess of white over black voters and, on the other hand, the excess of Trump over Biden votes on a parish-by-parish basis for the 19 parishes, including East Baton Rouge, correct?

A. The percentages.

Q. Yes. And the chart shows that setting aside East Baton Rouge, there's a nearly -- there's a clear lineal relationship between the excess of white voters over black voters in a parish and the excess of Trump votes over Biden

1 votes in that parish, correct?
2 A. That is correct.
3 Q. And the -- you were explaining in
4 your report that numerically that can be
5 explained by something called the R square,
6 right?
7 A. The R square tells you -- R square
8 is a metric which tells you the fit of -- the
9 quality or fit of the regression model.
10 Q. Yes. And for those 18 that the
11 R squared in this case for the 18 parishes other
12 than East Baton Rouge is over 94 percent,
13 correct?
14 A. That is correct.
15 Q. And that means that the one
16 variable, the number of white over the number of
17 black voters in a parish, that one variable
18 explains almost 95 percent of the variation from
19 parish to parish and how many votes former
20 President Trump won over President Biden in that
21 parish, correct?
22 A. Correct. It establishes the
23 relationship between the two variables.
24 Q. Now, you did not -- strike that. Am
25 I correct -- I think I asked this before, so I

1 apologize if I have. You have not estimated how
2 -- if how racially polarized, if it at all, East
3 Baton Rouge is, correct?
4 A. No, I have not.
5 Q. Okay. Now, the other opinion you
6 offered, if we go back to page 14 of -- of your
7 report, the other conclusion you offer is that
8 East Baton Rouge is heavily populated and
9 constitutes approximately 34.2 percent of the
10 total registered voters from the 19 parishes
11 which are being considered for a proposed -- for
12 the proposed new congressional district, right?
13 A. That is right.
14 Q. And that's District 5, right?
15 A. That's -- so these are the 19
16 parishes which I have in my report, and these are
17 the 19 parishes which are being considered in
18 Mr. Cooper's Illustrative Plan 1.
19 Q. Okay. And the other 18 parishes in
20 that list therefore constitute approximately
21 65 percent, a little over 65 percent of the
22 population of that region that you looked at,
23 correct?
24 A. Correct.
25 Q. Okay. Now, Dr. Handley submitted a

report a few days after your report criticizing your opening report, correct?

A. That is correct.

Q. Okay. And one -- one of her criticisms was you had only looked at one election, right?

A. That is right.

Q. And her opinion -- and her criticism was one election doesn't give you enough data to reach a conclusion about whether or not whites vote in sufficient numbers as a block to defeat the black preferred candidate, right?

A. That is correct.

Q. Okay. And she's right about that, isn't she?

A. She's right. And that prompted me to look at some of the elections to see. Even as a scientist myself, I was intrigued by that comment and interested in seeing that evolved and explored if that happens in those elections or not.

Q. And Dr. Handley's other main criticism of your report was that you focused only on East Baton Rouge and not on any congressional district, that was her other

criticism of your report; is that right?

A. That is right.

Q. And your supplemental report did not address that second criticism, correct?

A. That is right.

Q. Okay. You continue to focus on East Baton Rouge in the supplemental report in just the way you had focused on East Baton Rouge in the first report, correct?

A. That is right.

Q. And if we can turn to -- well, in your supplemental report, you looked at -- instead of one election, you looked at eight elections, correct?

A. Yes.

Q. And how did you select the eight elections to look at?

A. There was no particular criteria. I wanted to get a good spectrum of elections, some presidential, some governor, some Secretary of State, attorney general, lieutenant governor.

Q. And you recognize that some of those eight elections are elections that Dr. Handley did not look at, correct?

A. That is right. So if I can go back

and answer your question more. So I -- so I started looking at elections and I definitely wanted to include some which Dr. Handley had in her report, so get a good spectrum of elections, some which she has pointed out for -- that I did not look and some others, but a good sample of elections.

Q. And Dr. Handley looked only at elections in which there was a white candidate and a black candidate, correct?

A. I have not verified that.

Q. Okay. Did you recall her explanation that in her view and in the view of some courts elections like that between a white candidate and a black candidate are more probative of racially polarized voting; do you recall her saying that?

A. I recall her saying that in the report?

Q. In the report, yes.

A. I particularly don't recall her, but then I know they had some elections where there was a black minority candidate and a white majority candidate. I looked at -- at least two of those instances.

Q. Okay.
A. Maybe three. Yes, three.
Q. And in each of the -- in each of the eight elections you looked at in your second report, there was a high degree of correlation -- second site of East Baton Rouge, there was a high degree of correlation between the number of white voters over the number of black voters in the parish on the one hand and the votes for the white preferred candidate over the black preferred candidate on the other hand; you found a high degree of correlation consistently across those eight elections, correct?
A. Correct. And the only election where this was somewhat not there was the 2015 governor's election.
Q. And if we look at Table 2 on page 11 of your report --
MR. HURWITZ:
Can you pull that up, Matthew?
TRIAL TECH:
(Complied.)
BY MR. HURWITZ:
Q. That shows again the R squares, meaning the degree of fit as between those two

variables, correct?

A. Correct.

Q. And the one you are pointing to is the November 2015 gubernatorial election where the R squared is 63 percent?

A. Correct. So -- so what I pointed out and what we have been talking about, so R squared is a good method. It can capture such non-metric as well setting of the regression curve.

Q. And the -- the only other election you looked at where the R squared was less than 90 percent was the November 2019 governor's election involving, again, current Governor Edwards, correct?

A. Correct.

Q. And in those elections, what we see is that the -- the statistics showing the number of white voters over the number of black voters is less predictive of whether the parish will go for the white preferred candidate than in the other elections you looked at; is that -- is that a fair thing to say?

A. It's a fair list, and I'll just add to it that the race of the voter is one factor

and there potentially could be other factors.

Q. Well, one factor might be the race of the candidate; would you agree with that?

A. True.

Q. And Governor Edwards, of course, is white, correct?

A. Yes.

Q. And I wonder, if we could, take a look at the winners and losers of the eight elections you looked at. So there's a table beginning on page 3 and continuing over to 4 and into page 5. Let's start at the bottom of page 3.

A. Okay. But that's in my supplemental report, right?

Q. That's right.

A. Okay.

Q. And it's on the screen as well. It's on page 3 of your supplemental report.

A. Okay. I see it.

Q. And the table, the description is a little confusing because I think erroneously you described the table as Party Affiliation Summary for the November 2020 general elections, but, in fact, it's a summary of all of the eight

elections you looked at, right?

A. True. I apologize.

Q. Don't apologize.

A. I was under time pressure and I was reading different tables.

Q. We are all under time pressure here, so errors happen.

A. So I must have this idea to merge two tables and create one and forgot to change the title.

Q. And just so we can clearly understand what's being shown in this table, let's -- let's use as an example the 2020 presidential election on November 3rd, 2020. That's the two rows that reflect that election, right?

A. Yes.

Q. And you identified the two candidates on the right side, Trump and Biden, both of whom you identify as white, correct?

A. Yes.

Q. And then the top row, that portion of the chart is all of the parishes in Louisiana combined, right?

A. Yes.

Q. And the bottom row is East Baton Rouge Parish only, correct?

A. That is correct.

Q. Okay. And you have various pieces of data here about number of votes, which you described on direct, and then in the middle under the heading -- under the column election outcome, you identify whether -- which of the candidates have won, correct?

A. Yes.

Q. Okay. So if we walk through this, the eight elections, and focus only on East Baton Rouge, we see that in the presidential election 2020 Biden won East Baton Rouge?

A. Correct.

Q. One of the white candidates?

A. Yes.

Q. And then the Secretary of State election in November 2019, we see that Greenup won East Baton Rouge; and she's a black candidate, correct?

A. Correct. So you are looking at the second part. Yes.

Q. Yes.

MR. HURWITZ:

And maybe we can scroll down just a bit.

TRIAL TECH:

(Complied.)

BY MR. HURWITZ:

Q. And then in the governor's election that we discussed in 2019, Edwards won, white, in East Baton Rouge?

A. Yes.

Q. In the Secretary of State election in 2018, Ardoin won, defeated Greenup, so the white candidate defeated the black candidate in East Baton Rouge; is that right?

A. Correct.

Q. In the governor's election in 2015, as we discussed, Edwards was white and won East Baton Rouge, right?

A. Yes.

Q. And in the presidential election of 2016, Clinton won in East Baton Rouge; and, of course, both candidates were white, correct?

A. Yes.

Q. And the lieutenant governor's race in 2019, Nungesser, if I'm pronouncing that correctly, won East Baton Rouge over Jennings who

was a black candidate, correct?

A. Correct.

Q. And Nungesser is white, correct?

A. Yes.

Q. In the attorney general's race in 2019 in East Baton Rouge, Landry, who was white, defeated Jackson, who was black, correct?

A. Yes.

Q. So if I'm understanding the numbers correctly, of the eight elections you looked at, four involved a black candidate, right?

A. Correct.

Q. And three of those four, even in East Baton Rouge, the outlier, the black candidate lost, correct?

A. Correct.

MR. HURWITZ:

Can we pull up GX-30, page 3?

TRIAL TECH:

(Complied.)

BY MR. HURWITZ:

Q. So this is the rebuttal report of Dr. Palmer. Have you seen this before?

A. Yes, I have.

Q. Okay. And if we can look at page 3,

I'd like to focus on paragraph 10.

A. Okay.

Q. In paragraph 10, Dr. Palmer says "The ecological inference analysis using precinct level data from East Baton Rouge Parish shows that white voters voted as a block in East Baton Rouge in the 2020 presidential election. Using the same ecological inference methodology as I used in my original report, I estimated that 92.5 percent of black voter the and 23.7 percent of white voters in the East Baton Rouge Parish voted for Joe Biden." You see that?

A. Yes, I do.

Q. And that report, the rebuttal report of Dr. Palmer was submitted on May 2nd, which was a week or so before your supplemental report was submitted, correct?

A. That is correct.

Q. And your submittal report does not express any disagreement with Dr. Palmer's conclusion about the level of racially polarized voting in East Baton Rouge Parish, correct?

A. So I wrote that specifically and that would be in my new report.

Q. That's all I'm asking.

A. Okay. But if you wish, I can tell you more about what you have on the screen right now.

Q. Well, have you expressed an opinion about that subject matter, the subject matter of 10, paragraph 10 of Mr. Palm -- Dr. Palmer's rebuttal expert report in either of the two expert reports that you have submitted in this case?

A. I have not. And for me to run an ecological inference model, I would need to verify the assumptions on which certain models are made, meaning the whites in all parishes with same way, is that a fair assumption or not.

And I looked at what you are showing me right now on the screen. If we go to the East Baton Rouge Parish and look at how many were black voters for there and compute 92.5 percent of them and then see how many white voters are there and compute 23.7 percent of votes, that number will fall significantly below the number of votes President Biden got. So even very simple, you can see there's some flaw in this present assumption here.

So if I go with the assumption that

these numbers are correct, President Biden is falling short by 10, 15,000 votes. It's a simple arithmetic, but I can create. Anybody can do that.

Q. Of the simple arithmetic that you are describing one percentage of white voters, do you estimate that East Baton Rouge voted for President Biden; is it more than a third?

A. I have answered that question. Ecological inference is a proper way to do that, but there has -- it has to be done correctly, meaning you verify the assumption and then you fit the ecological inference model.

Some of the models that I have seen in the report rely on the assumption that whites vote same regardless of the parish they belong to; and -- and based on the preliminary analysis which I carried out, I found that assumption to be untrue, and I have documented that by the eight elections.

Q. Now, the -- the -- you mentioned that there was simple arithmetic that you could do to show that the 23.7 percent estimate in Dr. Palmer's report was wrong, but you did not say that in your supplemental report. You chose

not to address that issue in your supplemental report?

A. And the reason is --

Q. Can I ask you just to answer yes or no and then you can -- you can give your explanation?

A. I'm sorry. Go ahead. Please ask.

Q. So my question is, in your supplemental report which was submitted more than a week after Dr. Palmer's report rebuttal report, you chose not to address or dispute Dr. Palmer's opinion about racial polarization in East Baton Rouge Parish, correct?

A. Correct.

MR. HURWITZ:

I have no further questions. Thank you.

THE WITNESS:

Thank you.

MR. HURWITZ:

Thank you, Dr. Solanky.

THE COURT:

Any redirect?

MS. RIGGINS:

No, Your Honor, we do not have any

redirect, but I did forget to move in exhibits. I would like to move in Secretary of State Exhibits 4 and 5 at this time, if there is no objection.

MR. HURWITZ:

Understanding those are Dr. Solanky's original and supplemental reports, we have no objection.

THE COURT:

So ordered. They are admitted into evidence. You may step down. Thank you, sir.

Okay, ladies and gentlemen, it's ten minutes after 3:00. I'm happy to stay on the record until 3:30, if you think that we can make some progress. If we can start someone that is not going to cause a break and cost anybody time, I will leave that up to the party who's got the case right now.

MR. WALSH:

Yeah. I think it will create an odd break situation.

THE COURT:

Okay. Well, then let's break for

the day.

Are there any housekeeping matters that we need to take up? There is one, and that is our start time tomorrow. Let me just -- the court has two proceedings tomorrow, one at 9:00 and one at 9:30. I'm confident that I can get those done by 10:00. What that means for you, though, is you have tables, you can leave your materials, but, you know, obviously if you have papers, cover them up because we will have counsel at these tables in the morning.

If you come in before 10:00, if you sit in the gallery, you are more than welcome to see the other business of the court. So we will start at 10:00 or as close to 10:00 as humanly possible given the two proceedings that come before you.

And just full disclosure. I would have loved to move one of them to 8:30, but the marshall service can't transport the people to get them here at that hour without other requirements, so it's the best I can do. So we will be back in the

morning at 10:00.

(The hearing was concluded at 3:05 p.m.)

REPORTER'S PAGE

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(B) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the record;

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talkovers; that same is the proper method for the court reporter's transcription of a proceeding, and that dashes (--) do not indicate that words or phrases have been left out of this transcript; also, that any words and/or names which could not be verified through reference material have been denoted with the phrase "(spelled phonetically)."

CHERIE' E. WHITE, CCR (LA NO. 96002)
CSR (TX NO 10720)
CSR (MS NO. 1514)
RPR (NATIONAL NO. 839452)

REPORTER'S CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original seal on this page.

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, do hereby certify that this injunction hearing as hereinbefore set forth in the foregoing 241 pages; that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or the parties herein, nor am I otherwise interested in the outcome of this matter.

CHERIE' E. WHITE, CCR (LA NO. 96002)
CSR (TX NO. 10720)
CSR (MS NO. 1514)
RPR (NATIONAL NO. 839452)

1 R O U G H D R A F T
2 THE COURT:
3 Any housekeeping matters? Yes,
4 ma'am.
5 MS. KHANNA:
6 Thank you, Your Honor. Abha Khanna.
7 I just wanted to give the court the update
8 on the chess clock.
9 THE COURT:
10 Yes, ma'am.
11 MS. KHANNA:
12 The plaintiffs have used 481 minutes
13 and the defendants 386. And I don't know
14 if now is a good time, but we just wanted
15 to raise with the court. I don't know if
16 Your Honor is thinking of some kind of
17 closing or oral argument at the end or --
18 we certainly want to give you the
19 opportunity to ask the lawyers any
20 questions you have. I know we have two
21 more days and several witnesses. I just
22 wanted to make sure we are able to allot
23 you time to ask any questions.
24 THE COURT:
25 I was not inclined to ask for

closing arguments. If you will feel like that there are some things that are particularly germane, I'm going to give you a brief opportunity to say what you want to say in writing and document that in any way that you would like to do. So with that being said, I really don't feel the need to, but if you-all want 10 minutes just to kind wrap things up, I'll certainly let you have it. But the court really doesn't require it.

MS. KHANNA:

I'll confer with other counsel, but I think on behalf of the Galmon plaintiffs, our primary was in making sure if you have questions you want to ask us you have the opportunity to do any oral argument or ask any of any questions. Thank you.

THE COURT:

All right. Thank you.

All right. Next witness?

MR. LEWIS:

If before we call this witness, do we -- will plaintiffs be willing to

stipulate to Dr. Blunt's qualifications in political science.

MS. MADDURI:

We have no objection to qualifying Dr. Blunt in political science.

MR. LEWIS:

Okay. With that seasoned political science and data analysis in the matters standards --

MS. MADDURI:

I'm sorry.

THE COURT:

Okay. Hold on everybody. First, I'll make your appearance. Patrick Lewis.

MR. LEWIS:

Yes, Your Honor.

THE COURT:

Representing which --

MR. LEWIS:

I represent the legislature intervenor defendants.

THE COURT:

All right. Now, you are tendering the next witness, who is --

MR. LEWIS:

Dr. Christopher Blunt.

THE COURT:

-- Dr. Blunt and speak to the court, not the opposing counsel.

MR. LEWIS:

Yes.

THE COURT:

What is your tender?

MR. LEWIS:

As an expert in the field of political science with emphases in quantitative political science and data analysis in the matter stated in this report.

THE COURT:

Quantitative political science and data analysis is the emphasis?

MR. LEWIS:

Yes, Your Honor.

THE COURT:

Is there a stipulation as to his expertise?

MS. MADDURI:

This is Lali Madduri on behalf of the Galmon plaintiffs. We don't stipulate

to his expertise in political science or data analysis, but we do object to qualifying -- I'm sorry. We do stipulate to that, but we do object to qualifying Dr. Blunt as an expert in the matters stated in his report.

THE COURT:

Which is? Usually, they testify in the area of which they are -- they are tendered and you just stipulated to his expertise in that area, and so now I'm very confused. All right.

MR. LEWIS:

Your Honor, may -- I think -- I think we can accept the tender as stipulated the matters stated in his report.

MS. MADDURI:

Okay. Let me object to qualifying Dr. Blunt as the expert in this matter stating in his report.

THE COURT:

Okay. So you are going to have go through it the hard way, Mr. Patrick. You are going to is have to call Dr. Blunt,

1 qualify him, let them cross on the tender
2 and then the court will make a decision.
3 MS. MADDURI:
4 And like we don't object to him
5 testifying for purposes of the preliminary
6 injunction hearing, but we do not
7 stipulate to his expertise or him
8 testifying at future proceedings, but we
9 can explore his qualifications on
10 cross-examination.
11 THE COURT:
12 Okay. I mean, either you are
13 stipulating that he's going to give
14 opinion testimony or not, and he will give
15 opinion testimony in the field in which
16 he's tendered. I don't know how to help
17 you. We are going to do it this way: You
18 put Dr. -- you call Dr. Blunt, you
19 establish his qualifications in the field
20 in which you propose to tender him, you
21 tender him, she cross-examines him, the
22 court will decide whether or not to accept
23 opinion testimony in the field tender.
24 MR. LEWIS:
25 Your Honor, may I try one last time

so we can get the stipulations that we can just -- I want to be efficient for the court.

THE COURT:

I do too. I do too. You may -- you may certainly try. What is -- what is --

MR. LEWIS:

Yes. Yes, Your Honor. So we would -- we would look for a stipulation to tender Dr. Blunt. He's an expert in the field of political science with an emphasis in quantitative political science and data analysis.

MS. MADDURI:

We can stipulate to his expertise in those general fields.

THE COURT:

All right. Dr. Blunt will be accepted as an expert in political science with an emphasis in quantitative political science and data analysis and will be permitted to give opinion testimony in those -- in that field.

MR. LEWIS:

Thank you, Your Honor.

THE COURT:

Everybody's clear?

COUNSEL:

(Indicated.)

THE COURT:

All right. Call your witness, sir.

MR. LEWIS:

Intervenors call

Dr. Christopher Blunt to the stand.

THE REPORTER:

Raise your right hand.

DR. CHRISTOPHER BLUNT,

after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

THE COURT:

Dr. Blunt, you may replace your mask with a shield if you wish to or you can remain masked. It's your decision.

THE WITNESS:

Where would I do that?

THE COURT:

She's going to give you -- well, there should be, she's going to give you one. If you are fully vaccinated, you

1 don't have to hear any of the above,
2 but --
3 THE WITNESS:
4 There you go. Thank you.
5 DIRECT EXAMINATION BY MR. LEWIS:
6 Q. Good morning, Dr. Blunt, I'm
7 Patrick Lewis on behalf of legislative
8 intervenors. Would you state your name for the
9 record?
10 A. Christopher Blunt.
11 Q. And, Dr. Blunt, you prepared two
12 reports in this case; is that correct?
13 A. That's correct.
14 MR. LEWIS:
15 And, Your Honor, may I approach the
16 witness and provide him with the binder
17 that contains the two reports?
18 THE COURT:
19 You may.
20 MR. LEWIS:
21 Thank you.
22 I'd like to turn first, just to
23 identify the reports for the record, turn
24 first to Tab 1 in your binder, which is
25 Exhibit LEG 3, which should also come up

on the screen.

TECHNICAL SUPPORT:

(Complied.)

BY MR. LEWIS:

Q. And do you recognize this report, Dr. Blunt?

A. Yes.

MR. LEWIS:

Okay. And then if we can go to the second report, which is a supplemental report, legislative Exhibit 77.

TECHNICAL SUPPORT:

(Complied.)

THE WITNESS:

Yes.

BY MR. LEWIS:

Q. Do you recognize that as well? Thank you.

MR. LEWIS:

If you can go back to the first exhibit, Legislative 3.

TECHNICAL SUPPORT:

(Complied.)

MR. LEWIS:

And I ask you to turn to page 16,

which I believe is exhibit A.

TECHNICAL SUPPORT:

(Complied.)

THE WITNESS:

Yes.

BY MR. LEWIS:

Q. And, Dr. Blunt, is this your curriculum vitae?

A. Yes.

Q. And it is a current and complete copy of your CV?

A. Yes.

Q. Dr. Blunt, what is your educational background?

A. A PhD in political science from UCLA. My emphases were in American government, campaigns, voting behavior.

Q. Okay. All right. And other --

A. Also, I have a bachelor and master of arts in -- in political science in Western University my emphases there were very similar.

Q. And have you published academic or peer-reviewed papers?

A. Yes. As listed on the second page of my CV, I recently had a peer review article I

was a co-author of in a political science journal on some work we had done. I did the great bulk of the data analysis for that. That was my role as co-author.

THE COURT:

Dr. Blunt, adjust the mic so that it's kind of under the mask. There's a little bit of barrier between the mic and your mask.

THE WITNESS:

Is that better, Your Honor?

THE COURT:

Yeah. I think so.

BY MR. LEWIS:

Q. All right. And, Dr. Blunt, what is your current occupation?

A. I am the owner and president of Overbrook Research, which is a public opinion consulting practice.

Q. And how long have you operated Overbrook Research?

A. Since 2003.

Q. What types of work do you do through Overbrook Research?

A. Well, I do a lot of campaign turnout

modelling, especially during election years. I'm very busy with that and I also do work for other clients. Many of my clients are other researchers and research firms who hire me to do some secondary analysis of their data.

Q. Okay. And besides voter turnout, what types of data do you work with?

A. Public opinion studies that could be for on behalf of campaigns or consumer products or the corporate communications public policy. I also work with the census data regularly in the course of my work.

Q. And do you study voting behavior and voting behavior as part of your work?

A. Yes. Very frequently.

Q. How long have you studied voting behavior?

A. Oh, all the way back to my undergraduate days. I took my first data analysis course as an undergrad, the days when you'd do these things, like main frames, you had to walk across campus to a data center to do this; but it was -- I got my first job out of college was with market strategies national political polling firm. I was broken down in

part because I had those particular skills. I was able to do that kind of data analysis on behalf of campaigns for president, senate, government all across the country.

Q. Dr. Blunt, do you use quantitative statistical methods in your professional work?

A. Yes. Virtually every day.

Q. Okay. Could you explain how --

A. Well, it would depend on what I was doing for the client. I build turnout models for campaigns, but I for another client, I might use a linear regression or a bilineal logistical regression or multi bilineal. Might use factor analysis or cluster analysis to build an audience segmentation, build a classification algorithm. My classes could classify one of their future references in /WUFPB their categories, use math difficult and a whole host of other analytical techniques in my work.

Q. And you apply those statistical methods to study data regularly in your practice?

A. Yes.

Q. And fundamentally in the field of -- let me strike that.

For how long have you been using

statistical techniques in your work?
A. Well, as I noted from the very beginning, from undergraduate days and my first time after used in ultimately in graduate school and formed my original research my dissertation and virtually everything I've done since.
Q. So is that since the late or early 1990s?
A. That was in the early 1990s.
Q. And this case, of course, concerns redistricting. Dr. Blunt, are you familiar with redistricting from your work in political science?
A. Oh, yes. It's a very well-known issue in political science, certainly something that I've studied.
Q. And is that an issue you are familiar with from your graduate school days?
A. Yes.
Q. So you studied -- did you study the literature in political science?
A. Yes. In redistricting, yes.
Q. Okay. And did you conduct -- did you ever conduct research that involved the use of census and election data to study voting

behavior?

A. Yes. In fact, my first Congress paper that I presented, that I presented several papers at academic conferences when I was in graduate school, the first used valid data I had gathered in Los Angeles County and I joined the census data to precincts those ballots came from. It was a very interesting project. This was in the early days of Gary King's method for ecological inference. I used the census data that Bruce Ames' team at Cal Berkley had put together. So this was when very early times in this and was able to get a very interesting paper on that. In fact, it won an award for the best conference by a graduate student in our department that year.

Q. Have you kept up with the redistricting literature since graduating?

A. Yes, I have.

Q. And more specifically, are you familiar with the political science literature on the use of simulations methods that study redistricting?

A. Yes, I am.

Q. And can you explain what

1 redistricting simulations are?
2 A. Sure. It's a simulations exercise
3 and what it does is it generates a large number
4 of alternative districting plans that could have
5 been drawn following a particular set of legal
6 criteria, and the value of that is that you can
7 then compare any given enacted plan or posed plan
8 to this range of districts that you -- that you
9 might expect will emerge from that process.
10 Q. And have you become familiar with
11 this methodology?
12 A. Yes, I have.
13 Q. In your opinion, is this methodology
14 been accepted in the field of political science?
15 A. Yes. It's very common, widely
16 accepted. It appears frequently in the
17 literature and, of course, it's been used in
18 court cases.
19 Q. And do you know of any courts that
20 have accepted simulations in redistricting cases?
21 A. Yes. Simulations have been accepted
22 by courts or redistricting commissions in
23 New York, Pennsylvania, North Carolina, Ohio,
24 Michigan and in others.
25 Q. Now, have you performed an analysis

using the redistricting simulations in your prior work?

A. No. I had not before this.

Q. Okay. How does this type simulations analysis remit to other work that you have done in your prior work?

A. Well, it's a question in political science to which we are applying quantitative data and methods, which is what I do. This just happens to be a different question using a somewhat different set of data and somewhat different set of methods, but it's fundamentally something I'm familiar with.

Q. And so what you use in some of your other work, you might use various different tools and study different ways?

A. Yeah. Fundamentally, it's a different tool certainly, but it's -- the methodology and approach is something I'm familiar with.

Q. And you have experience working with the underlying census data used in that methodology from your prior work?

A. Yes. It is in addition to the paper I wrote in grad school. I work with census data

1 frequently in my work.
2 Q. Did you find that the simulations
3 technique was particularly difficult?
4 A. Not really. Certainly, as with
5 picking up any new technique, there is a learning
6 process to it; but fortunately, this one is well
7 documented, the software is fairly well
8 supported, there's been a lot written about it,
9 and so it was -- it wasn't a difficult thing to
10 take up. Particularly, since I was following the
11 same approach that other researchers have used
12 both in the literature and in court cases, I
13 wasn't plowing any particular new ground with
14 this.
15 MR. LEWIS:
16 All right. So I'd like to now turn
17 to it is page 1 of your report, but we are
18 going to, because I think the pagination
19 on our exhibit is a little off and I
20 apologize to one and all for that, so I
21 will be referring to the pagination at the
22 lower, right-hand corner. So that's
23 LEG 3-3 actually, if you could go there.
24 TECHNICAL SUPPORT:
25 (Complied.)

BY MR. LEWIS:

Q. Now, Dr. Blunt, in paragraph 2 of your report, I believe you identify -- you describe in sort of your -- the work that you did in this case. Can you identify for the court the question that you were asked and answered in this case?

A. Yes. It was 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.

Q. Okay. And just to make sure we have got the terms right, when you refer to majority-minority districts, are you referring to majority black districts?

A. Yes. And -- and we are defining black as any part black from the census to the particular file. It is the same definition used by plaintiffs.

Q. All right. And -- and is it fair to say that you used simulations methods to study this question?

A. Yes. To study the question, I generated a set of 10,000 simulations methodology

to generate a set of 10,000 possible Louisiana congressional districting plans that adhere to those traditional, redistricting criteria, but I did not take a grace in partisanship.

Q. So what software did you use to run your simulations?

A. I used the Redis software package that runs on the R statistical platform. It's an open source statistical program that's widely used by researchers.

Q. And what made you select the Redis software?

A. It's one of the most common and popular. It's -- it appears frequently in the literature. It's developed by a team at Harvard University. It's -- it's had tens of thousands of downloads, has a number of algorithms to chose from. It's also very well documented. They have excellent documentation for it.

Q. You said there were different algorithms you can select. What algorithms did you use for this case?

A. Different algorithms simulate the districts in a slightly different process. I selected one called sequential Monte Carlo. It's

been especially appropriate in this case because we were building districts from scratch and from blind map.

Q. And when you -- when you run the algorithm, and I believe you get into this on paragraph 14 of your report on page LEG 3-6, what -- when you run this algorithm, what does it generate?

A. It -- it generates -- it's a large number of possible Louisiana congressional district plans. So in the wonderful thing about the sequential Monte Carlo algorithm is it does this in a way such that the generated plans are a representative example of all of the plans that could have been drawn using those same criteria. So it's measured the same way that we would use a large representative example of voters doing public opinion polls.

Here, we are polling a large representative sample of redistricting plans to study the question. And so the -- so when we did this, having the process was using the stipulations that were put on. I'll give you some -- let the -- let the algorithm kind of what the limitations are. So that would be

contiguous, reasonably compact, limit the number of split parish boundaries, and some degree of population quality between the redistricting plan.

Q. We will get to the criteria in a moment, but what is the relevance of being able to look at a large, you know, sample of alternative maps? What does that allow you as a researcher to look at?

A. Well, it's -- it's -- it gives you a good sense of the range of distribution of the plans that would emerge from this process using only these criteria and -- and nothing more, so it's -- it's what what kind of what the whole territory is.

Q. Okay. So you talked about criteria that made your simulations maps follow. Can you identify -- I know you sort of got into it earlier, but I want to make sure we get the record clear, what criteria did you require your simulated maps to follow?

A. Well, first was -- was contiguity. The second was respecting parish boundaries to the extent possible or practicable to ensure degree of population quality between the

1 districts and to -- to ensure that they were
2 relatively compact.
3 Q. All right. And just for the record,
4 did your -- did your simulations consider race,
5 partisanship or prior district boundaries?
6 A. No, it did not.
7 Q. So then is it fair to say that the
8 simulations were drawn in a race blind manner?
9 A. Yes.
10 Q. In selecting your criteria, did you
11 consider any of the criteria identified by
12 Mr. Cooper, Mr. Fairfax in their respective
13 expert reports?
14 A. Well, they -- they used many of the
15 same criteria that I did, including the -- the
16 ones that I used, they also used in addition to
17 what I used, they also talked about preserving
18 communities of interest.
19 Q. Okay. And did your models preserve
20 communities of interest?
21 A. Well, it did to some extent. To the
22 extent that a community of interest is contained
23 entirely within bounds of a parish, that plans
24 tended to respect parish boundaries and so we
25 didn't have many of them divided. But that was

not a variable, you know, that could be explicitly to the models in stipulation.

Q. Okay. So let me just start with just a general question. Is there a generally accepted definition of a community of interest in the field of political science?

A. Not that I'm aware of. It's a very broad term that can encompass all kind of things or considerations.

Q. All right. And you, Mr. Cooper and Mr. Fairfax defined communities of interest the same in their reports?

A. No. Mr. Fairfax tended to talk more about census places and landmarks sort of thing; whereas, Mr. Cooper talked more about the statistical areas. We call them submitter polls or statistical areas.

Q. And can you reliably control for communities of interest in a model without a generally accepted definition of the term?

A. No. It's a -- it's easier to control for parishes because we know exactly what those are. The -- the state of the ones that are -- it contained entirely within a parish boundary could be controlled. For some extent,

you are not dividing parishes. The other ones, like the statistical areas, in theory could be if the researcher knew there were certain ones that were important to keep together that could -- that sort of geographical constraint could be taken into account.

Q. So why didn't you just program the MSAs into the algorithm and tell them to keep them all together or something to that effect?

A. Well, it wasn't clear to me which ones were critical to keep together or which ones were not. Even in Mr. Cooper's plan, there were some that stayed together and some that didn't. These -- that's a kind of a -- the decision's difficult to make ahead in advance.

Q. And even if you could program in certain communities of interest, are the reasons not to program constraint that lacks a generally accepted definition, you know, offered by the mapmaker whose map you are studying?

A. Yeah. As I'm studying these maps, I was hesitant to include something like a community of interest that doesn't have a firm, legal definition the same way that, say, a parish would, and I part because this -- that's a

1 community of interest it could have served as
2 a -- as a proxy for race, which is exactly the
3 question that I am studying and trying to
4 evaluate with these plans. I didn't want to bake
5 that into the models if it had been, you know,
6 baked in somehow by the way they had drawn the
7 maps.
8 Q. So just as a -- as just more of a
9 general question before we move on, which year
10 census data did you use in your model?
11 A. Oh, it was the 2020 redistricting
12 file.
13 Q. Okay. All your data was from the
14 most recent redistricting --
15 A. Yes.
16 MR. LEWIS:
17 Okay. All right. I'd like now to
18 turn to paragraph 20 of your report
19 beginning on LEG 3-7.
20 TECHNICAL SUPPORT:
21 (Complied.)
22 BY MR. LEWIS:
23 Q. And -- and so, Dr. Blunt, were you
24 able to generate a set of simulated plans using
25 the software and the criteria you just discussed?

A. Yes, I was.
Q. Okay. And how many maps were you able to generate?
A. I did 10,000.
Q. Okay. Now, did you do any -- did you take a look at any of those maps after you simulated them?
A. Yes, I did. I looked at quite a few. It's possible to render the maps right there in the software, so I wanted to make sure it was doing what it was supposed to be doing. The districts were contiguous and they looked like real maps, so that was kind of a quality check. I looked at quite a few of them.
Q. Sure.
MR. LEWIS:
So I'd like to just quickly just put up one example. If we can pull up one.
TECHNICAL SUPPORT:
(Complied.)
BY MR. LEWIS:
Q. And, Dr. Blunt, this looks like that's labeled Plan No. 22, so can you explain what we are looking at?
A. Oh, sure. This was the 220th

1 district plan that the software generated. I
2 believe it just chose this one at random to -- to
3 look at. So it's there are six districts. They
4 are contiguous. That's -- I don't know what else
5 to say about it.
6 Q. So there are apparently 9,999 others
7 where that came from?
8 A. Yes.
9 MR. LEWIS:
10 Okay. We can take that down. If we
11 can go then back to I think it's now
12 page 6 of your report LEG 3-8.
13 TECHNICAL SUPPORT:
14 (Complied.)
15 BY MR. LEWIS:
16 Q. So, Dr. Blunt, you now have your
17 10,000 plans and can you -- did you calculate the
18 black voting age population for the districts in
19 your plans?
20 A. Yes, I did. I asked it to compute
21 what we call the BVAP. That's any part black
22 voting age population for each of the six
23 districts in each of the 10,000 simulated plans.
24 Q. Okay.
25 A. So that gave me a number for each of

the 60,000 districts.

Q. Okay. And all right. So you've got here total, so you calculated the BVAP for each and I believe that's what, 60,000 total districts?

A. Yes.

Q. All right. And then in Figure 1, it looks like you're reporting what you are calling the highest -- the highest BVAP district. Could you explain to the court what that is?

A. Yes, I did. The district numbers on these plans, they are numbers, but it's arbitrary. This is not in reference to an existing plan or anything else. So it's a question of looking across the six in each case to see which one has the highest BVAP. So I pulled that number to its own variable, so I ended up with a new variable in the data file that had, you know, this number representing the highest BVAP across the plan. So this is the distribution of what that variable looks like. This is -- these are 10,000 districts and it's one from each plan. Each district was the one in the plan that had the highest BVAP.

Q. All right. And all right. So how

many of your 10,000 simulated plans contained two majority-minority districts?

A. None of them did.

Q. And how many even had one majority-minority?

A. None of them did.

Q. Okay. All right. So can you identify for the court the highest BVAP district, the percentage BVAP and the highest BVAP district that you encountered in your simulations?

A. Yes. It was 45.47 percent.

Q. And what was the average, highest BVAP in your 10,000?

A. It was about 38-1/2. It was 38.56.

Q. Okay.

MR. LEWIS:

All right. So now I'd like to turn down to the next page in your report, which is LEG 3-9.

TECHNICAL SUPPORT:

(Complied.)

BY MR. LEWIS:

Q. Dr. Blunt, what's in the Figure 2 here that talks about the second, highest BVAP district? Can you explain that analysis?

A. Yes. Once I pulled out the highest BVAP district, it was a straightforward exercise to pull out the one that was second highest in each district and did the same analysis to look at the distribution of what the BVAP was in each of those. So that's what you see here.

Q. And what did you ultimately come to?

A. Well, I found that the -- the -- the highest one of these was just over 42 percent. It was 42.24 percent BVAP. You see that way over on the right tail. The average across these was just over 36 percent BVAP.

Q. Now, did you analyze whether in your 10,000 simulated plans that they -- whether they commonly had two relatively high BVAP districts?

A. Yes. I looked at that, but it was a very unusual thing for there to be two -- a tentative -- a plan that had two districts with a large BVAP share. In fact, in only 75 plans, out of the 10,000 had two districts that had the 40 percent BVAP, only 200 plans got to 39 percent BVAP in two districts.

Q. And based on, you know, this sort of analysis, were you able to draw any conclusions about the question that, you know, that you

1 looked at?
2 A. Yeah. I concluded that it would be
3 extremely unlikely for Louisiana redistricting
4 plan that included two MMDs to emerge in a
5 process that followed only the redistricting
6 criteria that I used.
7 Q. Okay. Now, did you look at -- I
8 know you testified that you sort of actually
9 looked at some of your plans, but did you also
10 analyses your simulated plans to see how well
11 they complied with those traditional,
12 redistricting criteria that you used in your
13 model?
14 A. Yes, I did.
15 MR. LEWIS:
16 All right. I'd like to turn now to
17 page 8 of your report, LEG 3-10.
18 TECHNICAL SUPPORT:
19 (Complied.)
20 BY MR. LEWIS:
21 Q. And did you look at the compactness
22 of the districts that your simulating plans drew?
23 A. Yes. Compactness was a criteria and
24 so I looked to see how well my districts did on
25 that.

Q. Okay. And I believe Figure 3 here on page LEG 3-10 reports that. Can you explain to the court what you found?

A. Yes. I report here that the polls poverty scores, it's a standard measure of district compactness political scientists use, it's very popular, very common metric you see widely reported. So this is all 60,000 districts to show what those scores are. My average across them was .25 or a little bit better. 90 percent of each district's was .13. 80 percent of them got to at least .162.

Q. And if you turn to the next page of your report, did you compare the average compactness of your districts to those of the illustrative plans submitted by Mr. Cooper and Mr. Fairfax?

A. Yes. That -- that's what I did here in Figure 4 and, yeah, my average was about .25. Theirs were about .18, .19, so my averages were better. The high end theirs topped out. See, the very best one was .31 and I had -- I computed the number of -- I'm sorry. I had about one-fourth of my -- my districts were better than that were more compact than that. But I would

say 26.4 percent of the simulated districts got to at least .31.

Q. And in your report, that's reported in your report, correct?

A. Yes, sir. I'm just reading from the report.

Q. Okay. So did you look at how many parishes were split in your simulations?

A. Yes.

MR. LEWIS:

Okay. So if we could look at I believe that's at the bottom of page 9, if we could zoom in on that.

TECHNICAL SUPPORT:

(Complied.)

BY MR. LEWIS:

Q. All right. And how many parish splits do your simulated plans produce?

A. The great majority of them split five parishes or fewer. It was most common to split five parishes. I had -- I had some number, I guess, 24 percent that it split six parishes, but six was the most that any of them split.

Q. Okay. I believe on the next page, Figure 5, is that where you --

A. Yeah.
Q. -- visualized the number of splits?
A. Yes.
Q. Okay. And how to -- how do your simulations compare to the illustrative plans of Mr. Cooper and Mr. Fairfax with respect to splits of parishes?
A. Let's see. The -- they split fewer. The -- see, so the -- just making sure. The -- so Mr. Cooper reported his plans one and three split 10 parishes, his plan two splits 11 parishes, Mr. Fairfax's plan splits 14 parishes. That's all taken from their reports. I didn't independently verify that, but that's in their report. So I split on average I guess about half of what Mr. Fairfax reported or, sorry, Mr. Cooper.
Q. All right. And then in -- it appears to be on paragraph 28 also on that page 10, you report on how your plans performed on population of quality?
A. Yes. They -- they do get close to the quality of total population. It's very difficult for simulations to get to perfect quality across districts by the nature of what

you are doing using voter tabulation districts, which are not splitting. But I set the parameter to be a total deviation from perfect to aim for less than .25 percent deviation, and what that is it's just you are just adding up across the six districts how far you were under or over the -- the number of 776,293, which is the perfect target. So you -- you're just adding up the sums of those deviations and it should get to 1940 or less, and in almost all of them were under that.

Q. Okay. All right. So just kind of sum up your ultimate conclusion here from your analysis, I believe you report that on paragraph 30 beginning on page 11, if you could just summarize for the court the ultimate conclusions that drew from your conclusions of your analysis of the sites?

A. Yes. I found the simulations were able to produce districts that were at least as compact as fewer plans. They split fewer boundaries. Most importantly, I found that using only these traditional criteria, you know, a districting plan would be extremely unlikely to contain two MMDs. So to draw a plan in Louisiana with two such districts would almost certainly

1 require prioritizing racial consideration or some
2 proxy for race or at least traditional criteria,
3 and the simulations followed.
4 MR. LEWIS:
5 Okay. Forest, you can take that
6 down.
7 TECHNICAL SUPPORT:
8 (Complied.)
9 BY MR. LEWIS:
10 Q. Now, Dr. Blunt, did you review the
11 rebuttal report Dr. Maxwell Palmer?
12 A. Yes, I did.
13 Q. Okay. Did Dr. Palmer criticize
14 certain -- or one of the methodological choices
15 you made in drawing -- creating your model?
16 A. Yes, he did.
17 MR. LEWIS:
18 Okay. And I'd like to turn now to
19 your supplemental report, Legislative
20 Exhibit 77.
21 TECHNICAL SUPPORT:
22 (Complied.)
23 BY MR. LEWIS:
24 Q. And was this a -- I think this was a
25 supplemental report that you issued in response

to that; is that correct?

A. Yes.

MR. LEWIS:

Okay. If we could turn to its first page, which is LEG 77-2.

TECHNICAL SUPPORT:

(Complied.)

BY MR. LEWIS:

Q. Can you summarize Dr. Palmer's critique of your parish spread?

A. Yes. He criticized the approach for splitting too few parishes that I had instructed the algorithm to do that, that because I was splitting it most only six parishes, that I wasn't getting the full range of distribution of the source of plans that might appear in Louisiana. I do think it was important he noted this, that this is a widely-accepted methodology and an approach in general to effect one that he used in his own research. So that was -- but he noted that there was this detail about how I had executed it that may be leading to fall short.

Q. And were you aware -- did you under Mr. Fairfax's and Mr. Cooper's redistricting criteria set forth in your reports to include

like a minimum number of parish splits?

A. No. They did not note the minimum number that they were using, not that I saw.

Q. And so can you in response to Dr. Palmer's critique, did you analyze to see if that issue effected your results?

A. Yes, I did. There's a test of the robustness of the findings in the original report. I -- well, let me back up. I wanted to test this, but given a sense as to how much is possible using the algorithm because I did want to see it, this was an issue. So with the sequential Monte Carlo algorithm, one of the standard settings on that is if you were going to constrain for parish splits, then it prefers plans that have one split fewer than the number of districts you create.

For instance, in Louisiana, we are making six districts. So it's going to -- that if you specify the parish split constraint, it's going to push the algorithm you generate plans that have five splits or fewer to get down to six. So that's the standard setting. There is no way to set your own minimum. You can't tell it I want to split 10 or I want to split 15.

1 That's -- the number is either number of
2 districts minus one or nothing, so my option was
3 nothing. That's the way that I tested this, was
4 I removed the parish split constraint all
5 together and let the -- let the algorithm do what
6 it was going to do and split parish boundaries at
7 will, gave it maximum freedom to find what it was
8 going to find.
9 Q. Okay. All right. So did you then
10 re-run another set of simulated maps without that
11 constraint?
12 A. Yes. That's what I did. I did
13 10,000 additional maps. I left the other
14 settings where they were and changed one thing,
15 which is a standard, scientific method and saw
16 what happened.
17 Q. Okay. And is that type of
18 robustness check common in the field of political
19 science?
20 A. Yeah. There's a -- there's some
21 kind of critique that said that this is, you
22 know, you are too strict or too lenient or
23 something and change it and see what happens.
24 Q. How long did it take the computer to
25 draw the second set of 10,000 maps?

A. I believe it was an hour and a half.
Q. About an hour and a half. And could another researcher done exactly as you did with the data code that you used in your report?
A. Yes. I provided all the code that I used. Dr. Palmer had been curious. He could have -- he could have removed that constraint and just run it.
Q. Okay.
A. I was happy to do it, though. I was --
Q. Sure.
MR. LEWIS:
And if we could then turn to page 77-3, paragraph four, I believe you report the -- the results of that second set of simulations.
TECHNICAL SUPPORT:
(Complied.)
BY MR. LEWIS:
Q. Could you just kind of summarize what you find with the highest BVAP?
A. Yes. I found that it didn't change much. The -- the highest percent at any one district, it increased very slightly, it had been

about 45 percent black, it was now just over 46 percent black. And, but that was still where it maxed out and I still did not get a single MMD in any of the plans.

MR. LEWIS:

Okay. And then if we turn to the next page.

TECHNICAL SUPPORT:

(Complied.)

THE WITNESS:

And note that -- I'm sorry. And then, of course, so I didn't get one. I didn't get two either. I did get -- I had at least 41 percent in two separate districts and 54 plans that had been 28. So I had a little bit more, but it did not substantially change that, you know, those core findings.

MR. LEWIS:

Okay. All right. And if we could just turn to the next page very quickly, Figure 1.

TECHNICAL SUPPORT:

(Complied.)

BY MR. LEWIS:

Q. Can you just briefly describe what Figure 1 reports?

A. Yeah. This is essentially a, you know, an updating of the Figure 1 in my original report. I'm showing that pulled out that district that had the 10,000 plans that had the highest BVAP, showed what the distribution looked like, and as I noted, it was very similar to what -- what I had originally reported. So even with the parish split constraint removed, it did not substantially change the results.

Q. Sure. All right. And -- and did the removal of the -- the constraint effect compactness over the parish splits?

A. Yes. Absolutely, it did.

Q. Did it make the increase the number of parish splits; is that fair to say?

A. Yeah. The number of parish splits increased dramatically. I reported that as you would expect because I wasn't respecting those boundaries any more. I note that compactness also dropped by quite a bit.

Q. All right. So in the end, what does this second simulations run tell you?

A. It tells me that the -- the, you

1 know, the original -- the original approach was,
2 I mean, it was a strong one that held up against
3 this robustness check even with the parish
4 boundaries constraint removed. I had the same
5 findings that told me that the sets of algorithm
6 I was using were altogether proper and
7 appropriate. Second set of algorithms.
8 MR. LEWIS:
9 We can take that down. Thank you.
10 TECHNICAL SUPPORT:
11 (Complied.)
12 BY MR. LEWIS:
13 Q. All right. So just finally, I'll
14 represent to you that Dr. Palmer on Monday
15 testified in this case and offered a critique, my
16 words, not his, that requires your model to
17 constrain population deviation too tightly. Is
18 that a plus or minus a quarter should have been a
19 larger number? Was that criticism reflected?
20 Did you see that criticism in your rebuttal
21 report anywhere?
22 A. No. He did not mention that -- that
23 concern.
24 Q. Okay. And do you have a -- do you
25 have a response to that criticism?

A. Yes. I would note had he mentioned that in his original report, that is something I certainly would have looked at and reported on and did an additional robustness check. I will say I did out of curiosity, I did look at what the set of plans would like, like with that constraint considerable widening. And again, the results were very similar to what we got here with the highest BVAP district increased very slightly and we had something like four plans that had two districts that were 42 percent BVAP. But again, we were nowhere near to having two MMDs and only one.

MR. LEWIS:

Thank you very much, Dr. Blunt.

At this time, Your Honor, I move in LEG 3 and LEG 77.

MS. MADDURI:

No objection, Your Honor.

THE COURT:

Admitted.

MR. LEWIS:

And I have no further questions.

THE COURT:

Cross?

1 CROSS-EXAMINATION BY MS. MADDURI:
2 Q. Good morning, Dr. Blunt.
3 A. Good morning.
4 Q. My name is Lali Madduri and I
5 represent some of the plaintiffs in this case.
6 You were engaged by legislative
7 defendants, correct?
8 A. Correct.
9 Q. Who first reached out to you?
10 A. Oh, the BakerHostetler.
11 Q. Do you remember who?
12 A. I don't remember exactly who the
13 first contact was. And I very quickly again, I'm
14 working with Patrick Lewis, but yeah, I'd have to
15 go back and look at my e-mails.
16 Q. That's fine. When were you first
17 contacted?
18 A. Oh, it was -- it was shortly before
19 April 22nd. It was earlier than that. We had
20 April 22nd was a Friday. That was when engaged
21 the work I was contacted shortly, I guess, a few
22 days before that. That was when I first heard
23 about the existence of a project and I believe we
24 spoke on that Friday the 22nd.
25 Q. Okay. And you're being compensated

at the rate of $250 an hour?
A. That's correct.
Q. And approximately how much have you billed working on this case?
A. How much have I billed? How many hours have I logged?
Q. Sure.
A. Oh, at least 60 to 70, but I would have to check my notes and add that up.
Q. And this is your first time testifying at a trial or by deposition, right?
A. That's correct.
Q. You testified on direct that you studied redistricting; is that right?
A. Yes.
Q. And that you've studied simulations?
A. Yes.
Q. Okay. Are you -- oh, and that you are generally familiar with stimulation?
A. Yes.
Q. Prior to your engagement in this case, had you ever run a simulations analysis of electoral districts?
A. No, I had not.
Q. Have you ever published on

simulations analyses in a peer-reviewed journal?

A. No.

Q. Have you ever published on a simulations analysis in any academic journal?

A. No.

Q. Have you ever published on simulations analyses anywhere?

A. No.

Q. Have you ever taught a course on simulations analyses?

A. No.

Q. Have you ever taken a course on simulations analyses?

A. Not that specifically, no.

Q. Do you use simulations analyses in your professional work?

A. Before this, I had not.

Q. Have you ever published on redistricting in a peer-reviewed journal?

A. No.

Q. Have you ever published on redistricting in any academic publication?

A. Not on redistricting, no.

Q. Have you ever published on redistricting anywhere?

A. No.
Q. Have you ever taught a course on redistricting?
A. For?
Q. Ever taken a course on redistricting?
A. Not on redistricting particularly, but it's certainly something that comes up in political science course work, and under contest certainly is a subject that, you know, we discuss and is well-known and widely taught. But I was not aware of any course on redistricting per se.
Q. So in this case, you are applying a quantitative method that you've never used before; is that right?
A. It is -- this particular quantitative method I picked up for this particular application, yes, which I would note is something that I have done in the past. You know, I have new methods looking for new applications, root of it still being a political science question to which we are applying an analytical method.
Q. An analytical method that you've never used before this case?

A. That's correct.
Q. You testified on direct that courts have accepted simulations expert analyses in other cases; is that right?
A. Yes.
Q. But no court has ever accepted you as an expert in this area, correct?
A. That's correct. I've never testified before.
Q. You ran a specific code in performing the analysis that you presented in your reports; is that right?
A. Yes.
Q. Did you write that code?
A. Yes.
Q. You wrote the code that you ran?
A. Oh, I wrote the instructions that executed the underlying algorithm.
Q. Okay. But you didn't write the algorithm?
A. No, no, no. The mathematicians and that's -- that's a different -- the people that actually wrote the algorithm, I relied on the tool that they provided and produced, yes. I just -- I used that. Yeah. I wrote the

instructions to, you know, to make it work, but the underlying algorithm, no. That is something that -- that someone designed and published.

Q. Where did you get that algorithm?

A. It's -- it's available through the -- it's a package. It's part of the R statistical package software. There's a -- I believe I footnoted it in my report that it's available through their standard package. It can be downloaded and added into the R software.

Q. Do you know who wrote that algorithm?

A. I believe it was Dr. Imai was one of the people who --

THE REPORTER:

Can you spell that?

THE WITNESS:

I-M-A-I. I believe he had collaborators, but he was one of the people who developed it, but -- and he has testified as an expert in -- in other cases in using this algorithm.

BY MS. MADDURI:

Q. So you're aware that simulations' experts in other cases write their own code?

A. I'm sure some do. In the case Dr. Imai, he wrote the algorithm, then you know, he designed it.

Q. Okay. Are you aware that other simulations' experts that have testified in cases also typically write the code that they present?

A. I don't know if they typically do or not. I'm not sure how you would define "typically." I know some do.

Q. And before this application, you have never run Dr. Imai's code, right?

A. That's correct.

Q. And you are aware that Dr. Imai's code produces simulated plans using a Metropolis–Hastings algorithm?

A. I don't know if that's the name of it, but is -- the one I used is simulated Monte Carlo. I don't know if there's something else that's under there that he's using, but that was the one in the package that I used.

Q. Okay. Do you have any reason to disagree if I told you Dr. Imai's code, his algorithm is using a Metropolis–Hastings algorithm?

A. I wouldn't have any particular

knowledge to contest that.

Q. Okay. And so I would assume that you can't tell me exactly how that type of algorithm works?

A. So this is the mathematicians and the statisticians are the ones who put the algorithms together. So for the great bulk of us researchers, this is a tool that is then available to us that we can use as an application in our -- in our day-to-day work, much as same the rest of the rest of statistical software that I use as algorithm undermining that I could not write, but I know how to use them to apply them and to set them up and to interpret the output. It's what I do every day with all kinds of other algorithms.

Q. Okay. But you can't explain the actual algorithm that's set forth here?

A. No. I looked. I read the article that is under review that Dr. Imai and collaborators have submitted where he explains the algorithm, and I got a sense for what it was doing and got validation for the article. No, I could not -- I could not produce the path for them, no.

Q. So you're not an expert in the algorithm that you used here?

A. Not on -- not of that algorithm itself, no, not the underlying engine.

Q. Okay. And you are not an expert in simulations?

A. In -- this is the first simulation that I've produced.

Q. So no?

A. I am -- I ma an expert in data analysis, which this simulation was one component. As I said, this is the first simulation that I have produced.

Q. Okay. So now moving to the analysis that you did here, the basic idea is that if you produce a set of simulated maps using traditional, redistricting criteria and not race, you can look at those -- that set of simulations that's produced and be able to tell how often a simulated map that adheres to those criteria would create a map that had two majority-minority districts in it, right?

A. Yeah. You can use it to compare, yeah, any kind of map to this distribution. You can say, you know, chose your map and you can get

a sense for how frequently you would see something like that. It's often used in partisan gerrymandering cases or it also sometimes is used in racial cases, yes.

Q. Okay. So you could simulate a set of maps using criteria that's aimed as maximizing compactness, right?

A. Yeah. The compactness setting that I chose was the one that Dr. Imai recommended. It's described as producing nice, compact districts. I don't know if that is maximal compactness, but that was what was kind of recommended as the default setting.

Q. Thank you.

A. That's why I used it.

Q. I'm sorry. I didn't mean to interrupt you. I understand, but just theoretically, you could program a set -- you could program an algorithm to produce a set of simulated maps that does maximize compactness, right?

A. I believe that would be possible.

Q. Okay. And then you could see when compactness is maximized, do plans with two majority-minority districts emerge?

A. You could certainly change the --
the settings for the algorithm to have it
emphasize something over something else and then,
you know, to see what a came out of it and then
compare your -- your holdout plan to whatever was
produced, yes.
Q. So the idea is to program the
simulation's algorithm with a traditional,
redistricting criteria and then see what kind of
maps emerge?
A. Yes.
Q. Okay. And then according to that,
your theory, if the simulated maps didn't contain
two majority-minority districts, that means that
race pre-dominated in the drawing of any map that
contains two majority-minority districts, right?
A. Right. I would strongly suspect
that race was some proxy for it had pre-dominated
over those traditional criteria if a map, in
fact, produced two majority-minority districts,
it certainly wasn't emerging on its own.
Q. So that means it's necessary for the
simulation's algorithm to be programmed according
to the same criteria that whatever comparative
map was drawn using, right?

A. Well, not necessarily. It should run according to what the -- the stated legal criteria are. Not necessarily what that over mapmaker did because if you do that, then you might put into the map whatever the mapmaker is using. If the mapmaker is using some other criterion and you program that in your algorithm, you are running the risk of, you know, producing something like what the mapmaker did. The idea is to do something different.

Q. Okay. But you can program in all the criteria, except for race or something like that for the comparative map, right?

A. You can program in some. I don't know -- I don't know what all the criteria would, -- you know, would encompass.

Q. If you had a list of all the criteria that the mapmaker used, you could program the algorithm to use all of that criteria, excluding race?

A. I would have to see what they are. I'm not sure entirely. There's a way to put everything in.

Q. I understand. So you are saying there is some algorithm that couldn't be

1 programmed in the program potentially?
2 A. Potentially, yeah. It would be for,
3 yeah, if there was some idiosyncratic local
4 traditions that go into districting, such as you
5 know, there are two parishes that always are, you
6 know, go on together in a plan, something --
7 something purely local to the -- to some place,
8 that might be difficult. There might be a way to
9 do it. You're saying there -- there could be
10 some constraints that could be difficult to
11 incorporate.
12 Q. Okay. But to search as a useful
13 comparison, generally, the simulations should be
14 programmed using sort of the same redistricting
15 criteria that are being applied?
16 A. Yes. That's what I attempted to do
17 here.
18 Q. And if a simulation's algorithm is
19 not programmed with sort of the same set of
20 redistricting criteria, then that wouldn't serve
21 as an appropriate comparison, right? It would be
22 sort of like comparing apples to oranges?
23 A. To some extent, yes. That's why
24 when you set this up, you try to get it as close
25 as you can. You may not be able to get a

1 hundred percent, but you, you know, you program
2 in the constraints that you can.
3 Q. Okay. So let's suppose that I
4 produced some simulated maps for Louisiana's
5 congressional districts, but my maps didn't
6 follow traditional, redistricting criteria for,
7 for example, they have population deviations for
8 certain districts over 50 percent and they
9 contain noncontiguous districts, would it be okay
10 to use those simulations to arrive at any
11 conclusions?
12 A. No. They would have to be certainly
13 those minimum standards of continuity and, you
14 know, reasonable population boundaries.
15 Q. So instead of stimulations that
16 didn't adhere to traditional, redistricting
17 criteria, you couldn't -- you couldn't use those
18 simulations to arrive at any conclusions about
19 Mr. Cooper's maps?
20 A. Well, it would have to be -- the
21 deviations for traditional criteria would be --
22 have to be preferred in a way that would
23 meaningfully effect your output.
24 Q. Okay. So if there were meaningful
25 deviations in the simulations, then you couldn't

use that set of simulations to arrive at any conclusions about whether Mr. Cooper's maps were drawn with race as a predominant factor?

A. I would need to know what kind of deviations we were talking about particularly.

Q. All right. But you could imagine a set of deviations or that would be the case?

A. What you described was noncontiguous districts.

Q. And that's because that that set of criteria for those simulations you are not controlling for the traditional redistricting principles?

A. What do you mean? I'm not sure what you mean by "I'm not controlling for the traditional" --

Q. You're not following the traditional, redistricting criteria in the set of simulations that I described.

A. Oh, the -- the ones that you were describing, not the ones that I produced?

Q. Correct.

A. Okay. Yes. Right. If what you described would not be districts, that would not be a valid comparison set.

Q. So that means in order to draw any conclusions about a given map by way of comparison to simulations, it's necessary for the simulation's algorithm to be programmed according to the redistricting criteria as the map you are trying to analyze, excluding race?

A. As close as you can to it.

Q. Your simulation's analysis took into account four criteria, right?

A. Okay. What is that, yeah, continuity, compactness, minimizing parish splits, and the, let's see, it was the reasonable compact.

Q. Is the part one population quality?

A. Yes.

Q. How did you select those criteria?

A. They were outlined in Joint Rule 21 minimizing parish splits, the population equality, continuity is an obvious one, and then I already addressed compactness. I used the standard setting for compactness in the algorithm, so I certainly took that into account.

Q. Dr. Imai's standard for --

A. Yes.

Q. -- compactness?

A. Yes.
Q. Okay. You would agree that the criteria you used are only some of the criteria that are considered traditional redistricting principles, right?
A. Well, those are among the most important. I know that there may be some other considerations that may have entered into the mapmaking process in a given state, but those -- those were the -- the big ones as I understood them.
Q. Okay. You would agree that preservation of political subdivisions is a traditional, redistricting criteria, right?
A. Yes.
Q. And that's included in Joint Rule 21?
A. Yes.
Q. Your simulations don't consider political subdivision boundaries other than parish splits, right?
A. But to the extent that a subdivision is contained within a parish, yes. I'm dividing very few of those subdivisions just because I'm providing very few parishes, but if there were

multi-parish, you know, political boundaries, that's -- that's something that I was not able to put into this particular analyses, yes.

Q. Okay. But your simulations don't consider municipality splits, do they?

A. Not explicitly. Just to the extent that they line up with parishes, you know, it's taken care of but not explicitly.

Q. And when a parish is split, then any number of municipalities within that parish could also be split, right?

A. Potentially, yes.

Q. And in your simulations, we don't know how many municipalities are split by the maps that you simulated, right?

A. I was not able to get a report of that number, no.

Q. You would agree that incumbency protection and not -- not putting two incumbents in the same district is also a traditional redistricting principle, right?

A. I -- I did observe that in Louisiana in practice, for example, the 2021, the current plan for 2022 strongly resembles the 2011 where I could see there was some -- it appeared to me

there was some consideration being given to that.

Q. Okay. I -- I also attend that case, not -- but that's a slightly different thing --

A. Yeah.

Q. -- right? We would call that poor preservation?

A. Sure. I understand that they, yes, incumbency protection is -- is often a consideration.

Q. And your simulations don't consider incumbency protection --

A. Yes.

Q. -- correct?

A. No.

Q. So we don't know how often incumbents are paired in any one of your 10,000 simulated maps?

A. That's correct.

Q. And you mentioned -- you -- you mentioned core preservation, your simulations also don't account for core preservation --

A. Correct.

Q. -- correct?

A. Right. My exercise was to show if you were drawing maps from scratch without

consideration for these other principles, yes.

Q. And you discussed this a little bit on direct. You would agree that preservation of communities of interest is a traditional, redistricting criteria, correct?

A. Well, this depends on how you are defining community of interest and what -- what would go into a community of interest. As I noted on direct, that's the -- that can be kind of a nebulous concept, so it can end up being whatever the mapmaker wants it to mean. So that's -- I understand there is some consideration given to it, but I was hesitant to incorporate something like that without knowing what the firm definition of it was.

Q. Joint Rule 21 requires considering and preserving communities of interest, right?

A. To my understanding, yes. It does but it doesn't define what those necessarily are; whereas with the parishes, those are well defined.

Q. Understood. Communities of interest are actually a particularly important consideration and criteria in Louisiana, right?

A. I don't know if it's a greater

consideration in any other state. I couldn't speak to that.

Q. And you testified on direct that you can't control for communities of interest in simulations, right?

A. Right. I said I can do so to a limited degree to the extent if they are within a parish boundary, but the ones that cross that would require a lot of additional setup and defining them ahead of time. You need to custom code your geography. They are -- with more time, there -- there's a way for a workaround for that, but this exercise, no, I did not.

Q. And you're aware -- you're aware that Mr. Cooper and Mr. Fairfax did consider communities of interest in their plans, right?

A. Yes. I'm aware that they considered them, but their definitions of communities of interest were somewhat different.

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.

Q. Your simulations also didn't take into account fracking, right?

A. Well, it -- as I understand fracking to mean multiple integers across a parish boundary, could you define what you mean by --

Q. Yeah. My understanding is that fracking occurs when a district boundary splits a jurisdiction into two or more noncontiguous areas contained within that jurisdiction within that parish.

A. Right. The -- there's not an explicit constraint for that, but to be -- but that my plans splits so few parishes even once to do with, I don't think that was a -- I don't think that happened very often, if it did at all, just because we split so few parishes.

Q. Okay. But you're not sure?

A. Oh, no, I'm not. There's not a way to get a report on that in the software. You know, if that had happened.

Q. Okay. You're not aware of a way to get a report on that through the software?

A. No. Not on -- on fracking per se.

Q. Okay. So you don't know how many majority-minority districts would have been produced had the algorithm taken into account each of the omitted, traditional, redistricting

criteria that we just discussed, right?
A. I would have to add those
constraints and -- and generate a new set of
maps. Again, only some of these can be -- can be
added, but I would have look at what the output
of that was.
Q. Okay. So you don't know sitting
here today?
A. I would have to run that to come up
with it.
Q. And your simulations can't tell us
anything about the range of configurations for
maps that are drawn according to all of the
traditional, redistricting principles that we
just discussed, right?
A. These maps, no, did not take into
account core preservation or incumbency
protection or any of those considerations. It
was truly to see what happens if you are drawing
the maps from scratch following the limited
criteria that I used.
Q. So no?
A. No. What was the -- I'm sorry.
Could you repeat the question?
Q. Of course. Your simulations cannot

tell us anything about the range of configurations for maps that are drawn according to all of the traditional, redistricting criteria that we just discussed?

A. These particular maps, no. But to -- I think this gets us -- this gives us a good sense for the major criteria that I described, and again, except for preserving parish boundaries, I don't think we are splitting many communities of interest.

Q. A plan that resembles the enacted plan never emerges in your simulations, right?

A. No, it does not.

Q. Is it your opinion that drawing the enacted plan required the prioritization of racial considerations or proxies for them over traditional, redistricting criteria?

A. Well, it requires something other than the traditional criteria of that. My understanding is that the enacted plan followed very closely the 2011 plan. In fact, when I was working on this, I would sometimes get the two maps confused because they were so similar. So it seemed to me as a political scientist knowing how this process works that the core preservation

was an important part of the enacted plan.

Q. And you don't know what other criteria went into that?

A. No. That wasn't -- that wasn't the focus of what I was looking -- I wasn't focusing on analyzing that.

Q. Your offering an opinion here that because no maps that have two majority black districts emerged in your simulations, that means that the illustrative plans required the prioritization of traditional considerations or proxies for them over the traditional, redistricting area, right?

A. Yes. I think it's very likely they did so. They would have had to taken that into account over the traditional criteria to get to where they got.

Q. Okay. And no -- no plans that contained one majority-minority district emerged from your simulations, right?

A. That's correct.

Q. So is it your opinion that the enacted plan also contained the prioritization of racial considerations or proxies?

MR. LEWIS:

Your Honor, plaintiffs' counsel stipulated they are not pursuing a claim for racial gerrymandering in violation of the 14th Amendment, which required the plaintiff to question. So I think we are getting far afield of what this witness has testified to or the matters before this court.

MS. MADDURI:

Your Honor, Dr. Blunt is testifying of about what type of a map is likely to emerge when race is not considered and I'm trying to understand his opinion about the enacted map, which also did not emerge from the simulations.

THE COURT:

Defense asked him about the illustrative maps and so the objection is overruled.

THE WITNESS:

The -- see, I -- I did not explicitly compare the enacted plan to the insingulated plan. But as -- as I already stated, it seemed to me that -- that an important consideration was core

preservation in -- in the designing the enacted plan that was likely as to what -- as to, you know, why the 2011 map looks the way it does or what was taken into consideration to draw those districts, then it seemed to be the ones that carried over in the current plan. I cannot address that. I'd have to do a second set of simulations using census data from 2010 to analyze the enacted map in 2011, so I can't speak to what went into that.

MS. MADDURI:

Okay. Let's look at your report, which is Legislative Defendants Exhibit 3. And you can turn to page 14.

TECHNICAL SUPPORT:

(Complied.)

THE WITNESS:

Which paragraph?

BY MS. MADDURI:

Q. Okay. You state in this paragraph --

THE COURT:

Are we talking about paragraph 14 or --

MS. MADDURI:

I'm sorry. We are talking about paragraph 14.

THE COURT:

Because you said page.

MS. MADDURI:

I did. I apologize. So it's paragraph 14, I think, on page 6 of the exhibit.

BY MS. MADDURI:

Q. Okay. And in the -- in the third sentence, which is in the third line down, you state that, quote, In Louisiana, that traditional, redistricting principles means drawing reasonably compact districts." Do you see that?

A. Yes.

Q. Okay. So you believe that drawing reasonably compact districts is a traditional criteria, right?

A. Yeah. That criteria, yes.

Q. What do you mean by "reasonably compact"?

A. Well, I am not aware of a standard compactness score that political scientists use

as a dividing line to say this district is compact and this district is not. It's compactness is a range. So more tends to be better, like districts could be more compact rather than less, so this is a consideration that we should be aiming for and in trying to -- trying to be more compact. But I'm not aware of a, you know, a particular threshold after which, you know, we are compact below that or not.

Q. You would agree that the traditional criteria is to have reasonable, compact districts? It doesn't require maximizing compactness.

A. No. I would say no.

Q. Okay.

A. It's difficult to achieve anywhere.

Q. You testified on direct that your initial simulations set had an average Polsby-Popper compactness score of 4.25; is that right?

A. Yes.

Q. Are you aware of any plan enacted by the State of Louisiana that had an average score of 4.25?

A. I'm not aware of -- I know that the

enacted plan I believe is less than that. I'm not aware of any that's higher than that.

Q. The enacted plan has an average Polsby-Popper score of .14. Does that sound right to you?

A. That sounds about what I have seen in -- in the report and elsewhere. I did not do that computation myself, but I believe I've seen a number like that reported.

Q. And all of Mr. Cooper and Mr. Fairfax's plans have an average Polsby-Popper score of either .18 or .19, right?

A. I believe so, yes.

Q. So is it fair to say your simulations maximize compactness more than the enacted plan or the illustrative plans?

A. I wouldn't say that they maximize compactness, but they were more compact. It did better on that metric on average.

Q. And it's fair to say that the enacted plan would never have occurred based on the compactness constraint in your simulations, correct?

A. No. I'm not saying never. There were some -- there was certainly some

1 districts -- what I'm showing were the
2 compactness of the districts. The individual
3 60,000 districts is what I was recording, so you
4 could -- I'm not speaking to whether the enacted
5 plan would have, you know, had the compactness
6 that it does. It's -- I'm just saying the
7 simulated plans tended to be better, but I'm not
8 speaking to -- you know, I'm not saying whether
9 it's likely it would have emerged or not. It's
10 just a performance metric.
11 Q. You would agree that 90 percent of
12 the districts in your simulations sets were at
13 least .13 on the Polsby-Popper metric --
14 A. Which page --
15 Q. -- right?
16 A. Which page are you on?
17 Q. It would be paragraph 25 of your
18 report, which I believe is on page 10 of the
19 exhibit.
20 A. Yes. That's -- that's what I was
21 indicating that it was the -- yeah. 80 percent
22 of the districts were at least .162 or, I'm
23 sorry, 90 percent of the districts were at least
24 .13.
25 Q. So it's fair to say that the

1 districts in your simulations are almost
2 90 percent more compact -- let me -- I'll say
3 that again.
4 Is it accurate to say that in your
5 simulations, 90 percent of the districts have an
6 average Polsby-Popper score that is more compact
7 about 90 percent of the time than the enacted
8 plan?
9 A. I don't know if that's the right way
10 to say it. Well, the enacted plan is an average
11 across -- the number that you pointed out is an
12 average across all six districts. I would need
13 to look at what the individual six district
14 Polsby-Popper scores were to see how they fit
15 into this distribution of, you know, of mine.
16 It's possible you could get, you know, six
17 districts that have the individual Polsby-Popper
18 scores that, you know, that -- I would need to
19 look to see what those were.
20 Q. Okay. You don't know what that is?
21 A. No. I would need to see what those
22 were and how they fit into the distribution.
23 Q. Okay. Your first simulations set
24 minimized parish splits; is that right?
25 A. Yes. It minimized constraints of

parish splits.

Q. On average, the maps in that first simulations set and under the second set of stimulations parish split -- said split five parishes, right? Ck pp above.

A. That is correct.

Q. And in your second simulations set, maps contained on average --

A. I believe it was --

Q. 30 parish splits?

A. Yes. I think you have that in -- I thought it was --

Q. I can?

A. Yeah. What I have is 30, yes.

Q. So just real quick, so in the second simulations, maps on average contain 30 parish splits, correct?

A. Yes. Right.

Q. And I should say 30 split parishes, not 30 parish splits?

A. Yeah. I mean, I believe that's -- I believe that's right. It's 30 split parishes.

Q. So you don't actually know how many parish splits there were?

A. I would need to -- I would need to

1 look at that more closely. I was reporting what
2 it gave me, so I don't have the further
3 documentation on that whether there were multiple
4 splits of the same parish or --
5 Q. You're not sure if there were
6 multiple splits within a single parish?
7 A. Yeah. I'm not sure.
8 Q. Are you aware of any plan enacted by
9 Louisiana that contains only five split parishes?
10 A. I am not aware of one, no.
11 Q. What about any plan enacted by
12 Louisiana that contains 30 split parishes?
13 A. Well, I know there was one that was
14 proposed in the early '90s that had a -- they
15 call the soar owe district. It simulated like
16 20 parishes, so I know there was a plan that I
17 believe it was thrown out ultimately. So I know
18 that that's been attempted. You would have to
19 have a large number of parish scores, but the
20 object of this exercise was to show what happens
21 when you give the maximum freedom to find what
22 it's going to find.
23 Q. I understand.
24 A. Yeah.
25 Q. You're not aware of any plan that

Louisiana has enacted that contains 30 split parishes, right?

A. Again, I couldn't speak -- no, not that I'm aware of, not 30 in particular. I'm not aware of it.

Q. What about the illustrative plans, did any of them have five parish splits?

A. No. The least that they split was 10.

Q. I said parish splits, but I should say split parishes, correct?

A. Yeah.

Q. I guess we could actually say either one.

A. Yeah. For purposes of this, I'm sorry. I didn't, you know, I didn't put down more specific.

Q. That's okay. Did any of the illustrative plans split 30 parishes?

A. No.

Q. So your simulations on average either split many more or many fewer parishes when compared to either of the illustrative plans or the enacted plan; is that right?

A. Right. Well, those were the

constraints that I was able to use for this exercise, is that I was not aware of a minimum number of parish splits that should be included or optimal number of splits; and regardless, that wasn't possible to program in this particular algorithm as a setting.

Q. So --

A. These were my two options I was showing what we get.

Q. Understood. So to clarify, though, in my question, your simulations on average either split many more or many fewer parishes when compared to the illustrative plans or the enacted plans; is that right?

A. I don't know. Five is many, fewer than 10, they split fewer. I would stipulate that on average 30 is, you know, quite a bit more than 10, but I don't know that I would say 5 is many or 6 I guess with some of mine split.

Q. I understand. You testified now and on direct Dr. Imai's code doesn't allow you to set a particular number of parish splits or split parishes, right?

A. Not that I'm aware of. In the sequential Monte Carlo algorithm, there is

1 another algorithm that does allow that
2 specification. I believe it's the Markov Chain
3 Monte Carlo algorithm, but I -- I went with the
4 SMC algorithm because it's most appropriate when
5 you are drawing maps from scratch like that.
6 Q. I understand. So the algorithm that
7 you've used, you've testified that it doesn't
8 allow you to set up a particular number of split
9 parishes or parish splits?
10 A. Not that I was aware of. Without
11 going deep into -- under the hood to do something
12 that I, you know, was not familiar with or
13 comfortable with, yeah.
14 Q. Okay. So you didn't --
15 A. To my knowledge, there was no way to
16 do that.
17 Q. Okay.
18 A. It certainly wasn't in the
19 documentation.
20 Q. You can, though, you could write
21 your own code and impose a different restriction
22 on parish splits, right?
23 A. In theory, yes. Someone who was
24 writing his own algorithm, someone like Dr. Imai.
25 In fact, I might suggest that he put that in the

next version of the SMC algorithm. That would be a useful feature. That's not something that was within my scope of work here.

MS. MADDURI:

Let's look at Legislative Defendants 3, which is your first report. We can turn to page 12, Figure 5.

TECHNICAL SUPPORT:

(Complied.)

BY MS. MADDURI:

Q. Again, let me clarify one of the issues that we were just discussing. So again in your report here, you are identifying the number of parishes that are split in each plan; is that right?

A. Yes.

Q. And you're actually not reporting the total number of parish splits?

A. Yeah. I'm sorry. I would have to to check that documentation as to exactly what it's counting up.

Q. On direct, you testified that a six-district plan like Louisiana's would require five splits at minimum, correct?

A. It would -- no. It wouldn't require

1 five minimum. It sets the preferred maximum at
2 five and there were some that got through with
3 six.
4 Q. So it's your testimony that it is
5 possible to split -- to have fewer than five
6 parish splits in a six-district plan?
7 A. It -- yes. There was something in
8 the way the algorithm read in this instance. It
9 did allow some to get through that were more than
10 that or more than five.
11 Q. What about less?
12 A. Yes. It did. You can see there
13 are, you know, 20, roughly 20 percent of them got
14 through with four.
15 Q. Four parishes that are split, not
16 four parish splits. In other words -- in other
17 words, we are saying I think in the column that
18 has the four underneath it that there are four
19 parishes that are split, but we don't know how
20 many times each of those four parishes are split?
21 A. Right. I believe that's -- yes. I
22 believe that's the case.
23 Q. So, for example, at some of your
24 simulated plans, East Baton Rouge could be split
25 four times in one of those plans, right?

A. I did not look at that.
Q. The way that you have reported it, that would be reported as a single parish split, correct?
A. I'm sorry. I would -- I would need to review more carefully and I apologize exactly what the definition of a parish split is. So I'm sorry I don't have that for you.
Q. Okay. So you don't know how many of your plans split East Baton Rouge Parish into more than two districts, right?
A. I don't -- with some time, I may be able to uncover that, but I don't have that here.
Q. Okay. And you don't know how many of your plans split Orleans Parish into more than two districts, right?
A. Correct. I don't know how many times Orleans. I can't -- without, you know, the time to go into this, determine when, you know, how often particular parishes are split.
Q. Okay. So it's possible that in your simulated plans, East Baton Rouge Parish divided into more than few congressional districts and you just don't know that?
A. Correct. I wouldn't know that

without drilling down to them.

Q. The enacted plan doesn't split any parish into more than two districts, correct?

A. I believe that's what they reported. I would take your word for that. I didn't independently verify that.

Q. And only one of the six illustrative plans that plaintiffs presented split any parish into more than two districts, right?

A. Again, if that's what they reported, I would take their word for it.

MS. MADDURI:

Okay. We can take this down.

TECHNICAL SUPPORT:

(Complied.)

BY MS. MADDURI:

Q. Dr. Blunt, you required that, quote, the districts as a whole are at least as compact as proposed alternative plans; is that right?

A. Yes. And -- and I could have worded that more carefully. I didn't require that they be more compact, but I was aiming that was -- I wanted them to be as compact as -- as was practicable. I was aiming for more compactness than less. I was aiming for them to be at least

as compact as compared to.

Q. But you were aiming for that, but that's not actually what they are, right?

A. They -- I was -- I was ensuring that the districts be reasonably compact as a constraint on the algorithm with an eye toward producing simulated districts that were at least as compact as, you know, what was in the illustrative plan. I could have worded that better in my report more clearly.

Q. I understand that's your goal, but it's actually not the case that your districts as a whole or at least as compact as the illustrative plans, right?

A. Well, the average score is Polsby-Popper across all the districts.

Q. So you didn't specifically instruct the software to match the illustrative plans for compactness?

A. No, I didn't. I appreciate the opportunity to clarify that.

Q. Yeah. So what weight did you instruct the software to give the geographic -- what weight did you instruct the software to give compactness when producing the simulated plans?

A. What I as I testified to earlier, I used the standard default, which the -- the weight is one is --

Q. Okay. So you could have instructed the software to give a lower weight to compactness, right?

A. You could, but my understanding is it doesn't run as well with a lower compactness score. There -- there are reasons to use that -- that standard.

Q. One is the maximum compactness that you could have programmed into the algorithm, right?

A. I believe there was a -- you know, I would have to review the -- the documentation for the software, but I believe you can enter a number larger than that.

Q. So it's your understanding that you could enter something higher than one?

A. I believe you can. Again, I would have to review that.

Q. Do you have any reason to disagree with me if I told you you cannot do that?

A. Without reviewing the, you know, the -- the documentation for the software, I

wouldn't have a reason to.

Q. So you don't know how many majority-minority districts would have been produced in your simulations had the algorithm used a lower compactness constraint than the one you used, correct?

A. Well, we get a sense of that in supplemental, because as a matter of course, those districts were much less compact. That suggests to me that had, you know, compactness within a set lower, we still weren't getting two MMDs. So even in the supplemental where compactness is, in fact, quite a bit lower on average than in the original run, we still didn't get two MMDs just by being less compact.

Q. But you didn't change the programming for the compactness for that you set in the second set of simulations, right? You were still using the maximum number of one?

A. Yes. I was using the value of one and I believe they were less compact is because they were not respecting parish boundaries.

Q. Okay. So both in the first set of simulations and the second set of simulations, you maximized compactness according to the code,

1 correct?
2 A. I used the value of one. That's the
3 compactness of it.
4 Q. I understand. And in your second
5 report, you said as much you relaxed the number
6 of parish splits restriction, correct?
7 A. Yes. I eliminated it.
8 Q. And when you eliminate it or relax
9 that constraint, the maximum black voting age
10 population in the simulated district increased,
11 didn't it?
12 A. Slightly.
13 Q. Okay. And that's because there are
14 fewer constraints, so there's a wider range of
15 possible simulations outcomes, correct?
16 A. I don't know if that's precisely the
17 reason why, but I can report that that is what
18 happened is that with the -- it increased the
19 maximal black -- BVAP increased slightly.
20 Q. And that didn't happen because you
21 put in any kind of racial consideration --
22 A. No, no.
23 Q. -- for that second set, right?
24 A. No, not at all.
25 Q. So depending on changing how the

1 traditional, redistricting principles are
2 weighted, that can result in districts with
3 higher BVAPs without race pre-dominating,
4 correct?
5 A. It could change, sure. Any time you
6 change the settings that the algorithm uses, you
7 can change your output. I don't know that you
8 know that necessarily changing one particular
9 setting is going to necessarily result in a
10 particular outcome. I would need to, you know,
11 try it and observe what happens. I'm saying in
12 this particular case this is what happened.
13 Q. In this particular case, when you
14 relaxed the parish constraint, the BVAPs
15 increased?
16 A. Slightly.
17 Q. Okay. Thank you.
18 MS. MADDURI:
19 Let's now pull up Dr. Blunt's
20 Demonstrative Exhibit 1.
21 TECHNICAL SUPPORT:
22 (Complied.)
23 BY MS. MADDURI:
24 Q. So I direct you looked at one of the
25 simulated maps that came from your set of 10,000;

do you recall that?

A. Yes.

Q. Okay. And I'll represent to you that this is an image of the first of the 10,000 plans that you turned over. You have any reason to disagree with that?

A. No. I take your word for it.

Q. I can also represent that the maps we are about to look at were selected randomly. Any reason to disagree?

A. No.

Q. Dr. Blunt, does this simulated map resemble any enacted congressional map for Louisiana that you have ever seen?

A. No.

Q. Does it resemble any of plaintiffs' illustrative plans?

A. No.

MS. MADDURI:

Let's turn to page 4.

TECHNICAL SUPPORT:

(Complied.)

BY MS. MADDURI:

Q. Again, this is one of the simulated plans that was contained in your 10,000

simulations. Do you understand that?

A. Yes.

Q. Does this simulated plan resemble any enacted congressional map for Louisiana that you've ever seen?

A. Not that I'm aware.

Q. Does it resemble any of plaintiffs' illustrative plans?

A. No.

MS. MADDURI:

Let's turn to page 9.

TECHNICAL SUPPORT:

(Complied.)

BY MS. MADDURI:

Q. Dr. Blunt, this is another one of the simulated plans from your set of 10,000 maps. Do you have any reason to disagree with that?

A. No.

Q. Does the simulated map -- does this simulated map resemble any enacted congressional map for Louisiana that you have ever seen?

A. No, not that I'm aware of.

Q. What about any of the plaintiffs' maps?

A. No.

MS. MADDURI:

Okay. Let's look at the last page, page 10.

TECHNICAL SUPPORT:

(Complied.)

BY MS. MADDURI:

Q. And again, I'm going to ask you the same questions. Do you have any reason to disagree that this is one of the simulated maps?

A. No.

Q. From your set that was chosen at random?

A. No. I have no reason to disagree.

Q. Does it resemble any of the plans that you have ever seen that the State of Louisiana has enacted?

A. Not that I'm aware of.

Q. Does it resemble any of plaintiffs' illustrative plans?

A. No, not that I saw.

MS. MADDURI:

Okay. We can take that down. Thank you.

TECHNICAL SUPPORT:

(Complied.)

BY MS. MADDURI:

Q. And your simulations analysis includes no consideration of race at all; is that right?

A. That's correct.

Q. It's entirely race blind?

A. Yes.

Q. In your view, is the opposite of a race blind district a district for race for dominated in the drawing direct?

A. I don't know if they would call it an opposite, but it's an alternative way of drawing. You know, a district is to -- to do race conscious and that could be done either through looking at race itself or some proxy for it. It correlates however you race.

Q. Is your view is there a difference between race conscious and race predominant?

A. I would say that to get to something with two MMDs would require prioritizing race over the traditional criteria that I followed in the simulations plans. So yes, I believe that racial considerations would predominate over the original race will have some proxy for it. Some other consideration like that would need to

1 predominate over traditional criteria to get
2 there.
3 Q. But my question's actually not
4 about -- I don't think you answered my question.
5 I'm trying to understand in your view is there a
6 difference between whether race predominated or
7 race was considered?
8 A. The -- I would say given how
9 likely -- how unlikely it would be to see two
10 MMDs following the traditional criteria, it's
11 typical for me to quantify the MMD difference
12 without a particular situation. I would say
13 given how unlikely, I mean, we weren't even close
14 in the simulations. That's why I concluded we
15 needed to have predominated over those
16 traditional criteria.
17 Q. The limited criteria?
18 A. The limited criteria, yes.
19 Q. Okay. So you didn't --
20 A. I'm not saying it predominated every
21 other consideration necessarily; but yes, it
22 predominated over the ones that I looked at, yes.
23 Q. So you didn't conduct any analysis
24 as to whether a simulations algorithm following
25 traditional, redistricting criteria with some

consideration race could result in two black majority districts, right?

A. No, I did not. No, I did not do a, you know, a light consideration for race to see what would happen.

Q. So it's possible that the simulation's algorithm that considers race alongside other traditional, redistricting criteria could result in two black majority districts?

A. Without running that actual simulations, I wouldn't be able to answer that question, but it would be something that you would have to look at.

Q. You didn't do that analysis?

A. I did not do that, no.

Q. So it is possible that a simulation analysis that considers race alongside other traditional, redistricting criteria could result in two majority black districts, right?

A. I would be -- again, I would be hesitant to look at that without specifying how heavily the algorithm was instructed to look at race.

Q. Okay. You didn't do that --

A. Right.

Q. -- so you don't know one way or the other?

A. Yes.

Q. And you also did not conduct any analysis as to whether a simulation's algorithm prioritizing traditional, redistricting criteria, but also giving some consideration to race as a subordinate factor, could result in two majority black districts, right?

A. Right. I did not look at that question.

Q. So it is possible that the simulations algorithm that prioritizes traditional, redistricting criteria puts race as a subordinate fact to that criteria could result in two majority black districts, right?

A. Well, I would be hesitant to say that without looking to see how strongly it was considered. Again, I do think it's -- it says something that no one has produced that simulation analysis. I know these simulations are -- are frequently done in the cases that I noticed that no one on the plaintiffs' side had produced a simulation that did take some account

of race and it did result in two MMDs.

Q. And you also didn't do that?

A. No. I didn't either, but I think if someone could have done that, we may have seen it.

Q. So if you didn't do it, you can't say one way or the other what the outcome would have been?

A. Correct.

Q. So you're not offering any opinion on whether it's possible to draw two majority black districts that comply with traditional, redistricting principles, correct?

A. I'm sorry. Could you repeat that question?

Q. Sure. You are not actually offering any opinion on whether it's possible to draw two majority black districts that also comply with traditional, redistricting principles?

A. Well, that's -- I said it's extremely unlikely that we would get a plan with two MMDs following the criteria that -- that I used.

Q. That's right. So your criteria, which was race blind and didn't consider a number

of factors, in that set of simulations --

A. Sure.

Q. -- it's your opinion that two majority black districts were not likely to emerge?

A. That's correct. And I consider those to be traditional criteria.

Q. Some traditional --

A. Yeah.

Q. -- criteria, as we discussed?

A. Yeah. And I'm not offering an opinion one way or the other if -- if you started adding additional criteria to that and how that would effect the outcome.

Q. Including whether two majority black districts could be produced?

A. Correct. You would have to like --

MS. MADDURI:

Okay. Thank you.

THE COURT:

Redirect?

REDIRECT EXAMINATION BY MR. LEWIS:

Q. Dr. Blunt, in performing your analysis in this case, you reviewed the criteria that Mr. Cooper and Mr. Fairfax represented that

they followed excluding their illustrative plans; is that fair?

A. Yeah. I didn't follow every one of the -- every criterion that they listed; but yes, I followed the key ones that I listed were very important.

Q. Did Mr. Cooper or Mr. Fairfax identify as the criteria that they were following the protection of incumbents?

A. No. They did not that I saw.

Q. And did Mr. Cooper or Mr. Fairfax identify the preservation of cores of existing districts as a principle that they followed in creating their maps?

A. No. They did not, not that I saw in their reports.

Q. Okay. And aside from the census tracks or, excuse me, census places or metropolitan statistical areas, did either Mr. Cooper or Mr. Fairfax document the communities of interest that they protected in their illustrative plans?

A. I believe they -- well, they listed some that they kept together. I didn't see an opt over list of ones that were listed just as a

1 matter of principle necessarily important, not
2 that I recall.
3 Q. I see. And so for your exercise,
4 were you trying to follow all of the traditional
5 districting criteria that the legislature used in
6 considering the enacted plan?
7 A. Well, to the extent that core
8 preservation was -- was something that the
9 legislature followed and I didn't follow that,
10 but I followed the other considerations, such as
11 you know, compactness and minimizing parish
12 boundaries, of course.
13 Q. I see. And I think your -- what was
14 your effort and attempt to test the criteria
15 followed by the legislature or by Mr. Cooper and
16 Mr. Fairfax?
17 A. Well, it -- the -- it wasn' -- I
18 don't know exactly what the legislature followed
19 in addition to what was listed in Joint Rule 21,
20 but that's -- those were the -- those neutral
21 criteria were the ones that I was trying to -- to
22 follow, yes. If there was something else the
23 legislature considered, I wasn't aware of it.
24 Q. And, in fact, your analysis -- did
25 your analysis look at the enacted plan at all?

A. No.

Q. Okay. And you believe it would be important for your model to consider a traditional, redistricting criteria, for example, preservation of cores of existing districts that Mr. Cooper and Mr. Fairfax did not identify as criteria that they followed?

A. That could be an interesting secondary analysis if one wanted to, you know, to analyze the enacted plan, but I'm not sure exactly. Could you restate it?

Q. Yeah. If your -- if the simulate -- if the simulated maps are being used to compare to a plan by a mapmaker like, for example, we will say Mr. Cooper, who identified that he followed specified criteria, right?

A. Yeah.

Q. And he did?

A. Yeah.

Q. Would it make sense for you to be controlling for criteria that he didn't say he followed?

A. Yeah. That's correct. So in that case for this exercise, it was not appropriate for me to control for incumbency if core for

existing districts because Mr. Cooper and Mr. Fairfax did not control for that either. Now, if we were analyzing the enacted plan, that might be a different consideration, but in this -- in this case, no.

Q. Okay. You were asked about fracking and did both of plaintiffs' mapmakers consider fracking in their reports?

A. I don't recall. I know at least one of them did.

MR. LEWIS:

Okay. So I'm going to turn just very quickly to -- let's go to PR-15, which is the report Dr. Fairfax and page 22.

TECHNICAL SUPPORT:

(Complied.

BY MR. LEWIS:

Q. Okay. So how many instances of fracking is he reporting for Mr. Fairfax's plan?

A. He reported five instances of fracking for one of his plans, eight fracking instances in another one. And yeah, so he certainly had -- had fracking included. He had instances of fracking in his maps.

Q. Okay. Okay. So I'd like to just --

MR. LEWIS:

We can take that down now.

TECHNICAL SUPPORT:

(Complied.)

BY MR. LEWIS:

Q. I'd like to just turn very quickly with discussion you had with opposing counsel regarding parish splits in the concept of five --

Let me just ask it this way: So your -- your plan split five and sometimes four and sometimes six parishes; is that right?

A. Yes. Almost all the time it was four, five or six.

Q. Okay. And you had a wider range of -- of parish -- split parishes in the second set of simulations you ran; is that correct?

A. Yes.

Q. So as you sit here today, I mean, is there a theoretical basis to believe that it's likely that a simulations that are splitting five or 6 parishes find none, no MMDs, parishes that split some range around 30, no MMDs, yet parish splitting between somewhere between 10 and 14 parishes would create 2 MMDs?

A. I would have no reason to believe that would -- that would happen.

Q. And just finally, you were shown a few examples of your 10,000 maps. Is -- is there a -- if any particular plan someone might say a particular plan does not consider or not be adopted by legislature doesn't look like a particular plan?

A. Right.

Q. Then what value are the -- are running, you know, 10,000 of them?

A. Right. The idea is to produce 10,000 maps that simply follow the criteria, and regardless of whether these maps would be enacted have been enacted or not, they are going to have some idiosyncrasies to them. They are going to have some features that may not -- may or may not be considered in the real world of redistricting. The idea is you generate enough of these and it's to show us a range of the possible so that we can view -- the idiosyncrasies hopefully fall out in the wash, and what we are looking at is the distribution of everything rather than the likelihood of any particular plan from the set.

Q. And then finally, Dr. Blunt,

simulations algorithms that have been used in -- and accepted by courts, have those algorithms controlled for all the different communities of interest that could possibly exist in a state?

A. Not that I'm aware of. I know some that try to take account. They have to be highly customized in settings to look at particular counties in some states; but, no I'm not aware of any that it's just a matter, of course, that control for just any and all communities. That term isn't well defined in political science.

MR. LEWIS:

I have no further questions, Your Honor.

THE COURT:

Thank you. You may step down.

MS. MADDURI:

One --

THE COURT:

Pardon me?

MS. MADDURI:

Plaintiffs move to enter exhibits.

THE COURT:

Which was the map, one of his simulations; is that which one it was?

MS. MADDURI:

It would be -- we can just leave the one to that. It should be map four, sorry, map one, four, nine and ten of that document.

THE COURT:

Any objection?

MR. LEWIS:

I mean, I think we have no objection provided that our demonstrative is also permitted in.

THE COURT:

And that was map --

THE WITNESS:

Map 220.

THE COURT:

Map 220.

MS. MADDURI:

No objection.

THE COURT:

Any objection.

MS. MADDURI:

No objection, Your Honor.

THE COURT:

Okay. Map 220 is entered in as a

demonstrative. All right. It's 12:40.
We will take a recess until 1:45 p.m.
(Whereupon, a lunch recess was taken at
p.m.)
THE COURT:
Okay. Next witness?
MR. FARR:
Your Honor, Tom Farr for the
Secretary of State. Before we begin, may
I thank the court and plaintiffs' counsel
for accommodating Dr. Sadow's schedule.
Dr. Sadow will be the next witness and I
believe he's in the Zoom waiting room; is
that right? Your Honor, has the witness
been sworn in?
THE COURT:
Not there yet. Swear him in.
THE REPORTER:
Would you raise your right hand?
DR. JEFF SADOW,
WITNESS ADDRESS, BOSSIER CITY, LOUISIANA
WITNESS ZIP, after first having been duly sworn
by the above-mentioned court reporter, did
testify as follows:
DIRECT EXAMINATION BY MR. FARR:

Q. Please state your name.
A. Jeffrey Sadow.
Q. Where do you reside, Mr. Sadow?
A. Bossier City, Louisiana.
Q. Could you repeat that, please?
A. Could you repeat the question?
Q. No. Your answer. Where do you reside?
A. Bossier City, Louisiana.
Q. And do you have any degrees?
A. Yes, I do. I have a bachelor's of arts from University of Oklahoma in public administration and political science in '83, business administration graduate school of management Mandeville constraints in management creation systems and finance in 1985, and a PhD in philosophy from the University of New Orleans in political science in 1990.
THE COURT:
Okay. This isn't going to work, so I don't know what we are going to do. I don't know, Dr. Sadow, do you have a microphone that you can adjust or I don't know what the problem is, but we can't make out your testimony.

THE WITNESS:

Hold on. Let me see what I can do.

THE COURT:

She got none of it. Oh, you did get it. Never mind. I take it back. She got it.

THE WITNESS:

I have the microphone on as high as I can get it.

THE COURT:

Well, whatever you did, it seems to have helped. Carry on, Mr. Farr.

BY MR. FARR:

Q. Did I hear you say or, Mr. Sadow, sorry. Did I hear you say that you have a PhD in political science?

A. That's correct.

Q. And Mr. -- I'll call you Dr. Sadow throughout the rest of this testimony.

A. As you wish.

Q. Are you currently employed?

A. Yes, I am.

Q. Where are you employed and how long have you worked there?

A. Louisiana State University,

1 Shreveport. I started there in the fall of 1991.
2 Q. What is -- what are your positions
3 that you've held there?
4 A. I started as super factor in
5 political science in --
6 Q. Can you try speaking directly in the
7 microphone as best you can?
8 A. All right.
9 Q. All right. Repeat the answer.
10 A. In 1991, I started as an assistant
11 professor. In 1997, I was promoted to associate
12 professor.
13 THE COURT:
14 So for the record, I want to put in
15 the record we need to -- the court
16 accommodated Dr. Sadow since counsel's
17 request having him by videoconference and
18 we are having some technical difficulty.
19 So with that said, let's see what we can
20 do to fix this.
21 MR. FARR:
22 Dr. Sadow, could you try to get
23 close to the microphone as close as you
24 can?
25 THE COURT:

It doesn't seem to be a volume issue. It seems to be a connectivity issue. It is fading off. It's not a question of volume.

MR. FARR:

Your Honor, can he try and call in again? Would that be worthwhile trying?

Dr. Sadow, would you try to call back in using the telephone Zoom instructions you were provided?

THE WITNESS:

All right. I'll try to do that.

THE COURT:

Okay. While you-all do that, I'm going to --

(Whereupon, a short recess was taken at p.m.)

THE COURT:

All right. Be seated. Go ahead, Mr. Farr.

MR. FARR:

I hope we have it. We will see.

THE COURT:

I didn't hear that. What?

MR. FARR:

1 Your Honor, we will try to figure
2 this out; and if we can't, we will call
3 another witness.
4 THE COURT:
5 Call another witness. Let's go.
6 MR. FARR:
7 Thank you.
8 Dr. Sadow, can you hear me?
9 THE WITNESS:
10 Yes.
11 THE COURT:
12 For the record, Dr. Sadow, is on his
13 cell phone and his picture is on the
14 screen and there is no audio.
15 THE REPORTER:
16 Dr. Sadow, please un-mute your cell
17 phone.
18 MR. FARR:
19 May I proceed, Your Honor?
20 THE COURT:
21 You may.
22 BY MR. FARR:
23 Q. So, Dr. Sadow, I think the next
24 question I wanted to ask you, could you tell the
25 court what classes you have taught or are

1 teaching at Louisiana State at Shreveport?
2 A. Yes. I've taught a variety of
3 courses with a small department, American
4 government, and then some other relevant courses
5 and this would be political behavior, state and
6 local government, urban policies, and Louisiana
7 government.
8 Q. All right. Thank you. Have you
9 prepared an expert report in this case?
10 A. Yes, I have.
11 Q. And do you have that in front of you
12 today?
13 A. I do.
14 Q. Is that marked SOS 3?
15 A. Yes.
16 Q. Is your curriculum vitae attached to
17 that report?
18 A. It is.
19 Q. Does it contain a complete summary
20 of your credentials and publications?
21 A. It does.
22 MR. FARR:
23 So, Your Honor, I would like to
24 tender Dr. Sadow as an expert witness in
25 the fields of political science, Louisiana

government, Louisiana political science,
and the history of Louisiana politics.
MS. KHANNA:
No objection, Your Honor.
MR. FARR:
All right. Thank you.
THE COURT:
The court will hear opinion
testimony in the fields of political
science, Louisiana government, Louisiana
political science and the history of
Louisiana political science.
BY MR. FARR:
Q. So, Dr. Sadow, in your report, you
discuss congressional redistricting in Louisiana
mainly beginning in 1991 to the present; is that
correct?
A. That's correct.
Q. What information did you rely upon
to develop the opinions you've expressed in your
report?
A. Relied upon academic published
articles and contemporaneous news reports, books
I like that I use to prepare for my Louisiana
government class, and the conversations with

1 people involved in Louisiana politics.
2 Q. Are these the types of materials
3 that a political science would reasonably rely
4 upon to form the opinions that you've expressed
5 in your report?
6 A. Yes, they would.
7 Q. And in this report, Dr. Sadow, you
8 are not offering any legal opinions or
9 conclusions, are you?
10 A. No, I am not.
11 Q. So can you summarize your findings
12 as far as the history of congressional
13 redistricting in Louisiana?
14 A. As far as the recent history, the
15 legislature consistently used among its
16 principles continuity of representation and
17 preservation of community interests.
18 Q. Could you please restate that for
19 the court reporter?
20 A. Yeah. The -- the Louisiana
21 legislature has in the last 30 years or, maybe to
22 be more precise, in the past 25 years has
23 consistently used as principles of representation
24 communities of interest and continuity of
25 representation.

Q. All right. Sir, let's begin with are you familiar with the series of cases challenging Louisiana congressional districts in the Hays litigation?

A. Yes, I am.

Q. Could you please turn to page 6 of your report?

A. All right.

Q. Could you tell the court is there a map on page 6, and could you explain what that represents?

A. Yes. That map is what the Louisiana legislature, its 1991, reports in session is how on the basis of 1990 census result, it drew maps for congressional representation.

Q. And how many congressional districts were in that plan?

A. In that plan there were seven.

Q. How did that compare to the congressional districting plan used in the 1980?

A. There is one fewer district.

Q. Now, are you familiar with the term majority black district and if you are, could you tell us what that means?

A. Yes. A majority black district is

where you have 50 percent plus 1 percent of the voting population as black.

Q. Now, did the 1981 plan, the plan used in the 1980s in Louisiana, did it contain a majority black district?

A. It did.

Q. And how many?

A. One.

Q. Now, looking at the map on page 6, can you tell us how many majority black districts are in that map, and can you identify them, please?

A. There are two; one in the 2nd district, which is centered in New Orleans; the second is the 4th district, which is basically spread all over the state.

Q. All right. Those congressional 2 was colored red and congressional District 4 is colored yellow; is that correct?

A. That is correct.

Q. Do you know why did the legislature increase the number of majority black districts in the Louisiana congressional plan in the 1991 plan as compared to the plan used in the 1980s?

A. Yes. There were two reasons: First

of all, the Department of Justice was signalling that states should whenever possible create the maximum number of black majority districts. Secondly, it served the political interests of both Republicans and black Democrats. Obviously, there would be more seats available for black Democrats to be elected under this plan, and Republicans figured that this kind of plan would make them more competitive and able to defeat white Democrats in the non-black majority districts.

Q. Okay. Thank you, Dr. Sadow. The map on page 6 did not list Louisiana parishes, but based upon your knowledge of Louisiana geography, can you name some of the parishes that were included in congressional District 4?

A. I'm sure. We have Lafayette, Tangipahoa Parish, East Baton Rouge, Florida Parishes, Pointe Coupee, Rapides, Tensas, Madison, Concordia, East Carroll, West Carroll, Morehouse, Union, Claiborne, Webster, Bossier, Caddo. I might have missed one or two.

Q. All right. Thank you.

Now, based upon your knowledge of Louisiana congressional plans, prior to 1991, had

1 the legislature ever put East Baton Rouge Parish
2 in the same congressional district as East and
3 West Carroll and Morehouse Parishes?
4 A. No.
5 Q. Now, do you recall any court rulings
6 on the plan that's reflected on page 6, the 1991
7 congressional plan? Did you hear my question?
8 Dr. Sadow?
9 THE COURT:
10 Okay. Counsel, I'm going to have to
11 insist that you call your next witness.
12 We have not heretofore had this amount of
13 difficulty with videoconferencing. I have
14 to believe that it has to do with the
15 connectivity maybe in Bossier, which is
16 where Dr. Sadow is physically situated.
17 MR. FARR:
18 Can you hear me, Dr. Sadow?
19 THE WITNESS:
20 Yes.
21 MR. FARR:
22 Can I try again now, Your Honor?
23 THE COURT:
24 No.
25 MR. FARR:

1 Can I get him to authenticate his
2 report and move for that to be admitted
3 into evidence?
4 THE COURT:
5 You can authenticate. Well, I mean,
6 the thing is no, you can't because what's
7 going to happen is if we can't get him in
8 a position where he can testify, which I
9 will remind you the court is accommodating
10 you-all by allowing him to testify by
11 videoconference, then all indicators are
12 that the difficulty with this -- this link
13 is on the witness's end. We have not had
14 this problem up until today. He's had to
15 call in on his phone. It tells me that
16 his connectivity in his home or wherever
17 he is, is maybe less than optimum. I'm
18 not going to allow you to put in his
19 report only to find out that he's not
20 available for cross.
21 MR. FARR:
22 I understand, Your Honor.
23 THE COURT:
24 So I'm happy for you-all to work
25 this out, figure out a way to get him some

more connectivity and try again tomorrow morning or whatever, but we were supposed to come back at 1:45. We didn't come back until 2 because of some accommodations that the court made for the witness and now we have been on the record 30 minutes and we have gotten maybe 10 questions answered.

MR. FARR:

Yes, sir, Your Honor. The court's been very gracious and I appreciate everything you've done to accommodate us. We will figure out something to do with Dr. Sadow if he is available.

THE COURT:

He is certainly welcome to testify, but we are not going to burn up any more record today or at least not right now, so --

MR. FARR:

I understand, Your Honor. Thank you.

THE COURT:

Let's call your next witness.

MR. JONES:

Judge, I'm Tom Jones. This is my first appearance in the case and I'm going to call Dr. John Alford, A-L-F-O-R-D. He is going to be by remote and should be in the waiting room now I think.

THE COURT:

All right. Thank you, Mr. Jones.

All right. Mr. Jones -- I'm sorry. Mr. Alford, can you hear us?

MR. JONES:

Can you hear, Dr. Alford? Can you hear all right, Dr. Alford?

THE WITNESS:

Hello.

THE COURT:

You are able to hear us, sir?

THE WITNESS:

Yes, I am.

THE COURT:

Okay. Good. Thank you. Dr. Alford, the courtroom deputy is going to swear you in, sir.

THE DEPUTY:

Please raise your right hand.

DR. JOHN ALFORD,

after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

THE COURT:

You may proceed.

MR. JONES:

He is going to testify as an expert, and I think we have to stipulate on expertise. He is being tendered in redistricting focused on Gingles 2 and 3 and racially polarized voting.

MR. HAWLEY:

Your Honor, Jonathan Hawley for the Galmon plaintiffs. We have no objection.

THE COURT:

Okay. Dr. Alford will be permitted to give opinion testimony regarding redistricting focusing on the Gingles 2 and 3 factors and racially polarized voting. You may proceed.

EXAMINATION BY MR. JONES:

Q. Please give your name, please.

A. John Alford.

Q. What is your address?

A. It is

1 .
2 THE COURT:
3 Okay. The Houston, Texas will be in
4 the record. The physical address will be
5 redacted from the record. Go ahead.
6 BY MR. JONES:
7 Q. What is your profession, sir?
8 A. I am a professor of political
9 science at Rice University.
10 Q. What position do you hold at Rice?
11 A. I am a professor in the department
12 of political science.
13 Q. And how long have you been at Rice?
14 A. I think close to 35 years.
15 Q. What degrees do you hold?
16 A. I have a bachelor of science in
17 political science from the University of Houston,
18 I have a master's in public administration from
19 the University of Houston, I have a master's in
20 political science from University of Iowa and a
21 PhD in political science from University of Iowa.
22 Q. Because of your expertise, have you
23 previously been called upon to express opinions
24 in voting rights litigation?
25 A. Yes, I have.

Q. Have you previously testified in voting rights litigation?

A. Yes, I have.

Q. In approximately how many cases?

A. I would think something like 30 to 40 cases.

Q. And you have been accepted as an expert to testify in those cases; is that correct?

A. Yes, I have.

Q. Now, you were asked to render an opinion in this case, were you not?

A. Yes.

Q. And you prepared a written report summarizing your opinion?

A. Yes.

Q. Do you have that report in front of you?

A. I do.

Q. Is it marked as State 1?

A. Yes.

Q. Let's start into your report and talk about the documents and data you reviewed in connection with this case. Are you still there?

A. Yes.

Q. Okay. What documents, if any, did you review?

A. I reviewed the expert reports provided by Dr. Handley, by Dr. Palmer, as well as some material that they exposed related to the data sets they relied on.

Q. And what data did you review in preparation of your opinion?

A. The data utilized by Dr. Handley and Dr. Palmer to perform their ecological inference analysis to assess cohesion and polarization.

Q. Let's talk just a second about ecological inference. What is that?

A. So it's -- it's both a description of a broader technique of analysis and it's a label given to us. It's a tool for that analysis. So broadly speaking, ecological inference is the attempt to discern information about individual level behavior from aggregate level data.

So in this case, we are interested in the individual level behavior of black voters, of white voters in Louisiana, but we don't have individual level information about either the race of the voters or about their voting

1 behavior. So we relied on information aggregated
2 to the precinct level, and it gives us
3 information about the demographics of the
4 precinct and about the way votes were cast in the
5 precinct. In the -- in the attempt to gather
6 information about individual level behavior from
7 aggregate level behavior, it is broadly called
8 ecological inference.
9 You also see it referred to with a
10 capital E or capital I or sometimes it's just EI.
11 That typically refers to statistical technique
12 for doing this type of analysis that was
13 developed by Dr. King at Harvard and has largely
14 supplanted work earlier more traditional
15 techniques for doing the same sort of analysis.
16 So very early on, people would simply look at
17 what we called homogeneous precincts. So you
18 look at precincts that were largely black or
19 largely white and look at the voting behavior.
20 That was to be replaced by the technique called
21 ecological inference where ordinary regression
22 was used to analyze basically the change in
23 behavior across the entire spectrum of precincts
24 based on their demographic variation. There are
25 statistical problems with that model that often

1 produced estimates that were impossible that also
2 did not provide any useful or appropriate nature
3 of statistical significance or competent
4 intervals. Professor King developed a -- an
5 early version of EI that's been supplemented with
6 a variety of more sophisticated versions. But in
7 general, the technique for trying to understand
8 how the individual level behavior might be
9 derived from the aggregate level information in
10 particular to try to understand how the behavior
11 of, in this case, two groups, black and white
12 voters, varies roughly on average across the --
13 the precincts in the State of Louisiana or in a
14 congressional district.
15 Q. Is EI an acceptable method in your
16 field for estimating voter preference?
17 A. Yes. It's not ideal. It does -- it
18 is an ecological inference technique rather than
19 an individual level technique so it remains
20 problematic in that sense, but of the techniques
21 that have been used, it is I think the most
22 useful, the most reliable. It's very widely
23 relied on by experts in this area, both in
24 courtroom work and in research work. So I would
25 say it is both widely tested and widely utilized

and reliable.

Q. Now, you indicated that you looked at the data produced by Dr. Handley and Dr. Palmer; is that correct?

A. Yes.

Q. Did you check their data?

A. Yes. Just some quick spot checks to see how it corresponded to data I had from the Secretary of State's office for election returns and precinct level information and that spot check at least for the things that I checked showed that it matched what I had for the state's.

Q. In formulating your opinion, did you use the data produced by Dr. Handley and Dr. Palmer?

A. Yes. So I first condition to spot check file so I ran quick EIs to inspect their EI results against my own analysis and also checked to make sure that their analysis matched each other where they had examined the same elections. All of those checks showed the work to be correct and so I relied for the purposes of this report on the EI results that were actually reported by Dr. Handley and Dr. Palmer.

Q. And the data reported by Dr. Handley and Dr. Palmer and the data that you produced all relate to Louisiana elections; is that correct?

A. That's correct.

Q. Now, you looked at the several presidential elections in Louisiana; is that correct?

A. Yes. Following the example I believe it's Dr. Handley who looked first at the presidential elections so I looked at those as well.

Q. Could we display Table 1 in State 1? Trial tech complied?

Q. Do you have table one in front of you Dr. Alford?

A. I do.

Q. What did you find to be significant in the data in Table 1?

A. First, if we look at the -- at the bottom on the 2020 presidential election buy den versus trump we see several things. One because this was an election utilized by both Dr. Handley and Dr. Palmer Dr. Handley only analyzed races that were racially contested. She included this contest because of the vice presidential

1 candidate on the Democrat side was black, so that
2 sort of -- at least partially met her criteria.
3 She did not include 2012 because she only went
4 back to I think 2013 in your analysis but this
5 election is included in both Handley and palmar.
6 As you can see when you look at the estimates --
7 estimates for the behavior of black voters palmar
8 has 89 percent voting for Handley has 87 percent
9 voting priority that's very similar competent
10 intervals turning to white voters palmar
11 17 percent Handley has 18 percent voting interval
12 so I guess this is part of that reinsurance that
13 none of this focused on a particular am bellness
14 or particular data or approach that where the
15 same election's being analyzed they are getting
16 substantive and statistically very similar
17 results.
18 The second that's useful is because
19 palmar also analyzed the 2016 and the 2012
20 contest, we can provide some context for looking
21 at those 2020 results, so Handley assumes that
22 that 87 percent black support for buy den in part
23 collects the fact at that time there is a black
24 candidate vice presidential candidate on that
25 ballot and presumably the -- the her report of

1 18 percent white vote that being a much lower
2 level of support reflects that as well. But when
3 we look at the other results, we can see that,
4 for example, in the -- in the 2012 contest where
5 the top of the ticket President Obama who is a
6 black candidate though estimate of black support
7 there is not much different than it was in the
8 2020 contest and the estimate of white support is
9 also not much different than it was in the 2020
10 contest.
11 And then we can compare that to 2016
12 where both of the candidates both the vice
13 presidential candidates were white. In there we
14 see Clinton supported by black voters is
15 97 percent, Clinton supported by white voters is
16 actually lower than palmar's estimate of white
17 support for either Obama or for -- for Biden and
18 Harris. So again, that provides a perspective
19 here about what this -- what we are seeing here.
20 The voting behavior that's very stable on the
21 party of the candidates but it's not really
22 responsive to the racial make up of the ticket.
23 Q. Is the voting consistent for
24 Democrats and Republicans in each race -- let me
25 say in each contest without regard to race?

A. Yes. The behavior is quite consistent. Again if we were broadly characterizing this we would say that black voters are voting in the 90 low to mid 90 range Democratic candidate white voters are voting somewhere in the teens for the Democrat candidate and that's consistent across these elections regardless of whether that Democrat candidate happens to be black or white or in the case of 2020, the again regardless of the race of the vice presidential candidate.

Q. Do those voting patterns change the voting patterns that you just described, do they change in a Republican versus Republican race and when I ask you that I want to look at Table 2. What does this table show and what does it tell you about a Republican versus Republican contest?

A. So these are contests that we included in Dr. Palmer's analysis that involve they are not racially contested so they are not in -- in professor Handley's analysis, but they -- they involve two white candidates, but because of the system used in Louisiana, they -- these elections also involve rather than a Democrat this would be more common elsewhere involve two

1 candidates both of which are Republicans. So
2 this is useful if we think about if we have sort
3 of two variables that we are trying to understand
4 one having to do with the race of the candidates,
5 the other having to do with a party of the
6 candidates. We can either -- look at varying or
7 whole concept of one or the other in this case we
8 are able to remove effects of party and see what
9 -- see what remains and what we see here is that
10 when both candidates are Republican, the -- the
11 behavior of black and white voters is remarkably
12 similar, so in the most recent contest in 2019,
13 commissioner of insurance race, the preferred
14 candidate of black voters at 54 percent is Donald
15 and the preferred candidate of white voters at
16 54 percent is also these are consistent with the
17 state numbers neither group is particularly
18 cohesive it is pretty evenly split between Donald
19 and testimony bell put the even split is present
20 for both black and white voters and in both cases
21 they show a slight preference for Donelon.
22 Q. In the 2015 treasurer contest
23 74 percent of black voters preferred Kennedy,
24 83 percent of white voters preferred Kennedy.
25 Again the contest is lopsided in this case much

less competitive than the commissioner's race or insurance commissioner's race but it's lopsided for both black and white voters in the same in the same direction. So again unlike that presidential table particularly using just Handley's election where you see very different behaviors between black and white voters they had a choice between a Democrat and Republican then they have a choice between two Republicans they are selectiveness is actually very similar.

The third contest the 2015 attorney general contest, again is fairly evenly divided much more evenly divided than is typical for the two party contest, but here black voters are showing a modest preference for called well and white voters for Landry. I think this probably reflects the fact that called well up until this particular up to the year of this contest called well was a Democrat so he had been a Democrat and run for office as Democrat and switched parties early in 2015 in preparation for this contest and for running as a Republican, so I suspect there may be -- there may be some Patterson feeling figuring into this contest even though by the time of the election polls called well was

1 officially Republican?
2 Q. What conclusion did you draw from
3 this table, if any?
4 A. Again, what we see here is that when
5 we -- when we remove party contestation when we
6 take away the element of a Democrat versus a
7 Republican we don't really see any particular or
8 obvious pattern in terms of a differentiation
9 between how black and white voters vote. We see
10 substantial variation between elections but not
11 between racial groups in voting. And again, this
12 is highlights how important that Democrat and
13 Republican difference is in -- as we saw in the
14 presidential elections.
15 Q. Did you look at other statewide
16 elections?
17 A. Yes.
18 Q. Could you pull up Table 3 on
19 State 1? Trial tech complied?
20 MR. JONES:
21 .
22 Q. Are these the other statewide
23 elections that you looked at?
24 A. So I looked at two sets of
25 additional statewide elections and I organized

them accordingly, according to first the ones that were included in both the Handley and palmar report which would be the racially contested elections and then after that the remaining statewide elections that were only palmar report. So these are all racially contested elections and they were all included in both -- in both Handley's analysis and palmar's analysis. And again part of the purpose of this table is just to highlight how the similar the EI results are between palmar and Handley. They vary very slightly some -- again they re enforce we can put some confidence in the analysis done by both Dr. Palmer and Dr. Handley.

Q. What did you find --

A. The second.

Q. Go ahead?

A. I was going to say the second obvious pattern is the one that basically Dr. Handley draws from -- from her -- in her conclusion from looking at this table which is that two things are true simultaneously. One is that black voters are voting in that 80 to mid '90s range for the black candidate which also happens to be the Democrat candidate and white

voters are voting the teens basically for that black candidate who also happens to be the Democrat candidate. So again here as was true for the single presidential election in 2020, from Handley's analysis this vote is vote by party or vote on the basis of the race of the candidate. It's certainly consistent here in the sense that it slows that same very high level of support among black voters for the black candidate who is also the Democrat and the similar lower level of support for that candidate that Democrat black candidate in white voters.

The issue with the is it simply doesn't allow us to -- the one conclusion you could draw from this is the black voters have a very strong preference for black candidates black voters have a very strong preference for black candidates and white voters modestly lower preference for white candidates but you can't distinguish that from saying the same thing about Democrat versus Republican candidates.

Q. Was there anything else in this table that struck you besides those two things?

A. No.

Q. Now, can you display table four in

State 1? Trial tech complied?

MR. JONES:

.

Q. What did you find significant in Table 4 Dr. Alford?

A. On Table 4 again below this will separate the question of party and race of candidates. Again if we look at the results here, these are the palmar results because Handley didn't analyze these contests. If we look down the estimates for black voters we see exactly the pattern that we saw in Table 3, black voter the are voting in the -- sort of the 90 percent range for the Democrat incompetent candidate Republicans are voting in the teen to 20 percent for the Democrat incompetent candidate. But here that Democrat incompetent is candidate is not black but is actually a white candidate so if we had looked at both in this analysis I think it would be pretty clear that there is very strong preference among blacks for Democrat candidates and a less strong preference among white voters for Republican candidates but both the nature of that preference which voters prefer which candidate and the level as which

they favor both candidates is remarkably similar to the table that includes racially contested election. So the conclusion from Table 3 from Dr. Hand lease analysis that black voters are strongly favoring black candidates isn't born up in this table because it show exactly the same strong preference for a Democrat incompetent candidate when a candidate is white as it is for a Democrat incompetent candidate when the candidate is black. So the tendency of white voters to provide support only in the teens and 20s for that Democrat incompetent candidate is the same whether that Democrat incompetent candidate is white or black. So in the inference from the Handley subset elections could be that white voters prefer not to vote for black candidates black voters prefer to vote for black candidates but looking at the table we can see -- in fact, the preference was evident in the previous table is the preference for Democrat incompetent candidates in general not simply for Democrat incompetent candidates that happen to be -- happen to be black.

Q. So the register of the candidate really was of no consequence it was party rather

1 than race?
2 A. I think there's two things: One is
3 clearly that the party of the candidate because
4 that's the information we have here is the party
5 of the candidate but there's also information
6 that the voters have. It's on the -- it's on the
7 ballot. The party of the candidate is -- is
8 producing a strong polarization here in voter
9 behavior. That polarization is not being
10 produced either in the sense of the levels of
11 black cohesion or the levels of white crossover
12 by the race of the candidate but it is being
13 produced by the party affiliation of the
14 candidate. So and again, the -- the striking
15 similarity between the two tables with the
16 difference in pulling sort of constant the party
17 affiliation of candidates comparing the race of
18 the candidates suggests that that the conclusion
19 that Dr. Handley draws about this very different
20 behavior on the part of black voters being a
21 response whatever it's a response to is clearly a
22 response overwhelmingly a response to the
23 affiliation -- party affiliation of the candidate
24 so. There is polarization here based on the party
25 affiliation of the candidates but that same level

of polarization isn't apparent here with regard to the race of the candidates and again that is backed up by what we saw on the presidential elections it's backed up by what we saw in the elections that don't feature Republican running against a Democrat.

Q. Turning to the congressional elections reported by doctors Handley and palmar, what did you find there with respect to voting patterns?

A. Dr. -- in two different analyses there. Dr. Palmer reports just an additional set of statewide elections performed analysis performed in congressional districts but doesn't actually analyze congressional elections. Dr. Handley analyzes a handful of congressional elections as well and there's nothing in that -- in any of that analysis to suggest anything other than what we see in the -- in the statewide evidence that there is strong evidence of voter polarization and that's really what those that's what that evidence shows. It shows that as it does statewide it shows that within the congressional districts as well, so in majority Democrat you see that party voting pattern in

1 districts that are more Republican you see that
2 pattern. It's -- it is a pattern that depends on
3 voters Patterson preferences not on voters racial
4 preferences.
5 Q. Based upon the election estimates
6 and the data that you reviewed, what do you
7 conclude with respect to racial voting patterns
8 in Louisiana?
9 A. There's clearly Patterson
10 polarization the black voters are voting cohesive
11 for Democratic candidates white voters are voting
12 cohesive although slightly less cohesive for
13 Republican candidates that's what this -- that's
14 what the election analysis provided by Dr. Palmer
15 shows as well as provided by Dr. Handley.
16 Q. Is that unique to Louisiana, that
17 pattern of partisan differences?
18 A. I think it's a characteristic of
19 modern American elections certainly all the
20 states that I've analyzed data for show a similar
21 pattern particularly in the last decade or two.
22 Partisan polarization as we are all aware has
23 become quite extreme in the United States a
24 little bit uncharacteristic for the U.S. where we
25 have we have often been criticized historically

for not having particularly cooperation between the parties but in the modern era the parties are polarized and what you see in elections is very durable partisan patterns voters rely on the party of their candidates quite strongly in the election.

Q. Is it fair that the two parties are and are not moving?

A. Well, I have sort of a strong belief in cycles maybe it's just because I'm old enough to have this view but these things do change other time but certainly in the context that we are in today the parties are quite quite well dug in both in the partisan elites option against each other as we see in congressional behavior and in public behavior of candidates than is true with voters as well.

Q. In the final analysis is it your opinion that party affiliation and not race best explains the divergent voting patterns among minorities and white voters in Louisiana?

A. I think from the evidence that's been provided here I don't think there's any question that the party affiliation of candidates is the driving force in this behavior and not the

1 race of the candidate.
2 Q. All right. Dr. Alford, you
3 contracted with the state to charge a fee for
4 your work in this case; is that correct?
5 A. That's correct.
6 Q. And how is your fee calculated?
7 A. It's an hourly rate of $500 an hour
8 for the work I do on the case including my
9 appearance here or at trial.
10 Q. What is the approximately number of
11 hours you devoted this case, to this one?
12 A. I don't -- I haven't sort of
13 compiled all of my things into a specific number
14 yet but I think it's something in the range of
15 roughly about a hundred hours.
16 Q. Okay. Thank you.
17 MR. JONES:
18 Judge I would like to introduce into
19 the record State 1 and appendix one to
20 state one which is his CV.
21 THE COURT:
22 Any objection.
23 MR. HAWLEY:
24 No objection.
25 THE COURT:

Admitted.

MR. JONES:

And that's it. I will tender the witness.

THE COURT:

Any cross?

MR. HAWLEY:

Good afternoon, Doctor. Alford. Can you hear me okay.

A. Yes. Just fine, thank you.

Q. Thank you. The my name is Jonathan Hawley and I represent some of the plaintiffs in this matter.

Dr. Alford according to your report you were engaged as an expert by the office of the Louisiana attorney general; is that correct?

A. Yes, I believe so that's correct.

Q. Who first reached out to you about serving as an expert?

A. I believe it was Mr. Kerry.

Q. And who were you first engaged to work --

A. I'm sorry. I'm sorry. Mr. Jones.

Q. Thank you. And when were you first engaged to serve as an expert in this matter?

A. I don't recall precisely but I think sometime earlier this year maybe late fall but I think early -- sometime early spring.

Q. Do you know if that was before or after the Louisiana legislature vetoed initially sorry. When governor vetoed the congressional map on March 9th; do you know if it was before or after then?

A. I'm not sure about the engagement because I was contacted about -- to check availability and to see if I would be able to work with the state on this case prior to doing anything with the state so I don't know when I made my first contact other than they asked me about availability and timing but certainly the first time I actually worked on the case involved the analysis the state would place on more recently say April -- April and then into May.

Q. And so just to clarify you started working on your report in April and into May; is that correct?

A. Yes. There was some -- I think some preliminary data assembly and checking that would have taken place a little bit before that, but nothing -- most of the substantiative work had to

1 do with actually responding to reports as they
2 came in and working on my report.
3 Q. Thank you. Dr. Alford your report
4 responds only to the expert reports of doctor
5 maximum palmar and Dr. Lisa Handley, correct?
6 A. That's correct.
7 Q. You provide no responses to the
8 report submitted by plaintiffs other experts?
9 A. That's correct.
10 Q. You do not respond to conclusions of
11 Mr. Cooper and Mr. Fairfax regarding the first
12 Gingles pre condition; is that correct?
13 A. That's correct. I do not.
14 Q. And you provide no analysis of any
15 of the Senate factors other than racially
16 polarized voting?
17 A. That's correct. I provide no
18 analysis on those factors.
19 Q. And you provide no direct response
20 to Dr. Lichtman analysis of racially polarized
21 voting?
22 A. That's correct.
23 Q. Did you read Dr. Lichtman's expert
24 report in this case?
25 A. I have not seen Dr. Lichtman's

report.

Q. And if Dr. Palmer and Dr. Handley both concluded that voting in Louisiana is racially polarized, correct?

A. Yes, that's correct.

Q. You identified no errors in their methodology or their application of ecological inference, correct?

A. Correct.

Q. I believe you transferred on direct that ecological inference is a reliable methodology to evaluate racially polarized voting is that correct?

A. Yes.

Q. In fact, you previously referred to ecological inference as the gold standard for analyzing racially polarized voting?

A. Yes.

Q. And you replicated selected results from Dr. Palmer's and Dr. Handley's ecological inference analyses, correct?

A. Correct.

Q. And your replication results matched very closely with reports of both Dr. Handley and Dr. Palmer?

A. Yes, it did.
Q. And you concluded that there were no substantive differences across Dr. Palmer's data Dr. Handley's results and your replication results, correct?
A. That's correct.
Q. You do not dispute Palmer's and Dr. Handley's conclusion that black Louisianians could cohesively vote for the same candidates?
A. Right.
Q. And that is true both statewide and in the state's six congressional districts, correct?
A. It's hold I want to make sure we are clear but I did -- we did look at those Republican versus Republican contests. So in the -- in the partisan contested elections, I would agree.
Q. And do you offer nothing to dispute Dr. Palmer's and Dr. Handley's conclusion that black and white Louisianians consistently prefer different candidates?
A. Again that's not true when the candidates are the same party but it is true when the candidates are of different parties.

Q. And you offer nothing to dispute that conclusion that white preferred candidates generally beat black preferred candidates in Louisiana except in majority black districts?

A. Again, that's only true in contests that feature Democrats versus Republican in the Republican versus Republican contest that's not.

Q. And you offer nothing to dispute Dr. Palmer's and Dr. Handley's conclusions that plaintiff's illustrative majority black districts would elect black preferred candidates, correct?

A. I have not examined the performance of the illustrative districts.

Q. Ultimately Dr. Alford you agree that there is a correlation between the race of voters and the candidates they prefer in Louisiana in general; is that correct?

A. Again, there is a correlation whether when there is both a Democrat and Republican candidate when there are only Republican candidates, for example, as we saw there is for correlation.

Q. But even in the election where is you did see correlation in the Democrat and Republican candidate elections, you excluded that

1 these results show nothing more than partisan
2 polarization; is that fair?
3 A. The analysis presented hereby
4 Dr. Handley and Dr. Palmer shows very clear
5 evidence of party polarization. It does not show
6 any evidence of that same level of polarization
7 is in any related to the race of the candidates.
8 Q. But you didn't provide any
9 qualitative or quantitative analysis into the
10 reasons black voters support their candidates of
11 choice, correct?
12 A. The entire analysis is very
13 straightforward analysis of exactly that point.
14 It shows very clearly that the candidates of
15 choice are preferred on the basis of the party
16 affiliation of the candidates.
17 Q. But you provided no subjected
18 inquiry into the reasons why black voters support
19 Democrat versus Republican candidates; is that
20 correct?
21 A. I'm not sure what do you mean by
22 subjective inquiry into the preference of the
23 black voter. This is objective information about
24 what the ecological standard, ecological
25 inference analysis of statewide elections shows

1 us and it shows us clearly that the party of the
2 candidate is crucial and the race of the
3 candidate is not.
4 Q. Let me give an example. You
5 performed no qualitative or quantitative analysis
6 of the Democrat and Republican parties parties
7 issues related to race; is that correct?
8 A. Correct.
9 Q. Do you recall your analysis of
10 attorney general called well, a former Democrat
11 who ran as a Republican in the 2015 runoff?
12 A. Yes.
13 Q. As another example did you do any
14 research into attorney general called well's
15 political positions relative to his opponent?
16 A. No.
17 Q. So other than examining the reports
18 by Dr. Palmer and Dr. Handley have you conducted
19 any into what motives racially polarized voting
20 check check?
21 A. Again to the extent that -- to the
22 extent that we can understand what is being
23 revealed by the voting or by the election
24 analysis that we typically do in this type of a
25 case like Dr. Palmer Dr. Or Dr. Handley did or I

1 did beyond that I've done nothing to individual
2 voting pattern I've just simply done a standard
3 racially polarized voting analysis.
4 Q. And you testified I believe on
5 direct that one conclusion that could be drawn
6 from the results reported by Dr. Palmer
7 Dr. Handley is that voters are voting based on
8 race; is that fair?
9 A. I mean, it's -- it would -- if you
10 look only at a subset of the data, you could
11 incorrectly draw that conclusion. It's clearly
12 not a conclusion supported by the data. I guess
13 this is where you are getting you sometimes --
14 I'm not disagreeing with the analysis done by
15 Dr. Palmer and Dr. Handley but the conclusions
16 reached by Dr. Palmer and Dr. Handley are not
17 correct. And in the case of doctor palmar he has
18 the information to see that it's not correct. In
19 the case of doctor Handley, she simply didn't
20 provide the court with the information it needed
21 to -- to see whether that conclusion was correct
22 or not: But only if you -- only if you very
23 carefully limit it to contests you look at could
24 you mistakenly reach the conclusion that this
25 could be either a party pattern or a racial

1 pattern but that you couldn't tell the difference
2 between them that would be a fair conclusion
3 based on a narrow subset of the data, but you
4 can't fairly conclude that the data shows that
5 voting on the basis of race when you have not
6 varied the race of the candidates or the parties
7 of the candidates it just isn't it's a -- anybody
8 can look at that data and see what the data tells
9 them I think that's quite clear and I don't think
10 our disagreement is over what the data tells us.
11 My understanding as I understand Dr. Handley's
12 and Dr. Palmer's position in this case and in
13 previous cases their position is that none of
14 this shows something different from what I said I
15 say it shows they just say that that's not
16 relevant that it doesn't matter whether the --
17 this is a -- has to do with the race of the
18 candidates or the party of the candidates all
19 that matter Social Security do black voters vote
20 differently than white voters and that's the only
21 thing that matters so that's the basis for their
22 conclusion that this isn't actually racially
23 polarized voting because they don't think
24 racially polarized voting has anything to do with
25 the race of the candidates.

Q. In your discussion with Mr. Jones, I believe you agreed that currently at least the two political parties are dug into their respected positions is that correct?

A. Again, I think I was a little more subtle than that but they certainly dug into their opposition to of each other I'm only surprised at how much flexibility they applied positionally with them with them being dug in in their opposition to each other.

Q. Would that opposition to each other include issues relating to race I'm sorry. Could you repeat your answer?

A. It certainly could.

Q. And you agree that it's possible that are political affiliation to be motivated by race, correct?

A. Politically voters can be motivated by any number of things.

Q. And that would race correct?

A. It would include race, yes Hawley thank you no further questions Dr. Alford.

THE COURT:

Any redirect, Mr.

MR. JONES:

Joan I don't Your Honor that's all I have for Dr. Alford.

THE COURT:

Okay. Dr. Alford thank you for your assistant today. Moving along now. Okay. Why don't we take about a ten-minute recess.

(A short recess was taken.) Cohesively

THE COURT:

Okay. Be seated. Had a little change in the guard there got our signals crossed for the record the last witness confirms that court's observations that the prior witness Mr. Sadow the difficulty with the videoconferencing was apparently his connectivity to I know that counsel for defendants is working on getting a work around for that I thought I would put that on the record. It didn't seem to be any of the court's equipment that was prohibiting Mr. Sadow from testifying. I know that we can discern what he was saying. Okay Ms. Mc Knight next witness.

MS. MCKNIGHT:

Thank you, Your Honor we now call

Jeff Lewis.

DR. JOHN ALFORD,

WITNESS ADDRESS, WITNESS CITY, LOUISIANA

WITNESS ZIP, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

MS. MCKNIGHT:

Good afternoon, Doctor. Lewis.

Could you state your name for the record.

A. Good afternoon. My name is Jeffrey buy Ron Lewis.

Q. Thank you. Your Honor the parties have stipulated to Dr. Lewis's expertise. We are offering him as an expert in the fields of political science, census data analysis and statistics. More specifically for this case racially polarized voting analyses.

THE COURT:

Is there a stipulation?

MR. HALWAY:

No objection judge.

THE COURT:

Okay. Dr. Lewis will be -- going to be giving opinion testimony in the field of political science census data and

statistics. You may proceed.

MS. MCKNIGHT:

Thank you, Your Honor. We will be referring to legislative intervenor's Exhibit No. 2 today if we could put that up on the screen but first doctor Lewis do you have a copy of your report with you, a paper copy.

A. Yes, I do. Thank you.

Q. What you see on the screen is this a copy of your report submits in this case?

A. It appears to be, yes.

Q. Okay. And your CV is located at pages ten through 17 of this document; is that right?

A. Yes. That's correct.

Q. Okay. Could you briefly tell the court what your about your academic background?

A. Yes. I earned my PhD in political science from M IT in 1998 I taught for several years at Princeton university in the politics and public policy schools there, and spent a year with dart mouth before moving to UCLA where I've been a professor for some 20 years.

Q. And and currently, what is your

position at UCLA?

A. Yes. I'm professor of political science and share the college of letters in science.

Q. And have you -- have you acted as an expert in other cases before?

A. Yes. In roughly a dozen previous cases.

Q. And has a court ever found you to be not qualified to testify about racially polarized voting?

A. No, they have not.

Q. Okay. And has your testimony ever been found to be not credible by any court?

A. Not to my knowledge.

Q. Okay. Let's turn to paragraph 4 of your report. This is on page 2 of your report. It is on --

A. Yes.

Q. Okay. And just for the record, this is legislative Exhibit 2 page 3, but it's page 2 of doctor Lewis's report.

And we are looking at paragraph 4. What were you asked to do in this case, Doctor Lewis?

A. Yes. My engagement here was very limited. It's set forth in paragraph 4 there. I was asked to estimate or report for black and white for the purposes here will be non-black voters for Biden Harris in the 2020 presidential election, general election I should say.

I was also asked to estimate I should say the support candidates in that election for plaques and non blacks and I was asked to calculate the support among all voters residing in each of the illustrative districts.

Q. Thank you. And we will get into more detail in a minute, but at a high level how did you approach answering though questions in the time provided?

A. Yeah. Thank you. Let me just -- I think I left something out of my previous answer and I apologize. I was getting some pretty substantial sort of echo back of what I was saying. It was a little bit distracting and I apologize for that.

I should also say that the last thing that I was asked to look at was whether in the illustrative districts Biden and Harris would have prevailed all in the absence of any white

crossover voting so I should have add the that.
Could you repeat your last question for me,
please?
Q. Sure. And let me just say would it
help to turn down the volume on your end to lower
the echo?
A. Yeah I can do that a little bit
then. I just worry about hearing you.
Q. Sure. I'll get very close to the
microphone for you?
A. Okay. Thank you.
Q. Let's see if this works is that any
better for you?
A. We will see. I hope so, thank you.
Q. Okay. So let me go back to that a
question. We will get into more detail in a
minute but at a high level how did you approach
answering these questions in the time provided?
A. Yes in the very narrow timeframe
provided, what I -- what I did was to take data
sets that had been prepared by - palmar and then
with the help of -- of cart Benson assign the
2020 precincts that are -- that are enumerated in
-- in -- in Dr. Palmer's data set, assign them to
the -- the various -- the various illustrative --

1 illustrative congressional districts, the second
2 and fifth illustrative districts under these
3 different illustrative plans and then I was able
4 to to tabulate in some cases or calculate or
5 estimate in other cases the quantities that I
6 just described.
7 Q. Okay. And now what election did you
8 study just so it's clear for the record?
9 A. Yes. I'm sorry. I studied the 2020
10 presidential -- U.S. presidential general
11 election.
12 Q. Okay. And why did you study this
13 one election?
14 A. Well, given the timeframe, we had to
15 choose or I had to choose one election to focus
16 on so you know, this -- this picked a lot of
17 boxes. It's the most recent -- recent election,
18 it's an election in which the office under
19 consideration here was also contested so there
20 were also congressional elections held at that
21 time. It was a contest that involved an an
22 African-American candidate and and the
23 alternative election in 2020, the election for
24 Senate involved a number of candidates and I
25 don't think it would have been representative of

1 the cohesion of black voters that's typical in
2 the broader set elections that one might have
3 considered so it seemed like the best set at as
4 the one we would want to look at.
5 Q. So whose data did you use to conduct
6 your analysis?
7 A. Yeah. So that would have been Dr.
8 -- Dr. Palmer's data as augmented by Mr. Benson.
9 Q. Okay. So your analysis assumes the
10 correctness of doctor palmar's data; is that
11 right?
12 A. That is correct.
13 Q. Okay. So let's turn now to the
14 results of your analysis. Is it fair to say that
15 the results of your analysis are indicated at
16 paragraphs seven through 11 of your report?
17 A. Yes.
18 Q. And are the results of your analysis
19 also shown in the tables are page 6 of your
20 report?
21 A. Yes. All of the results described
22 in seven through 11 are either directly presented
23 or derived from what's reported in those two
24 tables.
25 Q. All right. Let's zoom in on those

1 two tables. And Dr. Lewis could you tell the
2 court what those tables show?
3 A. Yes. They show the quantities that
4 I described at the beginning of our discussion
5 today. So for -- for illustrative plans for
6 District two and for District five and I'll just
7 say here that you'll maybe see me looking to the
8 left here I have two screens the courtroom is
9 appearing to my right and the exhibits to my
10 left.
11 What we have are two tables. The
12 top table describes the results of my analysis
13 for the four illustrative plans with respect to
14 the District two of each of those plans and the
15 bottom, the four illustrative plans with respect
16 to District five. And the first column just
17 shows which plan we are referring to. The second
18 column shows the percent of each one of those
19 districts, the percent of black voters that
20 participate -- that you know in that election.
21 So what fraction of the folks who actually voted
22 in the 2020 election were black. That's shown in
23 the first column.
24 In the second column, I have
25 tabulated from palmar's data the fraction of the

1 two party vote received by Biden and Harris and
2 what I mean by two party vote, it is the fraction
3 received by -- by the -- by Biden over the -- at
4 the number of votes received by Biden over the
5 number of votes received by either Biden or
6 Harris or Biden or -- I'm sorry. Biden or trump.
7 So again Biden and Harris has a fraction of /E
8 votes cast as provided for trump cast to be
9 clear. And then the next column shows the
10 estimated fraction of those black voters that
11 supported the black preferred candidate that was
12 Biden. The fraction of -- in the next column
13 shows the fractions of white voters who supported
14 Biden as estimated by ecological inference and
15 the final column calculates based on the other
16 numbers in the table the fraction of the vote
17 that Biden Harris would have received in each of
18 those districts in the absence of any white
19 crossover voting all else equal.
20 Q. Okay. Can you -- you mentioned that
21 it was a calculation that brought you to that
22 last column. Could you walk us through how you
23 achieved how you reached that number how you
24 calculated using the other numbers on this table?
25 A. Sure. So what we are going to be

able to do here is -- is decompose the total vote for -- for Biden Harris coming from black voters and also coming from white voters, so the estimate in the last column takes the -- for example, in the first row of the first table the 99.13 percent of black voters that voted -- that we estimate to have voted for Biden multiply that by the 51.18 percent of the -- of the electric tort in that district that we estimate to be African-American. And those two numbers together give us the total fraction of the vote that -- of the total vote that Biden would have gotten from black voters and under the assumption there was no crossover voting there's nothing to add to that so simply the product of those two numbers reveals the fraction of the vote that we estimate that Biden and Harris would have received in the absence of any white voting for Biden Harris.

Q. So if we are counting each row in these two tables as a district studied in this election whether under District two or District five in plaintiffs four illustrative plans I'm counting eight districts analyzed; is that fair?

A. Yes.

Q. And so of those eight districts

analyzed how many of those districts that you studied rely on white crossover voting for the black candidate to win?

A. It -- in the sense that without any white crossover voting, the percentage of support for of the two party vote support for Biden would only have been above 50 percent as estimated here in one of the eight instances.

Q. Okay. And something you mentioned earlier. This is an all else equal analysis could you explain what you meant by that.

A. Right. Whenever we think about you know, what would have happened had things been different, so, for example, had different district boundaries been used what would the support for different candidates be we would to sort of imagine how that how that world was constructed. We have to think about all the different things that might be the same with a different are different so when I say all else equal here what I mean is that the composition of the lock tort in terms of the whether the fraction that is African-American would have remained the same and I mean the race in which African-Americans and white voters supported

1 Biden and Harris would have remained the same.
2 Q. And do the districts as drawn by
3 plaintiffs here, these eight districts, do they
4 rely on white crossover voting to reach a
5 majority vote?
6 A. In -- in -- in all but one case.
7 Q. And now, even though you only had
8 time to study one election, have other experts in
9 this matter made findings consistent with your
10 analysis?
11 A. I think this -- this particular
12 question about the reliance on crossover voting
13 mentioned in the am cuss brief, I'm not sure if
14 you consider that one of the experts. They they
15 note that -- that those districts would -- would
16 rely on more than -- you know on some amount of
17 crossover voting the ones that they proposed
18 which are different from these. I'm not sure
19 that the experts, for example -- for example,
20 palmar were looking specifically engaged this
21 question.
22 Q. And did they engage another question
23 that is consistent with your analysis in this
24 case?
25 A. Yes. The other quantity that we

1 looked at here is whether these districts
2 required 50 percent BVAP or black voting age
3 population, in order to -- in order to be
4 effective. That is to say could these districts
5 have given the amount of white crossover voting
6 that's estimated to have exists that's estimated
7 to exist could they be effective at less than
8 50 percent black voting age population the
9 conclusion I reach is that they could and that
10 conclusion is consistent I believe with the
11 conclusions of doctor palmar and Dr. Lichtman.
12 Q. You mentioned the am cuss brief in
13 this case. Let's pull that up so that I can ask
14 you a question about that. This is located at E
15 C F 90 Your Honor in the record. This is an am
16 cuss brief?
17 MR. HALWAY:
18 Your Honor I respect /HRAOE object
19 this is outside the bounds of the doctors
20 reports and I object to him being
21 questioned about it he hadn't /TROFRD it
22 there has been no other testimony about it
23 so it's improper.
24 MS. MCKNIGHT:
25 Your Honor if I may this report was

filed this me cuss brief was filed on the
same day Dr. Lewis filed his report we
have heard testimony from two we have
heard testimony from two of plaintiffs
experts the this week that these districts
can perform below 50 percent Dr. Lewis has
reviewed this and is offering that it is
consistent with his own analysis.
THE COURT:
Objection sustained. That was John
Adcock objecting.
MS. MCKNIGHT:
Dr. Lewis how did you come to an
understanding that strike that.
Dr. Lewis, do you have any reason to
disagree with plaintiffs experts that
these districts could perform at below
50 percent BVAP add add Your Honor I have
the same objection.
THE WITNESS:
I do not.
THE COURT:
One moment there's an objection add
add I'll withdraw it.
THE COURT:

All right. The objection's
withdrawn you want to re-ask the question.
MS. MCKNIGHT:
I'll re-ask it.
THE ATTORNEY:
Q. Dr. Lewis do you have any reason to
disagree with plaintiffs experts that these
50 percent BVAP Adcock. Objection judge I was
right the first time no I'm just joking I don't
believe any expert has said that so if counsel
can lay a foundation what expert said that
whether Dr. Lewis has seen that and if he agrees
with it?
MS. MCKNIGHT:
Sure I can lay that foundation
Your Honor.
THE COURT:
Please lay a foundation.
MS. MCKNIGHT:
Okay. Dr. Lewis how do you know
that plaintiffs experts hold the opinion
that districts can perform at below
50 percent BVAP.
A. I have seen portions of their
appearing testimony.

Q. Okay. And in what format did you see that portion of that testimony?

A. Did you see it in a transcript or were you listening live.

A. Yeah. In -- I think what you refer to as a rough draft transcript.

Q. Thank you. Your Honor I would offer that if Dr. Lewis was able to with us in the courtroom he could have sat in on that testimony and sat in here today and that he was here for the testimony he has reviewed portions of the transcripts that are equally available to plaintiffs counsel plaintiffs counsel was in the courtroom when that testimony was provided add add Your Honor I just want to longer an objection by choice the expert was not in the courtroom and that was the choice of defendants and the experts. Second he hadn't identified what expert he's talking about he hadn't said that he looked at an expert report he can't identify what expert says what counsel is saying they said and he had every opportunity just like seemingly like every other expert in this case to issue a rebuttal report or supplemental report with this kind of rebuttal or opinion about other people's

1 testimony he chose not to do it so I think it's
2 improper here month over counsel still has not
3 been able to lay a foundation /KPAEPT that
4 vaguely maybe he saw something in some draft
5 transcript?
6 THE COURT:
7 I'm going to sustain the objection
8 to the extent it lacks foundation if you
9 can establish what testimony he listening
10 to formulate to say that there was
11 testimony the districts can perform at or
12 below 50 percent BVAP then start with that
13 and we will go from there.
14 MS. MCKNIGHT:
15 Thank you, Your Honor. Dr. Lewis
16 let's go with this step by step. Let's
17 start with the first expert. What is the
18 first expert's testimony you reviewed to
19 understand that plaintiff's expert
20 witnesses said that these districts could
21 perform at below 50 percent BVAP.
22 A. Dr. Palmer.
23 Q. Okay. And do you recall what doctor
24 palmar said add add objection Your Honor vague?
25 THE COURT:

1 You know, we were all sitting in on
2 when Dr. Palmer testified so let's ask the
3 substantive question. I don't need him to
4 tell the court what doctor palmar
5 testified to we will have a record of
6 that.
7 MS. MCKNIGHT:
8 Sure are pardon Your Honor I was
9 trying to lay a foundation that he
10 understands what doctor palmar said and is
11 prepared to give testimony about it about
12 how hesitate analysis is consistent with
13 Dr. Palmer's.
14 THE COURT:
15 Ask the question add add and
16 Your Honor I'd like to further object I
17 don't believe Dr. Palmer testified to that
18 if counsel has an draft transcript an
19 official transcript that can show us and
20 can produce it then /AOEUPBL not sure
21 there's a good faith base to asking that
22 question.
23 THE COURT:
24 Okay it's a bench trial we are going
25 to have a record for the record that is

not the official court record whatever you sent this witness is not the official court record if you want to ask him about other witness ass testimony if it is not borne out in the record well then I guess that will settle his testimony on that point.

MS. MCKNIGHT:

Thank you, Your Honor pardon me I don't want to misunderstood what you said am I allowed to continue asking him about the testimony.

THE COURT:

Ask him specific questions whether he agrees with purported testimony or not and we will find out whether or not that was the testimony.

MS. MCKNIGHT:

Your Honor may I have just one minute to grab a copy of the testimony to make sure it's clear.

THE COURT:

Okay.

MS. MCKNIGHT:

Dr. Lewis do you I understand that

you reviewed testimony by Dr. Palmer in this case. Do you believe -- did you understand that your analysis in this case is consistent with what doctor palmar found on the point of whether CD2 and C D five could likely be drawn at below 50 percent BVAP and still elect black preferred candidates.

A. Yes.

Q. And just to be clear it was consistent in that both of those districts could be drawn at 50 percent below BVAP and perform; is that right?

A. Yes.

Q. Did you review any other expert testimony in this case add add same objection judge she needs to be more specific than this /STKPWR-FRPBLGTS let me be clear I don't want to tell you /TRAO try to do your case just state his opinions are and that could be?

MS. MCKNIGHT:

That's father Your Honor I'll move on.

THE COURT:

Okay. Just ask him his opinions and

1 then he can argue it.
2 MS. MCKNIGHT:
3 That's fair it's fair. Is it your
4 opinion Dr. Lewis that these districts can
5 perform at 50 percent below BVAP.
6 A. Based on what's presented in my
7 report and my reading of doctor palmar's report,
8 yes.
9 Q. Your Honor at this point I'd like to
10 admit into evidence Dr. Lewis's report ledge two?
11 THE COURT:
12 Any objection? Add add none, judge.
13 THE COURT:
14 Admitted.
15 MS. MCKNIGHT:
16 Thank you very much Your Honor.
17 THE COURT:
18 Cross? Add add.
19 THE ATTORNEY:
20 Q. John Adcock on behalf of the
21 Robertson plaintiffs I previously appeared but
22 making my appearance again since it's been a few
23 days?
24 THE COURT:
25 Okay.

THE ATTORNEY:

Q. Dr. Very quickly, in your report I want to go through what you were asked to do according to your report.

The first one is you were asked to calculate a fraction of voters in the 2020 presidential election who are identified as black, that's the first one, correct?

A. I yeah. Let me just -- I just want to make sure that we are always on the same page here and -- let's see.

Q. It's page 2, paragraph 4 I think you are looking for?

A. Yes. That's -- black in these illustrative districts each of these illustrative districts.

Q. And you are asked to estimate the support for black and white voters for the Biden Harris ticket?

A. Yes.

Q. And you are asked to estimate the support of black and white voters among Biden for all voters?

A. Yes.

Q. And you were asked to estimate the

support of black and white voters for Biden absent any crossover voting?

A. Yes.

Q. And nothing else?

A. Well, I -- I was also asked and maybe it doesn't appear directly in that paragraph, but it's one of the findings at the end to consider whether these districts would have performed less than 50 percent and so I also did that.

Q. Uh-huh (affirmatively). So I want to go through this again Dr. You were -- the first thing you were asked according to your report was to calculate the fraction of voters in the presidential election who were identified as black, correct?

A. Yes.

Q. And that's what you said in your report? That's what you said in your report?

A. That is what I said in the first sentence of the paragraph we are talking about, yes.

Q. That is what the intervenors asked you to do?

A. It is among the things they asked

plea to do yes.

Q. You were asked to estimate the support of vote for Biden yes?

A. Okay you were asked to estimate the support of black and white voters for all voters.

A. Yes.

Q. And asked to estimate the support of black and white supports provided absence any crossover voting?

A. Yes.

Q. And those four things involved plaintiffs illustrative districts for CD2 and C D five, correct?

A. Yes.

Q. Okay. And you were hired to do that by plaintiff -- by the intervene others, correct?

A. Yes.

Q. Okay. Now, you say in your report a complete analysis would require consideration of additional elections, correct?

A. Yes.

Q. And we just discussed you were only asked to analyze the 2020 presidential election, correct?

A. Yes.

Q. And the next sentence you state you did not consider additional elections due to time limitations, correct?

A. Yes.

Q. Now, you agree that evidence of one election does not give a complete picture about voting patterns within a district?

A. Yes.

Q. And you agree that voter turn out can differ across elections, correct?

A. Yes.

Q. Depending on the candidates?

A. It's potentially depending on many things depending on the weather depending on many things, yes.

Q. That candidates can be part of that?

A. Potentially the degree to which candidates effect turn out depends a lot on bar context but in principle there's some and in the political science literature there's some evidence that looking at H R effects turn out yes.

Q. Uh-huh (affirmatively) and the race of the candidate effects turn out?

A. It could it could effect turn out

1 but again, for example, the race of the
2 congressional candidate may not have a big effect
3 on the turn out in a -- in a presidential
4 election, for example, where people's turn out
5 decisions may be driven by the higher offices
6 being tested and not the lower office.
7 Q. But it could?
8 A. It's not impossible.
9 Q. Now, there are other elections you
10 could have looked at, correct?
11 A. Yes.
12 Q. And from 2015 to 2020, there were 15
13 statewide elections with a white and black
14 candidate, correct?
15 A. I am I am not aware of how many
16 elections during that period involved a black and
17 white candidate.
18 A. You're not aware of that. You were
19 not asked to do that analysis, correct.
20 A. Correct.
21 Q. You were not asked to look at that
22 data, correct?
23 A. No. Only insofar as perhaps some of
24 those elections that you mentioned are presented
25 in other expert reports such as that of doctor

1 palmar I was given to review.
2 Q. Not my question. You were not asked
3 to analyze those statewide elections, correct?
4 A. I was not asked to analyze them,
5 that is that's correct I apologize for
6 misunderstanding your question.
7 Q. So you didn't look at that?
8 A. That's correct.
9 Q. Now, we went through you table on
10 page 6 of your report. Can we pull that up. I
11 think it's exhibit number ledge underscore 02 L E
12 G underscore 02. And Dr. You recognize this,
13 correct?
14 A. Yes.
15 Q. This is your report in the case.
16 And this is page 6 of your report these are the
17 tables you testified about earlier, correct?
18 A. Yes.
19 Q. Okay. Now, I just want to talk
20 about the final column, the one on the far right
21 of the screen, correct? You see where I'm
22 saying?
23 A. You want to talk about the far the
24 far right column you just highlighted.
25 Q. Yes?

A. Yes.
Q. It's entitled without white crossover votes you see that?
A. Yes.
Q. Okay. Now, that shows I think you testified on direct that shows what the share of the vote for the Biden Harris ticket would have been without any crossover votes whatsoever without any white crossover votes?
A. All else equal yes.
Q. Yes with everything else remaining constant is that a yes?
A. Yes.
Q. Including -- scratch that. Now my question is can you testify -- have you ever seen an election with no white crossover voting?
A. With 0 white crossover voting, I'm I'm not -- I'm not aware of any such - election I've never applied anywhere where -- I have applied E and I places where the estimate was 0, yes.
Q. But you've never seen an election with no white crossover voting that's my question.
A. Well, I can't directly observe

1 whether there's white crossover voting or -- or
2 not, so I can only rely on the estimates. There
3 are instances in which the crossover -- where the
4 fractions of the vote by each /ESDZ nick group
5 are estimated to be 100 percent or 0 percent for
6 a particular candidate in a particular instance,
7 although that may not actually reveal the
8 question, the answer to the question you were
9 asking which was was there, in fact, not a single
10 white crossover vote.
11 Q. But that's not the case in any
12 election here?
13 A. No. The estimates are substantially
14 higher than that. That's fair.
15 Q. Now, you were retained by the
16 legislative intervenors in this case?
17 A. I believe so, yes.
18 Q. Okay. When were you first contacted
19 by them to work on this case?
20 A. In April of this year, I believe.
21 Q. Do you know when in April?
22 A. I think that we may have had a
23 discussion early in the month and that it was
24 only later that there was an actual specific
25 discussion of something that -- that I might

actually do.

Q. Okay. And you turned in your report?

A. I don't recall specifically the days.

Q. Sure. And you turned in your report on April 29th, correct?

A. I -- I don't recall, but -- I -- if that sounds possible to me, yes. I see that date on the report so I assume that's correct.

Q. Okay. Now, were you contacted by anyone at Baker Hostetler about the 2020 redistricting cycle in Louisiana not involving this litigation?

A. I don't believe so. I -- I've worked with them on other things and identify had maybe general conversations about other things they are working on but I haven't had any specific conversation about Louisiana and perhaps being aware they were involved.

Q. That's my question let me restate it. Have you ever been contacted outside of this litigation have you ever been contacted for advice, information, anything about the 2020 redistricting cycle in Louisiana?

A. I don't believe so.
Q. Does that include you've never been contacted by anyone at the legislature about that?
A. Oh certainly not, no.
Q. Okay. And just to go over this. You did not submit a rebuttal report, correct?
A. No, I did not.
Q. Okay. You did not submit a supplemental report?
A. No, I only submitted the one report that we are looking at right now.
Q. You did not submit supplemental reports?
A. No I did not.
Q. And you were not asked to do that, correct?
A. Correct.
Q. So you didn't do it?
A. Correct.
Q. Now, you're being paid by the state in this case, correct?
A. I believe that's correct.
Q. You're not sure?
A. I -- I assume that that's correct.

1 I have not as yet been paid so I'm not entirely
2 insure whose name will be on the check.
3 Q. The state retained you as an expert?
4 A. I -- you know my indication is
5 created was established by the plaintiffs
6 attorneys. I assume that I'm indirectly at least
7 working for the state but I don't understand the
8 deal details of that engagement.
9 Q. Perhaps it's the legislature?
10 A. Perhaps.
11 Q. You're not sure and the state's
12 paying you or the legislature is paying you $550
13 an hour?
14 A. I -- I am billing $550 an hour
15 regardless of whose paying.
16 Q. And can you estimate for the court
17 how many hours you've spent on this case?
18 A. Less than 20.
19 Q. Less than 20. No more questions,
20 judge.
21 THE COURT:
22 Any redirect?
23 MS. MCKNIGHT:
24 No redirect Your Honor.
25 THE COURT:

Thank you Dr. Lewis we thank you for your assistant.

THE WITNESS:

Thank you, Your Honor.

THE COURT:

You have another witness?

Your Honor my name is Erica /PRAOT /AOE for legislature intervenors in this case.

THE COURT:

Last name. /PROUT /PROUT PR O U T Y.

THE COURT:

You have a witness /PROUT /PROUT Dr. M/V hood the third.

THE COURT:

Okay.

DR. JOHN ALFORD,

WITNESS ADDRESS, WITNESS CITY, LOUISIANA WITNESS ZIP, after having first been duly sworn by the above-mentioned court reporter, did testify as follows:

THE COURT:

Ms. /PROUT /AOE you represent the attorney general intervenes or the legislature intervenes /PROUT /PROT the

1 legislative intervenes are on.
2 THE COURT:
3 Please proceed.
4 THE ATTORNEY:
5 Q. Your Honor we would quantitative
6 political analysis and election administration?
7 THE COURT:
8 Is there a dispute or is there a
9 stipulation.
10 THE COURT:
11 Ma'am the respondent apologies
12 Victoria /WAPBG /TKPWERs.
13 THE COURT:
14 Last name.
15 THE ATTORNEY:
16 Q. Want /TKPWERs W A N G EIR?
17 THE COURT:
18 Okay. Political science
19 quantitative.
20 THE ATTORNEY:
21 Q. Quantity /TP EUF political analysis
22 and election administration?
23 THE COURT:
24 Okay. Dr. Hood will be permitted to
25 give opinion testimony in those fields.

/PROUT /PROUT good afternoon Dr. Hood.

A. Good afternoon.

Q. Could you please state your name for the record?

A. M/V hood the third.

Q. And were you retained as an expert witness in this case on behalf of legislative intervenors?

A. Yes.

Q. And were you asked to prepare reports in this case on behalf of legislative intervenors?

A. Yes.

Q. Your Honor may I approach the witness to provide him a copies of of his reports in this case?

THE COURT:

You may. /PROUT /PROUT.

THE ATTORNEY:

Q. Can we also bring up ledge one? Do you recall this document Dr. Hood?

A. Yes.

Q. What is it?

A. It's a copy of my initial report in this matter.

Q. And if you turn to page 10?
A. (Complied.)
Q. Is this an accurate copy of your CV?
A. Yes, it is.
Q. And it's dated April 2022 but it's a current copy of your CV?
A. No changes since then.
Q. And it's pages ten to 25 in this document; is that right?
A. Yes.
Q. Okay. And did you also prepare a supplemental report in this case?
A. I did.
Q. Okay. Can we bring up ledge 78? Trial tech complied?
Q. Do you recall this document, Doctor hood?
A. Yes.
Q. And what is it?
A. A supplemental report I produced for this matter.
Q. And we will get into more detail in a moment, but at a high level can you tell the court what you were asked to do in this case?
A. I was asked to investigate two

1 questions: One dealing with district con grew
2 /TAOE between the benchmark plan or the plan that
3 was introduced in -- or that was used in -- from
4 2011 an and the enacted plan that was just
5 adopted in 2022 along with some other plans that
6 were introduced by the plaintiffs so I was asked
7 to do a district con grew /TAOE examination and I
8 also did an examination of district racial
9 composition between the bench mark being enacted
10 and these plaintiff produced plans.
11 Q. And in your supplemental report, did
12 you perform the exact same types of analyses that
13 you did are in your initial report just on some
14 additional plans?
15 A. Yes.
16 Q. Okay. Can you please describe your
17 educational background for the court?
18 A. I have a three degrees in political
19 science a B S from /TERBGS /TERBGS A M an M A
20 from Baylor university and a BA from Texas tech.
21 Q. And where are you currently
22 employed?
23 A. I am a professor of political
24 science at the university of Georgia where I've
25 been since 1999.

Q. And what department do you have an appoint in?

A. The department of political science and I also serve as the the director of the /SPAOE /AEU survey research center for the past five years /SPAOE /AEU stands for school of public and international affairs.

Q. I apologize for almost interrupting you. Are you a tenured professor?

A. Yes.

Q. What types of courses have you taught at university of Georgia?

A. Over the years I have taught a variety of courts in American politics and policy most recently /HRAOE every spring I teach a course in southern politics that has a heavy dosage of voting rights and also redistricting with than it. I've taught that course at both the undergraduate and graduate level. I've taught graduate courses also in the under the topic of election administration most of my other time at the university currently is directed at managing the survey research center, so --

Q. And what are your current areas of research and publication?

A. I have two current areas again within the larger umbrella of American politics and policy and those are southern politics and election administration.

Q. Does this include issues relating to redistricting?

A. Yes.

Q. Have you ever received research grants to study election administration issues?

A. I have. I have received external grant funding from the future trust the national science foundation and the center for election integrity and research or invasion ain't research to study election administration issues.

Q. Have you published any peer-reviewed books and journal articles?

A. Yes. I've published two university press books, one is just about to come out I mean literally in if the summer so it's complete. And I've published somewhere north of peer-reviewed journal articles at this point.

Q. And are all of these included in your CV?

A. Yes they are all listed in my CV.

Q. Due serve on the editorial boards of

any publications?

A. Yes currently serve on the editorial boards for social science quarterly and election law journal, election law journal is a journal that specializes in election administration.

Q. Do you regularly use and analyze census data in your academic work?

A. Yes.

Q. And do you use and analyze census data in the courses that you teach?

A. Yes.

Q. Have you ever testified as an expert witness before?

A. I have.

Q. Does that include in any redistricting cases?

A. Yes.

Q. How many cases would you say you have testified as an expert witness in?

A. I don't have an exact count. More than 25.

Q. And most recently were you qualified and found to be a credible expert witness by a three judge panel in a redistricting case in Alabama?

A. Yes.
Q. And that was /KAS /TER versus mill began?
A. Correct.
Q. And I think we heard plaintiffs witness Dr. Lichtman joke the other day and I'm paraphrasing something along the lines when you are side looses you are found not to be credible have there been some /STPHASs reports given less weight to your testimony?
A. There have been yes.
Q. And in those cases did any courts find that you did not correctly conduct the types of analyses that you've performed in this case?
A. Not to my knowledge.
Q. And before we get into your reports I want to ask a few more questions were you asked to review the criteria that the Louisiana legislature used in 2022 redistricting process?
A. No I was not.
Q. Have you ever reviewed that criteria?
A. No, I have not.
Q. And are you offering any opinions in this case about what redistricting criteria

1 should be used by legislatures?
2 A. No, I'm not.
3 Q. So let's turn to your initial
4 report. This is ledge one we can go to page 4.
5 So let's discuss your district con grew /TAOE
6 analysis first how did you perform your district
7 con grew /TAOE here?
8 A. So there's two parts though this
9 analysis there's what's called a core retention
10 analysis and I also make use of a met trick
11 called the geographic index so look at core
12 retention looks at population.
13 Q. And we will discuss it in more
14 detail in a moment but what did your district
15 /KOPBG /KOPBG analysis correct?
16 A. In a nutshell at a very high level,
17 the enacted plan is highly congruent with the
18 benchmark plan and the plaintiff introduced plans
19 are less congruent than the enacted plan as
20 compared to the benchmark plan.
21 Q. I apologize Dr. Hood if you already
22 explained that but when you say the benchmark
23 plan had what do you mean?
24 A. So there I'm talking about the 2011
25 plan.

Q. And the enacted plan is which plan?
A. The 2022 plan.
Q. So let's discuss your core retention analysis first what does core retention mean?
A. So core retention looks at how much of a present district is comprised much its former self if terms of population so the measure would range from 0 to 100 percent so if it's say 100 percent it would mean that the current district configuration wholly contains population that was from the previous district if it's 0 that means there's no overlap in population from the current district to the previous district. So as you get closer to a hundred obviously there's no congruent /TAOE in the district terms that was carried over to the redistricting cycle check check.
Q. Does table one contain the results of your core retention analysis?
A. Yes.
Q. And what does table one show as to the core retention score of the enacted plan?
A. Well, maybe it's easiest to look at the row where the mean averages are housed. It's 96.4 percent for the enacted plan on average a

1 district in the enacted plan had a core retention
2 of 69.4 percent so fairly high close to a
3 hundred.
4 Q. And overall what does table one show
5 as to the core retention score as the predicted
6 proposed plans that you analyzed in your initial
7 report?
8 A. Well the core retention score force
9 the plaintiff plans are lower than those for the
10 enacted plan so again if it you look at the mean
11 Row 67.1, 69 point, 73.1 or 66.6 are the mean
12 average core retention score force the plaintiff
13 introduced plans in this particular table again
14 as compared to 96.4 percent for the enacted plan.
15 Q. And what does table one show as to
16 the core retention scores when you look district
17 by district?
18 A. Well, you can compare any districts
19 say starting with District one through District
20 six and if you look at the core retention score
21 for District one and compare it to the core
22 retention score for the corresponding
23 District one in any of the plaintiff introduced
24 plans, the core retention score for the enacted
25 plan for that district is higher than for the

1 plaintiff introduced plans.
2 Q. And what did you conclude as to the
3 ability of constituents to return their previous
4 incumbents to office if they so chose in the plan
5 case thank that you analysesed?
6 A. Well the analysis for that to occur
7 to vote an incumbent in or out for the
8 constituent Social Security much higher than the
9 enacted plan than the plaintiff introduced plans.
10 Q. In addition to to your core
11 retention analysis I heard I did say you also
12 performed a simulate at index analysis what does
13 the simulate index measure?
14 A. Well again it's measuring congruent
15 /TAOE here I'm using it to measure geographic con
16 /TKPWRAOUPT so not population but literally
17 geography how much of the geographic of a present
18 district was shared with a former or the previous
19 district where it was occupied and so this is a
20 formula that's from the academic literature the
21 citation there is footnote five for this. It is
22 from a published peer-reviewed press academic
23 book and again here I'm looking at geographic.
24 Again the score would range from 0 to 100 percent
25 so if it's 100 percent, then the district will be

1 comprised wholly of geography from the previous
2 district. If it's 0 there's literally no
3 geographic overlap between those districts
4 geographically speaking.
5 Q. In a formula that you've used is on
6 ledge one -5 in your report; is that right?
7 A. Correct.
8 Q. So does Table 2 on page ledge one -6
9 contain the results of your simulate art index
10 analysis?
11 A. Yes.
12 Q. And overall what does Table 2 show
13 as to the share of the geography between the
14 enacted plan and plaintiffs plans and the bench
15 mark plan?
16 A. Well again if we look at the mean
17 score for the enacted plan in terms of the
18 simulate art index it's 88.3 so fairly high
19 fairly high geographic congruent /SWEPB the
20 interest /-PLT it I do look at plaintiffs
21 produced plans in this table similarly the index
22 mean is lower 44 percent, 44 percent, 46 percent
23 or 41 percent for instance. So there's less
24 geographic con grew /TAOE between the plaintiff
25 produced plans and the benchmark plan as compared

1 to the enacted plan and the benchmark plan.
2 Q. And what did the analysis show when
3 you look district by district?
4 A. Again, it's you can look at any one
5 of these districts and compare the enacted plans
6 similarly to the index score to the similar
7 simulate /SPWEBS score for the other plaintiff
8 introduced plans and it's higher for the enacted
9 plan than any of the other plaintiff introduced
10 plans.
11 Q. I apologize Dr. I what plans did you
12 analyze in this initial report?
13 A. In this initial report again the
14 enacted plan, the Robertson plan, the Edward
15 Galmon one two and three.
16 Q. So let's turn to your supplemental
17 report. It's ledge 78. It's at tab two of your
18 binder. If we go to page 2. What plans did you
19 analyze in this report?
20 A. In this report, I analyzed Robertson
21 2A, Edward Galmon four and an am cuss plan that
22 was introduced by some professors at LSU and
23 Tulane.
24 Q. Does Table 1 contain the results of
25 your core retention analysis for these three

additional plans compared to the enacted plan or the benchmark plan?

A. Yes.

Q. And overall what did your analysis conclude here?

A. Well there is a column for the enacted plan just for reference it's saying the figures are the same as the enacted plan calculations referenced in the original report. But again, so it's 96.4 percent core retention for the enacted plan as compared to lower core retention levels on average, 68.8, 69.7 or 68.3 for the other plans that are analyzed in the table.

Q. Okay. I want to turn to page 3. What does Table 2 contain?

A. This is the similar /TART index the geographic simulate art index and again just for referencing the enacted -- the calculation is for the enacted plan are listed there in the second column. So again the mean for the enacted plan on the simulate art index is 88.3 if you compare that to lower mean scores for Robertson 2A at 42.7, Edward Galmon four at 44.4 with the LSU Tulane plan at 44.6.

Q. If we can turn back to your initial report. If you turn to page 6 did you also compare the percentage of the black population within each district for several plans?

A. I did.

Q. And is in your district rational composition analysis?

A. Yes in section four.

Q. And how did you measure the percentage of the black population in each district?

A. I used a formula that's made available by the Department of Justice the specific formula is there on page 4 of this report along with documentation, but basically someone is considered black if they are non Hispanic single race black or non Hispanic single race white plus black so those two categories added together divided by the total population or the total voting age population depending on what calculation's being made.

Q. Is this what's also referred as DOJ black?

A. That's the shorthand some people use, yes.

Q. Now, are you offering any opinions in this case about whether the DOJ definition of black or some other definition should be used by courts?

A. No.

Q. And /KWHAOEU is it helpful to have one metric of the percentage of the black population in districts in this case?

A. Well there are different ways. Obviously you can measure percent black in a districting plan and so I think it's useful or helpful to consistently use a measure across a range of redistricting plans and so you have the same calculation for the enacted plan and the plaintiff introduced plans and even the am cuss plans so they can all be compared side by side.

Q. In using the DOJ definition of black what was the total black population in Louisiana in 2010?

A. 32.2 percent.

Q. Using that same DOJ definition of black what was the total black population in Louisiana in 2020?

A. 32.1 percent.

Q. And would that same definition, what

was the black loading each population in Louisiana in 2010?

A. 30.0 percent.

Q. And using that same definition what was the black voting age population in 2020?

A. 30.4 percent.

Q. And what did you conclude about any trends in the black population over the last decade in Louisiana?

A. Well, from these numbers it's fairly stationary or static.

Q. If you turn to page 7 in your report. What does Table 3 contain?

A. These are the Department of Justice again using the Department of Justice black formula for total population for both the bench mark and the enacted plans and then these plaintiff introduced plans. In here I do want to state for the benchmark plan in this particular table, it's the benchmark plan using 2020 census data just so there's no confusion confusion there.

Q. If we turn to page 8 what does Table 4 contain?

A. These are the same calculations made

using the DOJ formula except this time this is voting age population comparisons.

Q. And what does Table 4 show us to the black voting population in the benchmark and the enacted plans?

A. It shows us that there's one majority black voting population district at 57.0 percent in both the benchmark and the enacted plans.

Q. And what does Table 4 show as to the black voting age population in plaintiffs plans?

A. In this particular table, it shows us that for instance under the Robertson plan, District five would be a majority black voting age population district at 51.2 percent and under the Edward Galmon three plan District five is also majority black voting age population district at 58.8 percent under the Edward Galmon one and two plans in this table, there are no majority black voting age population districts using this metric.

Q. Is Congressional District two a majority black district in any of plaintiffs proposed plans using the DOJ definition of black?

A. No.

Q. Okay. What does Table 5 show as to the voting age black total population in District two in 2011 with 2010 census data?

A. So this is just for reference. This is the benchmark plan in 2011 using the 2010 census and so under that drawing District two was a majority voting age black -- excuse me a majority black voting age population district at 58.7 percent BVAP.

Q. And what did you find when comparing the black voting age population in CD2 between 2010 and 2020?

A. The black voting age population in that district drops one .7.

Q. We will turn back to your supplemental report again. It's ledge 78 we will go to page 5.

And what does Table 4 contain?

A. Similar comparisons these are the black voting age population comparisons for these different plans. The enacted plan again Robertson 2A Edward Galmon four and the LSU Tulane plan.

Q. And so what does Table 4 show us to the black voting age population of the districts

in the Robertson 2A Edward Galmon four and the LSU Tulane am cuss plan?

A. Okay so in the Robertson 2A plan, for example, there are two majority black voting age population districts using this metric one at 50.02 percent and one at 51.1 percent and in the Edward Galmon four and the LSU Tulane plans there are no majority black voting age population districts.

Q. Thank you Dr. Hood. Did you review any of the reports by plaintiffs experts in this case?

A. No. I reviewed -- the only thing I reviewed in terms of reports were I guess some rebuttal reports and only the parts that pertained to the report I had submitted originally in this matter and I think those were rebuttal reports that were submitted by Mr. Cooper and Mr. Fairfax.

Q. Okay. So other than those you did not review any other reports?

A. No.

Q. And you only reviewed the portions of those reports that responded to your initial report?

A. Correct.
Q. In his May 2nd supplemental report, PR 86, we don't need to bring it up but did Dr. Fairfax dispute your core retention or simulate art index calculations?
A. No.
Q. Did you review Dr. Fairfax's responsibility to your calculation of DOJ black?
A. Yes.
Q. Do you have a response to that?
A. Well, he -- he questions my use of the formula so there's -- there's an extension to the -- the Department of Justice formula. It's my understanding the extension continued to count individuals who are in this case, for example, single race black plus another single race outside of being white. You would only continue to do that if it was an enforcement action so I didn't make use of that part of the formula so he disagreed with me about that.
Q. Did you look at what the impact of using that second part of the formula would have been?
A. Well, took a quick peak at it from what I saw, again there are few people that fall

1 into these other categories which would be black
2 plus native American or black plus /AEURB your or
3 black plus other or black plus had a way an or
4 pacific island. There's -- there's about between
5 five and 6,000 people that would fall statewide
6 that would fall into those other racial
7 categories.
8 Q. And so did the percentage of the
9 black population using that additional metric
10 increase significantly when you looked at it?
11 A. Well, that would add something like
12 about two tenths of a percentage point statewide.
13 Q. And in his May 2nd, 2022, rebuttal
14 report. It's GX 29 we don't need to bring it up
15 but did Mr. Cooper dispute any of the
16 calculations in your report?
17 A. No.
18 Q. And, in fact, did Mr. Cooper
19 specifically say in his report that he did not
20 disagree with your calculations?
21 A. Yes, that's correct.
22 Q. Pour the pour the Your Honor at this
23 time we move for the admission of doctor hood
24 /AESZ report they are ledge 71 his initial report
25 and ledge 78 his supplemental report /WAPBG

/WAPBG no objection as admitted /PROUT /PAOUT and /WHAO EUL we are here Your Honor we have offer for /TKPWEURBGZ we just Dr. Hood's testimony about how it would be useful to have a side by side comparison of all the metrics and ought plaintiffs in this days we have prepared and ledge 79 an permitted by federal rule of evidence 1,006 we prepared a chart that proves the content of /HRUPL us writings that Complaintant's Exhibit than /SRAOEPBLT /HRAOE examined in court in this case it's the census data from the 2010, 2020 census for the all the plans that have been offered and /PR-FPZing discussed in this case we have made this document and it's sources available to plaintiffs counsel. The sources are noted in the chart. We have provided this document initially last week as a proposed joint stipulated exhibit. We provided an updated version on Monday marked it as an exhibit and we would move for its admission at this time?

THE COURT:

Is there an objection as to her 1,009 summary? /WAPBG /WAPBG can we just see the exhibit? /PROUT /PROUT oh sure. I have a copy. Your Honor I would offer

that we provided this over a week ago and
we have not heard from plaintiffs counsel
if there's an issues with its accuracy.
THE COURT:
Well that may be as it were but let
them take a look at it I mean we have all
been working pretty hard here /PROUT
/PROUT I understand Your Honor.
THE COURT:
I think the rule by the court are
the headings if this is a compilation of
census data that seems like it would fit
the definition of a charter summary of
1,009 I guess I'd ask you-all to take a
look at the headings and see if that -- if
those comport with census headings /PROUT
/PROUT and there is a chart towards the
end of the exhibit that explains the
meaning of the headings and then also has
the sources.
THE COURT:
I tell you what rather than I
realize you gave it to them I realize they
haven't a chance to look at it the court
are rule after you-all have had a chance

to look at it and you can workout any discrepancies how about that /WAPBG /WAPBG okay.

THE COURT:

And the court will rule on the /TKPWHEURBGZ after the plaintiffs' had looked at the findings /PROUT /PROUT Thank you, Your Honor. /WAPBG /WAPBG Good afternoon, Doctor. Hood.

A. Good afternoon.

Q. I'd like to talk to you about your work in Louisiana leading up to this hearing when did you start working on congressional redistricting in Louisiana?

A. On this matter?

Q. In general.

A. Oh well this is the only matter I'm involved with in Louisiana.

Q. And when did your work on this matter begin?

A. Late April from what I recall.

Q. So you were never asked to perform arraign analysis on any of the bills presented during the redistricting session that provided for two black majority districts, correct?

A. That's correct.
Q. Who contacted you to become involved in this matter?
A. The defendant intervenors the legislative defendant intervenors.
Q. Do you know who exactly?
A. Well, I was contacted by Baker Hostetler law firm on their behalf I guess.
Q. So have you ever spoken with the Louisiana legislator about the enacted map?
A. No I have not.
Q. How about any of the alternative maps?
A. I have not spoken to any legislators in Louisiana.
Q. What is your hourly rate in this litigation?
A. $400 an hour.
Q. And about how many hours have you billed thus far?
A. 0.
Q. How many hours have you worked on this matter thus far?
A. I haven't compiled an invoice at this point so.

Q. Do you have a general estimation?
A. Well, it was only an estimation ten, ten to 12.
Q. Dr. Hood is your testimony rejected or found not credible or helpful by courts in the past?
A. Court the have /STKPW EUFPB my testimony varying degrees of weight over the years.
Q. On voting rights cases specifically?
A. Well, those are the only kind of cases I testify in.
Q. You testified in a case captioned north east Ohio coalition for the homeless few house correct?
A. That's correct and that case was about provisional and absentee voting in Ohio correct.
A. Correct.
Q. The court said your testimony was relative to the issues before the court, correct?
A. From what I recall, yeah.
Q. And that your report reflected methodological errors that undermined your conclusions?

A. From what I recall, again that's that's a different analysis from what I'm doing in this particular case.

Q. Okay. And you testified in a matter called B CB P Perry, correct?

A. Correct.

Q. And that was a case about voter ID the in Texas right?

A. Correct.

Q. And your the court found your analysis /EUPB convince ass gave a little weight correct?

A. Correct it's not the same analysis I'm doing in in case though.

Q. Okay. So let's shift to the analysis you are doing here regarding core retention can a states desire to preserve the core of prior districts relieve it from its obligations to comply with the Voting Rights Act?

A. Does -- does -- I mean it does does core retention trump the Voting Rights Act is that what you're asking.

Q. Certainly.

A. Okay. Well, again, that's a legal matter. But no as a general matter the general

principle core retention does not trump the Voting Rights Act although I will say that there's some caveats you know if you are drawing a second two relief districts you can't ignore completely ignore traditional, redistricting criteria like compactness for instance.

Q. You testified earlier that you're not aware of what the prioritized redistricting principles for this State of Louisiana work, correct?

A. That's correct. That was a general statement I just made.

Q. But you did not?

A. That's not related to this particular state at this particular time I'm just speaking generally.

Q. Certainly but you did not review any rule that B. I let literature that they were going to apply during this redistricting process?

A. As I stated I did not.

Q. Because you don't know those principals principles so you don't know if the illustrative plans here comply with those principals principles, correct?

A. /TKPWREPB I didn't review those

1 principals principles so I don't know the
2 answer to that question.
3 Q. Right and you're offering no opinion
4 as to the compliance of plaintiffs illustrative
5 maps here with the principles that were outlined
6 by the Louisiana legislature for this
7 redistricting process correct?
8 A. That is correct you asked me a
9 general question previously and I answered it,
10 so.
11 Q. Certainly Dr. Hood I'd like to pull
12 up Table 4 on page 6 of your report. That's
13 exhibit ledge one Matthew can you pull that up on
14 the screen? I believe it's page 8 of the PDF
15 document I've shared. Trial tech complied?
16 Q. Thank you. Dr. Hood you recognize
17 this table, correct?
18 A. Correct.
19 Q. And the third column here where it
20 says enacted, that shows the black voting age
21 population in each of the six districts in the
22 enacted plan, correct?
23 A. Correct.
24 Q. And what was the percentage of the
25 black voting age population in the district with

the second highest black voting age population?

A. In -- for the enacted plan.

Q. Correct.

A. 33.1, District four.

Q. And District five, that follows closely behind correct with 32.3?

A. Correct.

Q. And that's not based off any part black, correct?

A. That's based off of the DOJ formulation that I discussed previously.

Q. Got you.

A. So again it's -- non Hispanic black plus non Hispanic black plus white those two categories.

Q. You would agree that while factoring other redistricting principles if a mapmaker's set up to draw a second majority black district at minimum that district about -- at minimum about 17 or so percent of one of the non majority black districts like those here must be displaced in order to make way for enough black voters to form a majority in that second district /PROURT /PROUT objection Your Honor this is outside the scope that are hood as offered in this case?

Q. This is specifically about the population that would have to shift in order to create a second majority /TKPREUBGT the core population of an existing district /PROUT /PROUT she's asking hypotheticals about maps that he did not propose or draw in this case and about redistricting prescribe principals principles that he has not testified about?

THE COURT:

Well, his principal principle testimony has been about core retention and as I understand the question that's what you are getting at can you rephrase the question just so the court understands exactly what you're asking.

THE ATTORNEY:

Q. Certainly. So you would agree that if a mapmaker is trying to create a second majority black district using these districts, for example, he would have to take some of the percentage in a non majority black district we could say District four, District five here, and you would have to take some of that population and shift it around to create a second black majority district correct /PROUT /PROUT

1 Your Honor I apologize I would object again
2 Dr. Hood hadn't offered any testimony about how
3 to create a second black majority district he's
4 just reporting what the core retention figures
5 are that the plaintiffs proposed in this case and
6 not what would have to be done to create a second
7 district?
8 THE COURT:
9 Counsel.
10 THE ATTORNEY:
11 Q. Just?
12 THE COURT:
13 No address the objection /WAPBG
14 /WAPBG certainly I'm specifically just
15 asking about the statistical manipulation
16 here we don't even have to say they are
17 districts, for example, what type of map
18 would you have to do to shift these number
19 to get two of those districts or whatever
20 you wanted to call them to a 50 percent
21 threshold.
22 THE COURT:
23 Objection sustained. /WAPBG /WAPBG.
24 THE ATTORNEY:
25 Q. Are we able to pull up that same

exhibit once more?

THE COURT:

Yeah.

THE ATTORNEY:

Q. Thank you.

THE COURT:

It's part of his report.

THE ATTORNEY:

Q. Dr. Hood, here you've mentioned that District four and District five in the enacted plans have populations just over 30 percent, correct?

A. That's correct.

Q. And how -- in all of -- how -- what percentage would have to increase 33.1 percent to reach a 50 percent threshold /PROUT /PROUT Your Honor same objection.

THE COURT:

Sustained. Yeah. I mean he wasn't -- he's been asked to give opinions about the retention in the enacted plan compared to the benchmark plan and the illustrative plans compared to benchmark plan not what -- I don't need to explain it objection sustained.

THE ATTORNEY:

Q. Dr. Hood, let's look at something different. Roughly what is the difference between in this chart right here District 5's enacted the enacted column District five is at what percentage point?

A. In the enacted plan?

Q. Correct.

A. 32.3 percent BVAP.

Q. And how does that compare to the Robertson plaintiffs plan?

A. It's lower.

Q. By about how much?

A. 19 percent.

Q. And how about in the Edward Galmon three plan?

A. What about it specifically?

Q. What is the difference between the percentage in District five and the enacted plan versus the Edward Galmon three plan?

A. About 19 approximately.

Q. 19 percent with the DOJ black metric, correct?

A. Yes.

Q. In core -- if you were to change any

of the numbers in the enacted plan shifting one percentage here or there in any of those statistics in the enacted plan for each one of the districts would that have a /R EUPL effect on any of the other districts is /PROUT /PROUT Your Honor same objection?

THE COURT:

I'll allow it we don't need an expert to tell us that go ahead answer the question.

THE WITNESS:

Yes /WAPBG /WAPBG.

THE ATTORNEY:

Q. And so solely on your opinion of core retention you have not looked at any of the other redistricting principles and state no opinions on what /KPHREUPLGZ implications those principals principles would have factors those scores correct?

A. Correct my opinion are on the matter are housed in these two opinion reports presented in the court today /WAPBG /WAPBG no redirect.

THE COURT:

Any other questions /PROUT /PROUT no Your Honor.

THE COURT:

Okay. It's five okay. How much is left folks? Let's talk about that.

MR. STRACH:

Your Honor, Phil Strach. We have two witnesses left. The one that's here this afternoon, the direct would be at least 30 minutes and then we have one witness after that, so we should be able to do -- we can -- if we come back tomorrow morning, we should be able to wrap up pretty early in the morning.

THE COURT:

All right. So if you think off the record. You want to start a little early tomorrow morning folks?

MR. STRACH:

That's fine. 9:00 o'clock?

THE COURT:

9:00 o'clock works?

MR. STRACH:

Yes.

THE COURT:

All right. Hearing no objection, we will break for the day and we will

reconvene at 9:00 a.m.

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF LOUISIANA

3

4 PRESS ROBINSON, et al, CASE NO.
Plaintiffs,
5 3:22-cv-00211-SDD-SDJ
v
6
KYLE ARDOIN, in his
7 official capacity as c/w
Secretary of State for
8 Louisiana,
Defendant.
9 _____
EDWARD GALMON, SR., et
10 al, CASE NO.
Plaintiffs,
11 3:22-cv-00214-SDD-SDJ
v
12
R. KYLE ARDOIN, in his
13 official capacity as
Louisiana Secretary of
14 State,
Defendant.
15

16 PROCEEDINGS

17 INJUNCTION HEARING

18 Held on Friday, May 13, 2022

19 Before The

20 HONORABLE SHELLY DICK

21 Judge Presiding

22 Baton Rouge, Louisiana

23

24 REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
25 CERTIFIED COURT REPORTER

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25 PHILLIP M. GORDON, ESQUIRE

1 I N D E X

2

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P R O C E E D I N G S

THE COURT:

Okay. Good morning, everyone. You can be seated. Okay. I guess maybe we can find out where we are on the clock. I don't think it's going to be an issue. Are we fine? So we can dismiss the clock in the court and the defense may call their next witness.

MR. GORDON:

Thank you, Your Honor. This is Phil Gordon for the State of Louisiana as intervenors. The state would like to call Dr. Alan Murray.

ALAN MURRAY Ph.D,

after having first been duly sworn by the above-mentioned Court Reporter did testify as follows:

MR. GORDON:

First, Your Honor, as it's been a practice, I'd like to receive a stipulation as to the witness's expertise. We would like to tender Dr. Murray in demographic analysis, spatial analytics as it relates to race, and statistics.

MR. NAIFEH:

No objection.

THE COURT:

All right. Mr. Murray will be allowed to give testimony on demographic -- what was it, demographic what?

MR. GORDON:

Analysis.

THE COURT:

Spatial analytics as it relates to race and the third thing was?

MR. GORDON:

Statistics.

THE COURT:

Statistics. All right. You may proceed.

MR. GORDON:

Your Honor, may I approach the witness?

THE COURT:

You may.

THE DEPUTY:

Would you just state and spell your name for the record?

THE WITNESS:

My name is Alan Murray, A-L-A-N, M-U-R-R-A-Y.

DIRECT EXAMINATION BY MR. GORDON:

Q. Thank you, Dr. Murray. Where are you currently employed?

A. University of California, Santa Barbara.

Q. And what is your title at the university of --

A. I'm a professor in the field of geography.

Q. And is that a tenured position?

A. Yes.

Q. What degrees do you hold?

A. I have a bachelor's in mathematics, a masters in probability and statistics and a Ph.D in geography.

Q. And how long -- approximately how long have you been a professor?

A. 25 years, 27 years.

Q. And what classes do you teach?

A. I teach classes in spatial statistics; geographic information systems, GIS; and spatial optimization location modelling.

Q. And have you ever testified as an

1 expert witness in a case before?
2 A. Yes, I have.
3 Q. And in what -- in what capacity did
4 you testify?
5 A. I provided expert testimony during a
6 deposition.
7 Q. And so have you ever testified at a
8 trial?
9 A. No.
10 Q. So this is your first time?
11 A. Yes.
12 Q. Approximately how many publications
13 do you have?
14 A. Approximately 300.
15 Q. And are those publications relevant
16 to your area of expertise?
17 A. Yes.
18 Q. And about how many times has your
19 research been cited?
20 A. 17,000.
21 Q. And are both of those in various
22 peer-reviewed journals?
23 A. Yes.
24 Q. Okay. Moving more to the work that
25 you did in this case, Dr. Murray, how many

1 reports did you provide?
2 A. One.
3 Q. And what sources did you analyze in
4 formulating the opinions in your report?
5 A. I looked at a number of
6 redistricting studies, some academic literature
7 in redistricting.
8 Q. And what data did you use to
9 formulate opinions in your case, in this case?
10 A. I used U.S. Census block level data.
11 Q. And are you responding to any
12 specific plaintiffs' report and with your report?
13 A. No.
14 Q. Did you review any of the other
15 plaintiffs' expert reports?
16 A. No.
17 Q. And I guess it goes without saying,
18 but in any way did you respond to any specific
19 plaintiffs' experts reports in your report in
20 this case?
21 A. No, I did not.
22 Q. What were you asked to do in this
23 case?
24 A. I was asked to look at the spatial
25 distributions of black voting age population and

1 white voting age population in the State of
2 Louisiana.
3 Q. And who reached out to you about
4 doing work in this case?
5 A. Jason Torchinsky.
6 Q. And how much per hour were you paid
7 for your work related to this case?
8 A. 250.
9 Q. And how many -- about how many hours
10 have you spent on your analysis in this case?
11 A. Somewhere between 20 and 30 hours.
12 Q. And did you do any analysis of any
13 on socioeconomic factors related to your expert
14 report?
15 A. No.
16 Q. Did you do an analysis of what are
17 called the traditional redistricting criteria for
18 your report?
19 A. No.
20 Q. Did you do an analysis of racially
21 polarized voting?
22 A. No.
23 Q. Did you opine as to the proper
24 metric for measuring black population?
25 A. No, I did not.

1 Q. So focusing on the substance of your
2 report now, what conclusions did you reach in
3 your report?
4 A. I reached the conclusion that black
5 and white voting age population are
6 heterogeneously distributed across the street and
7 they are not distributed in the same manner
8 geographically.
9 Q. All right. Now, let's turn to your
10 report, which is State Exhibit 4.
11 MR. GORDON:
12 Can you please bring up Figure 3A-3
13 on page 11.
14 TRIAL TECH:
15 (Complied.)
16 MR. GORDON:
17 And if we can blow up Figure 3A-3,
18 please?
19 TRIAL TECH:
20 (Complied.)
21 BY MR. GORDON:
22 Q. So what is this map?
23 A. In this figure, it's showing the
24 percent any part black voting age population
25 across the state at the census block level.

1 Q. And what is the measurement of --
2 sorry. Let me back up. What does this map show
3 you?
4 A. So this shows the distribution in
5 terms of the percentage voting age population
6 across the state; and, in particular, it shows
7 low percentages in what would be characterized as
8 the rural areas of the state and in more urban
9 areas higher concentrations of any part black
10 voting age population.
11 Q. And what does this map tell you
12 about the population who identify as any part
13 black throughout the city or -- yes.
14 A. It tells us that there are a few
15 distributed in the rural areas and again more
16 concentrated in urban areas.
17 Q. And that's as a percentage of the
18 population?
19 A. Yes.
20 MR. GORDON:
21 Now, let's turn now to Figure 3A-14
22 on page 21.
23 TRIAL TECH:
24 (Complied.)
25 BY MR. GORDON:

Q. So focusing your attention on 3A-14, the difference in percent white and black non-spatial correlation, what does this map show?

A. So this map is a summary of spatial statistical measure local brands that detects whether there is clustering of like or unlike areas in terms of, in this case, the difference between the percent white and the percent black non-Hispanic voting age population.

Q. Okay. And so let's back up a couple steps. First, let's start with what is spatial auto correlation?

A. So spatial auto correlation is a measure that looks at the simulate of one observation in this case a block to its neighboring block attribute values.

Q. Okay. And then you use the term previously called more rans I can you please try to explain that in laymen's terms?

A. So it's a statistical measure that looks at the observed at /PR-BT value compared to the mean and it looks at the deviation from this mean of an observation and to its neighbors.

Q. All right. And then let's proceed sort of through the you have here first tell me

what is not significantly?

A. So in terms of the key non significant suggests that statistically the observed differences of an observation to its neighbors are not statistically different; that is they are sort of random and differing in some way.

Q. And how about high high is the next?

A. So high high indicates in this case that the block has a high percentage of the white population surrounded by areas that also have a high percent white population.

Q. Okay. And the low low?

A. Low low in this case suggests that it has a low percent white population surrounded by areas of low white population or conversely high black population.

Q. Okay. And how about low high?

A. So low high indicates a low percent white population surrounded by a high percent white population.

Q. And then just for completeness, high low?

A. High low suggests high percentage white population, voting age population

1 surrounded by low percent, areas of low percent
2 voting age population.
3 Q. Okay. Thank you. So what do the
4 patterns of red, the various red shades and blue
5 shades and the clearer white tell you about the
6 population distribution of Louisiana?
7 A. So in terms of the high high, what
8 we see is predominantly, at least in terms of
9 this figure, the demonstration that rural areas
10 are effectively high percent white, very high
11 percent white surrounded by other areas that are
12 high percent white, so the clustering of high
13 percentage white population. And --
14 Q. And then what does it tell you about
15 the distribution of black population in
16 Louisiana?
17 A. So in this case, the blue would
18 indicate high percentage of black population,
19 voting age population on Hispanic and the -- they
20 are effectively in the more urban areas of the
21 state.
22 Q. And as an academic who works with
23 this data frequently, are these results
24 statistically significant?
25 A. Yes. All of the indicated colors

1 are statistically significant.
2 MR. GORDON:
3 All right. Can we zoom out and then
4 zoom in on 3A-15 right below it?
5 TRIAL TECH:
6 (Complied.)
7 BY MR. GORDON:
8 Q. Can you just briefly describe what
9 this map shows?
10 A. So this map shows that for each of
11 the colored areas in the previous figure the
12 associated levels of significance.
13 Q. And what does "very significant"
14 mean?
15 A. So, in this case, the significant
16 levels go down to a P of 0.5 up to a P of 0.001;
17 and in all cases in statistics, these are all
18 considered significant levels.
19 Q. And just for our edification, they
20 are all significant for academic purposes, but
21 which color is more significant versus less
22 significant?
23 A. So the darker green would suggest a
24 higher level of significance, but you're pretty
25 much nitpicking here. All of these are

1 significant.
2 MR. GORDON:
3 All right. If we could zoom out?
4 TRIAL TECH:
5 (Complied).
6 MR. GORDON:
7 And if we can bring up Figure 3A-14,
8 zoom in on -- if you can bring it up side
9 by side with Figure 3A-3 on page 11?
10 Page 11, please.
11 TRIAL TECH:
12 (Complied.)
13 BY MR. GORDON:
14 Q. So comparing Figures 3A-14 to
15 Figure 3A-3, what does that -- how do those two
16 maps relate to one another?
17 A. The observed distribution in this
18 case of any part black seems to conform or match
19 exactly what we see in terms of the significance
20 categories identified in Figure 3A-14.
21 Q. Okay. And I noticed that on your
22 Figure 3A-14 you use black non-Hispanic and
23 Figure 3A-3 you use any part black; is that
24 right?
25 A. Yes. This is true.

Q. And does that make any difference to the ultimate conclusions in your report?

A. In this case, they seem to indicate exactly the same thing.

MR. GORDON:

All right. Now, let's move now to your sub state analysis on page 22.

TRIAL TECH:

(Complied.)

MR. GORDON:

And if we just blow up both New Orleans and Baton Rouge.

TRIAL TECH:

(Complied).

BY MR. GORDON:

Q. First, focusing on the New Orleans area, which is the top map, what does this map show?

A. So this map is a zoomed in version of Figure 3A-14, so the same categories are shown in these colored -- coloring schemes. And this shows the greater New Orleans area, and what we see here in zooming in, something you can't really differentiate in Figure A, Figure 3A-14 you can see that within the urban area there's

1 quite a bit of spatial segregation or differences
2 in terms of percent white voting age population
3 and percent black voting age population in the
4 city.
5 Q. All right. And now looking down at
6 the Baton Rouge area, which is just below that,
7 what does that map show us?
8 A. A similar sort of phenomena that
9 there is segregation of these two racial groups
10 within the city, and that in Baton Rouge there's
11 also this distinguishing characteristic of
12 highlighting some of the more rural areas and the
13 fact that they are higher percent white
14 population surrounded by areas that are also high
15 percent white population.
16 Q. Okay. So overall then, how is black
17 voting age population dispersed in Louisiana?
18 A. Black voting age population seems to
19 be predominantly more concentrated in urban
20 areas, but even in urban areas, obviously it --
21 as shown in these figures, it varies as well, but
22 definitely heterogeneously distributed across the
23 state but also within urban areas.
24 Q. Okay. And turning now to the last
25 page of your report, page 24.

1 MR. GORDON:
2 Can you blow up the table on 24,
3 please?
4 TRIAL TECH:
5 (Complied.)
6 BY MR. GORDON:
7 Q. And what does this table show?
8 A. So this table shows miles between
9 these indicated samplings of cities and the
10 distance metric is Euclidian straight line
11 as-the-crow-flies distance in miles again.
12 Q. All right. And so let's see if
13 there's a firm example. What is the distance as
14 the crow flies between Monroe and Baton Rouge?
15 A. It's 152 miles, and this would be
16 from city center to city center.
17 Q. Thank you.
18 Mr. GORDON:
19 At this time, I'd like to admit
20 State's Exhibit 4 into evidence.
21 MR. NAIFEH:
22 No objection.
23 THE COURT:
24 Admitted. Cross?
25 CROSS-EXAMINATION BY MR. NEIFEH:

Q. Good afternoon, Dr. Murray, or good morning. I guess we are --

A. Good morning.

Q. -- still morning. You have no background in electoral redistricting, correct?

A. That's correct.

Q. And you've never published on electoral redistricting in a peer-reviewed journal; is that correct?

A. That's correct.

Q. And have you ever published on redistricting in any academic publication?

A. No, I have not.

Q. And have you ever published on redistricting anywhere?

A. I've published on districting, but not political redistricting, no.

Q. Okay. And you've never drawn redistricting plans for electoral districts; is that right?

A. No, I have not.

MR. NEIFEH:

And can we bring up State 4 at page 5?

TRIAL TECH:

(Complied.)

BY MR. NEIFEH:

Q. And so this is the executive summary from the report filed in this case; do you recognize it?

A. Yes, I do.

Q. And, in the first paragraph, you say you were engaged by the attorney general's office to assess the characteristics of five congressional redistricting plans. You stated on direct that you did not review any of the expert reports submitted by the plaintiffs in this case, correct?

A. That's correct.

Q. And so you haven't reviewed any congressional redistricting plans submitted by the plaintiffs in this case; is that correct?

A. Well, I was asked to do this work in the context of these congressional redistricting plans.

Q. But did you review any congressional redistricting plans?

A. No, I did not.

Q. And outside of this statement in the executive summary, your report makes no mention

1 of any congressional redistricting plans,
2 correct?
3 A. That's correct. But, again, this
4 was the context in which I was asked to do the
5 analysis.
6 Q. And so you express no opinion in
7 your report on the characteristics of any
8 congressional redistricting plan involved in this
9 case; is that correct?
10 A. That's correct.
11 Q. And you express no opinion on
12 whether the black population in Louisiana was
13 sufficiently numerous and geographically compact
14 to form two majority congressional districts in
15 Louisiana; is that correct?
16 A. That's correct.
17 Q. In other words, you don't have an
18 opinion on whether two districts that are
19 consistent with traditional redistricting
20 principles can be drawn in Louisiana's
21 congressional plan in which a minority of the
22 voting age population is black; is that right?
23 A. That's true.
24 Q. And you have no basis to disagree
25 with any of the opinions offered by the

1 plaintiffs' experts in this case, correct?
2 A. I don't know what the opinions are,
3 but --
4 Q. So you have no basis to disagree
5 with any of them?
6 A. At this point, yeah, that's true.
7 Q. Have you ever previously analyzed
8 the distribution of black and white populations
9 in any state other than Louisiana?
10 A. Yes, I have.
11 Q. And are you aware of any state in
12 which the black and white population is not
13 heterogeneously distributed?
14 A. Based on my experience, I have not
15 seen that.
16 Q. Are you aware of any court that has
17 considered a spatial analysis of the kind you
18 performed in this case in a case involving
19 Section 2 of the Voting Rights Act?
20 MR. GORDON:
21 Excuse me, Your Honor. I'd like to
22 enter an objection. He's seeking opinions
23 outside of his relative expertise. He
24 would have no reason to know about the
25 court cases.

1 THE COURT:
2 Sir, I actually missed your
3 question. I was going to ask you to
4 repeat it. Can you repeat it and then I
5 can rule on it?
6 MR. NEIFEH:
7 The question is is Dr. Murray aware
8 of any court that has considered a spatial
9 analysis of the kind he performed here in
10 a case involving Section 2 of the Voting
11 Rights Act.
12 THE COURT:
13 I'll overrule the objection.
14 THE WITNESS:
15 I am not aware, no.
16 MR. NEIFEH:
17 And can we turn to page 25 of
18 State 4?
19 TRIAL TECH:
20 (Complied.)
21 BY MR. NEIFEH:
22 Q. So these are your conclusions in
23 your report; is that correct?
24 A. Yes, they are.
25 Q. And you state that one of your

1 conclusions is that the white and black voting
2 age populations are not at all similarly
3 geospatially distributed with significant
4 clusters of concentrated groupings.
5 So your -- by that, you just -- I --
6 confess I could not follow the math in your
7 report, but are you simply telling us that black
8 people and white people are not disbursed equally
9 across the state?
10 A. Yes.
11 Q. And, similarly, your conclusion is
12 that black people and white people are
13 concentrated at different places in the state?
14 A. Yes.
15 Q. Okay. And I think you said this
16 earlier, but just so I'm clear.
17 MR. NEIFEH:
18 Can we pull up page 22, Figures
19 3A-16 and 3A-17 of the report?
20 TRIAL TECH:
21 (Complied.)
22 BY MR. NEIFEH:
23 Q. And here, is this an example of the
24 difference in the spatial distribution of the
25 black and white population within cities?

A. No, it's not. It's -- what it's showing are clusters of like areas, so in the red, these would be high concentration high percent white voting age population surrounded by high percentage white voting age population, so it's not a distribution per se. It's showing a statistical summary of a comparison of observed racial population in a block compared to its neighbors.

Q. Okay. Just so I understand; and, again, I may be simplifying again. Essentially what you're telling us using a mathematical model is that residential patterns in these cities are highly segregated; is that correct?

A. Yes.

Q. Okay.

MR. NAIFEH:

I have no further questions.

THE COURT:

Is there any redirect?

MR. GORDON:

Nothing for me, Your Honor. Thank you.

THE COURT:

Okay. You may step down. Thank

1 you, sir.
2 MR. STRACH:
3 Your Honor, Phil Strach. The
4 defense calls Sherry Hadskey.
5 SHERRI WHARTON HADSKEY,
6 after having first been duly sworn by the
7 above-mentioned Court Reporter did testify as
8 follows:
9 THE DEPUTY:
10 And, if you would, please state your
11 name and spell it for the record.
12 THE WITNESS:
13 Sure. Sherri, S-H-E-R-R-I, Wharton,
14 W-H-A-R-T-O-N, Hadskey, H-A-D-S-K-E-Y.
15 DIRECT EXAMINATION BY MR. STRACH:
16 Q. Good morning, Ms. Hadskey.
17 A. Good morning.
18 Q. Could you tell the court what your
19 current position is?
20 A. I am the commissioner of elections
21 for the Louisiana Secretary of State.
22 Q. And could you give us a brief
23 overview of your position, what you do?
24 A. I oversee elections. We have
25 elections of operations, elections field

1 operations, elections business and elections
2 services; and I oversee the administration of the
3 elections process.
4 Q. All right.
5 MR. STRACH:
6 Forest, could we pull up
7 Ms. Hadskey's affidavit, which is SOS-1?
8 TRIAL TECH:
9 (Complied.)
10 BY MR. STRACH:
11 Q. Ms. Hadskey, does this appear to be
12 a copy of the affidavit declaration you submitted
13 in this case?
14 A. Yes, it does.
15 Q. And does this affidavit outline your
16 professional background and current duties?
17 A. Yes, it does.
18 Q. All right. Then we won't go into
19 detail on that.
20 MR. STRACH:
21 You can take it down, Forest.
22 TRIAL TECH:
23 (Complied.)
24 BY MR. STRACH:
25 Q. Thank you, Ms. Hadskey.

1 Do your duties include the new
2 redistricting plans at the state and federal
3 level?
4 A. Yes, it does.
5 Q. All right. So let's focus in here
6 on what we are all here about, the congressional
7 redistricting plans in terms of the enacted plan,
8 the enacted congressional plan.
9 What is the current status of the
10 readiness of that plan for the 2022 election?
11 A. The parishes that had changes, 15 of
12 them have already been completed, the voter cards
13 to the 250,000 voters have been sent, and we are
14 preparing now for the next session of
15 redistricting.
16 Q. All right. Is there -- is there a
17 deadline coming up on June 22nd?
18 A. Yes.
19 Q. What is that deadline?
20 A. So the deadline on June 22nd is the
21 deadline for all school board redistricting plans
22 to be provided to the state. Also, it's the
23 deadline for a petition to be submitted by anyone
24 who would like to qualify, and they have to have
25 the appropriate number of signatures, which they

1 have 120 days to get those signatures.
2 Q. All right. So on June 22nd, folks
3 who want to get on the ballot through a nominated
4 petition have to submit that petition by that
5 date?
6 A. Correct. With all of the
7 signatures, which will be submitted to the
8 registrars for verification.
9 Q. All right. And so is your office
10 ready and prepared for that deadline as of today?
11 A. We are, because the cards have
12 notified the voters which districts they are in,
13 the people that want to qualify for nominating
14 petition will have the correct areas that they
15 need to get the signatures from.
16 Q. All right. When is the qualifying
17 deadline for congressional candidates who want to
18 pay a filing fee?
19 A. Qualifying deadline is -- well,
20 qualifying is the 20th, 21st and 22nd of July.
21 Q. All right. So you're working
22 between now obviously and June 22nd and
23 July 20th. What kind of activities is your
24 office engaged in and facing between now and
25 July 20th?

A. So currently we are receiving the school board plans to begin the process for redistricting with the school boards, which is quite complicated. We also have 158 municipalities that can be redistricted and we are waiting for that information to come in as well. We are conducting an election on June 4th because of a redistricting error that was made in the March 26th election in Calcasieu Parish, so we have early voting and the election process going on for that particular area. We begin canvas on May 23rd for our voter registration roles and we will be sending out the cards for canvas which are going to be due back July 1st.

Also during this time, it's the only time of the year that we can conduct our yearly maintenance on all equipment, our scanners, other voting machines, all of our -- all of the information that we have to have for the machines, batteries, everything that has to be changed.

We also are responsible for the acts of legislation and we are currently looking at possibly 800 acts that we have to process as soon as session ends, which is June 6th; and in any of

1 those acts or any legislation that changes our
2 certificates or registration forms or any part of
3 the election process, we have to update that
4 information. We have to train on that
5 information and we have to get everything printed
6 to be able to provide for everyone, every
7 registered voter I should say.
8 Q. All right. Do you have any duties
9 with regard to constitutional amendments?
10 A. Yes. The constitutional amendments,
11 once they come out of the legislature, we are
12 responsible to write the summaries, have the
13 summaries placed in order, then it has to be
14 improved by the attorney general and we have a
15 very limited amount of time to get that onto the
16 instructions and the posters for the voters to be
17 able to have those at the precincts.
18 Q. All right. So the canvas, what
19 exactly is the canvas? Describe that process for
20 us.
21 A. So canvas is where we are comparing
22 to NOCCA, we are comparing to the USPS; and if
23 there's changes in a registered voter's address
24 or changes in a registered voter's name, etc.,
25 they are mailed a card. It's identified,

compared to our voter registration list and they are mailed a card to say something has changed, are you still at this address, do you still live at this location and then the voters are responsible to contact the registrars to update the information or make the changes necessary; so it's basically maintaining the voter roles.

Q. Do voters get notices in the mail if the canvas effects them?

A. Absolutely.

Q. All right. When -- as you're processing the -- and the redistricting is going on for the local school boards, will voters get cards notifying them of their school board districts as those are processed?

A. Absolutely. They have to know what district they are in. We have already been contacted by someone who wants to qualify by petition and they have to know which area to get their signatures in and the voter, the candidate who wants to qualify needs to know which direct they are in, if it's the same or if it's changed.

Q. Do voters get notices as the municipal districting process too?

A. Yes, absolutely.

Q. All right. So between now and July 20th, some voters could be getting as many as three or four notices in the mail regarding their -- the varying districts, correct?

A. Correct.

Q. You're aware that in this case the plaintiffs have submitted through experts several illustrative redistricting plans for Congress; are you aware of those?

A. Yes.

Q. Have you reviewed those illustrative plans?

A. Yes.

Q. All right. If through this litigation your office had to implement a new congressional redistricting plan that looked like one or more of those illustrative plans, what implications would that have for elections administration in Louisiana?

A. So our errand system, which is our voter registration system, currently had the plans created and then the plans rolled over into the live Aaron system. In order to redo those plans, we would have to back out the work that was done and then re-enter all of the new work

1 required for the plan so that the voters are
2 informed and are given the correct districts that
3 they need to have a ballot for.
4 Q. And you mentioned that when you were
5 coding the current plan, that was about 15
6 parishes that you had to code?
7 A. That's correct.
8 Q. And in the illustrative plans,
9 approximately how many parishes would you have to
10 redo or do again to code those plans in the
11 system?
12 A. It appears to be 25, approximately
13 25.
14 Q. All right. And so if you were -- if
15 you were required to undo the 15 parishes, redo
16 25 parishes, you would be doing that while all
17 this other work is going on in your office,
18 correct?
19 A. Correct. And it's very cumbersome
20 and I think you can understand when you have a
21 new registrant or a moved registrant and you are
22 incorporating these plans and then you have to
23 put this additional person into this plan and
24 figure out all of the districts that they should
25 be a part of, the concern is to make certain that

all of that information is correct; otherwise, you end up with incorrect ballots.

Q. And who are the folks at the local level who run the parishes?

A. The registrar, the clerk of court, yes. The registrar of voters is responsible to move the voters when they are split in precincts. Any splits in precincts require that they are moved by hand, by street range or by individual voter. And it's very complicated, that process is on them, and then they -- currently, it takes them several weeks to get this done.

Now, the problem that we had in Calcasieu stemmed from the late census information coming through and the short amount of time that the locals had to get that information entered; and by doing it quickly and -- and trying to process everything as fast as they could to be ready for qualifying, mistakes were made, so on election day people were given the wrong ballot.

Q. All right. Do you have any -- obviously this is a once-a-decade process for congressional maps. Do you have any new registrars at the local level this year who have

never done redistricting before?

A. Yes. We have 19 new registrars that will be doing this process for the first time as the registrar of voters.

Q. All right. And if you had to process a new congressional plan sometime between now and July 20th, would a new round of notices have to go out to the voters?

A. Absolutely.

Q. Okay.

A. The most important thing is that the voter and the candidates know the districts that they are living in and that they will vote in.

Q. And the cards, would they have to go out in plenty of time for the candidates to actually study the plan and decide what to do and the voters decide what to do?

A. Yes. Yes.

Q. Are there any issues in your affidavit declaration? You talked about a paper shortage. What does that -- how does that play into this process?

A. So we have supply chain shortages right now that we are dealing with for elections, actually the entire nation is dealing with for

1 elections. One of those is the paper shortage.
2 We attempted to get the envelopes
3 for our absentee by mail process and we searched
4 -- actually the division of administration
5 assisted us in searching the entire United States
6 to try and find the paper to produce our
7 envelopes. They also reached out to Canada and
8 fortunately at the last minute we were able to
9 find one paper mill that could provide the paper
10 that we need; however, it's, of course, at a much
11 higher rate of pay, rate of cost.
12 Q. All right. So in light of all the
13 many activities your office is engaged in, if you
14 had to do a new congressional plan sometime
15 within the next few months, what is your
16 assessment of whether you could -- you could pull
17 that off error free?
18 A. I'm extremely concerned. I'm very
19 concerned because when you push -- when you push
20 people to try and get something done quickly and
21 especially people that have not done this process
22 before, the worst thing you can hear from a voter
23 is I'm -- I'm looking at my ballot and I don't
24 think it's right, I think I'm in the wrong
25 district or I don't feel like I have the right

1 races.
2 The other thing is notifying the
3 voters. I think we all can relate to we know who
4 our person is that we voted for for Congress or
5 for a school board or any race; and when you get
6 there and you realize it's not the person you are
7 looking for, you're thinking that's who you are
8 going to vote for and then you find out, wait,
9 I'm in a different district. If we don't notify
10 them in enough time and have that corrected, it
11 causes confusion across the board, not just
12 confusion for the voters, but also confusion for
13 the elections administrators trying to go back
14 and check and double check that what they have is
15 correct.
16 Q. Okay. So, broadly speaking, aside
17 from just election administration, are there any
18 other factors that concern you in considering the
19 election schedule this year?
20 A. Yes. Unfortunately and sadly, for
21 the last two years, it's been -- the last -- the
22 last two years have been the hardest in my entire
23 career. I have no way of knowing if COVID is
24 going to come back up this coming fall, and that
25 alone added an additional massive amount of work

on the locals and on the state to be able to provide for social distancing, not have poll locations in nursing facilities, etc. So I'm very concerned about that coming at us like a freight train.

And then I'm also concerned about -- I think we all know in 2020 we could not find hand sanitizer, we couldn't find masks. We actually were buying barrels and trying to make it ourselves. There's concern of having the supplies necessary for that.

The other concern that I have, which is a tremendous concern, is over the past two years we have had to unfortunately deal with hurricanes, and some of them have been just catastrophic. And the worst is having one five days prior to the presidential election. It's an unbelievable amount of work to be able to provide people a safe polling location that is near their area.

And we -- the local governing authorities are responsible for polling locations, however, when a hurricane hits, you're -- some are displaced, the local elections administrators are displaced or they are

1 devastated with their homes and their family
2 homes and so the state does assist in that
3 process, but it adds to the regular elections
4 process. So we already have a tight schedule for
5 our elections and then on top of that adding
6 these other factors make it even more difficult
7 and scary, to say the least, and now having
8 redistricting on top of that, so I am very
9 concerned.
10 Q. Okay. I'll represent to you --
11 going to another topic -- there's been some
12 testimony in this hearing about change of
13 register voter in general, so I thought it would
14 be a good chance for you to tell the court from
15 your perspective what does your office do to
16 provide voting currently?
17 A. So currently, you can register to
18 vote at the social security offices, the food
19 stamp offices, the department of motor vehicles.
20 We also have an outreach division that -- I've
21 always been proud of -- Dr. Sandra Wilson was our
22 first outreach director. She's the registrar in
23 New Orleans, and I worked with her for years; and
24 we do private elections, we go out and do
25 outreach. We also have a voter registration

week, and Louisiana has a 90 percent rate of voter registration, which we are very proud of. That's -- that's a huge accomplishment. And from all areas of the state, East Baton Rouge, Caddo, Orleans, all of the locals, Mayor Cantrell, everybody can tell you we not only do the private elections and encourage voter registration, but we also work hand in hand with them, that if they ever have a need for the voting machines or things like that, we work hand in hand together with that. It's a great program.

Q. Does your office offer online registration?

A. We do.

Q. And what's the -- what's the schedule for early voting?

A. So early voting is -- it begins two weeks prior to election day and ends the week prior to election day and so for a congressional election, it's Tuesday to Tuesday; for a state election, it's Saturday to Saturday.

Q. All right. Now, you are familiar with the law called UOCAVA regarding overseas ballots?

A. Correct.

Q. What's the deadline this year for you to send ballots pursuant to that law?

A. September 24th, all ballots have to be mailed to meet the UOCAVA federal guidelines, and the state works diligently with the Department of Justice. I've already had two meetings with them regarding our plan to make sure that we meet that deadline and to confirm that we meet that deadline, and I have to report back to them that we did meet that deadline.

Q. All right. Is there anything in particular you do for voter registration outreach and voting outreach to the minority community?

A. We do. We do. We -- all communities, everybody, more than anything, as much work as we put into conducting and administering elections, we want people to vote. We want people to be registered to vote and we want participation. That's critical. So we do lots of outreach and we do lots of -- of conducting of private elections, unions, state police, all of the local area, Zulu.

We've done many, many private elections to encourage people to learn about the machines and also encourage them to register to

1 vote: Churches, community centers, everything.
2 And I myself have done some of that, and that's
3 the great part of our job. That's the fun part
4 of our job.
5 Q. So there's also been some -- I'll
6 represent to you just some general testimony
7 about polling location changes and things like
8 that.
9 I just want to make sure it's clear
10 from your perspective who is responsible for
11 decisions regarding polling location changes and
12 precinct consolidations and things like that.
13 A. So the election code states that it
14 is the parish governing authority, so your local
15 parish council or your parish police jury, they
16 are responsible for selection of the polling
17 locations and for submitting the polling location
18 to our office so that we can upload that
19 information to Aaron; and that way on the Geaux
20 Vote aspect and in Aaron on our voter port at all
21 people can be notified. And also we send the
22 cards notifying people that that is where their
23 polling location has been moved by your parish
24 governing authority or your police jury.
25 Q. All right. Thank you.

MR. STRACH:

Your Honor, I don't have any further questions at this time.

THE COURT:

Cross?

CROSS-EXAMINATION BY MR. SHELLY:

Q. I'm Jacob Shelly for the plaintiffs.

A. Hi.

Q. Good morning. Good morning, Ms. Hadskey. How are you this morning?

A. Good morning. Nice to see you.

Q. As I stated, my name is Jacob Shelly. I just have a few quick questions for you this morning.

You mentioned a paper shortage in your declaration; is that right?

A. That's correct.

Q. And you were pointing to a couple of documents from that group that goes by the acronym EISCC.

A. EISCC, the EISCC, yes.

MR. SHELLY:

Let's just pull those documents up quickly. First one is at page 9 of the affidavit that you submitted.

TRIAL TECH:

(Complied.)

BY MR. SHELLY:

Q. This document is titled Ballot Paper Supply Chain Risk Management; is that correct?

A. Uh-huh (affirmatively).

Q. And then let's jump to the second document, which is on page 11. This one is called ballot paper supply chain, risk management; is that right?

A. Yes.

Q. Your office hadn't printed any ballots for the 2022 elections, correct?

A. No. We have only printed ballots for the June 4th election at this time.

Q. And you won't know which candidates are qualified to appear on the congressional elections until July 29th at the earliest?

A. That's correct.

Q. The number of ballots the state needs for those November elections won't change based on the shape of the congressional districts, correct?

A. No. No. It should not be based on the shape of the congressional districts. It's

1 based on the number of candidates that qualify,
2 the number of constitutional amendments. In
3 other words, you may have a one-page ballot or
4 you could have a three-page ballot depending on
5 who qualifies.
6 Q. Right. You discussed absentee
7 envelopes with Mr. Strach I believe. No absentee
8 ballots have gone out yet; is that correct?
9 A. Not yet.
10 Q. And those won't need to be printed
11 until 45 days before the election?
12 A. Oh, no. We have to have them
13 printed way in advance. We -- Louisiana has a
14 special envelope. It has an affidavit flap on
15 it. It's unique. There's not -- to my
16 knowledge, there's no other state or jurisdiction
17 in the United States that has the detailed flap
18 that we have, and it's very difficult to print.
19 When we put it out to bid in the
20 past, only three companies in the nation were
21 able to print this particular envelope in the way
22 that it's made; and the information that's on it
23 and in order to have them print, proof, print all
24 of them that are necessary for the primary and
25 the general and then have them shipped to us then

1 -- then break it down and distribute them to the
2 parishes, we have to receive those by August 1st.
3 We can't receive them any later than that or we
4 wouldn't be able to get them out to the locals to
5 be able to have them to use.
6 Q. Thank you. The number of absentee
7 envelopes will not change depending on the shape
8 of the congressional districts, correct?
9 A. No. That will depend on the number
10 of people that apply for an absentee ballot and
11 the number of people that apply for the programs
12 like the over 65 program or disability program,
13 things like that.
14 Q. You suggested that the paper
15 shortage might effect the printing of voter
16 registration cards, correct?
17 A. It could effect any item that we
18 have to print. For example, the paper rolls for
19 the voting machine, the tapes, the cards or any
20 supply, if you've gone to vote on election day
21 and you want to change your address or you want
22 to vote by affidavit or any of the supply items.
23 Also, the poll book pages, we use paper poll book
24 pages. We don't use poll E books, so everything
25 that's paper related we are trying to acquire all

of the paper that we can now so that we are ready and we don't run into a problem where we say we can't conduct a federal election.

Q. When did your office start work on printing and mailing these voter registration cards?

A. The voter registration cards?

Q. Did I understand correctly that those needed to be updated after the recent congressional happening?

A. Oh, I'm sorry. So not a voter registration card. It's a notification card that's going to the voter of their district, and those were -- the plans went into place April 25th and the cards were mailed directly after each parish's plan was completed.

So if you work on a plan and the registrar of voters confirms the plan, then the cards are released; and so it depends on which parish completed their plan and what time they did as to when the cards got mailed.

I do know I checked with state printing through the division and they said all cards had been mailed.

Q. Okay. Let's talk about the purposes

1 served by these voter cards. I think you discuss
2 this on page 4, paragraph 15 of your affidavit.
3 MR. SHELLY:
4 It might be helpful to take a look
5 at that.
6 TRIAL TECH:
7 (Complied.)
8 MR. SHELLY:
9 Perfect.
10 BY MR. SHELLY:
11 Q. So first, you say that issuance of
12 these cards can help decrease voter confusion; is
13 that right?
14 A. That's right.
15 Q. And that's because --
16 A. I'm sorry.
17 Q. And that's because these cards
18 inform voters which district they reside in?
19 A. That's correct.
20 Q. Are you familiar with Still Vote
21 Oval Act?
22 A. Yes.
23 Q. And you're aware that this happens
24 to voter registration information, voter district
25 information, information about upcoming

1 elections, including voting dates and times,
2 voting locations and sample ballots?
3 A. Yes, it does.
4 Q. And once the system is updated, any
5 voter can check this information on the aspect
6 even if they have not received a voter card in
7 the mail, right?
8 A. They can, but we find from my
9 experience not everybody has a smart phone and
10 not everybody is savvy with computers; and our
11 elderly community and some of the -- some of the
12 poorer areas of the state, they don't have that
13 type of access, so we want to provide it in every
14 way possible so that we know that you are able to
15 see what you -- what you need.
16 When you are working early voting or
17 you are working election day, you can see a lot
18 of people that have a pay-as-you-go phone or
19 something like that, so we want to make sure that
20 everyone is able to know what their districts
21 are.
22 Q. The information is also available on
23 the Secretary of State's website, correct?
24 A. Absolutely.
25 Q. Looking at the next sentence here,

1 the second purpose you say is served by issuance
2 of these voter cards is that they "let citizens
3 know what district they can run in and what
4 district they need to gather signatures in if
5 they decide to file for election by nominating
6 petition." Did I read that correctly?
7 A. That's correct.
8 Q. And is it for this reason that cards
9 must be mailed well before the deadline of
10 nominating petitions, which this election cycle
11 is June 22nd; is that right?
12 A. Correct.
13 Q. It's your position that prospective
14 congressional candidates may be waiting on these
15 printed voter cards to decide whether to run for
16 Congress?
17 A. We have had a few calls for
18 Congress, not just for Congress, but also for
19 school board asking us for the nominating
20 petition, how do they acquire the signatures,
21 where would the -- is their district going to be
22 the same. And, of course, if it's school board
23 related, we point them to the direction of their
24 school board organization in their parish to say
25 you need to find out from there where their

1 districts are going to be and then you could go
2 with the form and start obtaining everything you
3 need to do that.
4 For Congress, it takes a thousand
5 signatures; for school board, it takes a hundred
6 signatures, so we just want them to be able to do
7 that process if they -- if they need it.
8 Q. Okay. Is it your testimony that if
9 candidates are delayed in receiving their voter
10 cards that would cause disruption to the voter
11 process and make it difficult, if not plausible,
12 to hold a successful congressional election?
13 A. They can't qualify for nominating
14 petition if they don't know where to get the
15 signatures; is that what you're asking me? I'm
16 sorry.
17 Q. I'm trying to understand the
18 wording, because there would be other ways to try
19 to figure out which congressional district am I
20 in to match it to my voter card, correct?
21 A. It could be, but the other thing
22 about the voter card, they bring them in, they
23 have this in their hand, they put them in their
24 wallet; so it's something they keep with them for
25 reference and I just think they are important, I

1 think it's important.
2 Q. Switching gears slightly, Louisiana
3 has the absolute last congressional primary in
4 the country, correct?
5 A. Yes.
6 Q. And the governor initially vetoed
7 the legislature's congressional plan on March
8 9th, but the legislature overrode three weeks
9 later; is that correct?
10 A. Yes.
11 Q. If the legislature had failed to
12 override the governor's veto of the congressional
13 plan, you are not suggesting it would be
14 impossible to hold the congressional election in
15 November, are you?
16 A. I'm not saying it would be
17 impossible. I'm saying I'm concerned about
18 errors that can occur trying to rush through the
19 process.
20 Q. And you seek to fulfill your
21 possibility to ensure that election is right on
22 schedule, correct?
23 A. Yes.
24 Q. And you would rely on your 30 years
25 of experience in election administration to do

so?

A. Yes, absolutely. And I do want to say that the -- in the history of elections that I've worked in the state, we have had to move state elections due to emergencies, due to hurricanes, due to things like that, but never in my career have we moved a federal election. We can't. It's in the constitution, so that is a fear factor to make sure that everything is okay. You never want to hear wait a minute, I got my jurisdictions wrong the week before the election. That's a scary thing.

Q. Touch on one other thing I'd like to ask you a few questions about. There are -- candidates have two ways to get their names on the ballot, right? They can either gather a certain number of signatures or pay a filing fee?

A. Correct.

Q. And for congressional races, that would be $106?

A. I believe so, yes.

Q. And the deadline for candidates filing for nominating petition is June 22nd?

A. Correct. That gives the voters time to verify the signatures that are on the

1 petition.
2 Q. And the deadline for appeal, the
3 filing is one month later, July 22nd?
4 A. Correct.
5 Q. And then there's seven days to
6 object to any --
7 A. Seven days to object to candidacy.
8 Q. Okay. You mentioned some school
9 board examples, but over the course of your
10 career, how many times are you aware that a
11 congressional candidate has filed by nominating
12 petition?
13 A. Well, unfortunately, I've been the
14 commissioner of elections since 2017, so I don't
15 really know prior to that whether somebody has
16 filed or not.
17 Q. Are you aware of any since 2017?
18 A. Not since 2017, not -- I take that
19 -- well, locally, but not --
20 Q. For congressional?
21 A. Not for congressional.
22 Q. Okay. If I were to tell you that we
23 went back and checked the Secretary of State's
24 website for every election since 2010 and we
25 didn't find a single candidate using a nominating

1 petition, would that surprise you?
2 A. No. It doesn't change that the law
3 is on the books to allow for it, and I do have
4 people that have reached out for that -- for
5 that, so that's kind of what's got me. I don't
6 know what's happened in the past as far as
7 previous to 2017.
8 Q. Are you aware of any prospective
9 congressional candidates this year who are
10 planning to file by nominating petition?
11 A. We had a call -- we had an e-mail
12 about two weeks ago from someone from St. Charles
13 parish, but that was not for Congress. That was
14 for school board and then we did have a call.
15 I'd have to check with my elections business
16 department to find out what -- what they were
17 asking exactly, but they did ask about the
18 nominating petition.
19 Q. Okay. So possibly one, but not
20 necessarily for Congress?
21 A. Correct.
22 Q. And to put that number in context,
23 do you know how many hundreds of thousands of
24 black voters are claiming that their fundamental
25 voting rights are being violated by the

1 congressional plan?
2 A. No.
3 Q. In fact, is it possible that there
4 are more Louisianians in this room who claim
5 their fundamental voting rights are being
6 violated than congressional candidates in the
7 entire state will file by nominating petition?
8 A. I'm not aware of that.
9 MR. SHELLY:
10 No further questions.
11 THE WITNESS:
12 Sure.
13 THE COURT:
14 Redirect?
15 MR. STRACH:
16 None, Your Honor.
17 THE COURT:
18 Okay. Thank you, Ms. Hadskey.
19 THE WITNESS:
20 Thank you.
21 THE COURT:
22 Any further witnesses?
23 MR. STRACH:
24 No, Your Honor. The defense rests.
25 THE COURT:

1 Okay. Is there any rebuttal?
2 MS. KHANNA:
3 No, Your Honor.
4 THE COURT:
5 Okay. The court will consider the
6 case submitted. The court thanks all
7 counsel for their diligent and hard work.
8 You-all have tried a really good case,
9 okay.
10 So let's talk about post trial
11 filings. The court has already ordered
12 that the parties may be permitted to file
13 findings of fact and conclusions of law on
14 or before close of business on April --
15 I'm sorry, May the 18th, 2022. The court
16 is going to order that there be one filing
17 of findings of fact and conclusions of law
18 by the defendant, Secretary of State and
19 the two state-related intervenors; namely,
20 the legislative intervenor and the
21 attorney general intervenors, and also one
22 combined findings of fact and conclusions
23 of law by the plaintiffs. Both sets of
24 plaintiffs, Galmon and Robinson, as well
25 as the legislative black caucus

1 intervenor.
2 Recognizing that you may want to
3 argue your cases a bit beyond just the
4 findings of fact and conclusions of law,
5 the court will allow post trial briefs,
6 the same limitations that I've just given,
7 one basically per side limited to 25 pages
8 each.
9 Do the parties require any other
10 types of deadlines? Yes, ma'am.
11 MS. FREEL:
12 Your Honor, Angelique Freel for the
13 state. Did you give a number of pages for
14 the findings of facts and conclusions of
15 law?
16 THE COURT:
17 Did I -- no, I did not limit the
18 number of pages for findings of fact and
19 conclusions of law. Yes, ma'am.
20 THE DEPUTY:
21 Could you come forward? This
22 microphone picks up a lot better.
23 MS. MCKNIGHT:
24 Thank you, Your Honor. You asked if
25 we had other deadlines in the case. I

1 would suggest a deadline for the time by
2 which plaintiffs can complete their review
3 of that summary exhibit, LEG No. 79 I
4 believe?
5 THE COURT:
6 Well, I had hoped maybe that had
7 been done. Where are we on that?
8 MS. KHANNA:
9 It has, and we have no objection.
10 THE COURT:
11 No objection. LEG Exhibit 79 is
12 admitted.
13 MS. MCKNIGHT:
14 Thank you, Your Honor. Thank you.
15 THE COURT:
16 Okay. Anything else? All right.
17 Well done everyone. The court looks
18 forward to receiving the filings and we
19 will work diligently, as diligently as you
20 have to get you written reasons as quickly
21 as humanly possible.
22 All right. Thank you very much.
23 (The injunction hearing was concluded at
24 10:03 a.m.)
25

1 REPORTER'S PAGE

2 I, CHERIE' E. WHITE, Certified Court
3 Reporter, in and for the State of Louisiana, the
4 officer, as defined in Rule 28 of the Federal
5 Rules of Civil Procedure and/or Article 1434(B)
6 of the Louisiana Code of Civil Procedure, before
7 whom this sworn testimony was taken, do hereby
8 state on the record;
9 That due to the interaction in the
10 spontaneous discourse of this proceeding, dashes
11 (--) have been used to indicate pauses, changes
12 in thought, and/or talkovers; that same is the
13 proper method for the court reporter's
14 transcription of a proceeding, and that dashes
15 (--) do not indicate that words or phrases have
16 been left out of this transcript; also, that any
17 words and/or names which could not be verified
18 through reference material have been denoted with
19 the phrase "(spelled phonetically)."
20
21
22 CHERIE' E. WHITE, CCR (LA NO. 96002)
23 CSR (TX NO 10720)
24 CSR (MS NO. 1514)
25 RPR (NATIONAL NO. 839452)

REPORTER'S CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original seal on this page.

I, CHERIE' E. WHITE, Certified Court Reporter, in and for the State of Louisiana, do hereby certify that this injunction hearing as hereinbefore set forth in the foregoing 65 pages; that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or the parties herein, nor am I otherwise interested in the outcome of this matter.

CHERIE' E. WHITE, CCR (LA NO. 96002)
CSR (TX NO. 10720)
CSR (MS NO. 1514)
RPR (NATIONAL NO. 839452)

EXHIBIT N

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

PRESS ROBINSON, et al., Plaintiffs, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, Defendant. *consolidated with* EDWARD GALMON, SR., et al., Plaintiffs, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, Defendant.	CIVIL ACTION NO. 3:22-CV-00211-SDD-SDJ *consolidated with* NO. 3:22-CV-00214-SDD-SDJ

NOTICE OF APPEAL

Defendant, Secretary of State R. Kyle Ardoin, hereby gives notice of appeal from the Court's June 6, 2022 Order [D.E. 173] granting Plaintiffs' Motions for Preliminary Injunction [D.E. 41, 42].

Respectfully submitted this the 6th day of June, 2022.

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Counsel for Defendant R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana
**Pro Hac Vice Motions Granted*

4889-1522-3073 v.1

EXHIBIT O

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al., *Plaintiffs,* v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Civil Action No. 3:22-cv-00211-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson
EDWARD GALMON, SR., et al., *Plaintiffs,* v. R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Consolidated with Civil Action No. 3:22-cv-00214-SDD-SDJ

LEGISLATIVE INTERVENORS' NOTICE OF APPEAL

Notice is given that Legislative Intervenors Clay Schexnayder, Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, President of the Louisiana Senate, in their respective official capacities, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order of June 6, 2022 issuing an injunction, Doc. 173, and all orders related to, or forming the basis of, that injunction.

Respectfully submitted,

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Counsel for Legislative Intervenors, Clay Schexnayder, in his Official Capacity as Speaker of the Louisiana House of Representatives, and of Patrick Page Cortez, in his Official Capacity as President of the Louisiana Senate

CERTIFICATE OF SERVICE

I certify that on June 6, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

/s/ Erika Dackin Prouty
Erika Dackin Prouty *(admitted pro hac vice)*
BAKERHOSTETLER LLP

Counsel for Legislative Intervenors, Clay Schexnayder, in his Official Capacity as Speaker of the Louisiana House of Representatives, and of Patrick Page Cortez, in his Official Capacity as President of the Louisiana Senate

EXHIBIT P

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON., *et al*. Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al* Defendant and Intervenor-Defendants,	Case No.: 3:22-cv-00211-SDD-SDJ
AND	(c/w)
EDWARD GALMON, SR., *et al*. Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al*. Defendant and Intervenor-Defendants,	Case No.: 3:22-cv-00214-SDD-SDJ

NOTICE OF APPEAL

Notice is hereby given that the State of Louisiana, by and through Jeff Landry, the Attorney General of Louisiana, hereby appeals this Court's June 6, 2022 Order, (ECF No. 173) Granting Plaintiffs' Motions for Preliminary Injunction (ECF Nos. 41, 42), and all other previous rulings, opinions, and orders entered in the consolidated cases (No. 3:22-cv-00211-SDD-SDJ and No. 3:22-cv-00214-SDD-SDJ), to the United States Court of Appeals for the Fifth Circuit. This appeal is brought pursuant to 28 U.S.C. § 1292(a)(1).

Dated: June 6, 2022

Respectfully Submitted,

Jeff Landry
Louisiana Attorney General

/s/Angelique Duhon Freel
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Morgan Brungard (CO Bar No. 50265)*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 6, 2022, I caused to be filed with the Court, via submission to the Court's ECF system, the State of Louisiana's notice of appeal, which will send notification of such to all counsel of record.

/s/Jason Torchinsky
Jason B. Torchinsky
Counsel for the State of Louisiana

EXHIBIT Q

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

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE,

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana,

Defendant.

CIVIL ACTION NO. 3:22-cv-00211

Chief Judge Shelly D. Dick
Magistrate Judge Scott D. Johnson

EDWARD GALMON, SR., CIARA HART, NORRIS HENDERSON, and TRAMELLE HOWARD,

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana,

Defendant.

CIVIL ACTION NO. 3:22-cv-00214
(consolidated with Civil Action No. 3:22-cv-00211)

Chief Judge Shelly D. Dick
Magistrate Judge Scott D. Johnson

BRIEF *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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INTEREST OF THE *AMICI CURIAE*

Amici curiae Michael Mislove, Lisa J. Fauci, Robert Lipton, and Nicholas Mattei are professors of mathematics and computer science at Louisiana State University and Tulane University. *Amici* were intervenors in the recent state-court litigation before the Honorable Donald R. Johnson of the 19th Judicial District Court. In that litigation, *amici* and their expert team were prepared to offer the court a lawful and fair remedial map if Louisiana's congressional-redistricting process remained at an impasse. With the Legislature's recent override of Governor Edwards's veto, *amici* now wish to offer this same expertise to this Court, should it be useful.[1]

Amici believe this expertise could be especially helpful in addressing two key questions that this Court will face if it finds that Louisiana's recently enacted congressional map must be enjoined as a violation of the Voting Rights Act (VRA), as Plaintiffs allege:

- How can a redistricting plan's dilution of minority voting strength, in violation of Section 2 of the VRA, 52 U.S.C. § 10301, be remedied without engaging in the kind of excessive, unjustified consideration of race that violates the Equal Protection Clause's racial-gerrymandering doctrine?
- How can this be done quickly?

[1] All parties have consented to the filing of this *amicus* brief, which is not in support of any party.

Amici have assembled a team of experts, including the co-authors of the recent peer-reviewed journal article, *Computational Redistricting and the Voting Rights Act*,[2] who specialize in using high-performance computers to draw maps that attempt to optimize multiple redistricting criteria, all of which at some point come into tension with each other. The premise behind computational redistricting is simple: "Given the number of [redistricting] criteria typically present and the spatial nature of how the criteria operate, it is not easy for humans to find optimal redistricting outcomes on their own.... Put simply, good maps are needles in a haystack of bad or at least worse maps. Enter redistricting algorithms. They are capable of meticulous exploration of the astronomical number of ways in which a state can be partitioned. They can identify possible configurations of districts and zero in on the maps that best meet the redistricting criteria. The algorithms sort through the haystack more efficiently and more systematically so that the needle—the better maps—can be found."[3] In this way, a "computer program essentially substitutes for a very large body of neutral experts and the viable, neutral maps they draw."[4]

As further explained in *Computational Redistricting and the Voting Rights Act*, algorithms can help craft district maps that provide minority voters with an equal

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[2] Amariah Becker, Moon Duchin, Dara Gold & Sam Hirsch, *Computational Redistricting and the Voting Rights Act*, 20 ELECTION L.J. 407 (2021), https://www.liebertpub.com/doi/full/10.1089/elj.2020.0704.

[3] Emily Rong Zhang, *Bolstering Faith with Facts: Supporting Independent Redistricting Commissions with Redistricting Algorithms*, 109 CALIF. L. REV. 987, 1012–13 (2021) (internal quotation marks and footnotes omitted).

[4] Bruce E. Cain, et al., *A Reasonable Bias Approach to Gerrymandering: Using Automated Plan Generation to Evaluate Redistricting Proposals*, 59 WM. & MARY L. REV. 1521, 1536–37 (2018).

opportunity to elect their preferred candidates—without injecting excessive race-consciousness into the mapmaking process. This attribute could be especially relevant in Louisiana, where the State's attempts in the 1990s to create two congressional districts that were effective for Black voters were invalidated (twice) for excessive consideration of race and racial data. *See Hays v. Louisiana*, 936 F. Supp. 360, 362–72 (W.D. La. 1996) (three-judge court) (*per curiam*); *Hays v. Louisiana*, 839 F. Supp. 1188, 1209 (W.D. La. 1993) (three-judge court), *vacated on other grounds*, 512 U.S. 1230 (1994).[5]

SUMMARY OF ARGUMENT

To fully appreciate the potential benefits of computational redistricting here requires an understanding of both the procedural and the substantive constraints that caselaw places on federal district courts involved in remedial redistricting. As for procedure, caselaw from the Supreme Court and the Fifth Circuit provides a clear legal framework for a district court upon finding that VRA plaintiffs seeking a preliminary injunction are likely to succeed on the merits of their claim. When, as here, there is still sufficient time available before the candidate qualifying period, the map can be enjoined while giving the State approximately two weeks to cure the VRA defect. If the Legislature and Governor act promptly to pass a map that fully cures the adjudicated VRA defect and complies with all other legal requirements, the federal court's work is done. But if the Legislature and Governor fail to meet the court's deadline or enact a new

[5] In the three decades since *Hays*, Louisiana's Black population has grown by nearly 19%, while its white population has declined by more than 6%. *Compare Hays*, 936 F. Supp. at 377 (showing that Louisiana's population was 67% white in 1990), *with* House Bill No. 1 (enrolled Mar. 30, 2022) (equivalent figure had fallen to 57% by 2020), https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1248568.

map that again violates the VRA or any other law, then the court must move quickly to fill the void. Computational redistricting can be extraordinarily helpful at this point because redistricting involves satisfying multiple objectives simultaneously.

A court-ordered remedial redistricting plan must fully comply with the VRA without allowing race and racial data to predominate, must satisfy all other federal and state legal requirements, and must cure the VRA defect while otherwise leaving intact, to the extent possible, the State's plan and the political policy choices undergirding it. To show that this is possible, this brief presents an illustrative "*Amicus* Map" developed with the assistance of computational redistricting. It contains two districts—one in the New Orleans area, the other in the Baton Rouge area—that are both likely to elect candidates preferred by Black voters even though most of the districts' voters are not Black. Both districts, like all six districts in the map, are contiguous, geographically compact, respectful of political subdivisions such as parishes and municipalities, and respectful of communities of interest. The *Amicus* Map adheres to the "one person, one vote" doctrine more closely than any congressional plan in Louisiana history. And it is fair to all Louisianans, regardless of party, region, or race. In short, the *Amicus* Map is a powerful demonstration of the benefits of computational redistricting. And, using the same algorithmic techniques, it could be speedily adjusted to account for any additional criteria that surface during the Court's upcoming evidentiary hearing or from the factual findings and legal conclusions that the Court might issue following that hearing.

ARGUMENT

I. Federal Caselaw Guides How a District Court Should Remedy a Congressional Redistricting Plan's Voting Rights Act Violation.

Precedents from the Supreme Court and the Fifth Circuit establish the legal framework for what a federal district court should do in a VRA Section 2 redistricting case if it concludes that plaintiffs seeking a preliminary injunction are likely to succeed on the merits of their claim.

A. Likelihood of Success on the Merits

The merits inquiry requires the district court to evaluate whether plaintiffs challenging a statewide redistricting plan will likely be able to satisfy the three-pronged "*Gingles* test" and to show, "based on the totality of circumstances," that citizens from plaintiffs' racial or ethnic group "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). The *Gingles* test requires plaintiffs to show three "preconditions": (1) The minority group must be sufficiently large and geographically compact to constitute a majority in an additional, reasonably configured district, (2) the minority group must be politically cohesive, and (3) other voters must vote sufficiently as a bloc to enable them usually to defeat the minority group's preferred candidate. *See Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). As Justice Scalia explained for a unanimous Court in *Growe v. Emison*, 507 U.S. 25 (1993), *Gingles*'s first and second prongs, "[t]he '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 a possible district; and *Gingles*'s second and third

prongs, "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." *Id.* at 40 (citing *Gingles*, 478 U.S. at 50–51 & n.17).

At the liability phase of the proceedings, VRA Section 2 plaintiffs thus typically submit an "illustrative" alternative map containing at least one additional district (compared to the challenged map) in which members of the plaintiffs' minority group both (i) constitute a majority of the voting-age population and (ii) have the potential to elect a representative of their choice. *See Bartlett v. Strickland*, 556 U.S. 1, 12, 18, 26 (2009) (plurality op.).

B. The Equities, the Public Interest, and the "*Purcell* Principle"

Before ordering a preliminary injunction, a district court must consider not only the movant's likelihood of success on the merits, but also the equities, including the likely harm to both parties, and the public interest. *See Harding v. Edwards*, 487 F. Supp. 3d 498, 505 (M.D. La. 2020) (citing *Robinson v. Hunt County*, 921 F.3d 440, 451 (5th Cir. 2019)). Under *Purcell v. Gonzalez*, 549 U.S. 1, 4–6 (2006) (*per curiam*), and its progeny, in election cases the equities and the public interest suggest that a federal district court ordinarily should not enjoin a state districting plan during "the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay applications). As Justice Kavanaugh recently explained, this "*Purcell* principle" reflects "a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption

and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Id.* at 880–81. Addressing the temporal scope of the *Purcell* principle, Justice Kavanaugh wrote: "How close to an election is too close [to issue a federal injunction] may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects." *Id.* at 881 n.1.

When the "nature of the election law at issue" is a redistricting plan, one key date is clear: the time for candidates to file their notices of candidacy. *Compare Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in denial of stay application) (declining to order changes to congressional districts after candidate qualifying had closed), *with id.* at 1091–92 (Alito, J., joined by Thomas & Gorsuch, JJ., dissenting) (stating that "promptly granting a stay" during the candidate qualifying period "would have been only minimally disruptive in the[se] circumstances"). *Amici* are not aware of any published redistricting case in which the Supreme Court or any other federal court cited *Purcell* to block a change in a redistricting plan more than a week before the opening of the candidate qualifying period.[6]

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[6] *See, e.g.*, *Common Cause v. Rucho*, 284 F. Supp. 3d 780, 791 (M.D.N.C. 2018) (denying a request to stay a decision invaliding congressional districts where candidate filing was set to begin more than two weeks after the deadline that the court had imposed for the Legislature to enact a new districting plan). *But see Palmer v. Hobbs*, No. C22-5035, 2022 WL 1102196, at *1–4 (W.D. Wash. Apr. 13, 2022) (unpublished) (denying preliminary injunction 19 days before the deadline for redrawing precincts, where plaintiffs' proposed map divided many precincts).

In *Merrill v. Milligan*, the recent Alabama congressional-redistricting case, state law had established a January 28, 2022 candidate qualifying deadline; but the federal district court did not preliminarily enjoin the Legislature's congressional plan until January 24, just four days before the deadline. And the district court made it clear that it expected the remedial process to take a few weeks, so the actual map might not have been ordered into effect until well into February. The Supreme Court thus stayed the

By statute, Louisiana's congressional candidate qualifying period will commence this year on Wednesday, July 20, and close on Friday, July 22. *See* LA. R.S. 18:467(2), 18:468(A). Prior to those dates in July, potential candidates may need several days, perhaps a week or two, to consult with their supporters and decide whether and where to run. But ordering changes to Louisiana's congressional districts in, say, June or early July will not cause the kind of chaos, confusion, or hardship for candidates, voters, or election administrators that the *Purcell* principle is designed to prevent. In any event, every day that the court can save during the remedial phase—for example, by taking full advantage of computational redistricting—is one more day that the Court can devote to adjudicating the merits of the case or can provide to potential candidates to decide whether and where to run for office.

C. Remedial Roles of the Legislature, the Governor, and the Federal Court

If plaintiffs are deemed likely to succeed on the merits of their VRA claims, and if equitable considerations, including the timing concerns addressed by the *Purcell* principle, favor granting a preliminary injunction, the federal district court would ordinarily give the State an opportunity (and a deadline) to cure the VRA violation, while simultaneously preparing for the contingency that the court itself ultimately will have to adopt its own remedial map. *See, e.g.*, *Major v. Treen*, 574 F. Supp. 325, 355–56 (E.D. La. 1983) (three-judge court); *see also White v. Weiser*, 412 U.S. 783, 794–95 (1973); *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). *But see, e.g.*, *North Carolina v. Covington*, 138 S. Ct.

January 24 preliminary injunction on February 7. *See* 142 S. Ct. at 879–80 (Kavanaugh, J., concurring in grant of stay applications).

2548, 2553–54 (2018) (*per curiam*) (affirming district court's decision not to give the Legislature another opportunity to enact a remedial map because doing so could interfere with the upcoming election cycle).

In a few States, the constitution or a statute has set out a specific period—typically 12 to 15 days—for the Legislature (or other redistricting body) to enact a remedial plan.[7] Although no such provision exists in the Louisiana Constitution, providing the Legislature with approximately two weeks to pass a remedial redistricting plan and have that plan signed by the Governor would be customary.

If the Legislature and the Governor timely enact a remedial plan that fully cures the VRA violation and otherwise complies with all federal and state legal requirements, then the federal district court should issue a preliminary injunction barring the use of the prior, invalid plan and ordering the Legislature's new, valid plan into effect for the upcoming elections. In this scenario, enactment of the latter plan (assuming it can remain in effect until the next federal decennial census) ordinarily will moot the VRA plaintiffs' case entirely and thus effectively end the litigation.

If, however, the State fails to timely enact a remedial plan, or if the court concludes that the newly enacted "remedial" plan does not fully cure the VRA violation or fails to

[7] *See, e.g.*, COLO. CONST. art. 5, § 44.5(4)(b) ("the commission shall have twelve days … to return an adopted plan that resolves the court's reasons for disapproval"); KAN. CONST. art. 10, § 1(b) ("[T]he legislature shall enact a statute of reapportionment conforming to the judgment of the supreme court within 15 days."); N.C. STAT. § 120-2.4(a) (giving the General Assembly "not … less than two weeks" "to remedy any defects identified by the court in its findings of fact and conclusions of law"); *see also* OR. CONST. art. IV, § 6(2)(c) (requiring a judicial order by September 15 and a corrected redistricting plan "on or before November 1").

comply with other legal requirements, then the court should adopt its own map and issue a preliminary injunction ordering it into effect for the next election cycle. In anticipation of this possibility, the federal district court typically will have invited the parties and *amici* to submit their own proposed remedial maps. *See, e.g.*, *Upham v. Seamon*, 456 U.S. 37, 38 (1982) (*per curiam*). The deadline for the parties' and *amici*'s submissions can, but does not have to, be the same deadline that the court sets for the State's remedial enactment. Once plans are submitted and evaluated, the court may either choose from among the litigants' proposed plans or draw its own remedial map, often with the help of a special master. *See* Nathaniel Persily, *When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans*, 73 GEO. WASH. L. REV. 1131, 1148–50 (2005); *see also* FED. R. CIV. P. 53.

A court-ordered map is subject to the same substantive legal constraints that the State would be subject to (discussed below). But in addition, principles of federalism and judicial restraint counsel that a federal district court should not "intrude upon state policy any more than necessary" or make modifications to a state districting plan unless they are "necessary to cure any constitutional or statutory defect." *Upham v. Seamon*, 456 U.S. at 41–43 (internal quotation marks omitted); *see Perry v. Perez*, 565 U.S. 388, 393 (2012) ("[A] district court should take guidance from the State's recently enacted plan in drafting an interim plan."). Tailoring modifications to a map to avoid needless changes is a task to which computational redistricting is particularly well suited, as explained below (*see infra* Part II-D).

Whether the task is evaluating a remedial plan newly enacted by the Legislature and Governor, evaluating a remedial plan proposed by a party or *amicus*, or crafting a court-drawn remedial plan, there are three main substantive legal constraints for the district court to apply. First, the remedial plan must cure the VRA violation in the challenged map. Second, in curing the VRA violation, the court must avoid the excessive and unjustified use of race and racial data. And third, the remedial plan must comply with all other federal and state legal requirements. Each of these three legal constraints is discussed below. And each can best—and most rapidly—be satisfied by employing the algorithmic techniques developed by computational redistricters, as demonstrated below (*see infra* Part II).

1. Curing the VRA Violation

Like the "illustrative" plan that plaintiffs present in the liability phase, a valid remedial plan must contain at least one additional district (compared to the challenged map) in which members of the plaintiffs' minority group have the potential to elect a representative of their choice. But unlike plaintiffs' liability-phase illustrative plan—which must comply with the requirement of *Bartlett v. Strickland*, 556 U.S. 1 (2009), to show that there is an additional district in which members of the plaintiffs' minority group constitute a majority of the voting-age population—in a remedial plan, members of the plaintiffs' minority group need not constitute a majority of the voting-age population in the additional district. The harm inflicted on plaintiffs is not that they reside in a district with the "wrong" demographic composition, but rather that they reside and vote in a district where they will be deprived the "opportunity … to elect representatives of their

choice," 52 U.S.C. § 10301(b), as their preferred candidates will routinely lose to nonminority voters' preferred candidates.

The Supreme Court explained this distinction in *Bartlett v. Strickland*. The plurality there held, on the one hand, that VRA ***plaintiffs*** have to show that their minority group is sufficiently large and geographically compact to constitute a literal, numerical majority in an additional, reasonably configured district. But it further held, on the other hand, that VRA ***defendants*** can prevail by pointing to what the Court called "crossover" districts. In a crossover district, minority adults, though outnumbered, can elect their preferred candidates with limited, but predictable, crossover support from nonminority voters. *Compare Strickland*, 556 U.S. at 12–14, 18–19, 26 (plurality op.) (requiring plaintiffs to meet the 50% threshold to satisfy the first prong of the *Gingles* test), *with id.* at 23–24 (encouraging defendants to rely on "crossover voting patterns and … effective crossover districts"); *see Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017) (explaining that the VRA can "be ***satisfied by*** crossover districts"); *Baltimore Cnty. Branch of the NAACP v. Baltimore Cnty.*, No. 21-cv-3232, 2022 WL 888419, at *1– 6 (D. Md. Mar. 25, 2022) (approving defendant's proposed remedial plan, with a reconfigured district in which Black voters would not constitute a numerical majority but would have an opportunity to elect a representative of their choice); *see also Fusilier v. Landry*, 963 F.3d 447, 456 n.7 (5th Cir. 2020) (distinguishing district court's remedial map from plaintiffs' "*Gingles* step one" map). As explained immediately below, this asymmetry can make it easier for a court to remedy a VRA violation without running afoul of the Equal

Protection Clause, especially if the court takes advantage of computational-redistricting methods designed to reconcile the statutory and constitutional demands.

2. Avoiding the Excessive and Unjustified Use of Race

Compliance with the VRA obviously requires both awareness and active consideration of race and racial data. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995). But if that consideration is excessive and unjustified, it violates the Equal Protection Clause under a line of Supreme Court "racial gerrymandering" precedents that commenced with *Shaw v. Reno*, 509 U.S. 630 (1993). Redistricters—including federal district courts at the remedial phase of a voting-rights suit—therefore must walk a fine line between paying too little attention to race and violating the VRA and paying too much attention to race and violating the Constitution.

The caselaw articulating the racial-gerrymandering doctrine identifies three potential triggers for deeming a district subject to strict scrutiny. First, some Justices have suggested, although the Court has never held, that intentionally creating a particular number of majority-minority districts is, by itself, presumptively unconstitutional. *See, e.g.*, *LULAC v. Perry*, 548 U.S. 399, 517 (2006) (Scalia, J., joined by Roberts, C.J, and Thomas & Alito, JJ., concurring in judgment in part and dissenting in part); *cf. Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1247, 1249 (2022) (*per curiam*). Second, the Court has held that it is presumptively unconstitutional for a State to draw districts to "maintain a particular numerical minority percentage" or to meet arbitrary or "mechanical racial targets." *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 267, 273–75 (2015); *see Cooper v. Harris*, 137 S. Ct. at 1468–69; *Bethune-Hill*

v. Va. State Bd. of Elections, 137 S. Ct. 788, 799, 801–02 (2017). And third, over the last few decades, the Court has repeatedly held districts presumptively unconstitutional if they subordinate traditional nonracial districting principles—such as contiguity, compactness, respect for political subdivisions, and respect for communities of interest—to racial considerations. *See, e.g.*, *Miller v. Johnson*, 515 U.S. at 916.

As the *Bartlett v. Strickland* plurality recognized, "crossover districts" where Black adults lack a numerical majority but nonetheless have the potential to elect representatives of their choice may be less vulnerable to claims of racial gerrymandering. *See Strickland*, 556 U.S. at 23. These districts can enhance "minority voting strength" while "diminish[ing] the significance and influence of race" and "encouraging minority and majority voters to work together" toward common goals. *Id.* The Court found these districts "can lead to less racial isolation, not more." *Id.* Moreover, these districts (by definition) are not the product of intentionally creating a particular number of majority-minority districts or of drawing districts to maintain an arbitrary numerical minority percentage or meet a mechanical racial target.

Again, this is an area in which computational redistricting can be particularly helpful: Racial subordination of traditional neutral districting principles can be avoided if algorithms draw districts emphasizing criteria like compactness and the integrity of parishes and municipalities and focusing on electoral outcomes for minority-preferred candidates rather than on raw demographic data.

3. Complying with Other Legal Requirements

Finally, a remedial redistricting plan not only must cure the VRA violation while avoiding excessive and unjustified race-consciousness, but also must comply with all other federal and state legal requirements. The list of applicable requirements here is brief: population equality, compliance with the VRA as to racial and ethnic groups other than the plaintiffs', and (although it is no longer an independently justiciable issue in federal court) the avoidance of excessive partisanship or political skew. Consideration for these legal mandates can be incorporated into the algorithmic instructions used in computational redistricting.

II. The *Amicus* Map Illustrates the Benefits of Computational Redistricting When Remedying a Plan's Voting Rights Act Violation.

As sketched above, the task potentially facing this Court is (1) to adopt a map that cures any VRA violation (2) without being overly race-conscious (3) while complying with other legal requirements, (4) minimizing needless changes, and (5) moving quickly. This is where computational redistricting shines. One could hardly imagine a better "fit" between a task and a technology.

To demonstrate how this could work in practice, *amici* here present a possible "*Amicus* Map." They do so purely for illustrative purposes and make no claim that it is an "ideal" map, if there even is such a thing. But it is an example of a map developed with the aid of computational redistricting and thus reflects some of the advantages inherent in this technology and methodology.[8] Importantly, should this Court find that a remedial

[8] *Amici* are electronically delivering a comma-delimited block-equivalency file and a set of shapefiles for the *Amicus* Map to counsel for all parties in these consolidated cases, so

map is warranted, the inputs used to generate this map could be easily and swiftly altered to create a map that aligns with the facts determined at the evidentiary hearing in this matter.

Perhaps most significantly, in response to the allegations leveled by Plaintiffs that the recently enacted plan violates the VRA, the *Amicus* Map contains ***two*** districts—one based in New Orleans, the other in Baton Rouge—that can elect congressional candidates preferred by Black voters, even over white voters' heavy—but not unanimous—opposition. At the same time, the *Amicus* Map contains ***zero*** districts that are majority-Black or that could be plausibly deemed "racial gerrymanders" by the Court of Appeals or the Supreme Court.

As shown below, the *Amicus* Map (1) fully cures any VRA violation that this Court could find in the Louisiana Legislature's recently enacted congressional plan, LA. R.S. 18:1276 ("the Enacted Plan"); (2) avoids being overly race-conscious; (3) complies with other federal and state legal requirements; (4) otherwise leaves intact the Enacted Plan and the legislative policy judgments it embodies; and (5) could speedily be modified, including to account for new evidence adduced at the Court's upcoming evidentiary hearing and for findings of fact and conclusions of law that this Court might issue following that hearing.

A large color version of the *Amicus* Map, as well as color blowups of the New Orleans- and Baton Rouge-based districts (Districts 2 and 6, respectively), along with a

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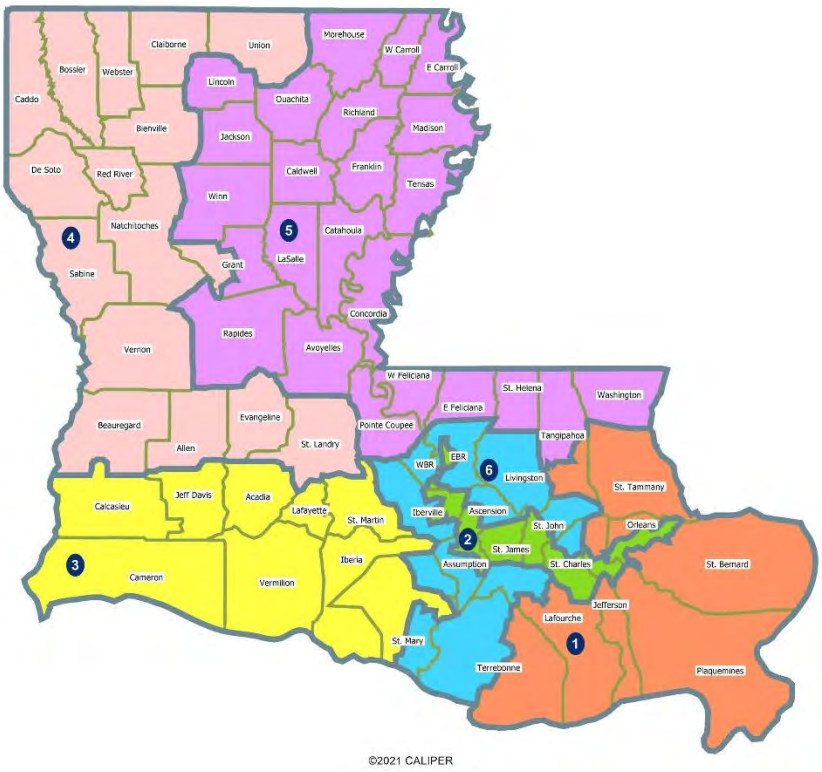
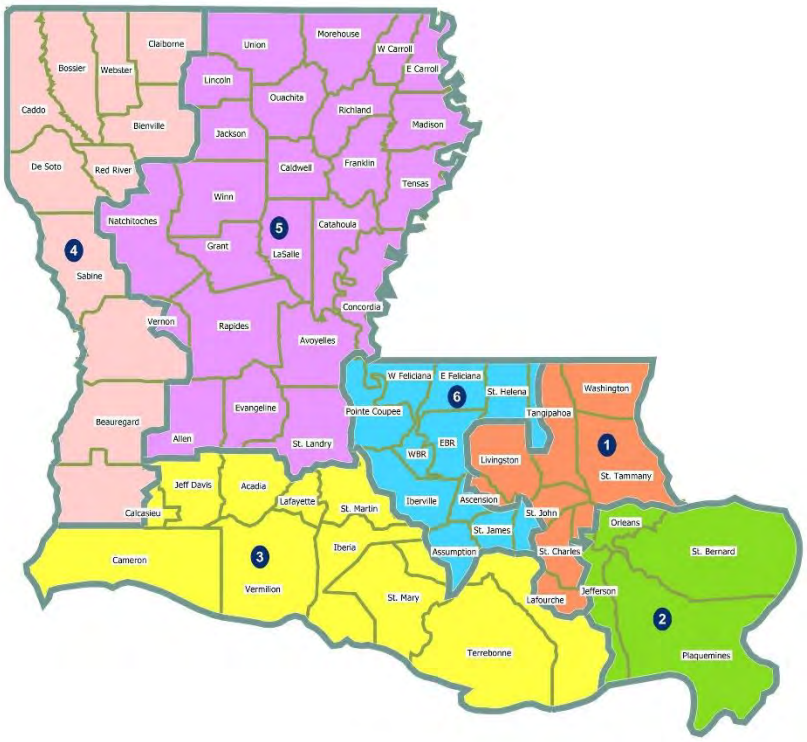
that they can more easily analyze the map themselves. *Amici* would be happy to supply the same files to the Court upon its request.

detailed legal description of all six districts, can be found in the Addendum to this brief. On the next page of the brief is a matching pair of color maps showing both the Enacted Plan (with its majority-Black District 2 shown in green) and the *Amicus* Map (with its Districts 2 and 6 in green and blue, respectively).

The Enacted Plan



The *Amicus* Map



A. The *Amicus* Map Cures Any VRA Violation in the Enacted Plan.

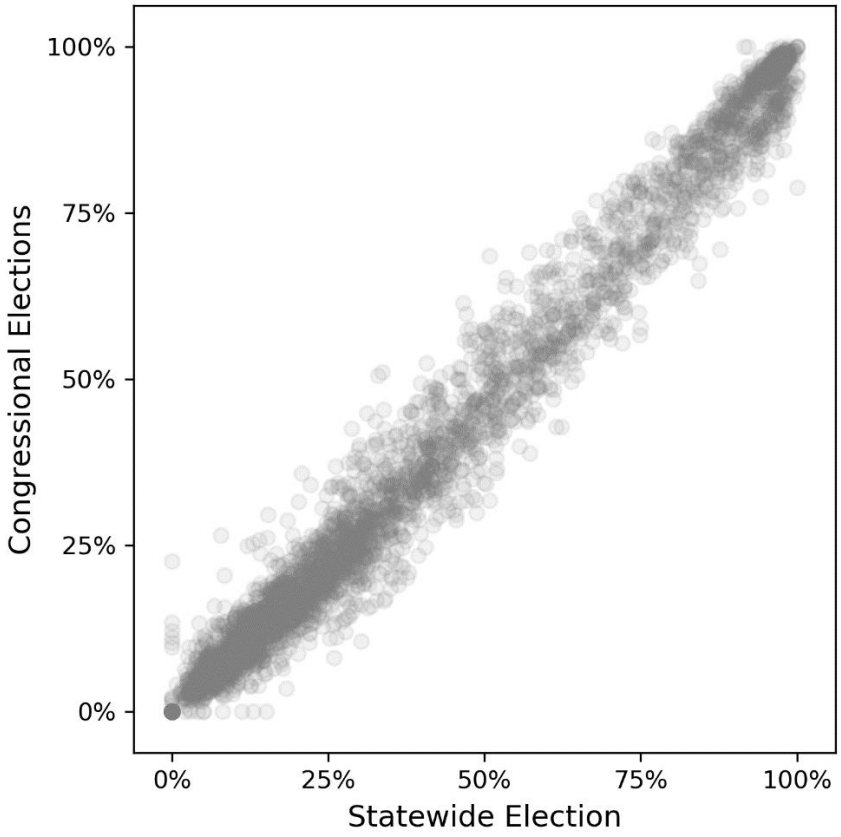
The gravamen of Plaintiffs' VRA claims is that minority voters generally, and Black voters specifically, have less opportunity than other citizens to elect their preferred candidates to Congress. This is because, realistically, their opportunities are confined to only one of Louisiana's six congressional districts. To cure the violation that Plaintiffs have alleged would require drawing a remedial congressional map with two districts, rather than only one district, where Black voters could elect their preferred candidates to the U.S. House of Representatives.

Properly analyzing whether a map contains two effective districts for Black voters requires using data from recent elections to determine which candidates were preferred by Black voters and whether those candidates prevailed among the voters in any particular proposed district. Statewide elections are particularly useful because they allow apples-to-apples comparisons between alternative districts, as the voters in all districts faced the same set of candidates (and campaigns). To determine which candidate carried a proposed district, one simply sums the votes cast in every precinct contained within the district. As discussed below, every district in both the Enacted Plan and the *Amicus* Map is constructed entirely from whole, intact precincts; so determining which statewide candidate carried any of these districts does not require statistical inference, just arithmetic. Determining which candidate in a given election was preferred by Black voters is more complicated, but political scientists and statisticians have developed well-accepted, sophisticated methodologies that compare each precinct's racial composition to

its voting behavior and thus draw inferences about how members of each racial group voted.[9]

In Louisiana, as elsewhere, data from statewide elections can reliably forecast congressional-election results. The following figure is a scatterplot showing, for each of Louisiana's 3,000-plus precincts, the most recent ***statewide*** election results (the Democratic percentage of the precinct's major-party vote in the November 2020 presidential contest) on the x-axis and the most recent ***congressional*** election results (the Democratic percentage of the same precinct's major-party vote) on the y-axis. That the former is an excellent proxy for the latter is obvious from even a quick glance.

[9] *See, e.g.*, GARY KING, A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM: RECONSTRUCTING INDIVIDUAL BEHAVIOR FROM AGGREGATE DATA (1997). Here, *amici*'s experts used an extension of King's Ecological Inference, specifically the ei.MD.bayes function from eiPack. *See* Olivia Lau, Ryan T. Moore & Michael Kellermann, *eiPack: R X C Ecological Inference and Higher-Dimension Data Management*, R NEWS, vol. 7, no. 2, at 43–47 (Oct. 2007); Ori Rosen, Wenxin Jiang, Gary King & Martin A. Tanner, *Bayesian and Frequentist Inference for Ecological Inference: The* RxC *Case*, 55 STATISTICA NEERLANDICA 134 (2001).



Statistical analysis has shown that, at least in recent years, the Black-preferred candidates in Louisiana's statewide (and congressional) elections have consistently been Democrats. And the leading Democratic vote-getter in every statewide election since 2012 was also the Black-preferred candidate. In recent statewide elections with one Democratic candidate on the ballot, that candidate has always won 74 to 95 percent of the Black vote. Conversely, during the same period, white-preferred candidates were consistently Republicans; the leading Republican vote-getter in every statewide election was also the white-preferred candidate; and when one Republican candidate was on the ballot, that candidate has always won 63 to 90 percent of the white vote. In sum, Louisiana's long history of significant and consistent racially polarized voting is hardly a

thing of the past. *See Clark v. Edwards*, 725 F. Supp. 285, 298–99 (M.D. La. 1988) (finding "consistent racial polarization" in voting "across Louisiana"), *vacated on other grounds*, 750 F. Supp. 200 (M.D. La. 1990), *vacated*, 501 U.S. 1246 (1991); *Major v. Treen*, 574 F. Supp. at 337–39, 351–52 (finding consistent racial polarization in the New Orleans area); *cf. Anderson v. Martin*, 375 U.S. 399, 400–04 (1964) (invalidating a 1960 Louisiana statute designed to encourage white bloc voting against Black-preferred candidates by requiring each candidate's race to be printed next to the candidate's name on the ballot).

The following Table One shows the 19 statewide elections in the last decade in which one candidate is estimated to have received at least 85 percent of the Black vote. This list includes every Democratic candidate who received more than one-third of the statewide vote since 2011. The columns in Table One show the month and year of the election, with a "p" indicating a primary election; the office being filled; the Black-preferred candidate's surname (or surnames, for a presidential and vice-presidential ticket), with italics indicating a Black candidate; the statewide estimated percentage support that this candidate received from Black voters and from non-Hispanic white voters; and a list of the congressional districts (by district number) that the candidate carried in the Enacted Plan and in the *Amicus* Map. The elections are listed in order by the candidate's estimated level of statewide Black support, starting with President Obama, who was preferred by more than 95 percent of all Louisiana Black voters. In 8 of the 19 elections in Table One the candidates preferred by Black voters were white.

TABLE ONE

Month and Year	Office(s)	Candidate(s) Preferred by Black Voters	Estimated Support for Candidate(s)		Enacted Plan Districts Carried by Black-Preferred Candidate(s)	*Amicus* Map Districts Carried by Black-Preferred Candidate(s)
			Black Voters	White Voters		
11/12	President/VP	*Obama*/Biden	95	12	2	2, 6
12/14	U.S. Senator	Landrieu	95	17	2	2, 6
11/15	Governor	J.B. Edwards	95	37	2, 3, 4, 5, 6	2, 4, 5, 6
11/19	Governor	J.B. Edwards	95	28	2	2, 6
11/16	President/VP	Clinton/Kaine	94	12	2	2, 6
12/16	U.S. Senator	Campbell	94	14	2	2, 6
11/19	Sec'y of State	*Collins-Greenup*	93	15	2	2, 6
11/15	Lt. Governor	*Holden*	93	22	2	2, 6
11/14p	U.S. Senator	Landrieu	92	20	2	2, 6
10/19p	Governor	J.B. Edwards	92	27	1, 2, 3, 4, 5, 6	2, 3, 4, 6
11/20	President/VP	Biden/*Harris*	91	14	2	2, 6
10/15p	Sec'y of State	*Tyson*	91	16	2	2
10/19p	Treasurer	*D. Edwards*	91	12	2	2
12/18	Sec'y of State	*Collins-Greenup*	90	14	2	2, 6
10/19p	Att'y General	*Jackson*	90	11	2	2
11/17	Treasurer	*D. Edwards*	90	19	2	2
10/19p	Lt. Governor	*Jones*	89	10	2	2
10/19p	Sec'y of State	*Collins-Greenup*	88	12	2	2, 6
10/15p	Governor	J.B. Edwards	85	21	2, 4, 5, 6	2, 4, 5, 6

Table One shows that, under the Enacted Plan, every Black-preferred candidate carried District 2; but none of the candidates, other than Governor Edwards, carried any of the other five districts. By contrast, under the *Amicus* Map, the Black-preferred candidate would have prevailed not only in District 2 in all 19 elections but also in District 6 in 14 of the 19 elections, including the 11 elections in which the candidate attracted the strongest levels of Black support. It is telling that each of the last three Democratic presidential tickets lost statewide by nearly 20 points but handily carried the *Amicus*

Map's District 6. In four of the five elections in Table One in which the Black-preferred candidate failed to carry the *Amicus* Map's District 6, the candidate was severely underfunded, received less than 38 percent of the vote statewide, and thus lost in a landslide—a circumstance that would be highly unlikely in a ***congressional*** election confined to District 6, which in this map is a competitive district likely to attract strong, well-funded candidates.

In any event, the mere fact that Black-preferred statewide candidates have occasionally failed to carry District 6 does not prevent it from fully curing any VRA liability that Plaintiffs might prove. As the Supreme Court has explained, the Act's "ultimate right … is equality of opportunity, not a guarantee of electoral success." *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994). "One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast." *Id.* at 1017.

Table One also demonstrates one of the two main reasons why the *Amicus* Map's Districts 2 and 6 are effective for Black voters even though their voting-age populations are not majority-Black: Although white voters are cohesive in voting against Black-preferred candidates, they are not as cohesive as Black voters are in supporting those same candidates. On average in these contests, the statewide Black vote split about 92 to 8 percent, while the statewide white vote split about 85 to 15 percent in the opposite direction. The second reason is that voters who identify as neither Black nor white, including substantial numbers of Latino and Asian-American citizens, consistently vote Democratic in Louisiana, which helps Black-preferred candidates. The latter point is

especially salient in the *Amicus* Map's New Orleans-based District 2, where 10 percent of all registered voters identify as neither white nor Black.[10]

The Supreme Court has expressly encouraged the creation of crossover districts like the *Amicus* Map's Districts 2 and 6, which foster cross-racial coalition-building. "[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics." *De Grandy*, 512 U.S. at 1020.

Any dilution of minority voting strength caused by the Enacted Plan's "packing" Black voters into District 2 (and cracking them elsewhere) would be cured by the *Amicus* Map—or any other map that harnessed computational redistricting to foster equal electoral opportunity by accounting for precinct-level returns from recent elections.

B. The *Amicus* Map Is Not Overly Race Conscious.

As explained above (*see supra* Part I-C-2), the excessive and unjustified consideration of race and racial data might render a district invalid under the Equal Protection Clause if the mapmaker (i) intentionally created a particular number of majority-Black districts; (ii) drew districts to maintain a particular numerical minority percentage or meet arbitrary or mechanical racial targets; or (iii) allowed race to

[10] In November 2020, in the *Amicus* Map's Baton Rouge-based District 6, Joe Biden and Kamala Harris won the Black vote by about 92 percentage points (*i.e.*, about 96% to 4% among major-party voters) and won the non-Black minority vote by about 70 points, but lost the white vote by about 79 points. In the *Amicus* Map's New Orleans-based District 2, they won the Black vote by about 93 percentage points and won the non-Black minority vote by about 61 points, but lost the white vote by about 30 points.

predominate over traditional nonracial districting principles such as contiguity, compactness, respect for political subdivisions, and respect for communities of interest.

Computational redistricting can aid in curing a VRA violation without engaging in any of these types of excessive race-consciousness. For one thing, the computational-redistricting methods employed by *amici*'s expert team replace reliance on simplistic, racial rules of thumb with systematic evaluation of actual precinct-specific electoral returns. Moreover, the *Amicus* Map can easily satisfy all three standards and thus could not plausibly be labeled a "racial gerrymander" or subjected to strict scrutiny for excessive race-consciousness.

First, *Amici* and their expert team did not intentionally create two majority-Black districts. This is apparent from the simple fact that the number of majority-Black districts in the *Amicus* Map is zero. Furthermore, in crafting two districts that, although not majority-Black, would present Black voters with a fair opportunity to elect their preferred candidates to Congress, *Amici*'s expert team generally relied not on racial data, but rather on electoral data—especially the performance of Democratic statewide candidates, some of whom were Black and some of whom were not. *See Hunt v. Cromartie*, 526 U.S. 541, 549–52 (1999).

Second, the *Amicus* Map's New Orleans-based District 2 and Baton Rouge-based District 6 obviously were not built to hit any arbitrary demographic threshold or target, such as being 50 percent or 55 percent Black in voting-age population, or VAP. Table Two presents the relevant figures:

TABLE TWO

Metric for Black Percentage	*Amicus* Map District 2 Greater New Orleans	*Amicus* Map District 6 Greater Baton Rouge
Voting-Age Population (2020)	41.5	42.9
Registered Voters (2021)	42.4	44.2
Total Population (2020)	43.8	45.3

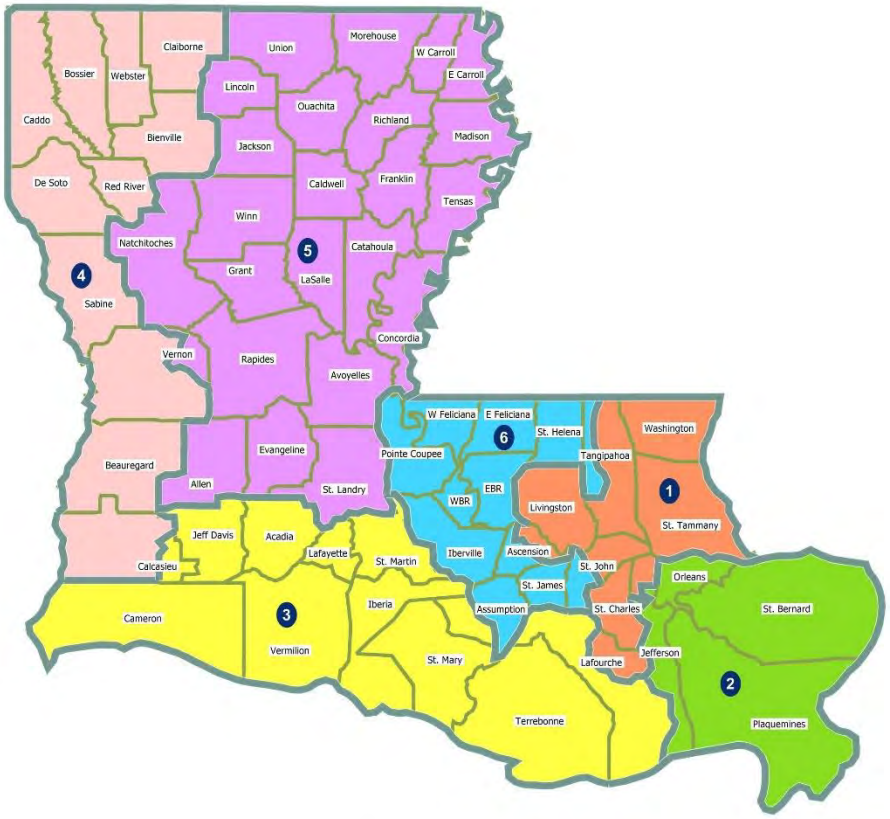
Third, Louisiana's traditional neutral districting principles, not race, predominated in crafting the *Amicus* Map generally and Districts 2 and 6 specifically. Last year, largely reaffirming similar criteria applied in earlier decades, the Louisiana Legislature enacted Joint Rule No. 21, which adopted the following discretionary criteria for congressional redistricting: (1) each district must be "composed of contiguous geography"; (2) the plan must "provide for single-member districts"; (3) each district must "have a population as nearly equal to the ideal district population as practicable"; (4) the plan must "be a whole plan which assigns all of the geography of the state"; (5) "[t]o the extent practicable, each district … [must] contain whole election precincts"; and (6) the plan must "respect the established boundaries of parishes, municipalities, and other political subdivisions and natural geography of this state to the extent practicable," although "this criterion is subordinate to and shall not be used to undermine the maintenance of communities of interest within the same district to the extent practicable." HCR 90, 2021 R.S. (effective June 11, 2021); *see also Major v. Treen*, 574 F. Supp. at 330–31 (listing traditional principles).

1. General criteria

The *Amicus* Map easily complies with the first five criteria from Joint Rule No. 21: The Map is a whole plan that assigns all of Louisiana's geography to one of six single-member congressional districts, each of which is composed of contiguous geography and (as discussed below) contains whole election precincts and has a population as nearly equal to the ideal district population as practicable (given adherence to the whole-precinct criterion).

2. Geographic compactness

Although Joint Rule No. 21 does not expressly list geographic compactness as a criterion, it is a traditional redistricting principle in Louisiana and may be inferred from the Joint Rule's references to political subdivisions and communities of interest (discussed in more detail below). *See Major v. Treen*, 574 F. Supp. at 330–31, 353 n.34. And compactness is a prominent traditional redistricting principle in the Supreme Court's caselaw on racial gerrymandering. *See, e.g.*, *LULAC v. Perry*, 548 U.S. at 432–33; *Bush v. Vera*, 517 U.S. 952, 962 (1996) (plurality op.). All six districts in the *Amicus* Map are geographically compact—and that is certainly true for Districts 2 and 6, as demonstrated by this color map:



When evaluating the compactness of a remedial map, the compactness of the Enacted Plan's districts may serve as a useful benchmark for comparison. Table Three reports three standard mathematical measures of district compactness for the Enacted Plan and the *Amicus* Map, breaking out the districts with larger Black populations (District 2 in both plans and District 6 in the latter plan). For each compactness measure, the scores range from a low near zero, for a dramatically bizarre shape, to a high of one, for a perfect circle. The Polsby-Popper measure focuses on a shape's jaggedness, which would penalize a district shaped like a gear; the Reock measure focuses on elongation, penalizing a district shaped like a string bean; and the Convex Hull measure focuses on concaveness, penalizing a district shaped like a crescent moon. Table Three shows that

the *Amicus* Map's districts are generally more compact than the Enacted Plan's—and this is especially true when one focuses on the districts with the greatest Black electoral opportunity. So it is clear that race did not predominate over the traditional redistricting principle of compactness in drawing the *Amicus* Map's Districts 2 and 6.

TABLE THREE

Compactness Score (higher is better)	Enacted Plan: All Districts	*Amicus* Map: All Districts	Enacted Plan: District 2	*Amicus* Map: Districts 2 & 6
Average Polsby-Popper Compactness Score	0.140	0.241	0.058	0.324
Average Reock Compactness Score	0.350	0.436	0.155	0.550
Average Convex Hull Compactness Score	0.621	0.738	0.383	0.767

3. Respect for political subdivisions

The *Amicus* Map is highly respectful of political subdivisions such as Louisiana's 64 parishes and 304 municipalities (cities, towns, and villages). Specifically, the *Amicus* Map splits only 7 parishes and 6 municipalities.[11] By contrast, the Enacted Plan splits more than twice as many parishes (15) and more than three times as many municipalities (19). Most of those divisions—9 parish splits and 10 municipal splits—can be attributed to just one of the Enacted Plan's districts, the majority-Black District 2, which starts in eastern New Orleans and snakes its way to north Baton Rouge. Indeed, more political

[11] Four of the six split municipalities are divided because a district line follows a parish line and the municipality falls into two parishes. The *Amicus* Map thus divides only two municipalities within a single parish (Hammond in Tangipahoa Parish and Lockport in Lafourche Parish). And the Enacted Plan also splits Hammond.

subdivisions are divided by this one district in the Enacted Plan than by all six districts combined in the *Amicus* Map.

Furthermore, while the Enacted Plan's majority-Black District 2 divides 9 of the 10 parishes it touches, the *Amicus* Map's Districts 2 and 6 divide only 4 of the 16 parishes they touch. There is not a single parish or municipality that is divided by the *Amicus* Map's District 2 or District 6 that was not already divided in the Enacted Plan. So, race did not predominate over respect for political subdivisions in the *Amicus* Map's districts.

4. Respect for communities of interest

The Supreme Court has also noted that a racial-gerrymandering claim can fail if districts were drawn to respect "communities defined by actual shared interests." *Miller v. Johnson*, 515 U.S. at 916. Often, a combination of respect for parishes (or counties) and municipalities, respect for precincts, and geographic compactness serves as a reasonable proxy for respecting communities of interest.

However, it can also be helpful to understand which parishes should sensibly "go together" in a given congressional district. Here, "metropolitan statistical areas," or MSAs, are helpful. "The United States Office of Management and Budget (OMB) delineates metropolitan … statistical areas according to published standards that are applied to Census Bureau data. The general concept … is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core."[12]

[12] *See* U.S. CENSUS BUREAU, ABOUT [METROPOLITAN AND MICROPOLITAN], https://www.census.gov/programs-surveys/metro-micro/about.html (last revised Nov. 22, 2021).

District 2 in the *Amicus* Map contains the core area of Louisiana's largest city, New Orleans, in its entirety, plus all parts of the New Orleans MSA that lie to the core's east or south, including all of Orleans, St. Bernard, and Plaquemines Parishes, and most of Jefferson Parish. The district largely tracks area code 504. The Jefferson Parish portion of District 2 covers the entire West Bank and the part of East Bank that abuts New Orleans; so it includes the parish seat, Gretna, the city of Westwego, and unincorporated places such as Marrero, Terrytown, Harvey, Estelle, and the bulk of Metairie. District 2 thus encompasses every Jefferson Parish suburb that is linked to New Orleans in Louisiana Supreme Court District Seven. *See Allen v. Louisiana*, 14 F.4th 366, 368 (5th Cir. 2021) (map).[13] The *Amicus* Map's District 2 contains no territory outside the New Orleans MSA; and more than 88 percent of the remainder of the MSA's population resides in District 1, mostly in St. Tammany, Livingston, and northern Jefferson Parishes.

District 6 in the *Amicus* Map is based in Louisiana's second-largest city, Baton Rouge, which is kept intact. District 6 contains about 8½ of the 10 parishes that constitute the Baton Rouge MSA, including the Parishes of East Baton Rouge and West Baton

[13] Likewise, fully nested in the *Amicus* Map's District 2 are the entire populations of Jefferson Parish Council Districts 1 and 5; Jefferson Parish School Board Districts 1, 2, 3, and 6; Senate Districts 5, 7, and 8; and House Districts 80, 83, 84, 85, 87, 94, and 105. *See Terrebonne Par. Branch NAACP v. Edwards*, 399 F. Supp. 3d 608, 616–17 (M.D. La. 2019) (adopting remedial map that respected communities of interest by following parish council and school-board district lines).

Rouge.[14] More than 85 percent of District 6's residents live in the Baton Rouge MSA. And almost the entirety of area code 225 falls into this district.

The *Amicus* Map's other districts also follow natural communities and MSAs. District 3 contains almost all of Louisiana's Gulf Coast, stretching from Lafourche and Terrebonne Parishes west to the Texas border, and including the entire Lafayette MSA in between. District 4 takes in western Louisiana, from Lake Charles through DeRidder and Fort Polk, up to Shreveport and Bossier City (another intact MSA). And District 5 is a heavily rural and agricultural district that also contains the entirety of the Monroe and Alexandria MSAs.

Overall, the *Amicus* Map is highly respectful of communities defined by actual shared interests. This is no accident: The algorithm used to help create the *Amicus* Map expressly considered a full hierarchy of socially meaningful geographic areas, from precincts to municipalities to parishes to MSAs.

C. The *Amicus* Map Complies with All Other Legal Requirements.

Computational redistricting also helped ensure that the *Amicus* Map complies with all other federal and state legal requirements, including the "one person, one vote" population-equality doctrine, the prohibitions against racial and ethnic vote dilution (aside from Plaintiffs' VRA allegations regarding Black voters), and the constitutional limitations on partisanship that constrain court-ordered districting maps.

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[14] The Baton Rouge metropolitan area's population is too large for one congressional district. Livingston Parish, the one Baton Rouge MSA parish wholly excluded from the *Amicus* Map's District 6, has given each of the last three Democratic presidential tickets less than 15% of the total vote.

1. Population Equality

The *Amicus* Map complies with the "one person, one vote" principle embodied in Article I, Section 2 of the U.S. Constitution. That provision does not require that congressional districts be drawn with "[p]recise mathematical equality," but does require a showing that population differences between districts that could have been, but were not, avoided "were necessary to achieve some legitimate state objective." *Karcher v. Daggett*, 462 U.S. 725, 730, 740 (1983).

The *Amicus* Map has a total deviation of less than 0.008% of the population of an ideal, or average, district—with a difference of only 61 persons between the Map's smallest and largest districts (776,257 residents in District 6 and 776,318 residents in District 4, respectively). The total population deviation in the *Amicus* Map is thus lower than that in the Enacted Plan (65 persons) or apparently (based on *amici*'s research) in any congressional plan in the history of Louisiana. Moreover, the *Amicus* Map's deviation is fully justified under the Louisiana Legislature's longstanding policy of keeping all 3,000-plus precincts fully intact when redrawing congressional lines.

2. Racial Vote Dilution

The *Amicus* Map does not unlawfully dilute the voting strength of any racial or ethnic group. As explained above (*see supra* Part II-A), the *Amicus* Map accounts for Louisiana's highly polarized voting patterns by including two congressional districts where Black voters can elect their preferred candidates and four districts where white voters can do so. None of Louisiana's other (*i.e.*, nonwhite, non-Black) racial or ethnic groups, such as Latino or Asian-American citizens, is sufficiently large and

geographically compact; and as noted earlier, these groups consistently support Black-preferred candidates. Regardless of whether one considers Black voters specifically or all minority voters collectively, a map in which two of six districts are effective is nondilutive, given that Louisiana's adult citizen population is about 62 percent white and 32 percent Black.[15] Therefore, there is no racial or ethnic group that would have a viable claim against the *Amicus* Map under the VRA. *See De Grandy*, 512 U.S. at 1006–22. And for similar reasons, no viable claim of racial vote dilution could be lodged against the *Amicus* Map under the Fourteenth or Fifteenth Amendment to the United States Constitution, U.S. CONST. amends. XIV–XV, or under the Louisiana Constitution's prohibition against racially discriminatory laws, LA. CONST. art. I, § 3.

3. Partisan Fairness

Although the Supreme Court has held that partisan-gerrymandering claims are no longer justiciable in federal court, it has also concluded that extreme partisan gerrymanders are "incompatible with democratic principles" and violate the Federal Constitution. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019) (quotation marks omitted); *see id.* at 2514–15 (Kagan, J., dissenting). A court adopting a remedial congressional redistricting plan therefore should avoid any map that is excessively partisan. *See, e.g.*, *Carter v. Chapman*, 270 A.3d 444, 470 (Pa. 2022) (adopting a remedial congressional plan that reflected "statewide partisan preferences" (internal quotation marks omitted)); *Maestas v. Hall*, 274 P.3d 66, 80 (N.M. 2012) (court-ordered plan should

[15] U.S. CENSUS BUREAU, QUICKFACTS: LOUISIANA (2021), https://www.census.gov/quickfacts/LA (last visited Apr. 14, 2022).

"avoid … political advantage to one political party and disadvantage to the other"); *see also Gaffney v. Cummings*, 412 U.S. 735, 736, 753 (1973) (approving a plan intended to "achieve 'political fairness' between the political parties"). And this is especially true here in Louisiana, where the state constitution expressly forbids arbitrary, capricious, and unreasonable discrimination based on "political ideas or affiliations." LA. CONST. art. I, § 3.

The *Amicus* Map easily satisfies any reasonable standard for partisan fairness. In a state where the last four Democratic presidential candidates all received between 38 and 41 percent of the total vote and their Republican counterparts all received between 57 and 59 percent, it is eminently reasonable for a six-district plan to contain two districts that lean Democratic and four districts that lean Republican.

D. The *Amicus* Map Minimizes Changes to the Legislature's Enacted Plan.

As explained above (*see supra* Part I-C), in fashioning a court-ordered redistricting plan, a federal district court should not intrude on state policy or make modifications to a state plan except where doing so is necessary to cure a constitutional or statutory defect. Again, this is a task for which computational redistricting is well-tailored.

For example, the *Amicus* Map readily satisfies this "least change" standard. Though it would make adjustments to District 6 to comply with the VRA, the *Amicus* Map otherwise leaves untouched much of the Enacted Plan, and the legislative policy choices undergirding it. As already noted (*see supra* Part II-B), the *Amicus* Map is highly respectful of the traditional redistricting criteria that the Louisiana Legislature

expressly adopted last year, including population equality, contiguity, parish integrity, municipal integrity, and maintenance of communities of interest.

Furthermore, the *Amicus* Map keeps the vast majority of Louisianans—more than 3 million residents—in their current congressional district in the Enacted Plan, with their current Representative. Not surprisingly, District 6 and its neighbor, District 1, retain less of their prior cores than do the other districts. But even District 6 retains more than 57 percent of its constituents. And the New Orleans-based District 2 retains nearly two-thirds of its constituents. In the western part of the state, where the impact of replacing one minority district with two is muted, Districts 3, 4, and 5 each keep almost three-quarters of their constituents in the same district as under the Enacted Plan.

Significantly, none of the *Amicus* Map's districts contains the residences of more than one U.S. Representative. So, like the Enacted Plan, the *Amicus* Map would avoid pitting two sitting Members of Congress against each other in this November's election. This, too, shows maximal respect for the Legislature's political policy choices, while making sufficient changes to vindicate the voting rights of Louisiana's Black and minority citizens.

E. *Amici*'s Computational-Redistricting Techniques Can Save the Court Precious Time During the Litigation's Remedial Phase.

Being able to conduct a speedy remedial process with the aid of computational redistricting could help the Court's schedule in two ways. First, it could free up more time for the Court to hear and decide the merits of Plaintiffs' VRA claims. Second, a speedy remedial process could help the Court vindicate important rights by issuing a proper injunction early enough to leave potential candidates, political parties, election

administrators, and others sufficient time to prepare for the November and December 2022 elections. *E.g.*, *Merrill v. Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grant of stay applications); *see also supra* Part I-B.

The remedial phase of successful redistricting cases can vary considerably in length, but often takes roughly two to four weeks. If the Court gives the Legislature and the Governor an opportunity (and a deadline) to enact a lawful remedial plan, it should simultaneously set in motion the process for adopting a map of its own choosing if the Legislature defaults. Then, when the Legislature's deadline arrives, the court can quickly proceed to analyze the map the Legislature and the Governor have enacted, if any, and adopt either that map or, if necessary, an alternative map of the court's own choosing. That is where the computational-redistricting expertise that *amici* and their team bring can be of great help—ensuring that the Court has access to the best alternative maps, which reflect the Court's factual findings and legal conclusions and integrate all applicable legal requirements with the State's legitimate redistricting policy preferences.

Once the parties have presented their evidence and the Court has ruled on the Plaintiffs' likelihood of success on the merits, *amici* are ready to assist the Court in putting the Court's findings and conclusions into action, either through further *amici* submissions or in any other capacity that the Court deems helpful.

CONCLUSION

As stated at the outset, *amici curiae* offer this brief, and their *Amicus* Map, not in support of either party, but rather as a public service to assist the Court. Given the tight time constraints facing any court adjudicating redistricting claims in an election year, and given the complexity of vindicating minority citizens' rights under the Voting Rights Act while avoiding excessive race-consciousness and complying with all other federal and state legal requirements, as well as respecting the legitimate policy choices that the Louisiana Legislature embedded in the Enacted Plan, *amici* firmly believe that their team's expertise in computational redistricting is a potentially valuable asset. *Amici* thus stand ready to serve the Court, and the people of Louisiana, in whatever capacity would be most helpful to the Court, whether as *amici* or in any other role.

Dated: April 20, 2022

Respectfully submitted,

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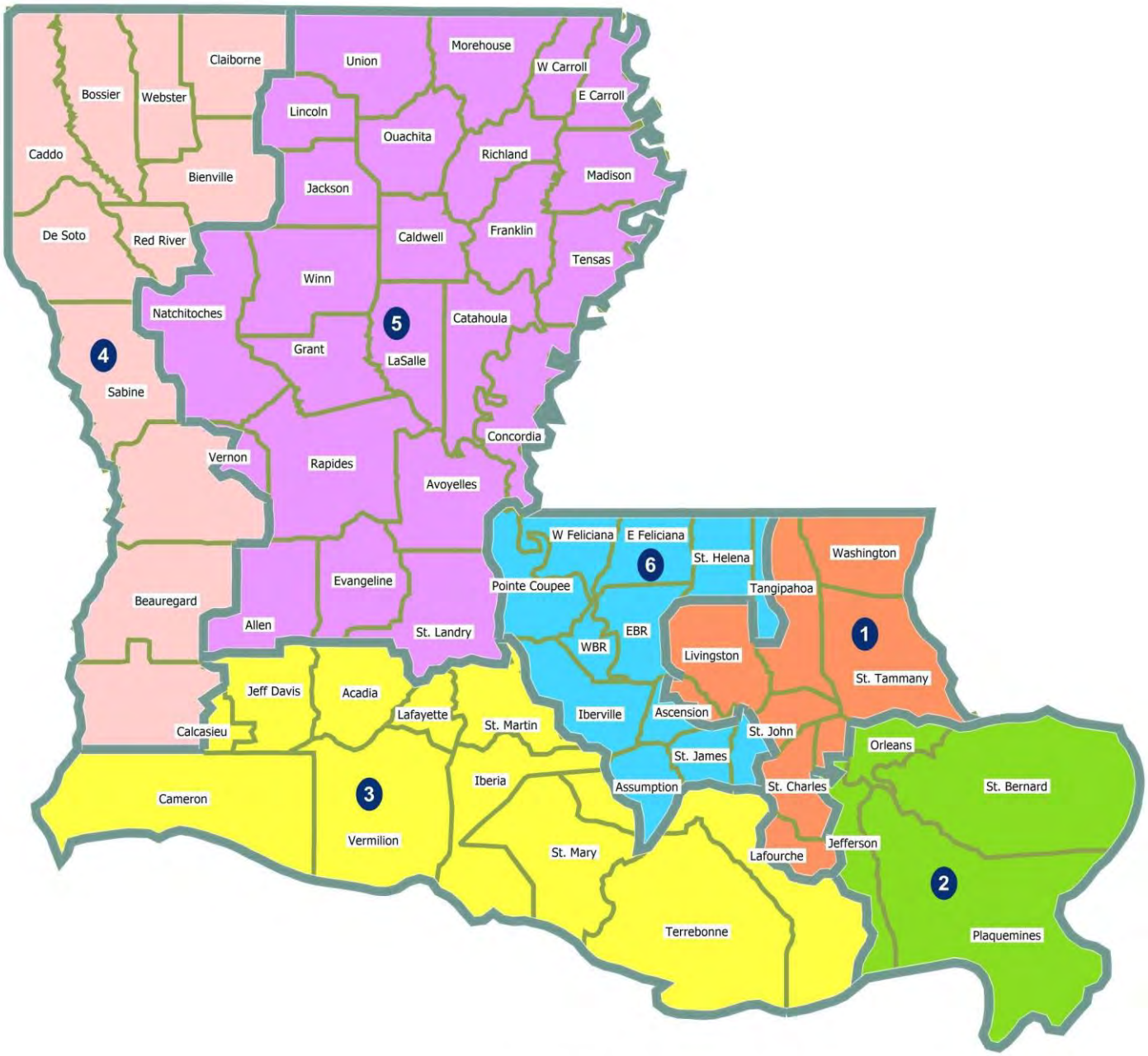
ADDENDUM

The *Amicus* Map—Statewide



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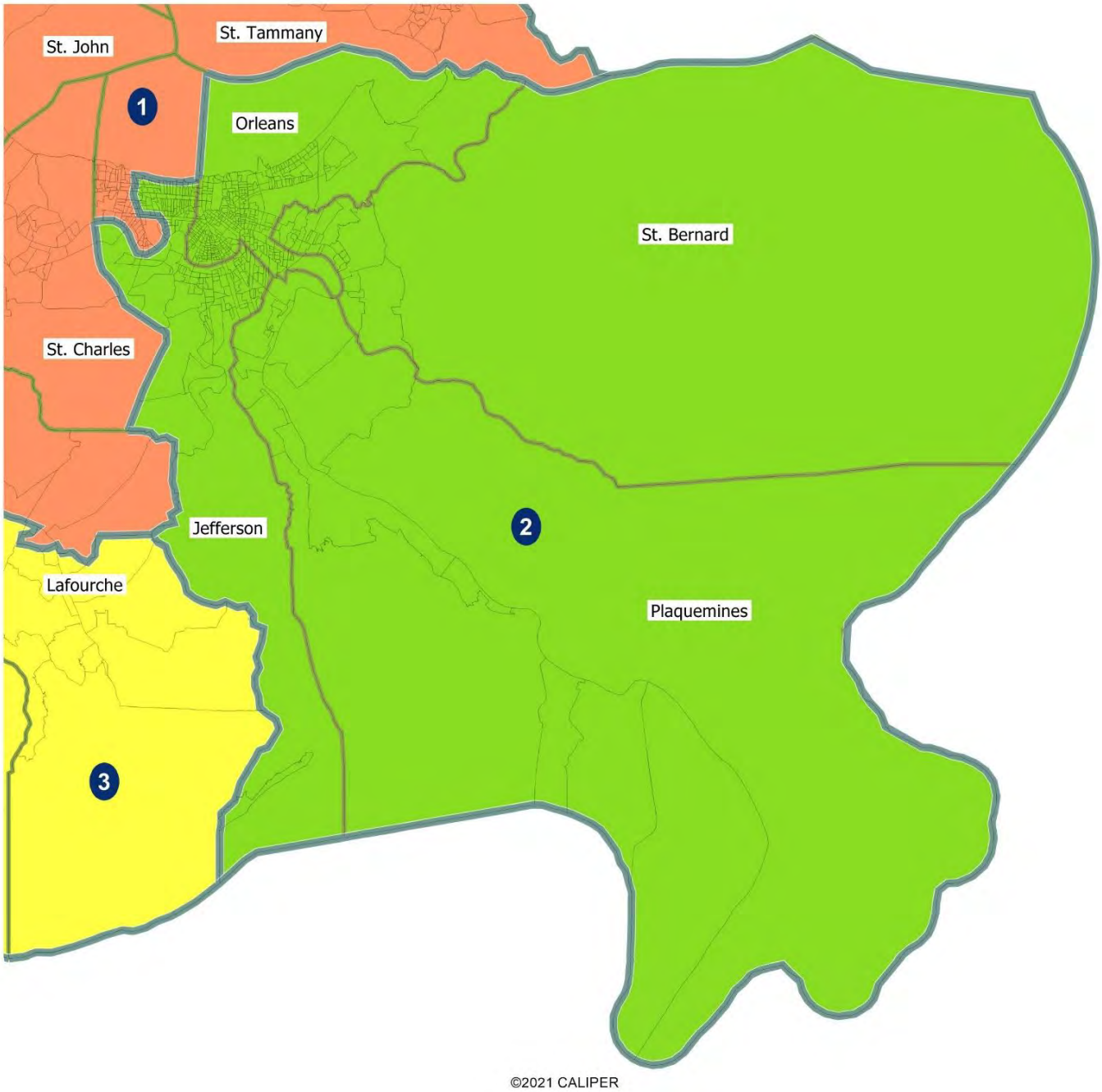
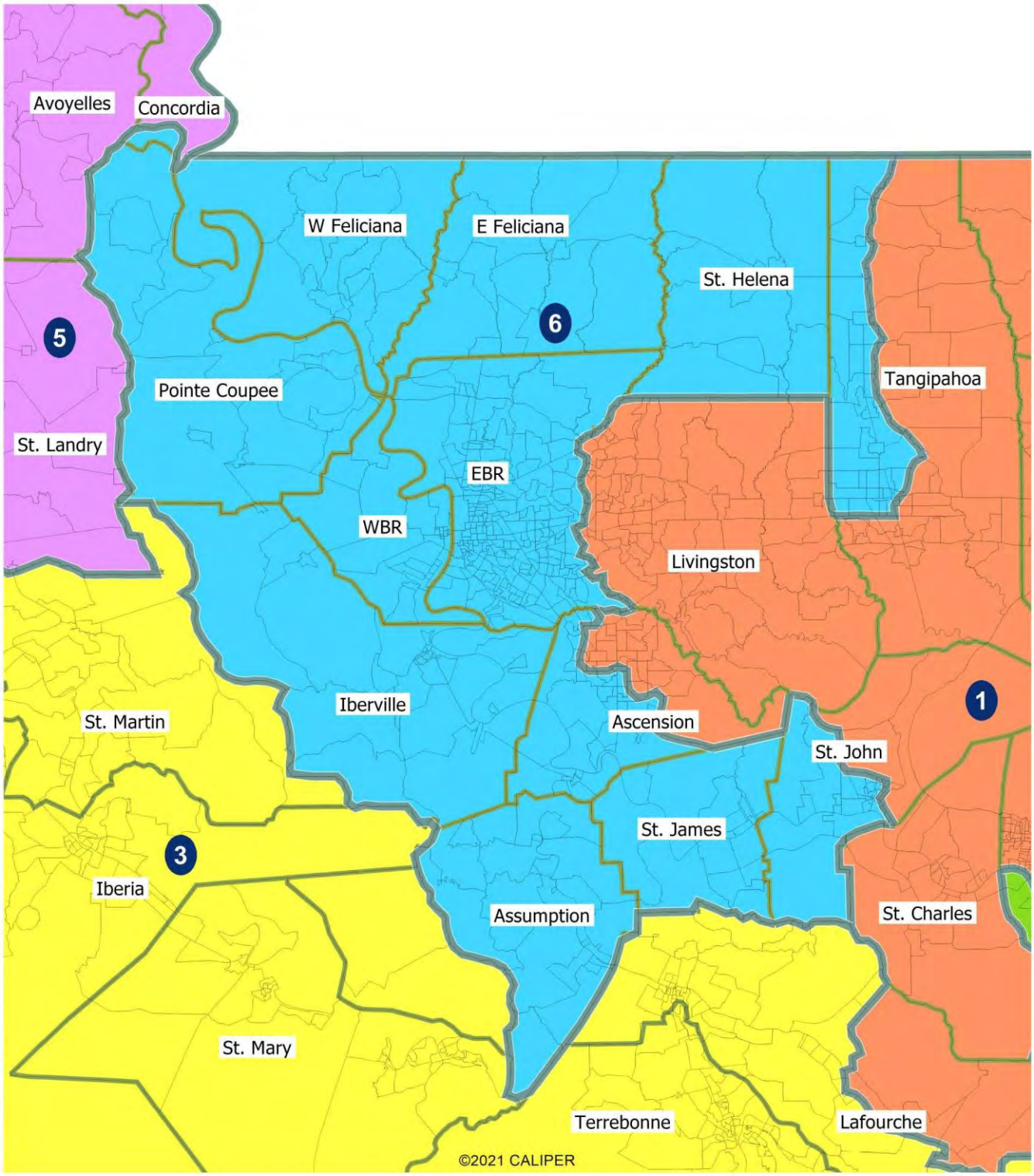
The *Amicus* Map's New Orleans-Based District 2



The *Amicus* Map's Baton Rouge-Based District 6



The *Amicus* Map's Congressional-District Components

The *Amicus* Map divides the State of Louisiana into six congressional districts:

District 1 is composed of Precincts 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 25, 26, 27, 33, 35, 41, 72, 76, 77, and 78 of Ascension Parish; Precincts 1, 1-H, 1-K, 2, 2-H, 2-K, 3-H, 3-K, 4-H, 4-K, 5-H, 5-K, 6-H, 6-KA, 6-KB, 7, 7-H, 7-KA, 7-KB, 8-H, 8-K, 9-H, 9-K, 10-K, 11-K, 12-K, 13-KA, 13-KB, 14-K, 15-K, 16-K, 17-K, 18-K, 19-K, 20-K, 21-K, 22-K, 23-K, 24-K, 25-K, 26-K, 27-K, 28-K, 29-K, 30-K, 31-K, 33-K, 34-K, 35-K, 51, 52, 53, 54, 55, 56, 57, 104, 105, 108, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125A, 125B, 126, and 130 of Jefferson Parish; Precincts 8-1, 9-1, 9-2, 10-1, 10-2, and 10-15 of Lafourche Parish; Livingston Parish; St. Charles Parish; Precincts 4-13, 5-1, and 5-4 of St. John the Baptist Parish; St. Tammany Parish; Precincts 44, 70, 70A, 71, 72, 72A, 73, 74, 102, 104, 104A, 106, 106A, 108, 110, 112, 114, 116, 118, 120, 120A, 120B, 122, 122A, 122B, 124, 124A, 137, 137A, 137B, 137C, 137D, 139, 141, 141A, 143, 143A, 145, 147, 149, 149A, and 151 of Tangipahoa Parish; and Washington Parish.

District 2 is composed of the Precincts of Jefferson Parish that are not located in District 1; Orleans Parish; Plaquemines Parish; and St. Bernard Parish.

District 3 is composed of Acadia Parish; Precincts 260, 261, 262, 800, 801, 860S, and 861E of Calcasieu Parish; Cameron Parish; Iberia Parish; Jefferson Davis Parish; Lafayette Parish; the Precincts of Lafourche Parish that are not located in District 1; St. Martin Parish; St. Mary Parish; Terrebonne Parish; and Vermilion Parish.

District 4 is composed of Beauregard Parish; Bienville Parish; Bossier Parish; Caddo Parish; the Precincts of Calcasieu Parish that are not located in District 3;

Claiborne Parish; De Soto Parish; Red River Parish; Sabine Parish; the Precincts of Vernon Parish that are not located in District 5; and Webster Parish.

District 5 is composed of Allen Parish; Avoyelles Parish; Caldwell Parish; Catahoula Parish; Concordia Parish; East Carroll Parish; Evangeline Parish; Franklin Parish; Grant Parish; Jackson Parish; LaSalle Parish; Lincoln Parish; Madison Parish; Morehouse Parish; Natchitoches Parish; Ouachita Parish; Rapides Parish; Richland Parish; St. Landry Parish; Tensas Parish; Union Parish; Precincts 5-1A, 6-1, 6-3, 8-2, and 8-3 of Vernon Parish; West Carroll Parish; and Winn Parish.

District 6 is composed of the Precincts of Ascension Parish that are not located in District 1; Assumption Parish; East Baton Rouge Parish; East Feliciana Parish; Iberville Parish; Pointe Coupee Parish; St. Helena Parish; St. James Parish; the Precincts of St. John the Baptist Parish that are not located in District 1; the Precincts of Tangipahoa Parish that are not located in District 1; West Baton Rouge Parish; and West Feliciana Parish.

The precincts listed here are the precincts used by the Louisiana Legislature in Act 5 of the Veto Session of 2022 (the "Enacted Plan").

EXHIBIT R

STATE 2

Expert Report of Thomas M. Bryan
Expert in Demography for the
Louisiana Attorney General

Robinson v. Ardoin

and

Galmon v. Ardoin

April 29, 2022

State Exhibit 2

EXPERT REPORT OF THOMAS M. BRYAN

I, Thomas M. Bryan, affirm the conclusions I express in this report are provided to a reasonable degree of professional certainty.

EXPERT QUALIFICATIONS

I am an expert in demography with more than 30 years of experience. Described more fully below, I have been retained by the Louisiana Attorney General's office as an expert to provide redistricting analysis related to State Congressional, State Senate and State Legislative redistricting plans.

I graduated with a Bachelor of Science in History from Portland State University in 1992. I graduated with a Master of Urban Studies (MUS) from Portland State University in 1996, and in 2002 I graduated with a Master in Management and Information Systems (MIS) from George Washington University. Concurrent with earning my Management and Information Systems degree, I earned my Chief Information Officer certification from the GSA[1]

My background and experience with demography, census data and advanced analytics using statistics and population data began in 1996 with an analyst role for the Oregon State Data Center. In 1998 I began working as a statistician for the US Census Bureau in the Population Division – developing population estimates and innovative demographic methods. In 2001 I began my role as a professional demographer for ESRI Business Information Solutions, where I began developing my expertise in Geographic Information Systems (GIS) for population studies. In May 2004 I continued my career as a demographer, data scientist and expert in analytics in continuously advanced corporate roles, including at Altria and Microsoft through 2020.

In 2001 I developed a private demographic consulting firm "BryanGeoDemographics" or "BGD". I founded BGD as a demographic and analytic consultancy to meet the expanding demand for advanced analytic expertise in applied demographic research and analysis. Since then, my consultancy has broadened to include litigation support, state and local redistricting, school redistricting, and municipal infrastructure initiatives. Since 2001, I have undertaken over 150 such engagements in three broad areas:

- state and local redistricting,
- applied demographic studies, and
- school redistricting and municipal infrastructure analysis.

---

1 Granted by the General Services Administration (GSA) and the Federal IT Workforce Committee of the CIO Council. http://www.gwu.edu/~mastergw/programs/mis/pr.html.

My background and experience with redistricting began with McKibben Demographics from 2004-2012, when I provided expert demographic and analytic support in over 120 separate school redistricting projects. These engagements involved developing demographic profiles of small areas to assist in building fertility, mortality and migration models used to support long-range population forecasts and infrastructure analysis. Over this time, I informally consulted on districting projects with Dr. Peter Morrison. In 2012 I formally began performing redistricting analytics and continue my collaboration with Dr. Morrison to this day. I have been involved with over 40 significant redistricting projects, serving roles of increasing responsibility from population and statistical analyses to report writing to directly advising and supervising redistricting initiatives. Many of these roles were served in the capacity of performing Gingles analyses, risk assessments and Federal and State Voting Rights Act (VRA) analyses in state and local areas.

In each of those cases, I have personally built, or supervised the building of, one or more databases combining demographic data, local geographic data and election data from sources including the 2000, the 2010 and now 2020 decennial Census. I also innovated the use of the US Census Bureau's statistical technique of "iterative proportional fitting" or "IPF" of the Census Bureau's American Community Survey, and the Census Bureau's Special Tabulation of Citizen Voting Age Population Data to enable the development of districting plans at the Census block level. This method has been presented and accepted in numerous cases we have developed or litigated. These data have also been developed and used in the broader context of case-specific traditional redistricting principles and often alongside other state and local demographic and political data.

In 2012 I began publicly presenting my work at professional conferences. I have developed and publicly presented on measuring effective voting strength, how to develop demographic accounting models, applications of using big data and statistical techniques for measuring minority voting strength – and have developed and led numerous tutorials on redistricting. With the delivery of the 2020 Census, I have presented on new technical challenges of using 2020 Census data and the impact of the Census Bureau's new differential privacy (DP) system. This work culminated with being invited to chair the "Assessing the Quality of the 2020 Census" session of the 2021 Population Association of America meeting, featuring Census Director Ron Jarmin.

I have written professionally and been published since 2004. I am the author of "Population Estimates" and "Internal and Short Distance Migration" in the definitive demographic reference "The Methods and Materials of Demography". In 2015 I joined a group of professional demographers serving as experts in the matter of Evenwel, et al. v. Texas case. In Evenwel I served in a leadership role in writing an Amicus Brief on the use of the American Community Survey (ACS) in measuring and assessing one-person, one vote. In 2019 I co-authored "Redistricting: A Manual for Analysts, Practitioners, and Citizens", and in 2021 I co-authored "The Effect of the Differential Privacy Disclosure Avoidance System Proposed by the Census Bureau on 2020 Census Products".

I have been deposed once in the last four years, in the matter of *Harding v. County of Dallas*, and have testified once, in the matters of *Milligan v. Merrill*, *Thomas v. Merrill* and *Singleton v. Merrill* over Alabama's Congressional redistricting initiatives.

I maintain membership in numerous professional affiliations, including:

- International Association of Applied Demographers (Member and Board of Directors)
- American Statistical Association (Member)
- Population Association of America (Member)
- Southern Demographic Association (Member)

My full CV, including my 30 years of demography experience, is attached as Appendix 5.

I am being compensated at my customary rate of $450/hour. My compensation is not dependent on my conclusions or opinions.

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Appendix 5 Thomas Bryan CV 102

I. EXECUTIVE SUMMARY

1. I was engaged by the Louisiana Attorney General's office to assess the characteristics of five congressional redistricting plans and to determine:
   a. whether the plans meet the numerosity criteria from the first prong of Gingles[2]; and
   b. if there was evidence that race appeared to predominate in the design of any of the plans.
2. In this report, I explore the demographic definition of minorities and show how different definitions can generate different conclusions about whether a district is a "majority" or not. Using measures of Black alone, Black (by the DOJ VRA definition) and Any Part Black (APB) Voting Age Population – we assess the Enrolled Plan and each of the Plaintiff's four Illustrative Plans in detail. Each of the Plaintiff's Illustrative Plans have two purported Black districts – but whether they are *majority* Black districts depends on which demographic definition of Black is used. As I will show: only by the most generous definition of Black, the any part black (APB) measure, do any of the Illustrative Plans meet the traditional majority minority criteria of over 50% + 1.
3. The Voting Age Population (VAP) by race and ethnicity by district for the Enrolled Plan is shown in **Appendix 1.A**. The Enrolled Plan has one majority Black district (District 2) no matter the definition of Black that is used. The VAP by race and ethnicity for the Robinson Illustrative Plan and the Galmon Illustrative Plans 1-3 are shown in **Appendix 1.B through Appendix 1.E**. Each Plaintiff Illustrative plan has two Black districts: 2 and 5, which could be considered either a minority or a majority Black depending on the demographic definition of Black used.

---

[2] Under the Gingles test, plaintiffs must show the existence of three preconditions:

- The racial or language minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district";
- The minority group is "politically cohesive" (meaning its members tend to vote similarly); and
- The "majority votes sufficiently as a bloc to enable it ...to usually to defeat the minority's preferred candidate."

4. In an effort to determine whether race predominated in the design of each plan – I executed a comprehensive geographic splits analysis. I not only analyzed the number of splits at different levels of geography, but deeply explored the size and type of population that were impacted by them. While the Plaintiff's Illustrative Plans have fewer place splits than the Enrolled Plan, there is evidence that virtually all of the Plaintiff's place splits are made almost surgically along racial lines. This is evident in the larger cities such as Lafayette, New Orleans and Baton Rouge – and smaller cities such as Alexandria and Monroe alike.

5. Based on the surgical, divisive nature of the splits in each of the Plaintiff's Illustrative Plans across Louisiana's places, I conclude that race was the prevailing factor in their design.

II. ASSIGNMENT

6. The Louisiana Attorney General has asked me to independently review and assess the features and characteristics of the Louisiana Congressional HB1 / SB5 Enrolled Redistricting Plan and compare them with each of the Plaintiff's Illustrative Plans, as follows:

   A. HB1 / SB5 Enrolled

   B. Robinson Illustrative Plan

   C. Galmon Illustrative 1 Plan

   D. Galmon Illustrative 2 Plan

   E. Galmon Illustrative 3 Plan

7. In Section III, I review the performance of these different Louisiana congressional redistricting plans with the following metrics:

   A. Demographic characteristics

   B. Geographic splits;

8. In Section IV, I present my conclusions.

9. In forming my opinions, I have considered all materials cited in this report and the appendices. I have also considered some pleadings and other filings in this matter; as well as technical resources such as Morrison & Bryan, Redistricting: A Manual for Analysts, Practitioners, & Citizens (Springer 2019) and the U.S. DOJ, Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 1301, for redistricting and methods of electing government bodies (Sept. 1, 2021).

10. I reserve the right to further supplement my report and opinions.

III. REDISTRICTING PERFORMANCE

A. Population and Characteristics

11. I began my assessment by examining the population movement in Louisiana between 2010 and 2020 that necessitated the decennial redistricting process. By 2020, the population in Louisiana had departed from where it had originally been drawn at the beginning of the decade. Using the Block Assignment File (also known as a Block Equivalency file) for the Senate Bill 5 - Enrolled - Congress – Hewitt and House Bill 1 - Enrolled - Congress - Schexnayder plans (which are identical) that I procured on or about April 17, 2022 from https://redist.legis.la.gov/HouseSenateBlockEquiv - I joined Census 2020 PL94171 data for each of the Louisiana Census blocks – then summed the total population and population by race and ethnicity data by each of six congressional districts for the existing Louisiana plan and each new plan I was asked to evaluate.

12. The main point of reference for the changes necessitated by redistricting is the total population deviation. For the Louisiana congressional plan is the total 2020 Census population of Louisiana of 4,657,757 divided by six districts – or a "target" population of 776,292.83. In ***Table III.A.1*** the numerical minimum and maximum values (the basis for the calculation of deviation) are shown for each plans. As of 2020, the existing Louisiana congressional plan had a deviation of 88,120. Louisiana District 6 had 816,466 population (+40,173, or +5.2% above target ideal), while District 4 had 728,346 population (-47,947, or -6.2% below target ideal).

13. In looking at the new plans - some have modest numerical deviations, but none of these rise to the point of being a measurable or meaningful percent deviation. As shown in ***Table III.A.1*** the Enrolled (Enacted) Plan has a total population deviation of 65. In the Robinson Illustrative Plan – the deviation is 51, and in each of the subsequent Galmon Illustrative Plans 1-3, the deviations are only 1.

Table III.A.1 Total Population of the Existing Louisiana Congressional Plan, the Enrolled Plan and Plaintiff's Illustrative Plans

District	Existing Louisiana Plan	HB1 / SB5 Enrolled Plan	Robinson Illustrative Plan	Galmon Illustrative Plan 1	Galmon Illustrative Plan 2	Galmon Illustrative Plan 3
1	812,585	776,268	776,286	776,292	776,293	776,293
2	775,292	776,317	776,291	776,293	776,293	776,293
3	785,824	776,275	776,280	776,293	776,293	776,293
4	728,346	776,333	776,280	776,293	776,293	776,293
5	739,244	776,277	776,331	776,293	776,293	776,293
6	816,466	776,287	776,289	776,293	776,292	776,292
Total	**4,657,757**	**4,657,757**	**4,657,757**	**4,657,757**	**4,657,757**	**4,657,757**
Minimim	728,346	776,268	776,280	776,292	776,292	776,292
Target	776,292.8	776,292.8	776,292.8	776,292.8	776,292.8	776,292.8
Maximum	816,466	776,333	776,331	776,293	776,293	776,293
Deviation #	88,120	65	51	1	1	1

14. Next, I refer to the final text of the SB5 Bill here: https://www.legis.la.gov/legis/ViewDocument.aspx?d=1248635. Page 7 of this report provides a population summary of the plan, shown in ***Table III.A.2*** below. The demographic statistics in this report precisely match my analysis of demographic statistics by district generated from the HB1 and SB5 Block Assignment Files (BAF) I downloaded from the https://redist.legis.la.gov/HouseSenateBlockEquiv website – the results of which I show in ***Table III.A.1*** above.

Table III.A.2 Population and Deviations from the Enrolled Plan Statistics Report

Plan: Senate Bill 5 Enrolled

Districts:	# of Members	Actual Population	Ideal Population	Absolute Deviation	Relative Deviation
District 1	1	776,268	776,292	-24	-0.003%
District 2	1	776,317	776,292	25	0.003%
District 3	1	776,275	776,292	-17	-0.002%
District 4	1	776,333	776,292	41	0.005%
District 5	1	776,277	776,292	-15	-0.002%
District 6	1	776,287	776,292	-5	-0.001%
Grand Total:	6	4,657,757	4,657,752		

Ideal Population Per Member:	776292		
Number of Districts for Plan Type:	6		
Range of District Populations:	776,268	to	776,333
Absolute Mean Deviation:	11		
Absolute Range:	-24	to	41
Absolute Overall Range:	65		

Ideal - Actual:	***-5***
Remainder:	***5***
Unassigned Population:	***0***

15. With this analysis in mind, it is concerning that there are two references to the Enrolled Plan's deviations in the Robinson Complaint that are inconsistent. On Page 25 at Para 73, the Robinson Complaint states "Representative Schexnayder asserted that his proposed map was his best effort to achieve population equality. However, the population deviation in H.B. 1 ranges from 29 voters to -17 voters". There is no reference for this claim, and an analysis of the Voting Age Population (VAP) of the Enrolled Plan shows the deviation to be much, much higher than 29 to -17 (a total of 46). In examining **Appendix 1.A HB1 / SB5 Enrolled Plan Voting Age Population**, I note that the minimum VAP of this plan is found in District 3 (with 586,488) and the maximum VAP of this plan is found in District 1 (with 601,559) for a total VAP deviation of 15,111.

16. In the same Robinson Complaint on Page 27 at Para 80, it states "Representative Duplessis pointed out that on equal population, S.B. 5 [had] a deviation of 128 people,". There is no source for this number, but I ascertained from an examination of statistics for the *Engrossed* Plan statistics here: https://www.legis.la.gov/legis/ViewDocument.aspx?d=1245772 that the population deviation for this plan was 128. I assume the *Engrossed* Plan is the plan referred to in this part of the Robinson complaint. The claim is irrelevant at this point, because the Engrossed Plan is not the plan that was enacted.

17. It is also worth noting that the analysis presented in the Plaintiff's expert Mr. Cooper's report does not appear to analyze or report findings based on the official Enrolled Plan either. In Figure 10 "2022 Plan – 2020 Census" of Mr. Cooper's expert report - he presents a demographic summary that he represents as being for the Enacted Plan, and again in

Exhibit H-1 of Mr. Cooper's report, "Population Summary Report, Louisiana Congress -- 2022 Enacted Plan". In comparing the figures from Cooper's tables with an actual, accurate demographic summary of the Enrolled Plan in ***Table III.A.2*** – Mr. Cooper's numbers are categorically different. An exploratory analysis of the demographic statistics from the *Engrossed* (not Enrolled, or the actual Enacted) plan are published here: https://www.legis.la.gov/legis/ViewDocument.aspx?d=1245772. A review of the "Plan Statistics" table at approximately page 9 reveals that the *Engrossed* Plan is the plan that Cooper apparently incorrectly characterizes as the "Enacted Plan" and goes on to analyze and critique at length. This numeric conclusion is corroborated by a visual examination of Cooper's Figure 11 "Louisiana U.S. House -- Enacted 2022 Plan" which reveals numerous geographic inconsistencies with the Enrolled Plan map. The Parishes of Jefferson Davis, Calcasieu and Rapides are clearly split while those parishes of Grant, St. Martin and St. Mary (which are split in the Enrolled Plan) are not.

18. The demographic summaries, illustrative maps and split analyses in Mr. Cooper's report all diverge from the results obtained from a similar analysis of the HB1 / SB5 Enrolled Plan. In order to independently confirm that Mr. Cooper used the Engrossed Plan in his analysis - I developed a series of maps and ran analyses from the other plans based on House and Senate Bill Block Equivalency Files (https://redist.legis.la.gov/HouseSenateBlockEquiv). I found that in fact, the results in Cooper's report are identical to the results obtained across all analyses when using the *Engrossed* Plan – not the actual *Enrolled* Plan.

19. In the following analysis, I assess and compare the population characteristics of the Louisiana HB1 / SB5 Enrolled Plan, the Robinson Illustrative Plan, and the Galmon Illustrative Plans 1, 2 and 3. This analysis includes measures of the total population, the white alone, non-Hispanic population (WNH), Any Part Black (APB), Black alone, non-Hispanic (BNH), all other non-Hispanic (including Asian, Native Hawaiian and Pacific Islander (NHPI), American Indian and Alaskan Native (AIAN), some other race and multi-race), and Hispanic population.

20. The VAP by race and ethnicity by district for the Enrolled Plan is shown in **Appendix 1.A**. The Enrolled Plan has one majority Black district (District 2) no matter the definition of Black that is used. The VAP by race and ethnicity for the Robinson Illustrative Plan and the Galmon Illustrative Plans 1-3 are shown in **Appendix 1.B through Appendix 1.E**. Each has two Black districts: 2 and 5, which are either a minority or a majority depending on the definition you use.

21. In the field of demography, and indeed in redistricting cases, the definition of a population in question is critical. The U.S. Census allows respondents to self-declare their ethnic and racial identification:

> "In order to facilitate enforcement of the Voting Rights Act, the Census Bureau asks each person counted to identify their race and whether they are of Hispanic or Latino origin. Beginning with the 2010 Census (and continuing in 2020) the racial categories available in the Census were: white, Black, American Indian, Asian, Native Hawaiians and other Pacific Islanders, and Some Other Race. Persons of Hispanic or Latino origin might be of any race. Persons were given the opportunity to select more than one race – and that race could be in combination with Hispanic or non-Hispanic origin." [3]

22. The Census Bureau reports some 288 different population counts for each level of Census geography in the country (71 in P1 "Race", 73 in P2 "Hispanic or Latino, and Not Hispanic or Latino by Race", 71 in P3 "Race for the Population 18 Years and Over" and 73 in P4 "Hispanic or Latino, and Not Hispanic or Latino by Race for the Population 18 Years and Over" The result is that the definition of "Black" and other races in Louisiana can be Black alone, or in combination with multiple other races or possibly even also Hispanic and other races. If one adds up the different combination of multiple races, the totals will exceed 100% because of double counting. That is – someone who self-reports that they are Black and Asian could be counted in the total of both groups. This can only be accounted for and adjusted using sophisticated demographic allocation techniques.[4] As shown in **Appendix 1.F,** there are 32 possible Black alone or in combination possibilities. As shown in **Appendix 1.G**, there are 64 possible Black alone or in combination possibilities when divided by Hispanic origin.

23. For the purposes of redistricting, there are multiple definitions of race to consider. The first is race alone. This is the most exclusive definition, excluding minorities from a racial category who are multi-race or of Hispanic origin. This is the definition that has been used historically, prior to the evolution of the multi-race definition in the census.

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[3] "How to Draw Redistricting Plans That Will Stand Up In Court", National Conference of State Legislators (NCSL), January 22, 2011, p. 17.

[4] See for example Ingram, Deborah D.; Parker, Jennifer D.; Schenker, Nathaniel; Weed, James A.; Hamilton, Brady; Arias, Elizabeth; Madans, Jennifer H. (2003) "United States Census 2000 Population with Bridged Race Categories. Vital and Health Statistics. Data Evaluation and Methods Research."

24. The next is what I will refer to as the "DOJ" definition. For the purposes of the Voting Rights Act, the DOJ has provided "Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for redistricting and methods of electing government bodies"[5]. This document provides a definition of minority populations that include both race alone and a minority race paired with white, as follows:

> "The Department's initial review will be based upon allocating any response that includes white and one of the five other race categories identified in the response. Thus, the total numbers for "Black/African American," "Asian," "American Indian/Alaska Native," "Native Hawaiian or Other Pacific Islander," and "Some other race" reflect the total of the single-race responses and the multiple responses in which an individual selected a minority race and white race."

The DOJ goes on to say in their guidance:

> "The Department will then move to the second step in its application of the census data by reviewing the other multiple-race category, which is comprised of all multiple-race responses consisting of more than one minority race. Where there are significant numbers of such responses, the Department will, as required by both the OMB guidance and judicial opinions, allocate these responses on an iterative basis to each of the component single-race categories for analysis. Georgia v. Ashcroft, 539 U.S. 461, 473, n.1 (2003)."

Last, the DOJ distinguishes their race from ethnicity classifications:

> As in the past, the Department will analyze Hispanic/Latino persons as a separate minority group for purposes of enforcement of the Voting Rights Act, pursuant to Sections 2, 4(f)(2), and 14(c)(3) of the Act. 52 U.S.C. §§ 10301, 10303(f)(2), 10310(c)(3). The Census asks respondents to answer both the Hispanic origin question and the race question. A Hispanic/Latino tabulation of Census data includes those who respond affirmatively to the Hispanic origin question, irrespective of their response to the race question, e.g., white, a minority race, "some other race" or multiple races. If there are significant numbers of responses in a jurisdiction that self-identify as Hispanic/Latino and one or more minority races (for example, Hispanics/Latinos who list their race as Black/African American), the Department will conduct its initial analysis by allocating those responses to

[5] https://www.justice.gov/opa/press-release/file/1429486/download

the Hispanic/Latino category and then repeat its analysis by allocating those responses to the relevant minority race category.

25. The math of the first step is what I use here for the calculation of "DOJ Black Voting Age Population (VAP)" – that is, Black + white, non-Hispanic. The population that can be considered in the second DOJ step is usually small, but as we will see, is still very important in assessing whether a district meets the 50% + 1 of minority Voting Age Population definition criteria from Gingles.

26. The last race definition is what I refer to as "Any Part" or "All". This definition counts a minority by race alone or in combination with other races (no matter how many other races are mentioned) as well as by Hispanic. Beyond the DOJ definition for example – if someone responds to the census by self-identifying as Black, white, Asian, Native Hawaiian Pacific Islander, American Indian Alaskan Native and "some other" – then by the "Any Part Black" definition they are counted as Black even though it was only one of races reported. For the purposes of the Louisiana analysis - we use this definition to refer to Any Part Black (or "APB"). Again, **Appendices 1.F and 1.G** show all of the combinations and counts of Louisiana Black populations that contribute to this definition.

27. The tables below illustrate that only the Enrolled Plan meets the Gingles numerosity test for VAP under Black alone or the DOJ Black definition. None of the Plaintiff's Illustrative Plans have two districts that meet the Gingle's criteria of majority under the DOJ Black or APB definition. All of the Plaintiff's Illustrative Plans have two majority VAP districts <u>only when using the APB definition</u>.

28. I begin with the detailed percent Black characteristics of the Enrolled HB1 / SB5 Plan in ***Table III.A.3***. District 2 has a Black alone VAP share of 56.34%. With the addition of Black and white population comprising the DOJ definition, that share rises to 57.03% When Any Part Black (APB) is considered – the share rises to 58.65%. Other districts vary from 13.48% to 33.82% APB.

Table III.A.3 HB1 / SB5 Enrolled Plan Black Share of Voting Age Population

HB1 / SB5 Plan	Black Alone	Black DOJ	Any Part Black
1	12.13%	12.49%	13.48%
2	**56.34%**	**57.03%**	**58.65%**
3	23.38%	23.94%	24.63%
4	32.54%	33.09%	33.82%
5	31.82%	32.33%	32.91%
6	22.87%	23.27%	23.86%

29. Next, I detail the percent Black characteristics of the Robinson Illustrative Plan in ***Table III.A.4***.

    a. District 2 only has a Black alone population of 48.73% - not a majority. With the addition of the Black and white population comprising the DOJ definition, that share rises to 49.39% - still not a majority. When Any Part Black (APB) is considered – the share rises to 50.96%, or a majority only when every combination of Black alone or in combination is considered.

    b. District 5 has a Black alone share of 50.63%. With the addition of Black and white population comprising the DOJ definition, that share rises to 51.25% When Any Part Black (APB) is considered – the share rises to 52.05% - all majorities.

Table III.A.4 Robinson Illustrative Plan Black Share of Voting Age Population

Illustrative Plan	Black Alone	Black DOJ	Any Part Black
1	16.84%	17.24%	18.29%
2	**48.73%**	**49.39%**	**50.96%**
3	16.77%	17.29%	17.91%
4	30.76%	31.25%	31.90%
5	**50.63%**	**51.25%**	**52.05%**
6	15.31%	15.68%	16.19%

30. Next, I detail the percent Black characteristics of the Galmon Illustrative 1 Plan in ***Table III.A.5***.

    a. District 2 only has a Black alone VAP share of 47.77% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 48.41% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.16%, or a majority only when every combination of Black alone or in combination is considered.

    b. District 5 has a Black alone share of 48.62% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 49.22% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.04% - an extremely thin majority.

Table III.A.5 Galmon Illustrative 1 Plan Black Share of Voting Age Population

Illustratuve 1 Plan	Black Alone	Black DOJ	Any Part Black
1	16.95%	17.35%	18.18%
2	**47.77%**	**48.41%**	**50.16%**
3	18.55%	19.10%	19.75%
4	30.68%	31.17%	31.82%
5	**48.62%**	**49.22%**	**50.04%**
6	16.36%	16.74%	17.24%

31. Next, I detail the percent Black characteristics of the Galmon Illustrative 2 Plan in ***Table III.A.6***.

    a. District 2 only has a Black alone VAP share of 48.27% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 48.92% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.65%, or a majority only when every combination of Black alone or in combination is considered.

    b. District 5 has a Black alone share of 48.65% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 49.25% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.04% - again an extremely thin majority.

Table III.A.6 Galmon Illustrative 2 Plan Black Share of Voting Age Population

Illustrative 2 Plan	Black Alone	Black DOJ	Any Part Black
1	15.29%	15.67%	16.51%
2	**48.27%**	**48.92%**	**50.65%**
3	20.39%	20.93%	21.59%
4	27.52%	28.00%	28.65%
5	**48.65%**	**49.25%**	**50.04%**
6	18.74%	19.14%	19.67%

32. Next, I detail the percent Black characteristics of the Galmon Illustrative 3 Plan in ***Table III.A.7***.

    a. District 2 has a Black alone VAP share of 47.77% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 48.41% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.16%, or a majority only when every combination of Black alone or in combination is considered.

b. District 5 has a Total Black Population of 50.23%. With the addition of Black and white population comprising the DOJ definition, that share rises to 50.81%. When Any Part Black (APB) is considered – the share rises to 51.63%.

Table III.A.7 Galmon Illustrative 3 Plan Black Share of Voting Age Population

Illustrative 3 Plan	Black Alone	Black DOJ	Any Part Black
1	17.35%	17.74%	18.52%
2	**47.77%**	**48.41%**	**50.16%**
3	16.82%	17.35%	17.98%
4	31.79%	32.29%	32.96%
5	**50.23%**	**50.81%**	**51.63%**
6	15.14%	15.53%	16.09%

B. District Boundaries, Parish and Place Geographic Splits Analysis.

33. I next turn my attention to the unity of administrative geography in Louisiana. There are three relevant layers of administrative geography in Louisiana, including parishes (the equivalent of counties in other states), places and VTDs - a generic term adopted by the Bureau of the Census to include the wide variety of small polling areas, such as election districts, precincts, or wards, that State and local governments create for the purpose of administering elections. [6]. The Louisiana Redistricting Criteria Joint Rule 21 specifically states (at H.) "All redistricting plans shall respect the established boundaries of parishes, municipalities, and other political subdivisions and natural geography of this state to the extent practicable".

34. The US Census Bureau provides useful details in understanding the number and characteristics of these geographic layers in Louisiana, as follows:[7]

- Parishes: There are 64 county equivalents in Louisiana known as parishes.
- Places: There are 488 places in Louisiana; 304 incorporated places and 184 census designated places (CDPs). The incorporated places consist of 69 cities, 128 towns, and 107 villages.

In addition to these geographies, we analyze 3,540 VTDs acquired from the 2020 Census TIGER program[8].

35. A "splits" analysis would conventionally extend to the number of split pieces of geography and stop there. Numerically fewer splits are *usually* indicative of a better performing plan than one with more splits. However - in the case of Louisiana, the raw counts of splits disguise the true nature and characteristics of the splits of places in all four of the Plaintiff's Illustrative Plans. In each, there is clearly a demographic pattern to the way in which places were split, and the characteristics of the populations in the resulting pieces begged further examination. I begin my analysis with a detailed examination of places, followed by observations about parish splits, concluding with a summary of VTD splits.

36. An examination of the number of place splits by plan in ***Table III.B.1*** shows the Enrolled Plan with 19 place splits. The Robinson Illustrative Plan follows with slightly more at 21, and the Galmon Illustrative Plans 1-3 follow with 13, 16 and 16 place splits respectively. What is significant is *how* each of these plans splits places – when they do.

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[6] https://www2.census.gov/geo/pdfs/reference/GARM/Ch14GARM.pdf

[7] https://www.census.gov/geographies/reference-files/2010/geo/state-local-geo-guides-2010/louisiana.html and current TIGER shapefiles

[8] https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.2020.html

Table III.B.1 Louisiana Place Splits by Plan

Plan	Split	Unsplit
HB1 / SB5 Enrolled	19	285
Robinson Illustrative Plan	21	283
Galmon Illustrative Plan 1	13	291
Galmon Illustrative Plan 2	16	288
Galmon Illustrative Plan 3	16	288

37. In the course of my analysis, I created tables showing not only the number of splits for each plan – but the size and population characteristics of the pieces that result from each place split. In **Appendix 2 Detailed Place Splits Analysis** I show the total population (and share), the white population (and share) and APB population (and share) for each place piece split, by plan.

38. In **Appendix 2.A HB1 / SB5 Enrolled Plan Place Splits** I show the population splits and demographic characteristics for the Enrolled Plan. Using Addis Town as an example – there are 6,700 of the 6,731 of the total population (99.54%) in District 2. Then, there are 3,415 white people (99.74%) and 2,765 Black people (99.74%) in District 2. The small remaining population is in District 6. I would characterize this split as being small and impacting the white and Black population equitably. This equity does not prevail for all cities in the Enrolled Plan though. For example, in Baton Rouge: 34.73% of the total population is in District 2, reflecting a balance of 5.41% of the white population and 57.21% of the Black population.

39. In the following **Appendix 2 Tables 2.B through 2.E** I report the detailed demographic size and impact of the splits incurred by the Plaintiff's Illustrative Plans. While each has fewer splits - an examination of these tables quickly reveals that there are much more significant demographic *impacts* of the splits made by those plans. But how do we quantify *how much more* these Illustrative Plans splits impact and divide the population (particularly by race) than the Enrolled Plan? A useful way for quantifying the degree to which a plan splits administrative geography by race is by measuring how much of a minority population would be in a given piece – if it had an exact same proportionate share as the total population. In demography = this is known as an index of misallocation[9]. For example, using the Galmon Illustrative 3 Plan split of Lafayette as shown in ***Table III.B.2*** below. In this plan, 70% of the total population is in the District 3 split, and 30% of the total

[9] Swanson, D.A. 1981 "Allocation Accuracy in Population Estimates: An Overlooked Criterion with Fiscal Implications." pp. 13-21 in Small Area Population Estimates, Methods and Their Accuracy and New Metropolitan Areas Definitions and Their Impact on the Private and Public Sector, Series GE-41 No.7, U.S. Bureau of the Census.

population is in the District 5 split. If the Black population were distributed evenly around the city, and a split was created randomly, we would expect the Black[10] population to be split the same as the total population. That is - we would expect that 70% of the 39,354 Black population in Lafayette would have ended up in District 3 and 30% of the Black population would have ended up in District 5.

Table III.B.2 Galmon Illustrative 3 Plan – Lafayette Expected Black Population

District	Total Pop	Total Percent	Expected Black Pop	
3	84,924	70.0%	27,536	=39,354 * 70%
5	36,450	30.0%	11,818	=39,354 * 30%

40. Instead, we find that the Black population in Lafayette was split in almost the exact opposite direction of the total population. As shown in ***Table III.B.3***- the Black population of 13,028 (or 33%) is split into District 3, while 26,326 Black population is split into District 5.

Table III.B.3 Galmon Illustrative 3 Plan – Lafayette Actual Black Population

District	Total Pop	Total Percent	Actual Black Pop	Black Pop Percent
3	84,924	70.0%	13,028	33%
5	36,450	30.0%	26,326	67%

41. The outcome, as shown in ***Table III.B.4*** is that in the Galmon Illustrative 3 Plan - 14,508 Blacks have been redistricted and split differently (27,536 expected minus 13,028 actual – or 26,326 actual minus 11,818 expected) in Lafayette than you would expect if the plan had been drawn race-blind. That is, they were demographically misallocated. As I am about to show with a series of maps of race by plan– it can be clearly seen in each of the Plaintiff's Illustrative Plans that the population has *not* been split and distributed equally in Louisiana's places.

[10] Any Part Black (APB)

Table III.B.4 Galmon Illustrative 3 Plan – Lafayette Black Population Difference from Expected

District	Expected Black	Actual Black	Black Pop Difference
3	27,536	13,028	14,508
5	11,818	26,326	-14,508

42. Of course, it would be unusual for there to be *no* differences between the expected and actual splits of minority populations. But we can easily quantify the extent to which different plans deviate by summing these differences between expected and actual for places and parishes for each of these plans. From ***Table III.B.5*** below it can clearly be seen that there are significant differences in the impact of actual versus expected population by plan. The Robinson Illustrative Plan misallocates nearly 40,000 more Blacks than the Enrolled Plan with its splits of places. And the Galmon Plans misallocate 10,011, 13,811 and 20,778 respectively more than the Enrolled Plan.

43. Similarly, the Robinson Illustrative Plan misallocates over 46,000 more Blacks than the Enrolled Plan with its splits of parishes. And the Galmon plans misallocate 43,044, 33,067 and 54,809 respectively more than the Enrolled Plan. There can be no argument that each of the Illustrative Plans act to significantly split the minority Black population from the white population across Louisiana places and parishes.

Table III.B.5 Black Population Difference from Expected by Plan: Louisiana Places and Parishes

Plan	Place	Parish
HB1 / SB5 Enrolled	57,843	132,930
Robinson Illustrative	97,341	179,066
Galmon Illustrative 1	67,854	175,974
Galmon Illustrative 2	71,654	165,997
Galmon Illustrative 3	78,621	187,739

44. To expand on this concept, I created a series of maps showing the splits of Louisiana places and parishes by plan to show first exactly where places were split, then second to visually illustrate the demographics of the pieces that were split. I focus this analysis on Baton Rouge, New Orleans and Lafayette. Metairie CDP was minimally affected, and Shreveport was not affected at all by redistricting – so I do not analyze those. I add an analysis of Alexandria and Monroe to show the patterns I observe were not limited to the biggest places in the state.

45. HB1 / SB5 Enrolled Plan Place Splits: By necessity every decade, the existing Louisiana congressional plan boundaries needed to be updated. The HB1 / SB5 Enrolled Plan appears to be a "least change" approach. In the enrolled map – the changes to the existing plan were generally made away from city cores as seen in **Map Appendix A Louisiana Enrolled HB1 / SB5.** In looking at the new HB1 / SB5 Enrolled boundaries – there appears to be little to no change for New Orleans and Baton Rouge – and Lafayette, Alexandria and Monroe (among other smaller places) are not split at all. **Map Appendix F Baton Rouge Split HB1 / SB5 Enrolled Plan** shows Baton Rouge divided north and south in this plan. This split of the city follows the existing congressional district lines.

46. HB1 / SB5 Enrolled Plan Place Splits by Race: In looking at **Map Appendix AA Baton Rouge HB1 / SB5 Enrolled Plan** we see the historic subdivision of the city with most of the northern part of the city in Black majority minority **District 2.** However – a sizable portion of Black population from the east / northeast corner of the city remains in District 6. Referring to the **Appendix 2.A Detailed Splits Analysis** for the Enrolled plan – I show that nearly 54,000 of the Back residents (approximately 43%) reside in the District 6 portion of the city. As I will show shortly – this is *much more equitably* distributed than in any of the Illustrative Plans. In **Appendix FF New Orleans HB1 / SB5 Enrolled Plan** we see that the city of New Orleans is split by District 1 and District 2. Lafayette, Alexandria and Monroe are not split by the HB1 / SB5 Enrolled Plan.

47. Robinson Illustrative Plan Place Splits: This Illustrative plan departs significantly from the existing congressional district boundaries, as seen in **Map Appendix B Robinson Illustrative Plan**. Significant changes are made to the cores of the three large Louisiana cities. **Map Appendix G Baton Rouge Split** shows Baton Rouge trisected in this plan. **Map Appendix L New Orleans Split** shows the city split in this plan between District 1 and District 2. **Map Appendix P Lafayette** shows the city split almost exactly in half, north and south. **Map Appendix T Alexandria** shows the city split northeast to southwest between District 3 and District 5. And in **Map Appendix X Monroe** shows the city split with a small portion going to District 4 in the northwest with the remaining portion in District 5.

48. Robinson Illustrative Plan Place Splits by Race: In **Appendix BB, Baton Rouge Split by Race** is shown with % Any Part Black (APB) VAP by 2020 Census Block. District 5 appears to almost perfectly cut off the northern half (predominantly Black) part of the city. District 2 cuts off a smaller Black population to the SW. The remaining (predominantly white) part of the city is left to District 6. In looking at **Map Appendix GG New Orleans Existing Plan and Robinson Illustrative Plan**, we can see that the Robinson Illustrative Plan started with the existing congressional boundaries in New Orleans – then expanded them just slightly, capturing additional white population from District 2 – and moving them out of District 2 and into District 1. This appears to be a clear race based shifting of population. Next, looking at Lafayette. As with the division of Baton Rouge, an examination of **Map Appendix HH Lafayette Split by Race** shows the city divided cleanly along racial lines. In **Map Appendix LL Alexandria Split by Race**, it can be plainly seen that the predominantly white portion of the city in the southwest corner in District 3 is nearly perfectly cut off from the remaining, primarily Black part of the city in District 5. And in **Map Appendix PP Monroe Split by Race**, it can be plainly seen that the predominantly white portion of the city in the northwest corner is nearly perfectly cut off in District 4 from the remaining, primarily Black part of the city in District 5.

49. Galmon Illustrative 1 Plan Place Splits : This Illustrative Plan also departs significantly from the existing district boundaries, as seen in **Map Appendix C Galmon Illustrative 1 Plan**. Significant changes are also made to the cores of these three large cities. **Map Appendix H Baton Rouge Split** shows the city roughly split north/south in this plan between District 5 and District 6. **Map Appendix M New Orleans Split** shows the city split in this plan – but this split is unremarkable. It creates a large split piece of geography northeast towards Lake St. Catherine – but this area is relatively unpopulous But as with the Robinson Illustrative plan, **Map Appendix Q Lafayette** shows the city split almost exactly in half north/south. **Map Appendix U Alexandria** shows the city split northeast to southwest between District 4 and District 5. As with the HB1 / SB5 Enrolled Plan – the Galmon Illustrative 1 Plan does not split Monroe.

50. Galmon Illustrative 1 Plan Place Splits by Race: In **Appendix CC, Baton Rouge Split by Race** is shown with % Any Part Black (APB) by 2020 Census Block. As with the Robinson Illustrative Plan - District 5 appears to almost perfectly cut off the northern half (predominantly Black) part of the city. The remaining (predominantly white) part of the city is again left to District 6. As with the division of Baton Rouge, an examination of **Map Appendix II Lafayette Split by Race** shows the city almost perfectly divided cleanly along racial lines, north and south. In **Map Appendix NN Alexandria Split by Race**, it can be plainly seen that the predominantly white portion of the city in the southwest corner in District 3 is nearly perfectly cut off from the remaining, primarily Black part of the city in District 5.

51. Galmon Illustrative 2 Plan Place Splits : This Illustrative Plan also departs significantly from the existing district boundaries, as seen in **Map Appendix D Galmon Illustrative 2 Plan**. Significant changes are also made to the cores of these three large cities. **Map Appendix I Baton Rouge Split** shows the city roughly split north/south in this plan, with refinements beyond Galmon 1 to its southwest border in the downtown area. **Map Appendix N New Orleans Split** shows the city split in this plan – but this split is unremarkable. It creates a large split piece of geography northeast towards Lake St. Catherine – but this area is relatively unpopulous. But as with the Galmon Illustrative 1 Plan, **Map Appendix R Lafayette** shows the city split almost exactly in half north/south – just in a slightly different configuration. **Map Appendix V Alexandria** shows the city split northeast to southwest between District 4 and District 5. And in **Map Appendix Y Monroe** shows the city again split with a small portion going to District 4 with the remaining portion in District 5.

52. Galmon Illustrative 2 Plan Place Splits by Race: In **Appendix DD, Baton Rouge Split by Race** is shown with % Any Part Black (APB) by 2020 Census Block. As with the earlier Galmon Illustrative 1 Plan, District 5 appears to almost perfectly cut off the northern half (predominantly Black) part of the city. The remaining (predominantly white) part of the city is again left to District 6. Unlike the earlier Galmon 1 plan – the map drawer here tightened the downtown border between District 5 and District 6 to almost perfectly segregate Black and white neighborhoods. A close examination shows the line was made and adjusted at the block level for a nearly perfect racial population split. As with the division of Baton Rouge, an examination of **Map Appendix JJ Lafayette Split by Race again** shows the city almost perfectly divided cleanly along racial lines, north and south. In **Map Appendix OO Alexandria Split by Race**, it can be plainly seen that the predominantly white portion of the city in the southwest corner in District 3 is nearly perfectly cut off from the remaining, primarily Black part of the city in District 5. And in **Map Appendix RR Monroe Split by Race**, it can be plainly seen that again the predominantly white portion of the city in the northwest corner is nearly perfectly cut off in District 4 from the remaining, primarily Black part of the city in District 5.

53. Galmon Illustrative 3 Plan Place Splits : This Illustrative Plan also departs significantly from the existing district boundaries, as seen in **Map Appendix E Galmon Illustrative 3 Plan**. Significant changes are also made to the cores of these three large cities. **Map Appendix J Baton Rouge Split** shows the city roughly split north/south in this plan, with refinements to its southwest border in the downtown area beyond Galmon 1. **Map Appendix O New Orleans Split** shows the city split in this plan – but this split is unremarkable. It creates a large split piece of geography northeast towards Lake St. Catherine – but this area is relatively unpopulous But as with the Galmon Illustrative 1 plan, **Map Appendix S Lafayette** shows the city split almost exactly in half north/south. **Map Appendix W Alexandria** shows the city split northeast to southwest between District 3 and District 5. And in **Map Appendix Z Monroe** shows the city again split with a small portion going to District 4 with the remaining portion in District 5.

54. Galmon Illustrative 3 Plan Place Splits by Race: In **Appendix EE, Baton Rouge Split by Race** is shown with % Any Part Black (APB) by 2020 Census Block. As with the earlier Galmon Illustrative 1 Plan, District 5 appears to almost perfectly cut off the northern half (predominantly Black) part of the city. The remaining (predominantly white) part of the city is again left to District 6. Similar to the Galmon 2 plan – the map drawer here tightened the downtown border between District 5 and District 6 to almost perfectly segregate Black and white neighborhoods. A close examination shows the line was made and adjusted at the block level for a nearly perfect racial population split. As with the division of Baton Rouge, an examination of **Map Appendix KK Lafayette Split by Race again** shows the city almost perfectly divided cleanly along racial lines, north and south. In **Map Appendix OO Alexandria Split by Race**, it can be plainly seen that the predominantly white portion of the city in the southwest corner in District 3 is nearly perfectly cut off from the remaining, primarily Black part of the city in District 5. And in **Map Appendix RR Monroe Split by Race**, it can be plainly seen that again the predominantly white portion of the city in the northwest corner is nearly perfectly cut off in District 4 from the remaining, primarily Black part of the city in District 5.

55. An examination of the number of parish splits by plan in ***Table III.B.6*** shows the Enrolled Plan with the most splits – at 15. The Robinson Illustrative plan follows with 14, and the Galmon Illustrative Plans follow with 10, 11 and 10 Parish splits respectively. I have already presented a summary of the differential impact of parish splits in ***Table III.B.5*** above – and my conclusion remains the same here. While there are numerically slightly fewer splits in each of the Plaintiff's Illustrative Plans than the Enrolled Plan – each of those impacts significantly more population by race.

Table III.B.6 Parish Splits by Plan

Plan	Split	Unsplit
HB1 / SB5 Enrolled	15	49
Robinson Illustrative Plan	14	50
Galmon Illustrative Plan 1	10	54
Galmon Illustrative Plan 2	11	53
Galmon Illustrative Plan 3	10	54

56. Finally, I share the splits of VTDs in ***Table III.B.7***. It is intuitive that the Enrolled Plan and the Robinson Illustrative Plans have 1 and 0 splits respectively – given that each plan has a small amount of population deviation. Work does not appear to have been done in either of these plans to split VTDs in order to drive the population deviation from a small, nominal amount to none. By comparison, the Galmon Illustrative 1 through 3 Plans have numerous VTD splits, which explains how each of these plans was able to achieve a minimum population deviation of 1. It is unusual to have this many splits, relative to the number of districts, however. Typically, only one VTD (and sometimes none) would need to be split by district to bring a plan into minimum deviation. The Louisiana Redistricting Criteria Joint Rule 21, states at G.(1) "To the extent practicable, each district within a redistricting plan submitted for consideration shall contain whole election precincts" and at G.(2) "If a VTD must be divided, it shall be divided into as few districts as practicable". My assessment of these VTD splits is that they are likely excessive.

Table III.B.7 VTD Splits by Plan

Plan	Split	Unsplit
HB1 / SB5 Enrolled	1	3,539
Robinson Illustrative Plan	0	3,540
Galmon Illustrative Plan 1	13	3,527
Galmon Illustrative Plan 2	10	3,530
Galmon Illustrative Plan 3	13	3,527

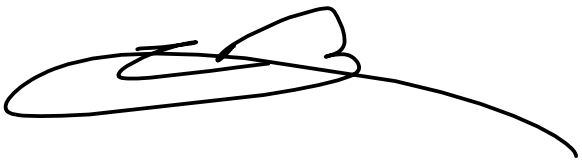
IV. CONCLUSION

57. For the reasons stated in this report and illustrated in the Appendices - I conclude that the Plaintiff's Illustrative Plans fail the voting age population and numerosity requirements for the majority minority districts using the Black alone non-Hispanic category and the DOJ Black formulation. Only when one adds multi-race Black with two up to additional five races in combination do you achieve two majority minority districts with > 50% of Black VAP.

58. My analysis shows that in order to achieve this tenuous result, the Plaintiff's Illustrative Plans have redrawn many of Louisiana's places to maximally divide the Black population from the rest of the population. While the Plaintiff's Illustrative Plans present a slightly smaller number of splits than the Enacted Plan, these smaller numbers belie the nature and character of those splits. In the Plaintiff's Illustrative Plans -the split of the cities in the eastern two thirds of the state and their associated parishes appear to be nearly surgically drawn by racial lines. Splitting these cities to cleave their white and Black populations apart was the only way to create two districts by the APB measure.

* * *

Submitted: April 29, 2022



Thomas M. Bryan

Appendix 1 Demographics

Appendix 2 Detailed Splits Analysis

Appendix 3 Detailed Core Retention Analysis

Appendix 4 Louisiana Maps

Appendix 5 Thomas Bryan Resume

Appendix 1 Demographics

A. HB1 / SB5 Enrolled Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH NH	All Other NH	Hispanic
1	601,559	420,268	81,105	72,977	42,503	65,811
2	600,203	179,129	352,018	338,179	35,854	47,041
3	586,488	392,996	144,434	137,106	28,899	27,487
4	591,095	343,535	199,907	192,343	31,174	24,043
5	597,389	360,144	196,617	190,118	25,558	21,569
6	593,814	386,038	141,688	135,788	34,277	37,711
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

B. Robinson Illustrative Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	603,084	394,140	110,315	101,553	42,773	64,618
2	603,764	218,098	307,670	294,198	40,066	51,402
3	586,948	428,229	105,115	98,440	31,630	28,649
4	596,366	357,220	190,267	183,466	31,689	23,991
5	589,193	252,112	306,701	298,337	20,064	18,680
6	591,193	432,311	95,701	90,517	32,043	36,322
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

C. Galmon Illustrative 1 Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	599,826	396,685	109,041	101,677	41,193	60,271
2	603,092	225,537	302,513	288,076	37,720	51,759
3	586,519	415,185	115,841	108,807	31,869	30,658
4	596,695	357,357	189,880	183,088	31,611	24,639
5	592,316	260,464	296,402	287,986	23,698	20,168
6	592,100	426,882	102,092	96,877	32,174	36,167
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

D. Galmon Illustrative 2 Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	598,980	399,732	98,862	91,591	42,331	65,326
2	606,036	229,831	306,982	292,507	36,913	46,785
3	585,553	406,600	126,424	119,366	29,970	29,617
4	592,745	369,521	169,811	163,140	34,225	25,859
5	593,183	261,385	296,852	288,597	23,038	20,163
6	594,051	415,041	116,838	111,310	31,788	35,912
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

E. Galmon Illustrative 3 Plan: Voting Age Population Characteristics

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	599,586	394,484	111,043	104,032	40,627	60,443
2	603,092	225,537	302,513	288,076	37,720	51,759
3	586,927	426,910	105,558	98,724	32,336	28,957
4	597,083	352,454	196,784	189,789	31,104	23,736
5	589,070	249,264	304,153	295,866	22,326	21,614
6	594,790	433,461	95,718	90,024	34,152	37,153
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

F. Louisiana Population with Black Alone and in Combination

P1 Total Pop	#	% of Total
Total:	4,657,757	100.0%
Black or African American alone	1,464,023	31.4%
White; Black or African American	43,631	0.9%
Black or African American; American Indian and Alaska Native	7,332	0.2%
Black or African American; Asian	2,323	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander	419	0.0%
Black or African American; Some Other Race	13,305	0.3%
White; Black or African American; American Indian and Alaska Native	4,955	0.1%
White; Black or African American; Asian	985	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander	121	0.0%
White; Black or African American; Some Other Race	2,995	0.1%
Black or African American; American Indian and Alaska Native; Asian	137	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	40	0.0%
Black or African American; American Indian and Alaska Native; Some Other Race	374	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	170	0.0%
Black or African American; Asian; Some Other Race	128	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	46	0.0%
White; Black or African American; American Indian and Alaska Native; Asian	339	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	46	0.0%
White; Black or African American; American Indian and Alaska Native; Some Other Race	1,250	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	64	0.0%
White; Black or African American; Asian; Some Other Race	67	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	30	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	38	0.0%
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	21	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	47	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	82	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	95	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	3	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	11	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	8	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	33	0.0%
Black Alone or In Combination	1,543,119	

G. Louisiana Population with Black Alone and in Combination by Hispanic Origin

P2 Total Pop by Hispanic	#	% of Total		Hispanic (P1 - P2)	% of Total
Not Hispanic or Latino:	4,335,208	93%		322,549	7%
Black or African American alone	1,452,420	31%		11,603	0%
White; Black or African American	41,902	1%		1,729	0%
Black or African American; American Indian and Alaska Native	6,931	0%		401	0%
Black or African American; Asian	2,185	0%		138	0%
Black or African American; Native Hawaiian and Other Pacific Islander	371	0%		48	0%
Black or African American; Some Other Race	6,202	0%		7,103	0%
White; Black or African American; American Indian and Alaska Native	4,341	0%		614	0%
White; Black or African American; Asian	886	0%		99	0%
White; Black or African American; Native Hawaiian and Other Pacific Islander	112	0%		9	0%
White; Black or African American; Some Other Race	1,525	0%		1,470	0%
Black or African American; American Indian and Alaska Native; Asian	119	0%		18	0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	36	0%		4	0%
Black or African American; American Indian and Alaska Native; Some Other Race	230	0%		144	0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	136	0%		34	0%
Black or African American; Asian; Some Other Race	74	0%		54	0%
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	20	0%		26	0%
White; Black or African American; American Indian and Alaska Native; Asian	253	0%		86	0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	37	0%		9	0%
White; Black or African American; American Indian and Alaska Native; Some Other Race	450	0%		800	0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	49	0%		15	0%
White; Black or African American; Asian; Some Other Race	32	0%		35	0%
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	16	0%		14	0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	26	0%		12	0%
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	18	0%		3	0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0%		1	0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	41	0%		6	0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	51	0%		31	0%
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	48	0%		47	0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0%		2	0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	7	0%		4	0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	8	0%		0	0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	20	0%		13	0%
Black Alone or In Combination, non-Hispanic and Hispanic	1,518,547			24,572	

Appendix 2 Detailed Place Splits Analysis

A. HB1 / SB5 Enrolled Plan Place Splits

Place Name	District	Total	Total %	white	white %	Black	Black %
Addis town	2	6,700	99.54%	3,415	99.74%	2,765	99.42%
	6	31	0.46%	9	0.26%	16	0.58%
Arnaudville town	3	39	3.87%	29	3.43%	5	3.79%
	4	970	96.13%	816	96.57%	127	96.21%
Baker city	2	3,119	25.04%	535	32.00%	2,509	24.12%
	6	9,336	74.96%	1,137	68.00%	7,893	75.88%
Basile town	3	0	0.00%	0	0.00%	0	0.00%
	4	1,214	100.00%	839	100.00%	275	100.00%
Baton Rouge city	2	79,011	34.73%	4,209	5.41%	72,143	57.21%
	6	148,459	65.27%	73,620	94.59%	53,954	42.79%
Brusly town	2	694	26.92%	398	22.26%	263	42.76%
	6	1,884	73.08%	1,390	77.74%	352	57.24%
Downsville village	4	96	80.00%	81	80.20%	1	100.00%
	5	24	20.00%	20	19.80%	0	0.00%
Eunice city	3	302	3.21%	252	4.63%	31	0.88%
	4	9,120	96.79%	5,196	95.37%	3,487	99.12%
Gonzales city	2	5,972	48.83%	1,629	36.76%	3,674	61.30%
	6	6,259	51.17%	2,803	63.24%	2,319	38.70%
Hammond city	1	3,001	15.32%	1,656	19.29%	1,074	11.58%
	5	16,583	84.68%	6,928	80.71%	8,202	88.42%
Houma city	1	31,448	94.14%	18,120	93.13%	8,428	96.19%
	6	1,958	5.86%	1,336	6.87%	334	3.81%
Kenner city	1	52,353	78.79%	24,540	92.30%	8,513	53.80%
	2	14,095	21.21%	2,046	7.70%	7,311	46.20%
Morgan City city	3	10,449	91.08%	5,855	88.18%	2,696	97.47%
	6	1,023	8.92%	785	11.82%	70	2.53%
New Orleans city	1	48,050	12.51%	36,600	30.15%	3,973	1.81%
	2	335,947	87.49%	84,785	69.85%	214,996	98.19%
Patterson city	3	4,325	72.92%	1,846	67.37%	2,166	80.70%
	6	1,606	27.08%	894	32.63%	518	19.30%
Plaquemine city	2	6,159	98.25%	2,792	97.15%	3,041	99.22%
	6	110	1.75%	82	2.85%	24	0.78%
Ponchatoula city	1	7,647	97.76%	4,684	97.60%	2,339	98.32%
	5	175	2.24%	115	2.40%	40	1.68%
Port Allen city	2	4,315	87.37%	1,327	79.94%	2,812	91.81%
	6	624	12.63%	333	20.06%	251	8.19%
White Castle town	2	1,722	100.00%	125	100.00%	1,572	100.00%
	6	0	0.00%	0	0.00%	0	0.00%

B. Robinson Illustrative Plan Place Splits

Place Name	District	Total	Total %	white	white %	Black	Black %
Alexandria city	3	13,740	30.35%	9,302	56.25%	2,796	10.87%
	5	31,535	69.65%	7,235	43.75%	22,935	89.13%
Baton Rouge city	2	34,805	15.30%	15,737	20.22%	14,148	11.22%
	5	101,118	44.45%	8,671	11.14%	86,314	68.45%
	6	91,547	40.25%	53,421	68.64%	25,635	20.33%
Breaux Bridge city	3	5,165	68.75%	3,128	86.19%	1,718	49.25%
	5	2,348	31.25%	501	13.81%	1,770	50.75%
Central city	5	2,135	7.22%	1,884	8.07%	119	3.20%
	6	27,430	92.78%	21,450	91.93%	3,604	96.80%
Eunice city	3	302	3.21%	252	4.63%	31	0.88%
	5	9,120	96.79%	5,196	95.37%	3,487	99.12%
Gonzales city	2	12,209	99.82%	4,418	99.68%	5,989	99.93%
	6	22	0.18%	14	0.32%	4	0.07%
Independence town	5	1,619	99.02%	718	98.09%	796	100.00%
	6	16	0.98%	14	1.91%	0	0.00%
Kenner city	1	54,578	82.14%	24,616	92.59%	9,187	58.06%
	2	11,870	17.86%	1,970	7.41%	6,637	41.94%
Lafayette city	3	84,924	69.97%	60,719	87.85%	13,028	33.10%
	5	36,450	30.03%	8,398	12.15%	26,326	66.90%
Leesville city	3	1,979	35.03%	1,047	39.78%	625	29.12%
	4	3,670	64.97%	1,585	60.22%	1,521	70.88%
Monroe city	4	10,565	22.15%	8,456	58.73%	1,370	4.41%
	5	37,137	77.85%	5,942	41.27%	29,687	95.59%
New Iberia city	1	28,033	98.17%	12,460	98.13%	13,099	98.56%
	3	522	1.83%	237	1.87%	191	1.44%
New Llano town	3	634	28.65%	273	32.62%	233	24.66%
	4	1,579	71.35%	564	67.38%	712	75.34%
New Orleans city	1	75,419	19.64%	55,537	45.75%	8,578	3.92%
	2	308,578	80.36%	65,848	54.25%	210,391	96.08%
Pineville city	3	4,753	33.04%	3,376	42.13%	846	16.48%
	5	9,631	66.96%	4,637	57.87%	4,287	83.52%
Plaquemine city	1	110	1.75%	82	2.85%	24	0.78%
	5	6,159	98.25%	2,792	97.15%	3,041	99.22%
Scott city	3	7,224	88.98%	4,955	88.70%	1,287	88.27%
	5	895	11.02%	631	11.30%	171	11.73%
Slidell city	1	28,664	99.59%	17,336	99.64%	7,593	99.50%
	6	117	0.41%	62	0.36%	38	0.50%
Ville Platte city	3	962	15.26%	730	39.16%	190	4.44%
	5	5,341	84.74%	1,134	60.84%	4,092	95.56%
West Monroe city	4	7,824	59.71%	5,508	77.77%	1,616	32.97%
	5	5,279	40.29%	1,574	22.23%	3,285	67.03%
White Castle town	1	0	0.00%	0	0.00%	0	0.00%
	2	1,722	100.00%	125	100.00%	1,572	100.00%

C. Galmon Illustrative 1 Plan Place Splits

Place Name	District	Total	Total %	white	white %	Black	Black %
Alexandria city	4	16,205	35.79%	10,837	65.53%	3,525	13.70%
	5	29,070	64.21%	5,700	34.47%	22,206	86.30%
Arnaudville town	1	39	3.87%	29	3.43%	5	3.79%
	5	970	96.13%	816	96.57%	127	96.21%
Ball town	4	0	0.00%	0	0.00%	0	0.00%
	5	3,961	100.00%	3,058	100.00%	522	100.00%
Baton Rouge city	5	143,972	63.29%	25,896	33.27%	105,549	83.70%
	6	83,498	36.71%	51,933	66.73%	20,548	16.30%
Broussard city	1	190	1.42%	153	1.57%	25	1.06%
	3	13,227	98.58%	9,617	98.43%	2,323	98.94%
Eunice city	3	302	3.21%	252	4.63%	31	0.88%
	5	9,120	96.79%	5,196	95.37%	3,487	99.12%
Kenner city	1	56,858	85.57%	25,661	96.52%	9,803	61.95%
	2	9,590	14.43%	925	3.48%	6,021	38.05%
Lafayette city	3	84,954	69.99%	60,738	87.88%	13,036	33.12%
	5	36,420	30.01%	8,379	12.12%	26,318	66.88%
Mandeville city	1	5,043	38.23%	4,000	37.54%	352	49.79%
	6	8,149	61.77%	6,654	62.46%	355	50.21%
Morgan City city	1	0	0.00%	0	0.00%	0	0.00%
	3	11,472	100.00%	6,640	100.00%	2,766	100.00%
New Iberia city	1	27,435	96.08%	11,971	94.28%	13,024	98.00%
	3	1,120	3.92%	726	5.72%	266	2.00%
New Orleans city	1	33,047	8.61%	25,500	21.01%	2,459	1.12%
	2	350,950	91.39%	95,885	78.99%	216,510	98.88%
West Monroe city	4	8,395	64.07%	5,879	83.01%	1,769	36.09%
	5	4,708	35.93%	1,203	16.99%	3,132	63.91%

D. Galmon Illustrative 2 Plan Place Splits

Place Name	District	Total	Total %	white	white %	Black	Black %
Alexandria city	4	15,160	33.48%	10,204	61.70%	3,220	12.51%
	5	30,115	66.52%	6,333	38.30%	22,511	87.49%
Arnaudville town	2	39	3.87%	29	3.43%	5	3.79%
	5	970	96.13%	816	96.57%	127	96.21%
Baton Rouge city	5	130,936	57.56%	17,643	22.67%	102,087	80.96%
	6	96,534	42.44%	60,186	77.33%	24,010	19.04%
Broussard city	2	190	1.42%	153	1.57%	25	1.06%
	3	13,227	98.58%	9,617	98.43%	2,323	98.94%
Carencro city	2	821	8.85%	234	5.85%	476	10.43%
	3	8,451	91.15%	3,768	94.15%	4,088	89.57%
Central city	5	1,266	4.28%	619	2.65%	568	15.26%
	6	28,299	95.72%	22,715	97.35%	3,155	84.74%
DeRidder city	3	9,198	93.36%	5,086	94.03%	3,147	93.13%
	4	654	6.64%	323	5.97%	232	6.87%
Eunice city	3	302	3.21%	252	4.63%	31	0.88%
	5	9,120	96.79%	5,196	95.37%	3,487	99.12%
Forest Hill village	4	605	100.00%	346	100.00%	17	100.00%
	5	0	0.00%	0	0.00%	0	0.00%
Lafayette city	2	38,408	31.64%	10,758	15.56%	25,615	65.09%
	3	82,966	68.36%	58,359	84.44%	13,739	34.91%
Monroe city	4	7,734	16.21%	6,448	44.78%	766	2.47%
	5	39,968	83.79%	7,950	55.22%	30,291	97.53%
Morgan City city	1	0	0.00%	0	0.00%	0	0.00%
	2	0	0.00%	0	0.00%	0	0.00%
	3	11,472	100.00%	6,640	100.00%	2,766	100.00%
New Orleans city	1	28,740	7.48%	22,401	18.45%	1,852	0.85%
	2	355,257	92.52%	98,984	81.55%	217,117	99.15%
Pineville city	4	7,724	53.70%	5,155	64.33%	1,759	34.27%
	5	6,660	46.30%	2,858	35.67%	3,374	65.73%
West Monroe city	4	8,264	63.07%	5,785	81.69%	1,737	35.44%
	5	4,839	36.93%	1,297	18.31%	3,164	64.56%
Zachary city	5	19,303	99.93%	9,012	99.93%	9,040	100.00%
	6	13	0.07%	6	0.07%	0	0.00%

E. Galmon Illustrative 3 Plan Place Splits

Place Name	District	Total	Total %	white	white %	Black	Black %
Alexandria city	3	15,163	33.49%	10,207	61.72%	3,217	12.50%
	5	30,112	66.51%	6,330	38.28%	22,514	87.50%
Arnaudville town	1	39	3.87%	29	3.43%	5	3.79%
	5	970	96.13%	816	96.57%	127	96.21%
Baton Rouge city	5	124,663	54.80%	14,103	18.12%	100,237	79.49%
	6	102,807	45.20%	63,726	81.88%	25,860	20.51%
Broussard city	1	190	1.42%	153	1.57%	25	1.06%
	3	13,227	98.58%	9,617	98.43%	2,323	98.94%
Eunice city	3	302	3.21%	252	4.63%	31	0.88%
	5	9,120	96.79%	5,196	95.37%	3,487	99.12%
Kenner city	1	56,858	85.57%	25,661	96.52%	9,803	61.95%
	2	9,590	14.43%	925	3.48%	6,021	38.05%
Lafayette city	3	84,924	69.97%	60,719	87.85%	13,028	33%
	5	36,450	30.03%	8,398	12.15%	26,326	67%
Mandeville city	1	13,192	100.00%	10,654	100.00%	707	100.00%
	6	0	0.00%	0	0.00%	0	0.00%
Monroe city	4	10,521	22.06%	7,972	55.37%	1,745	5.62%
	5	37,181	77.94%	6,426	44.63%	29,312	94.38%
New Iberia city	1	27,148	95.07%	11,810	93.01%	12,939	97.36%
	3	1,407	4.93%	887	6.99%	351	2.64%
New Orleans city	1	33,047	8.61%	25,500	21.01%	2,459	1.12%
	2	350,950	91.39%	95,885	78.99%	216,510	98.88%
Pineville city	3	8,141	56.60%	5,240	65.39%	2,162	42.12%
	5	6,243	43.40%	2,773	34.61%	2,971	57.88%
Scott city	3	7,224	88.98%	4,955	88.70%	1,287	88.27%
	5	895	11.02%	631	11.30%	171	11.73%
Slidell city	1	0	0.00%	0	0.00%	0	0.00%
	6	28,781	100.00%	17,398	100.00%	7,631	100.00%
Tickfaw village	5	0	0.00%	0	0.00%	0	0.00%
	6	635	100.00%	425	100.00%	121	100.00%
West Monroe city	4	8,828	67.37%	5,940	83.87%	2,095	42.75%
	5	4,275	32.63%	1,142	16.13%	2,806	57.25%

Appendix 3 Detailed Parish Splits Analysis

A. HB1 / SB5 Enrolled Parish Splits

Parish Name	District	Total	Total %	white	white %	Black	Black %
Ascension Parish	2	20,892	16.52%	5,452	6.85%	13,842	42.97%
	6	105,608	83.48%	74,193	93.15%	18,374	57.03%
Assumption Parish	2	6,710	31.89%	2,838	20.90%	3,622	58.23%
	6	14,329	68.11%	10,742	79.10%	2,598	41.77%
East Baton Rouge Parish	2	94,325	20.65%	5,351	2.80%	85,793	40.20%
	6	362,456	79.35%	186,004	97.20%	127,605	59.80%
Grant Parish	4	7,473	33.71%	5,567	33.38%	1,563	46.87%
	5	14,696	66.29%	11,111	66.62%	1,772	53.13%
Iberville Parish	2	21,073	69.68%	8,306	56.77%	11,316	82.42%
	6	9,168	30.32%	6,326	43.23%	2,414	17.58%
Jefferson Parish	1	245,132	55.61%	149,694	71.84%	32,307	25.60%
	2	195,649	44.39%	58,691	28.16%	93,910	74.40%
Lafourche Parish	1	43,701	44.80%	34,951	49.42%	1,903	12.00%
	6	53,856	55.20%	35,771	50.58%	13,952	88.00%
Orleans Parish	1	48,050	12.51%	36,600	30.15%	3,973	1.81%
	2	335,947	87.49%	84,785	69.85%	214,996	98.19%
St. Charles Parish	2	34,943	66.50%	20,529	62.76%	11,091	79.63%
	6	17,606	33.50%	12,179	37.24%	2,837	20.37%
St. John the Baptist Parish	2	32,678	76.93%	8,484	63.56%	21,557	85.56%
	6	9,799	23.07%	4,864	36.44%	3,639	14.44%
St. Martin Parish	3	50,399	97.36%	31,649	96.14%	15,908	99.92%
	6	1,368	2.64%	1,270	3.86%	13	0.08%
St. Mary Parish	3	44,607	90.29%	24,046	91.31%	15,198	95.04%
	6	4,799	9.71%	2,288	8.69%	793	4.96%
Tangipahoa Parish	1	39,681	29.80%	28,681	35.93%	7,152	17.08%
	5	93,476	70.20%	51,144	64.07%	34,727	82.92%
Terrebonne Parish	1	67,855	61.92%	41,238	59.94%	14,123	61.01%
	6	41,725	38.08%	27,564	40.06%	9,024	38.99%
West Baton Rouge Parish	2	13,908	51.13%	5,642	39.97%	7,347	65.77%
	6	13,291	48.87%	8,472	60.03%	3,823	34.23%

B. Robinson Illustrative Plan Parish Splits

Parish Name	District	Total	Total %	white	white %	Black	Black %
Ascension Parish	2	38,845	30.71%	15,739	19.76%	19,119	59.35%
	6	87,655	69.29%	63,906	80.24%	13,097	40.65%
East Baton Rouge Parish	2	78,676	17.22%	38,120	19.92%	27,030	12.67%
	5	177,263	38.81%	31,001	16.20%	136,262	63.85%
	6	200,842	43.97%	122,234	63.88%	50,106	23.48%
Evangeline Parish	3	23,988	74.15%	18,390	86.90%	3,854	41.73%
	5	8,362	25.85%	2,772	13.10%	5,381	58.27%
Iberia Parish	1	57,438	82.14%	30,224	78.36%	22,346	91.00%
	3	12,491	17.86%	8,348	21.64%	2,210	9.00%
Iberville Parish	1	5,187	17.15%	4,001	27.34%	886	6.45%
	2	10,224	33.81%	3,777	25.81%	5,529	40.27%
	5	14,830	49.04%	6,854	46.84%	7,315	53.28%
Jefferson Parish	1	237,070	53.78%	143,738	68.98%	30,464	24.14%
	2	203,711	46.22%	64,647	31.02%	95,753	75.86%
Lafayette Parish	3	172,780	71.47%	125,084	83.13%	26,466	40.63%
	5	68,973	28.53%	25,391	16.87%	38,670	59.37%
Orleans Parish	1	75,419	19.64%	55,537	45.75%	8,578	3.92%
	2	308,578	80.36%	65,848	54.25%	210,391	96.08%
Ouachita Parish	4	90,953	56.72%	72,160	82.54%	11,272	18.41%
	5	69,415	43.28%	15,266	17.46%	49,945	81.59%
Rapides Parish	3	69,584	53.52%	53,437	70.01%	8,596	20.18%
	5	60,439	46.48%	22,886	29.99%	33,996	79.82%
St. Martin Parish	1	1,368	2.64%	1,270	3.86%	13	0.08%
	3	35,420	68.42%	22,773	69.18%	10,468	65.75%
	5	14,979	28.94%	8,876	26.96%	5,440	34.17%
St. Tammany Parish	1	75,982	28.72%	44,884	23.36%	21,121	54.66%
	6	188,588	71.28%	147,260	76.64%	17,522	45.34%
Tangipahoa Parish	5	21,698	16.30%	9,297	11.65%	11,351	27.10%
	6	111,459	83.70%	70,528	88.35%	30,528	72.90%
Vernon Parish	3	33,131	67.96%	22,486	66.92%	4,986	65.51%
	4	15,619	32.04%	11,113	33.08%	2,625	34.49%

C. Galmon Illustrative 1 Plan Parish Splits

Parish Name	District	Total	Total %	white	white %	Black	Black %
Ascension Parish	2	48,562	38.39%	22,545	28.31%	20,750	64.41%
	6	77,938	61.61%	57,100	71.69%	11,466	35.59%
East Baton Rouge Parish	5	221,639	48.52%	45,966	24.02%	157,991	74.04%
	6	235,142	51.48%	145,389	75.98%	55,407	25.96%
Iberia Parish	1	37,106	53.06%	19,198	49.77%	14,793	60.24%
	3	32,823	46.94%	19,374	50.23%	9,763	39.76%
Jefferson Parish	1	236,658	53.69%	143,244	68.74%	30,583	24.23%
	2	204,123	46.31%	65,141	31.26%	95,634	75.77%
Lafayette Parish	3	176,829	73.14%	126,139	83.83%	28,505	43.76%
	5	64,924	26.86%	24,336	16.17%	36,631	56.24%
Orleans Parish	1	33,047	8.61%	25,500	21.01%	2,459	1.12%
	2	350,950	91.39%	95,885	78.99%	216,510	98.88%
Ouachita Parish	4	65,317	40.73%	53,190	60.84%	6,327	10.34%
	5	95,051	59.27%	34,236	39.16%	54,890	89.66%
Rapides Parish	4	48,517	37.31%	35,732	46.82%	7,350	17.26%
	5	81,506	62.69%	40,591	53.18%	35,242	82.74%
Sabine Parish	3	7,249	32.72%	5,842	39.34%	521	13.49%
	4	14,906	67.28%	9,008	60.66%	3,340	86.51%
St. Tammany Parish	1	122,259	46.21%	77,744	40.46%	28,640	74.11%
	6	142,311	53.79%	114,400	59.54%	10,003	25.89%

D. Galmon Illustrative 2 Plan Parish Splits

Parish Name	District	Total	Total %	white	white %	Black	Black %
Ascension Parish	2	9,737	7.70%	2,377	2.98%	6,971	21.64%
	6	116,763	92.30%	77,268	97.02%	25,245	78.36%
Beauregard Parish	3	32,682	89.42%	25,880	89.12%	4,305	92.60%
	4	3,867	10.58%	3,159	10.88%	344	7.40%
East Baton Rouge Parish	5	210,418	46.07%	38,523	20.13%	155,305	72.78%
	6	246,363	53.93%	152,832	79.87%	58,093	27.22%
Jefferson Parish	1	264,196	59.94%	152,348	73.11%	43,262	34.28%
	2	176,585	40.06%	56,037	26.89%	82,955	65.72%
Lafayette Parish	2	41,605	17.21%	12,051	8.01%	27,238	41.82%
	3	200,148	82.79%	138,424	91.99%	37,898	58.18%
Orleans Parish	1	28,740	7.48%	22,401	18.45%	1,852	0.85%
	2	355,257	92.52%	98,984	81.55%	217,117	99.15%
Ouachita Parish	4	72,964	45.50%	59,574	68.14%	7,068	11.55%
	5	87,404	54.50%	27,852	31.86%	54,149	88.45%
Rapides Parish	4	77,658	59.73%	59,498	77.96%	10,114	23.75%
	5	52,365	40.27%	16,825	22.04%	32,478	76.25%
St. Charles Parish	1	25,156	47.87%	15,374	47.00%	6,457	46.36%
	2	27,393	52.13%	17,334	53.00%	7,471	53.64%
St. Mary Parish	1	559	1.13%	216	0.82%	288	1.80%
	3	48,847	98.87%	26,118	99.18%	15,703	98.20%
St. Tammany Parish	1	183,226	69.25%	127,434	66.32%	31,736	82.13%
	6	81,344	30.75%	64,710	33.68%	6,907	17.87%

E. Galmon Illustrative 3 Plan Parish Splits

Parish Name	District	Total	Total %	white	white %	Black	Black %
Ascension Parish	2	48,562	38.39%	22,545	28.31%	20,750	64.41%
	6	77,938	61.61%	57,100	71.69%	11,466	35.59%
East Baton Rouge Parish	5	202,333	44.30%	34,185	17.86%	152,661	71.54%
	6	254,448	55.70%	157,170	82.14%	60,737	28.46%
Iberia Parish	1	48,334	69.12%	24,213	62.77%	20,296	82.65%
	3	21,595	30.88%	14,359	37.23%	4,260	17.35%
Jefferson Parish	1	236,658	53.69%	143,244	68.74%	30,583	24.23%
	2	204,123	46.31%	65,141	31.26%	95,634	75.77%
Lafayette Parish	3	170,269	70.43%	123,202	81.88%	25,986	39.89%
	5	71,484	29.57%	27,273	18.12%	39,150	60.11%
Orleans Parish	1	33,047	8.61%	25,500	21.01%	2,459	1.12%
	2	350,950	91.39%	95,885	78.99%	216,510	98.88%
Ouachita Parish	4	80,956	50.48%	64,061	73.27%	9,924	16.21%
	5	79,412	49.52%	23,365	26.73%	51,293	83.79%
Rapides Parish	3	74,443	57.25%	56,235	73.68%	10,344	24.29%
	5	55,580	42.75%	20,088	26.32%	32,248	75.71%
St. Tammany Parish	1	61,626	23.29%	43,926	22.86%	9,129	23.62%
	6	202,944	76.71%	148,218	77.14%	29,514	76.38%
Tangipahoa Parish	5	79,940	60.03%	38,617	48.38%	34,432	82.22%
	6	53,217	39.97%	41,208	51.62%	7,447	17.78%

Appendix 4 Louisiana Maps

Congressional Plans:

- Louisiana Enrolled HB1 / SB5
- Robinson Illustrative Plan
- Galmon Illustrative 1 Plan
- Galmon Illustrative 2 Plan
- Galmon Illustrative 3 Plan

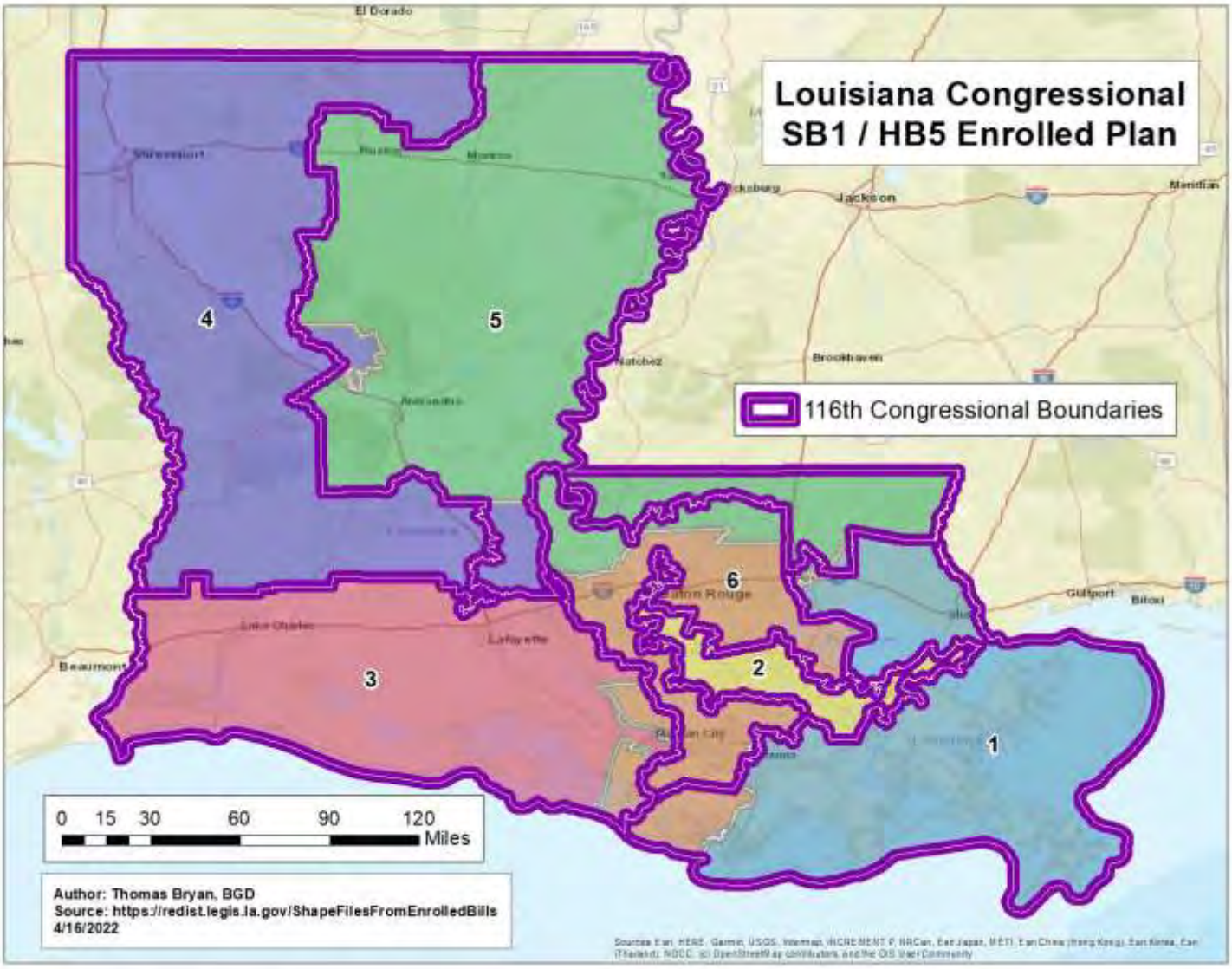
Place Splits by Plan:

- Baton Rouge
- New Orleans
- Lafayette
- Alexandria
- Monroe

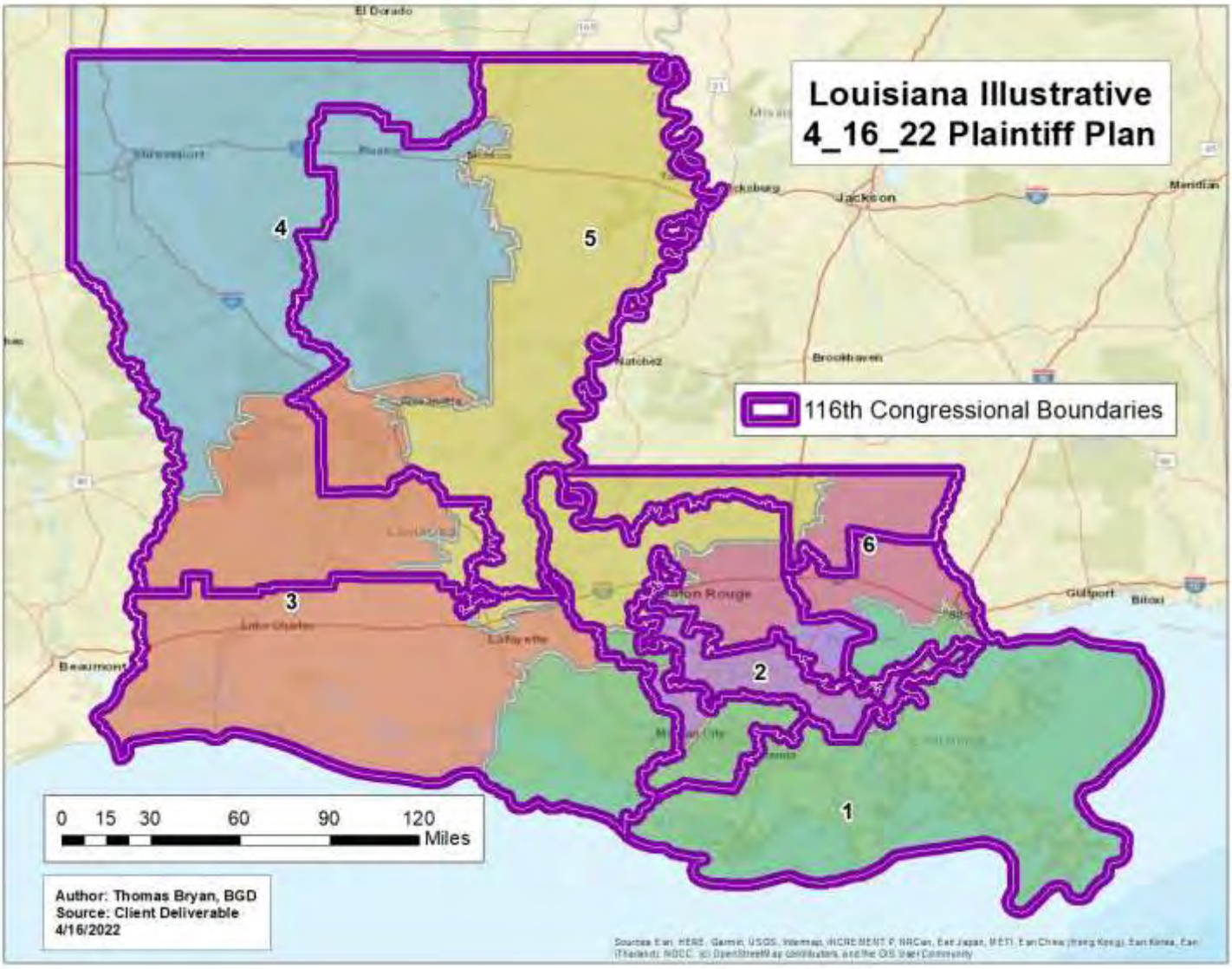
Place Splits by Plan by Race:

- Baton Rouge
- New Orleans
- Lafayette
- Alexandria
- Monroe

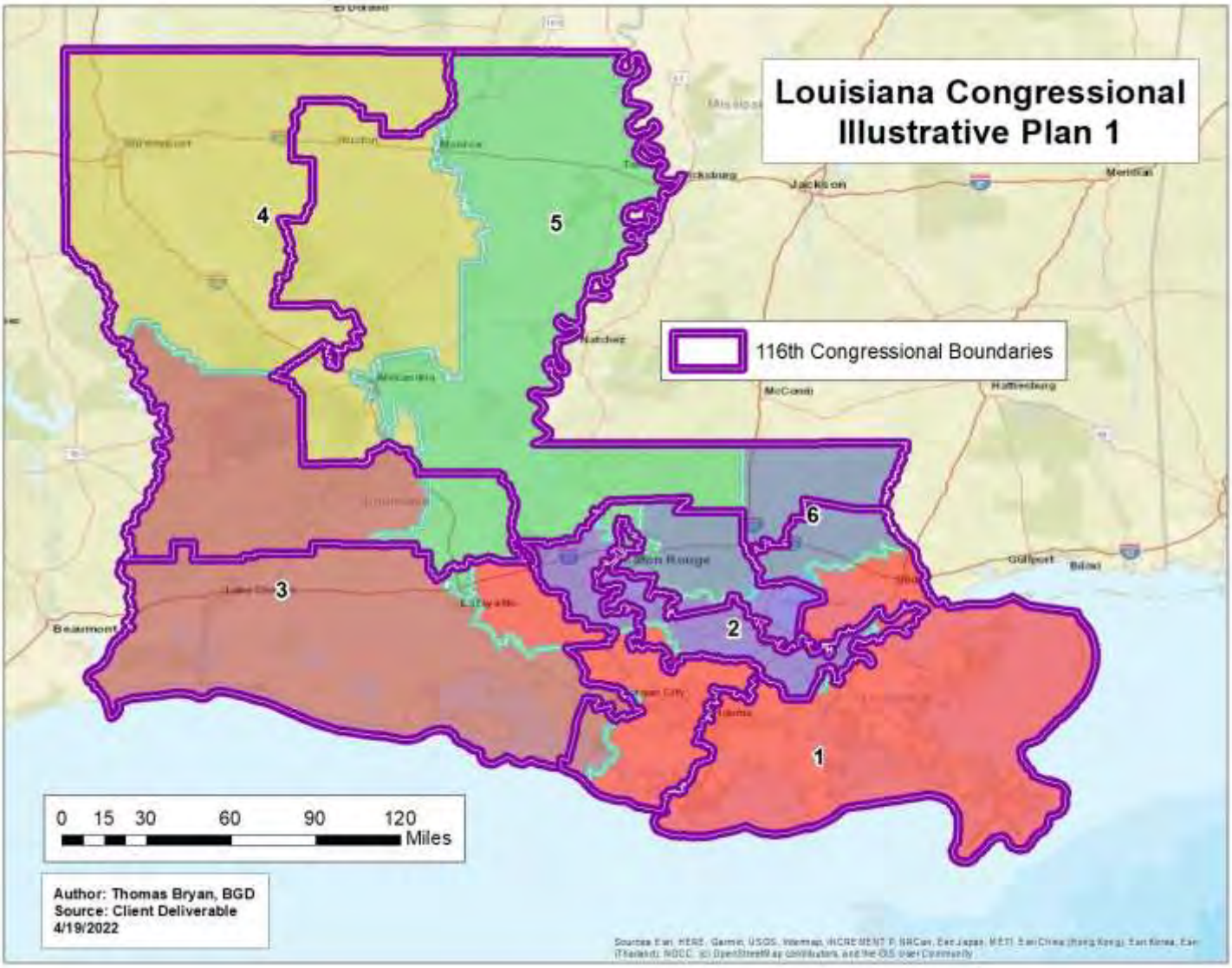
A. Louisiana HB1 / SB5 Enrolled Plan and Existing Plan



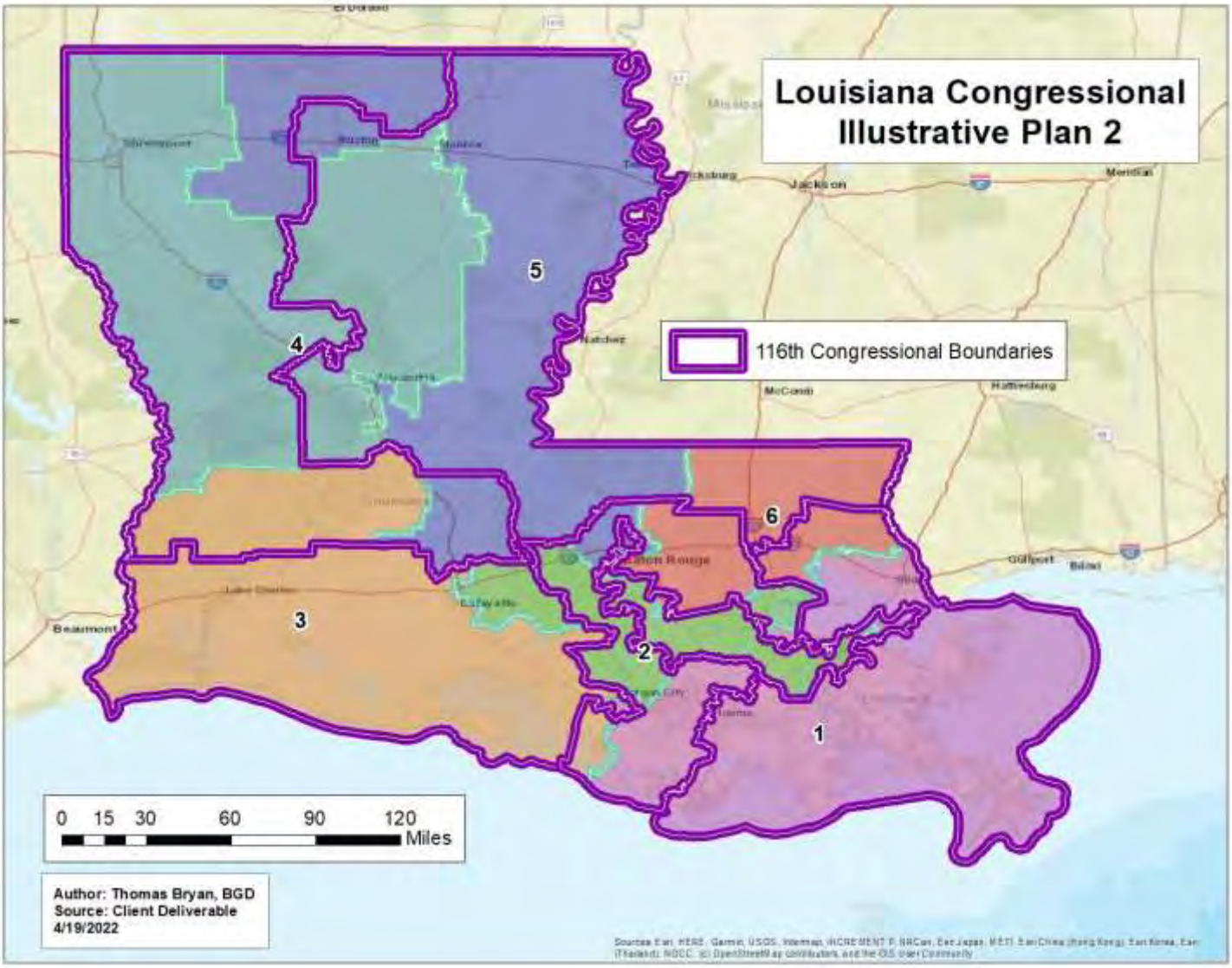
B. Robinson Illustrative Plan and Existing Plan



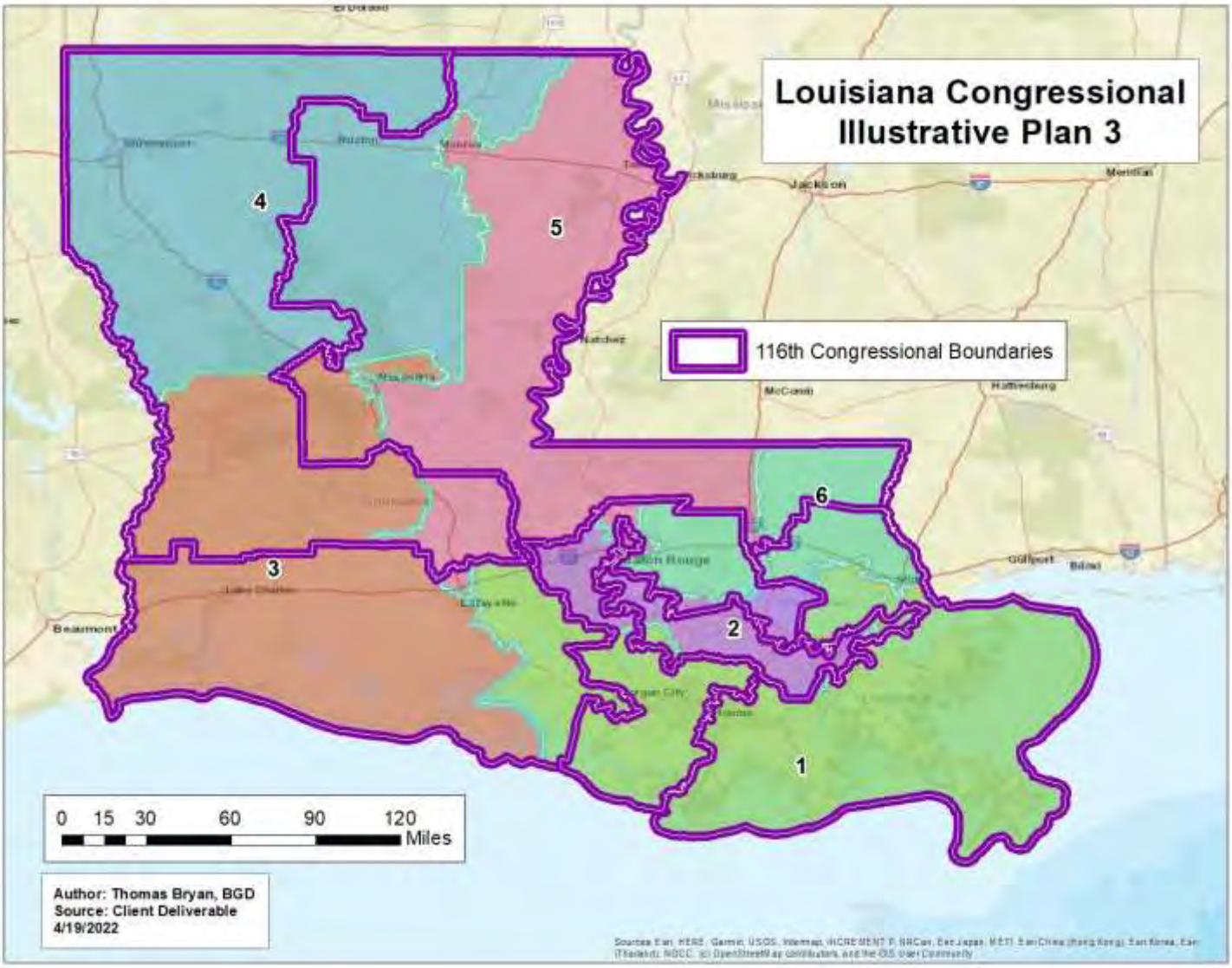
C. Galmon Illustrative 1 Plan and Existing Plan



D. Galmon Illustrative 2 Plan and Existing Plan

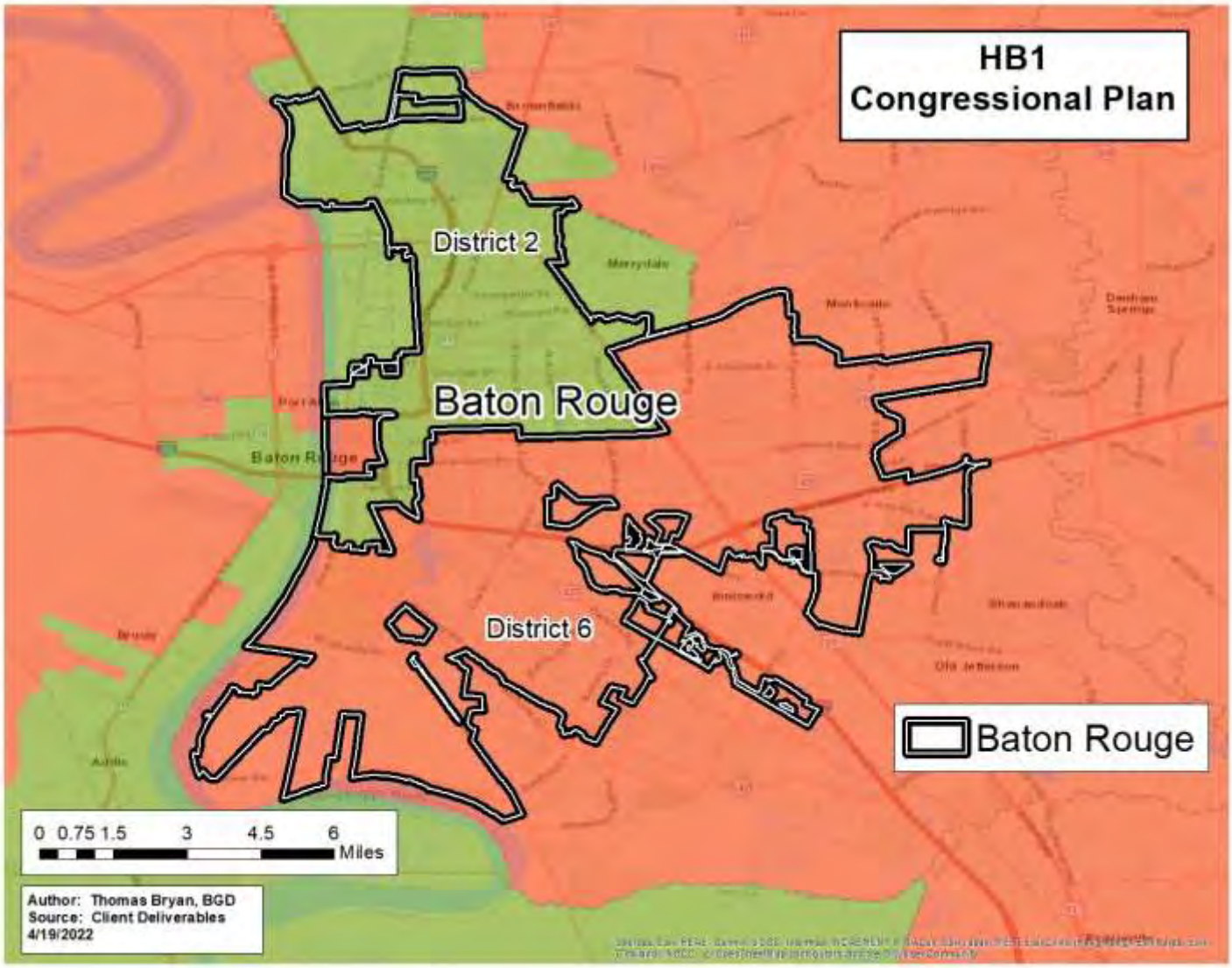


E. Galmon Illustrative 3 Plan and Existing Plan



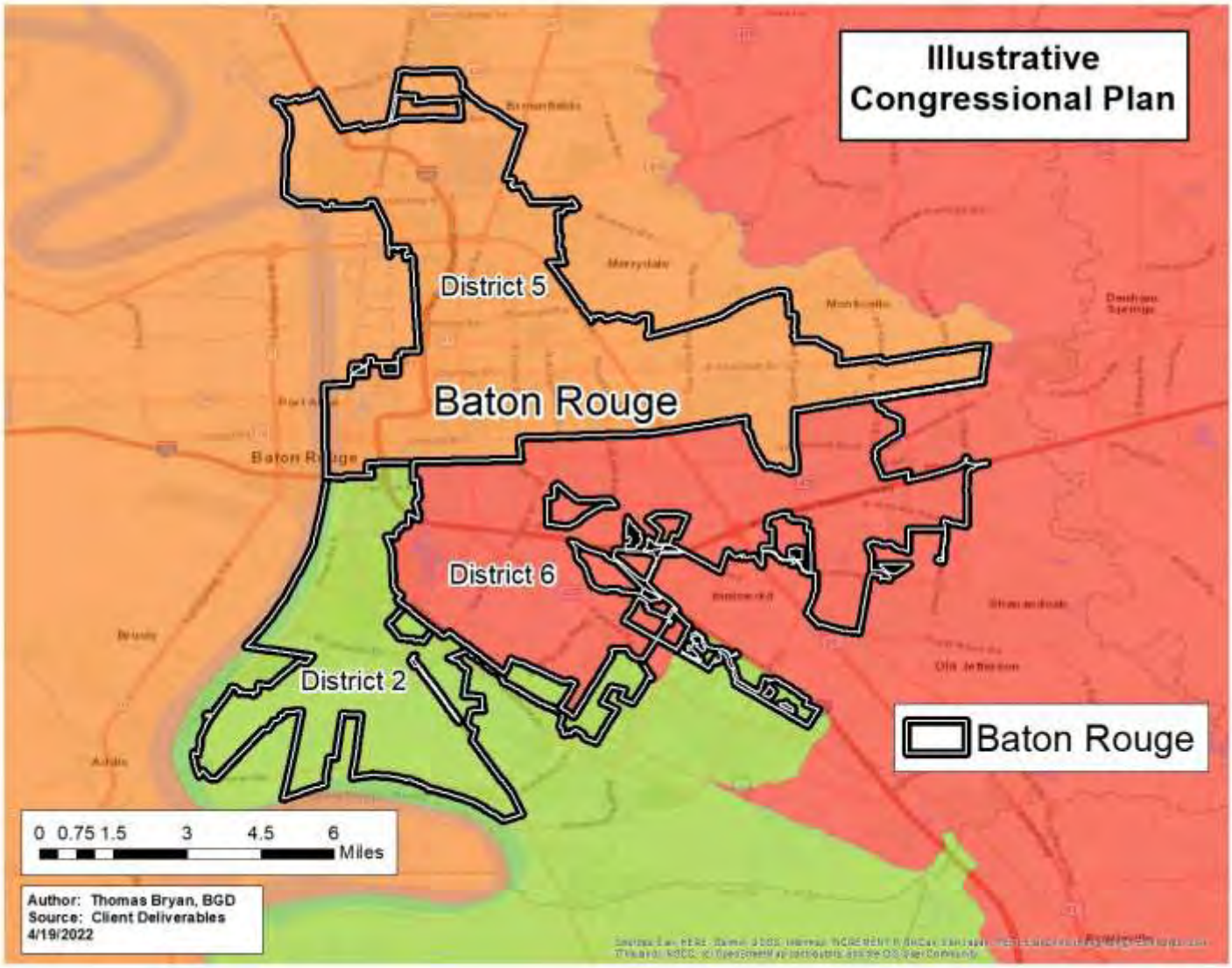
Baton Rouge
City Splits by Plan

F. Baton Rouge HB1 / SB5 Enrolled Plan Split



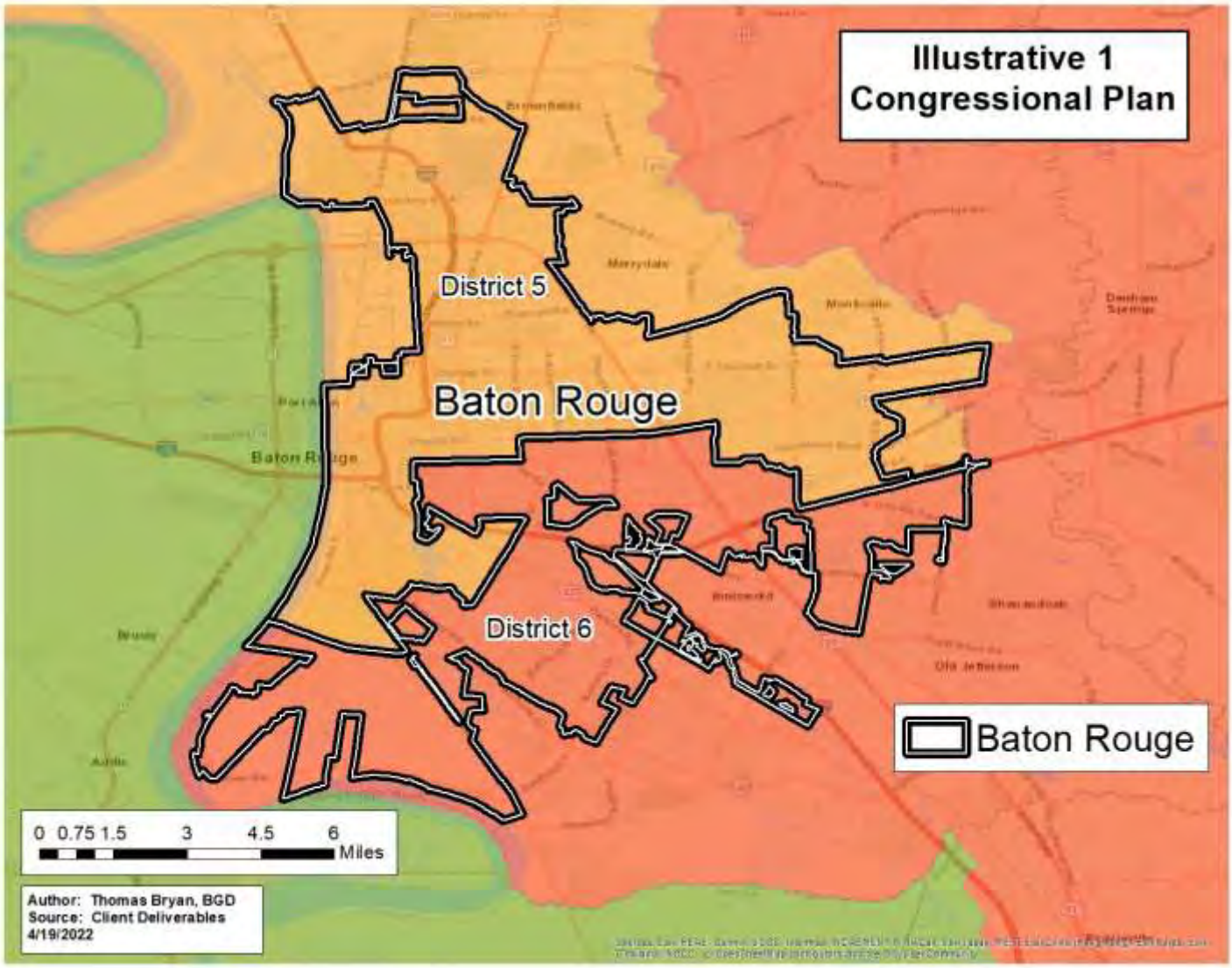
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

G. Baton Rouge Robinson Illustrative Plan Split



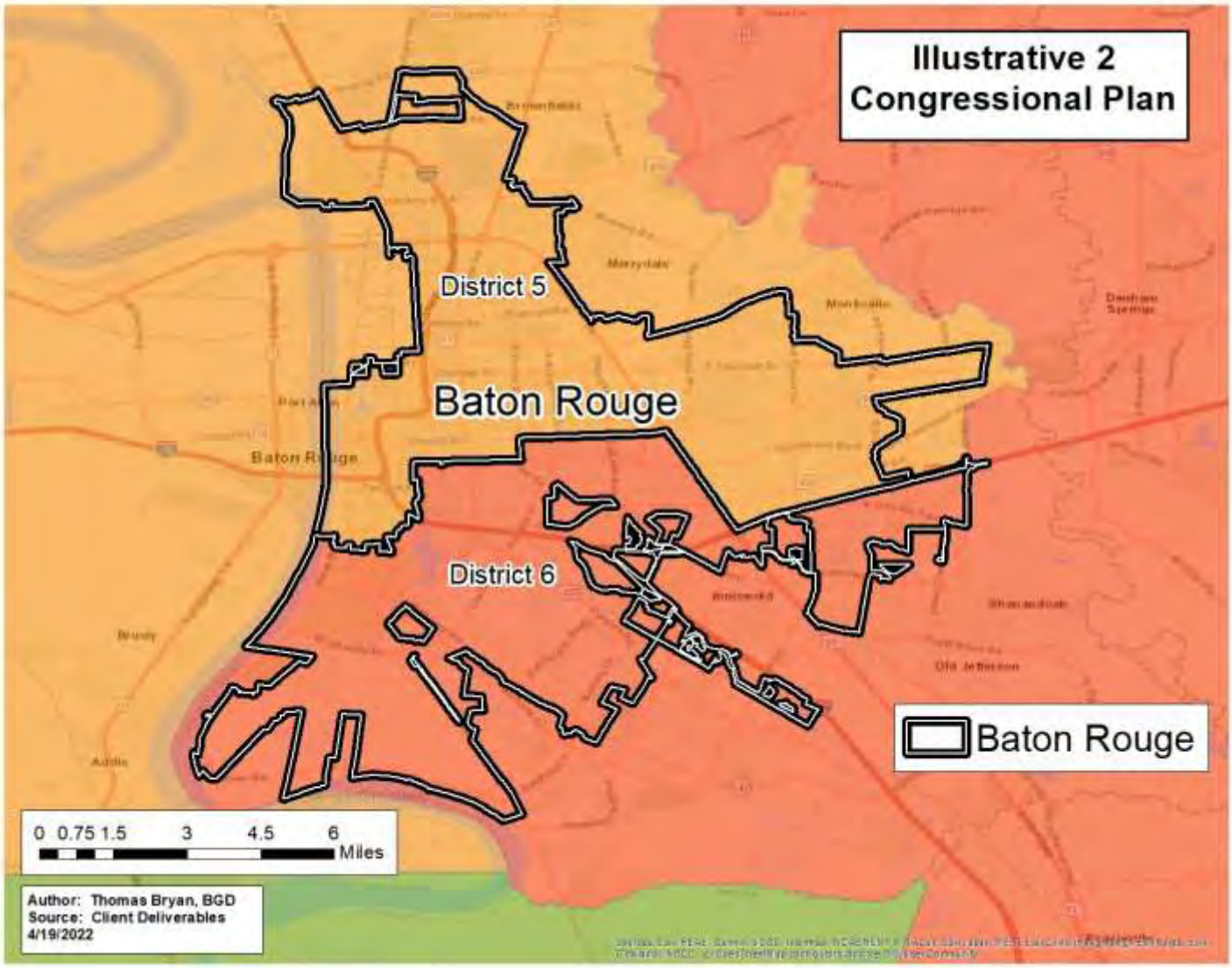
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

H. Baton Rouge Galmon Illustrative 1 Plan Split



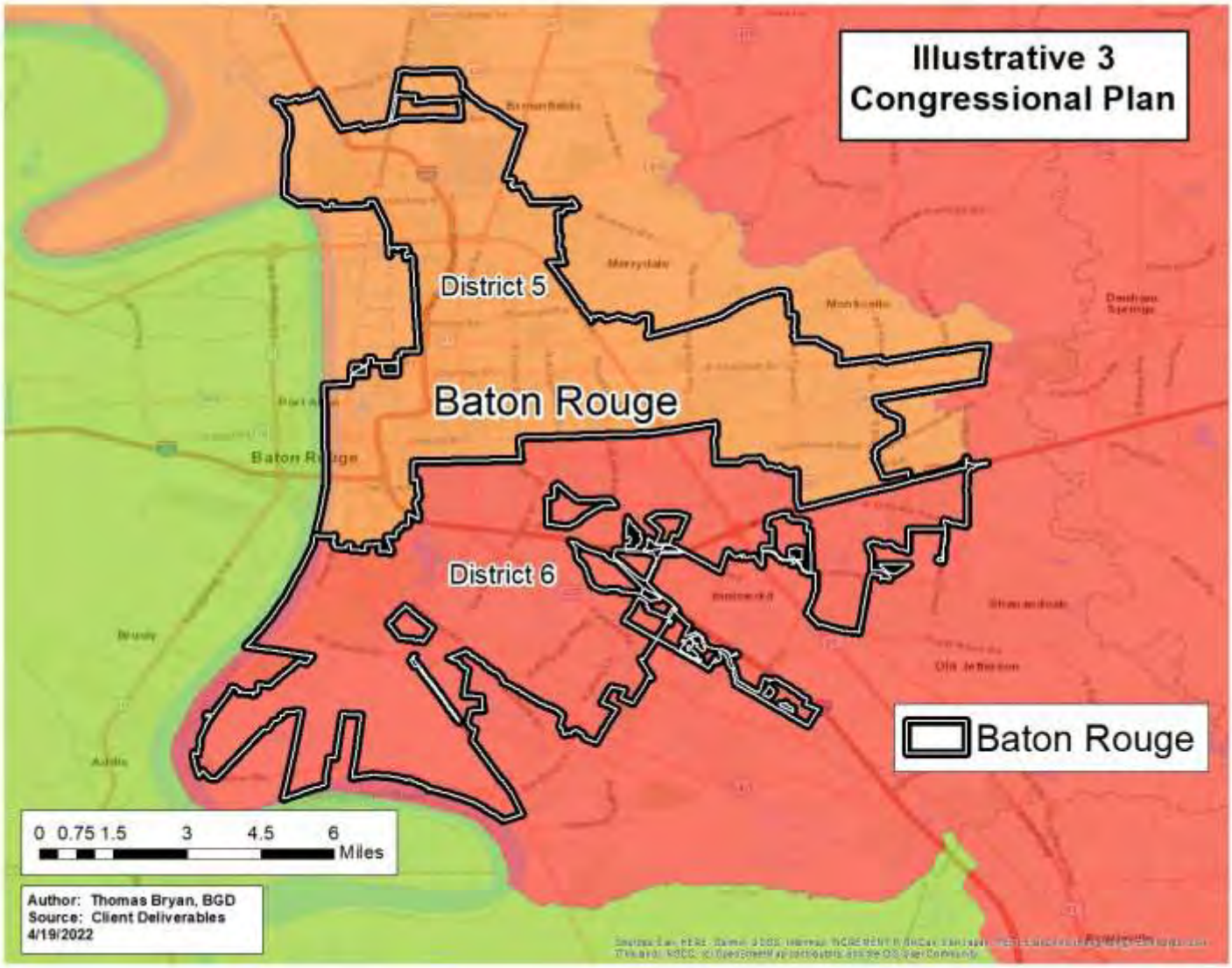
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

I. Baton Rouge Galmon Illustrative 2 Plan Split



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

J. Baton Rouge Galmon Illustrative 3 Plan Split

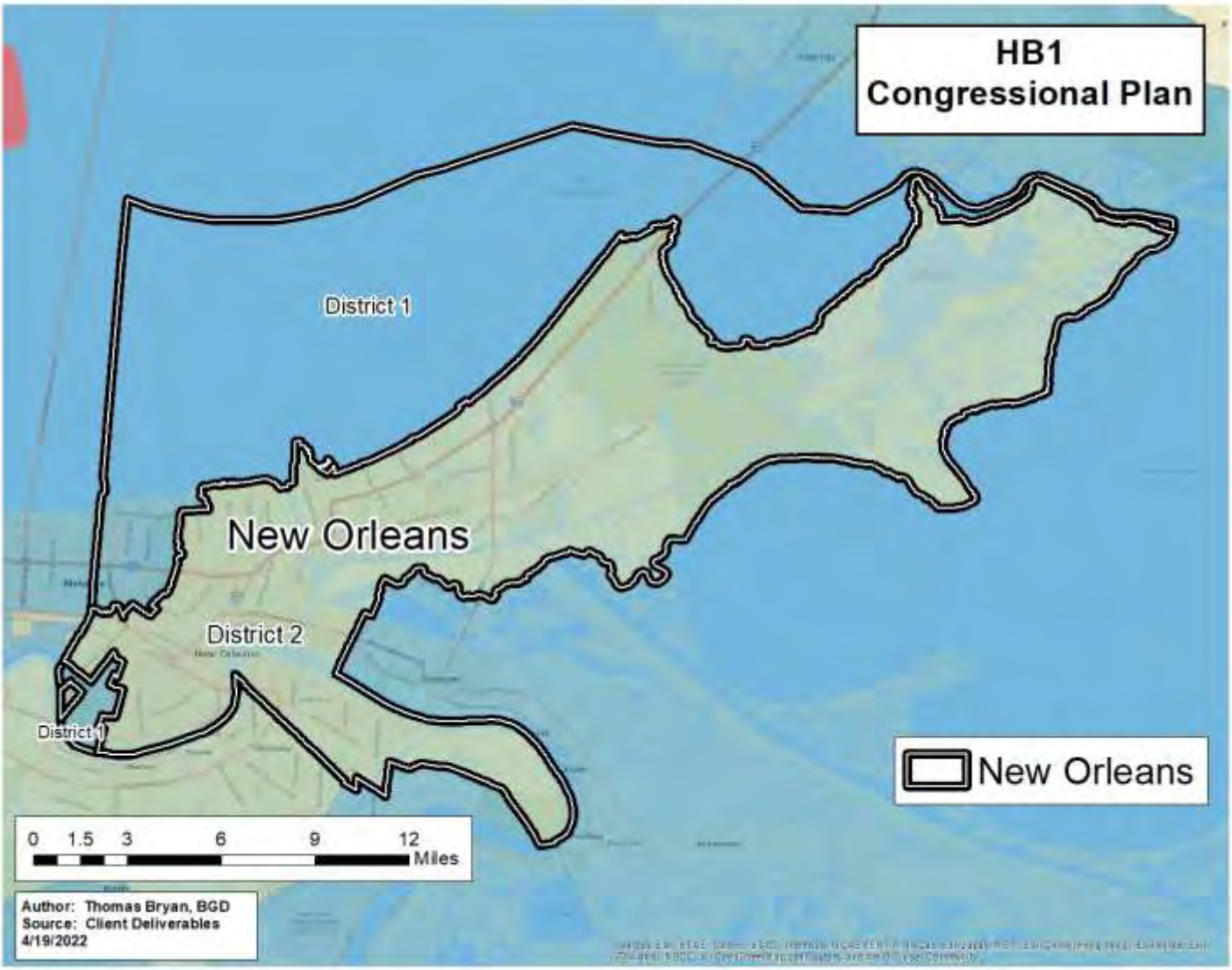


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

New Orleans

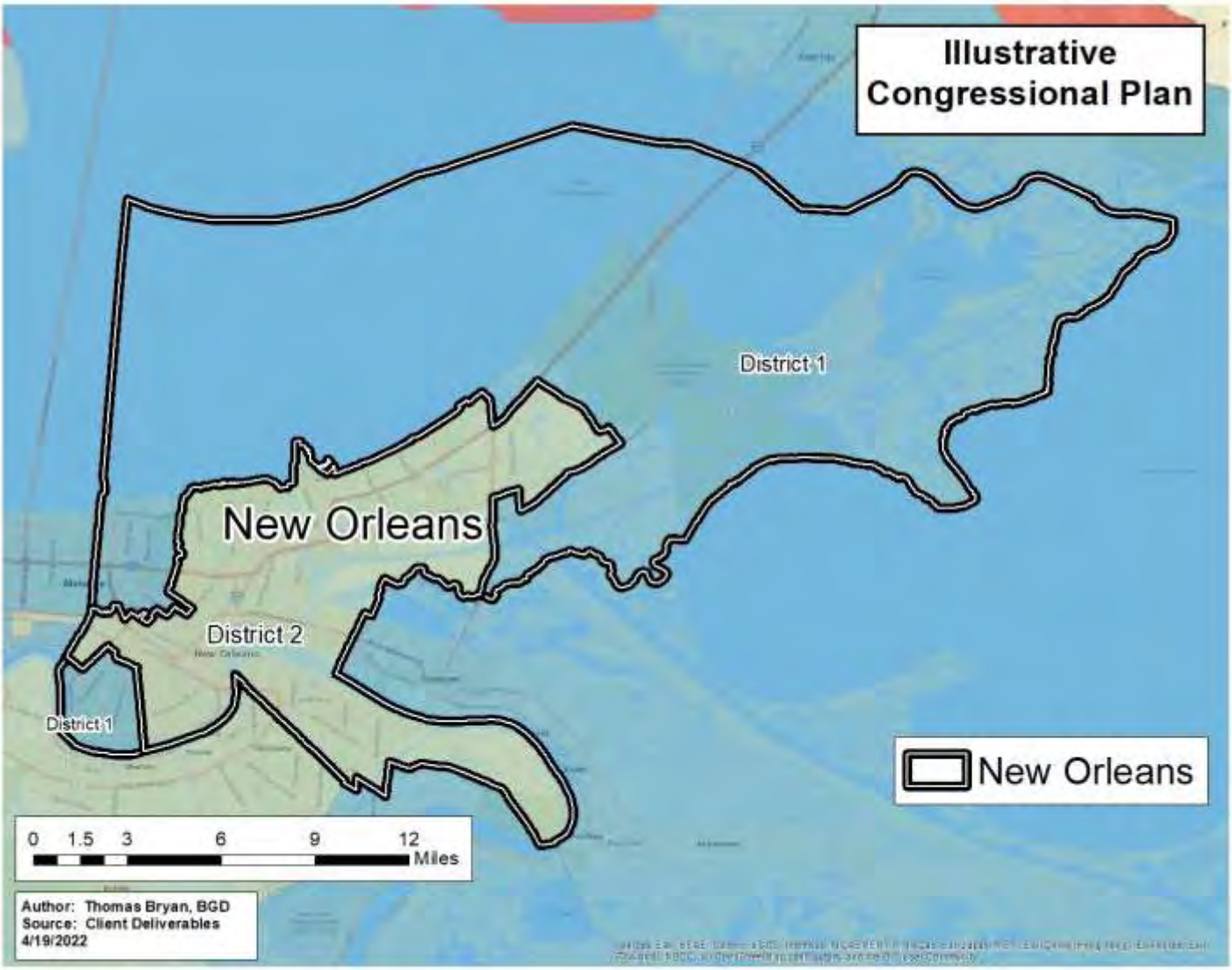
Place Splits by Plan

K. New Orleans HB1 / SB5 Enrolled Plan Split



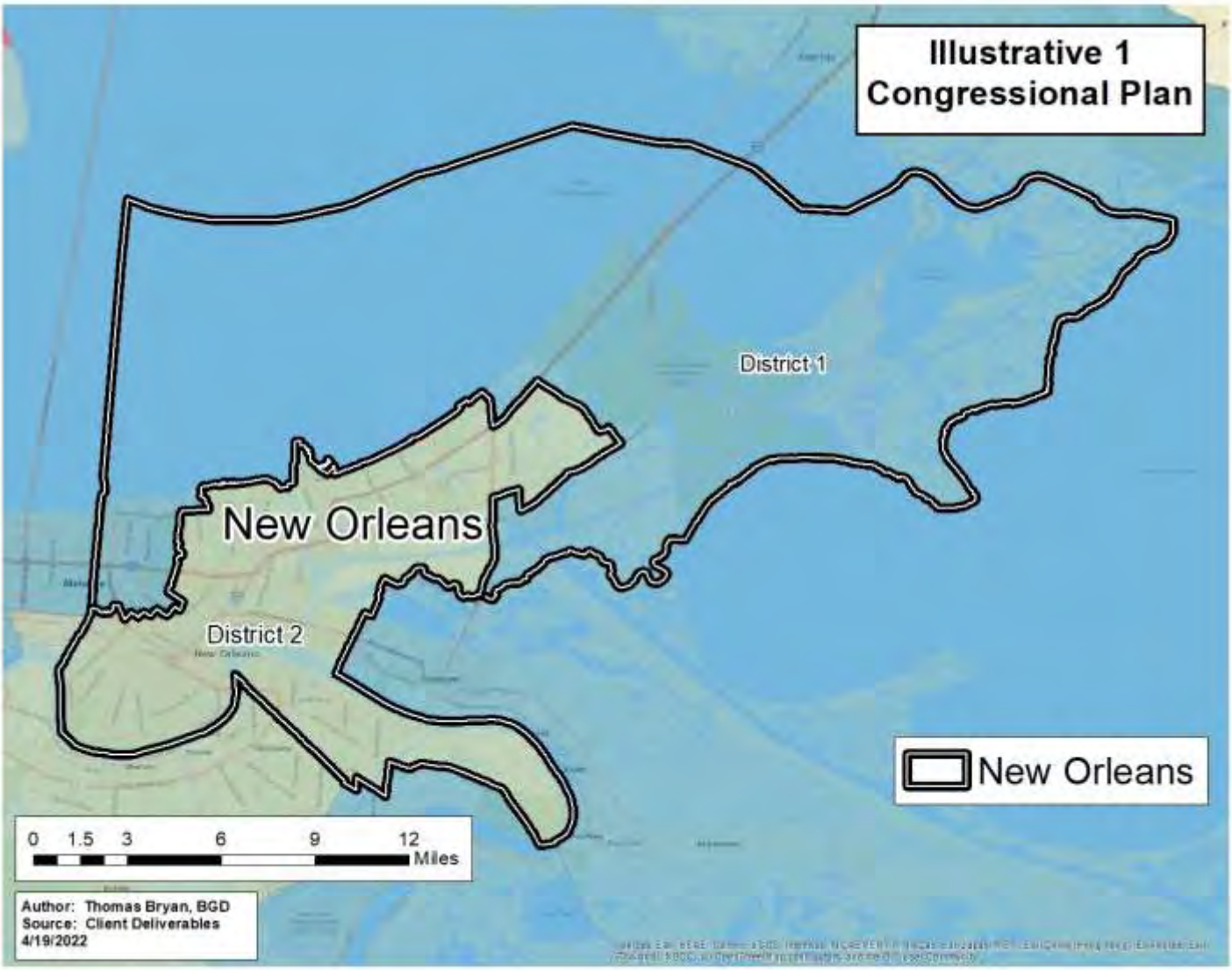
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

L. New Orleans Robinson Illustrative Plan Split



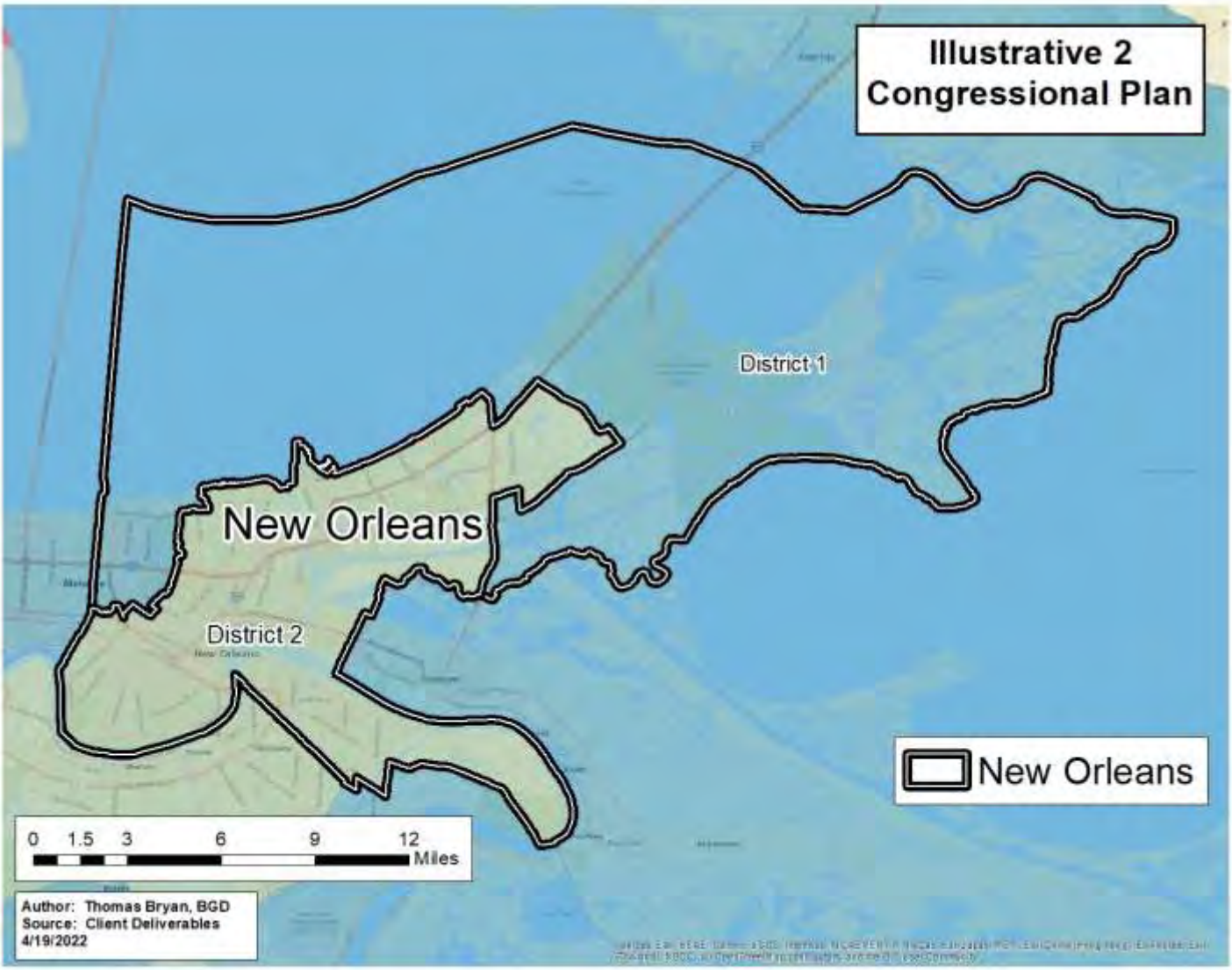
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

M. New Orleans Galmon Illustrative 1 Plan Split



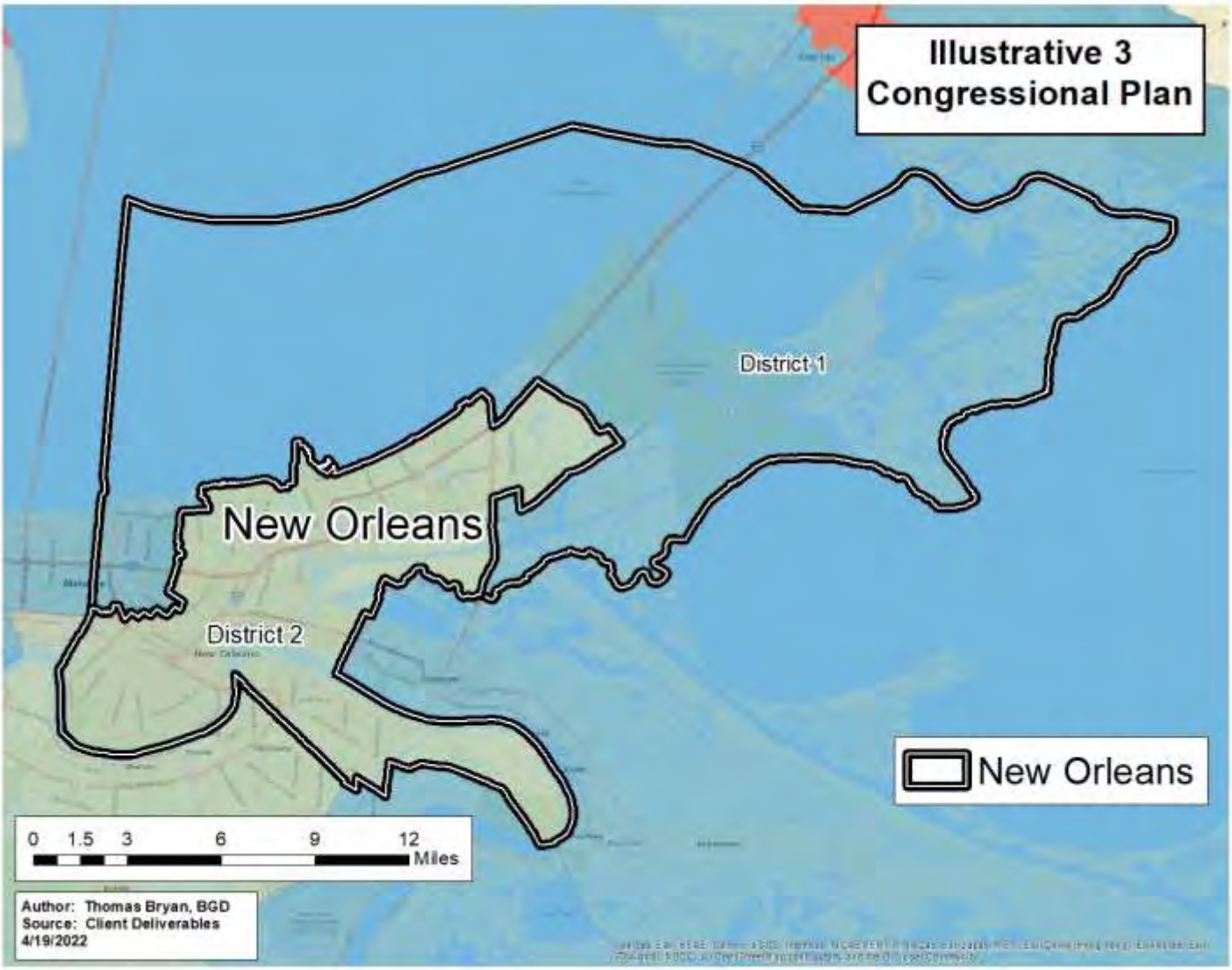
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

N. New Orleans Galmon Illustrative 2 Plan Split



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

O. New Orleans Galmon Illustrative 3 Plan Split

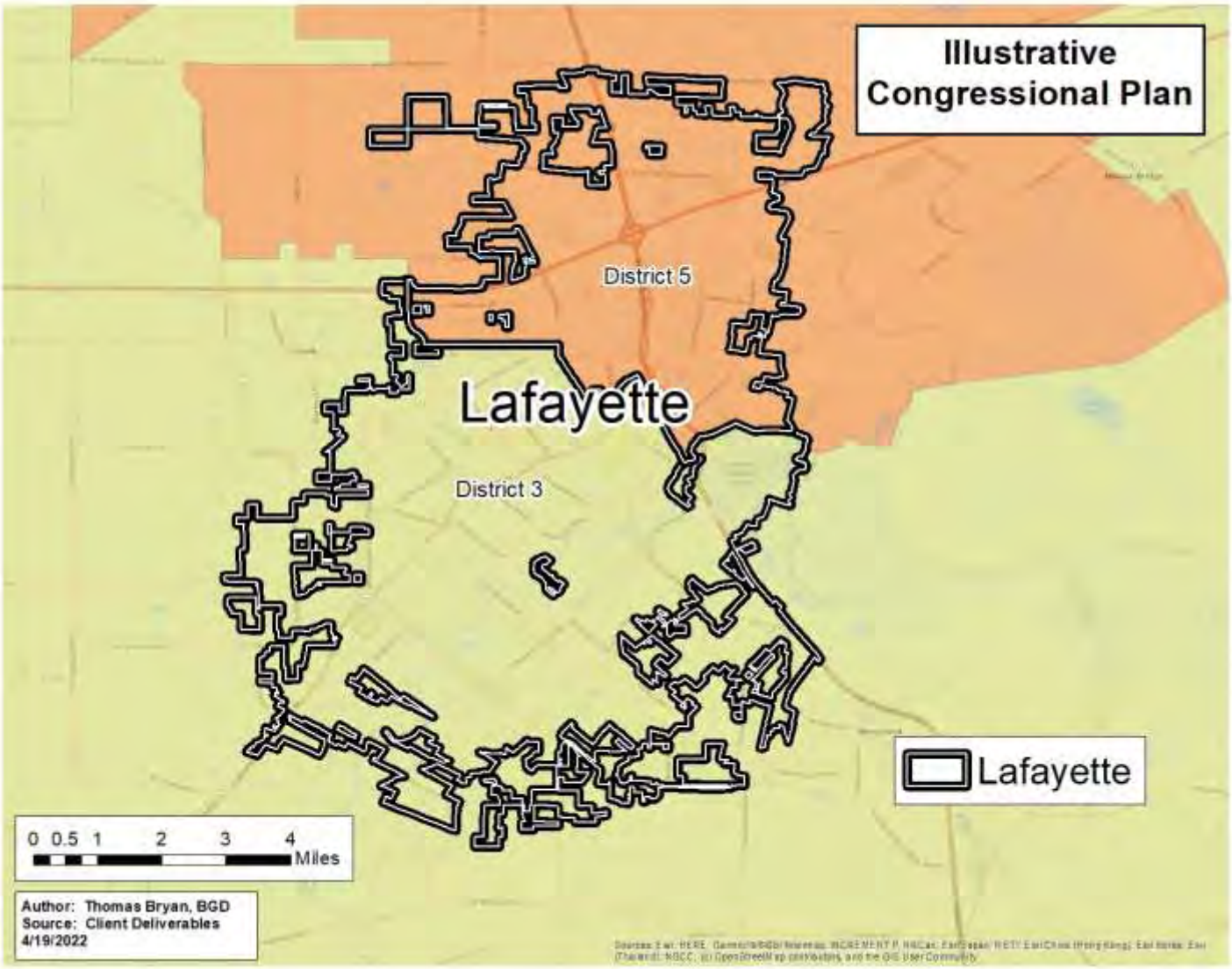


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Lafayette

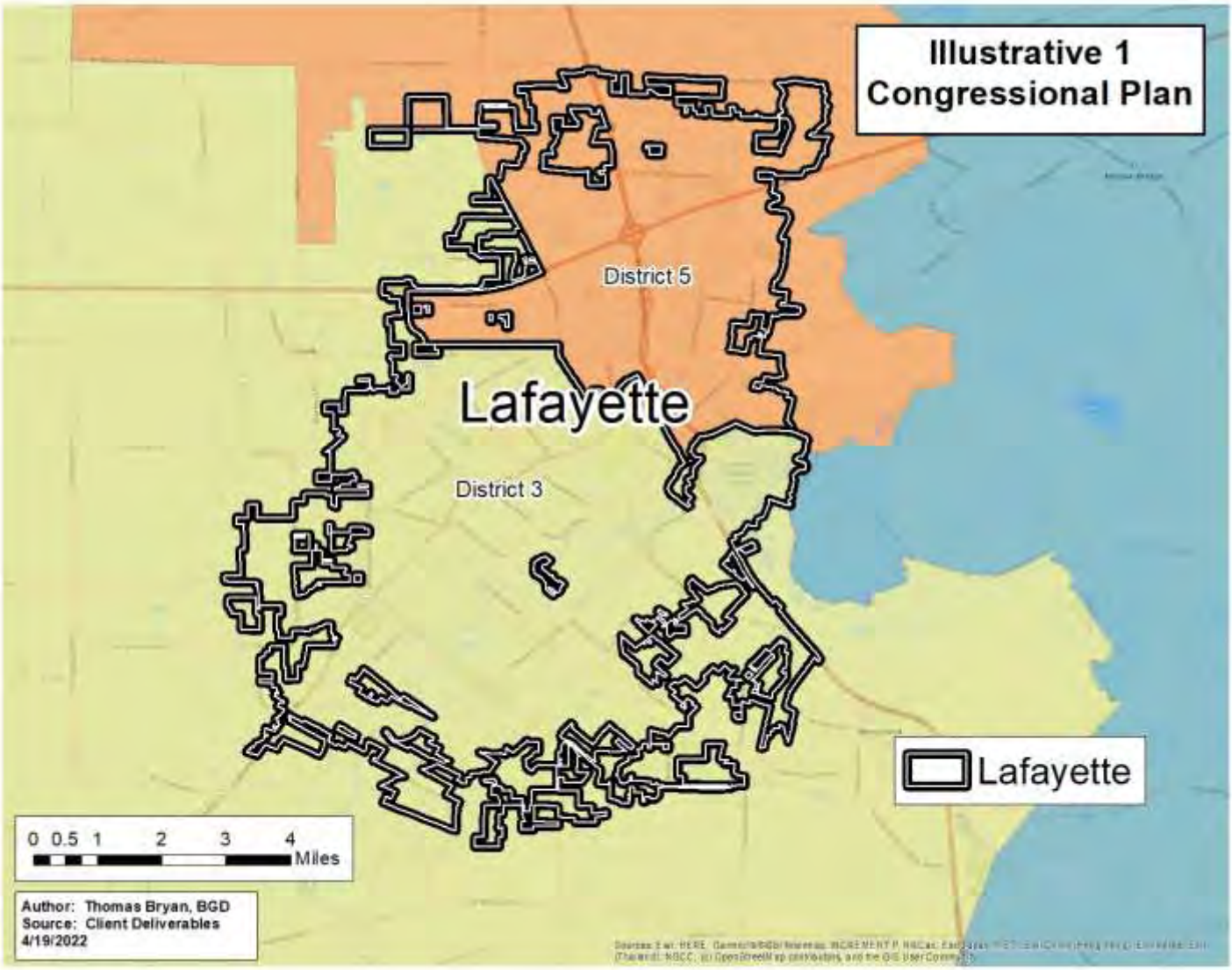
City Splits by Plan

P. Lafayette Robinson Illustrative Plan Split (the Enrolled Plan does not split Lafayette)



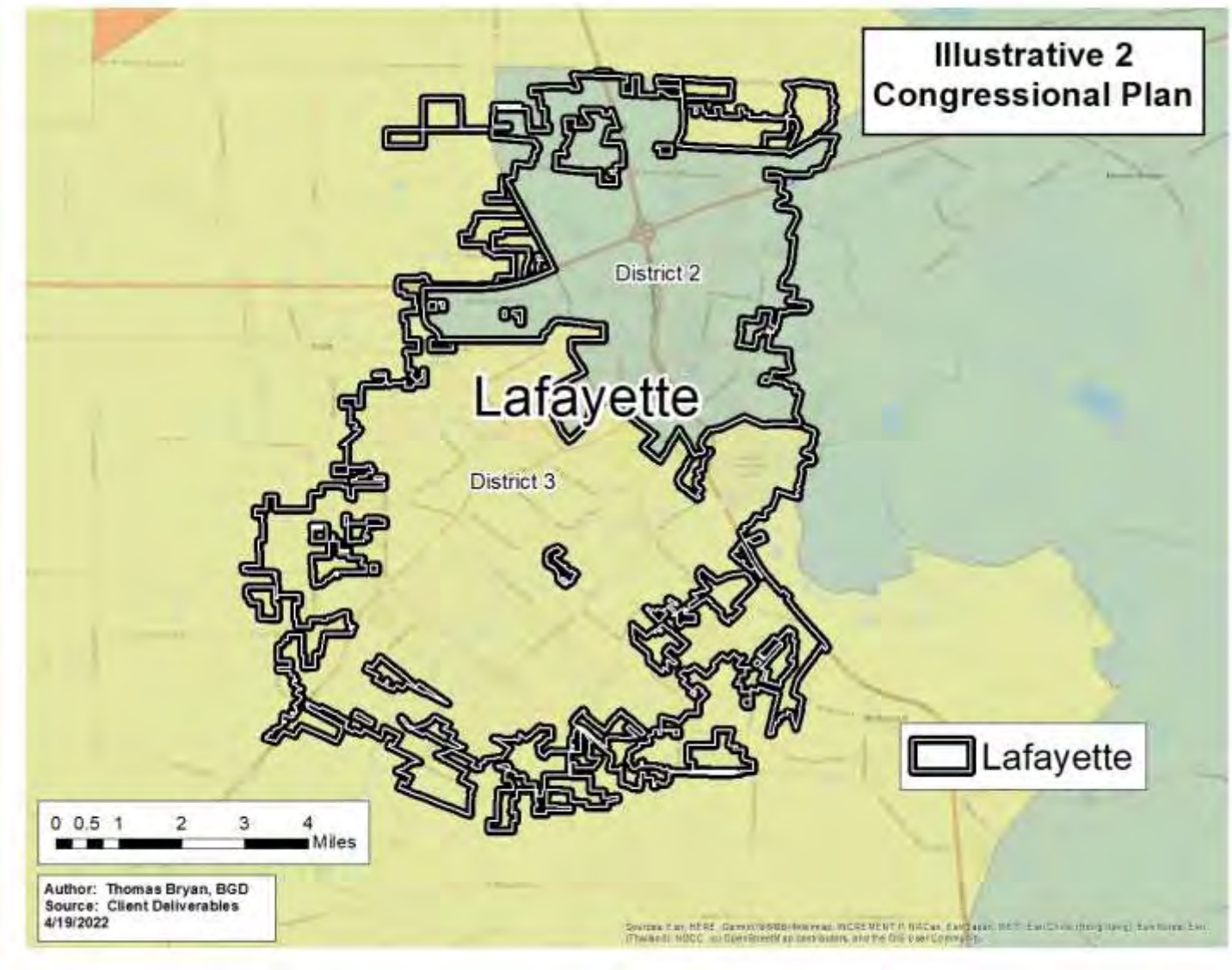
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Q. Lafayette Galmon Illustrative 1 Plan Split



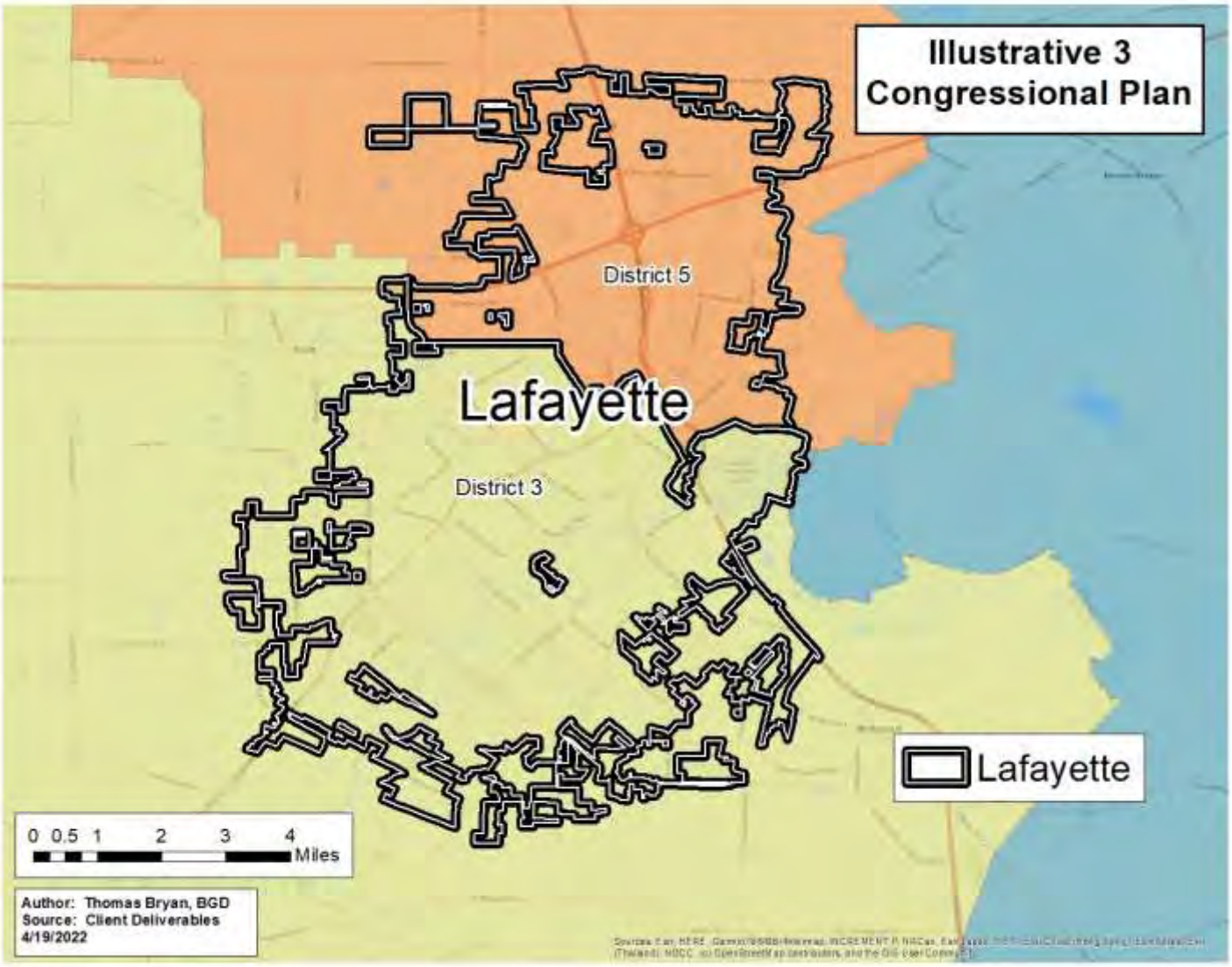
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

R. Lafayette Galmon Illustrative 2 Plan Split



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

S. Lafayette Galmon Illustrative 3 Plan Split

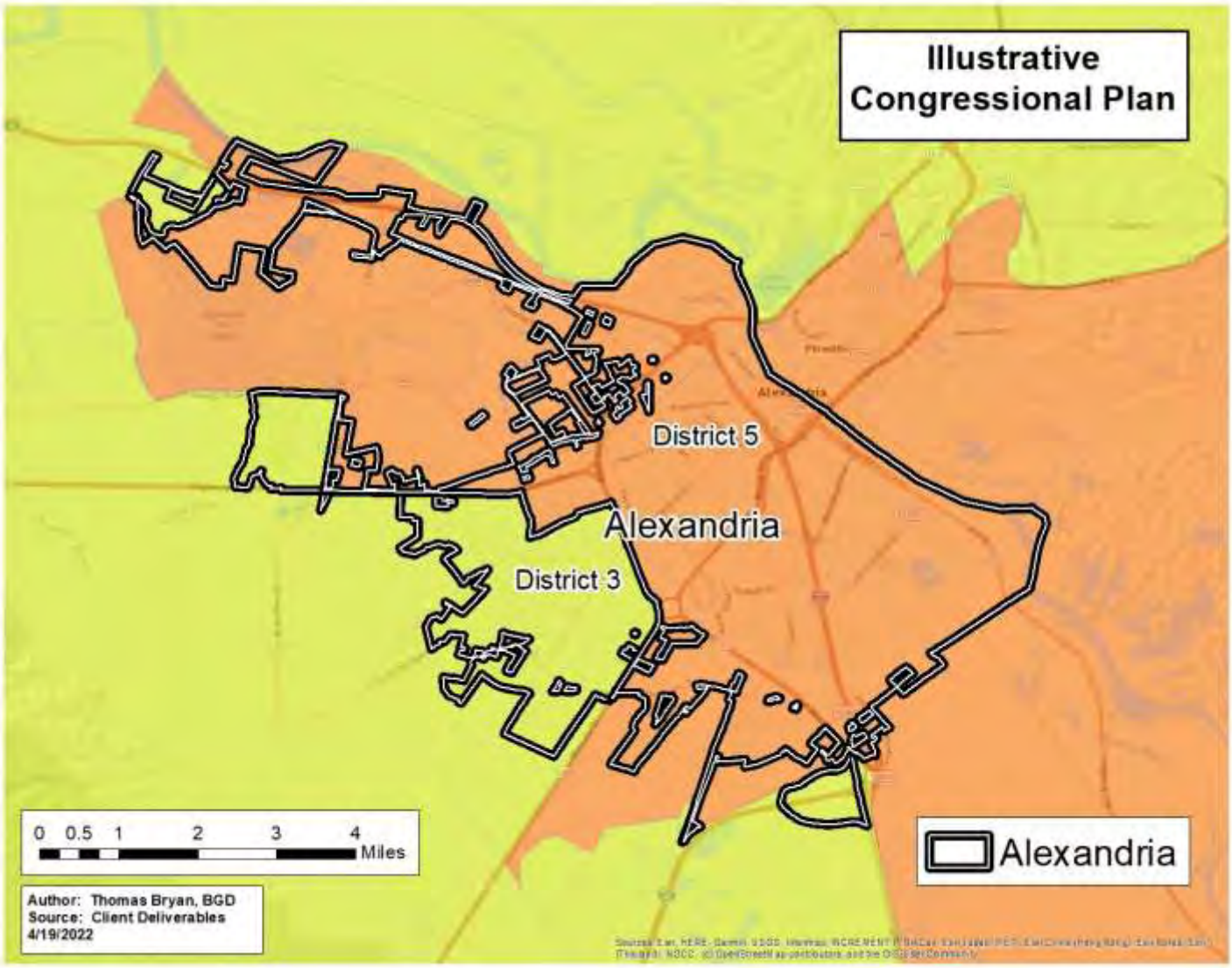


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Alexandria

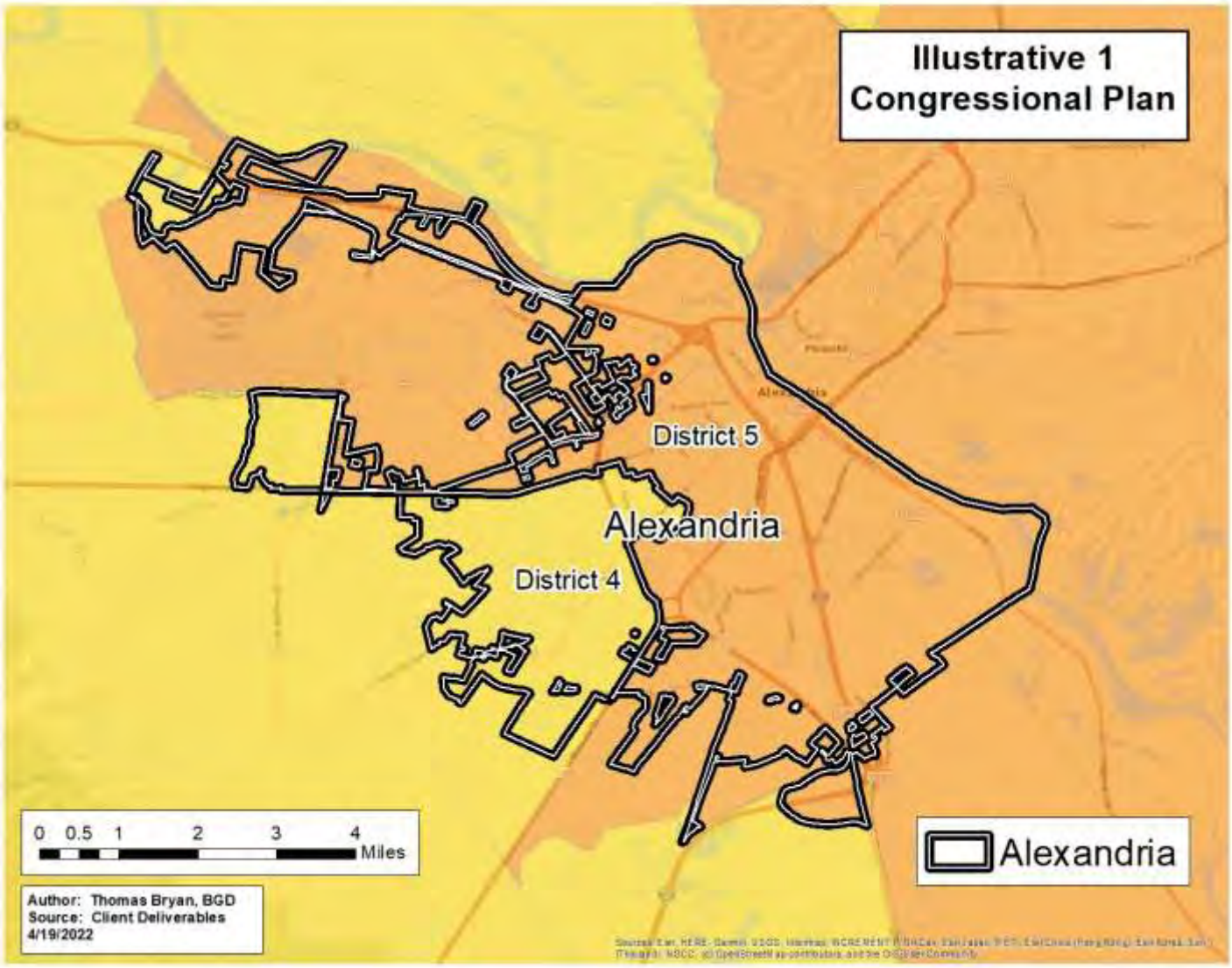
City Splits by Plan

T. Alexandria Robinson Illustrative Plan Split (the Enrolled Plan does not Split Alexandria)



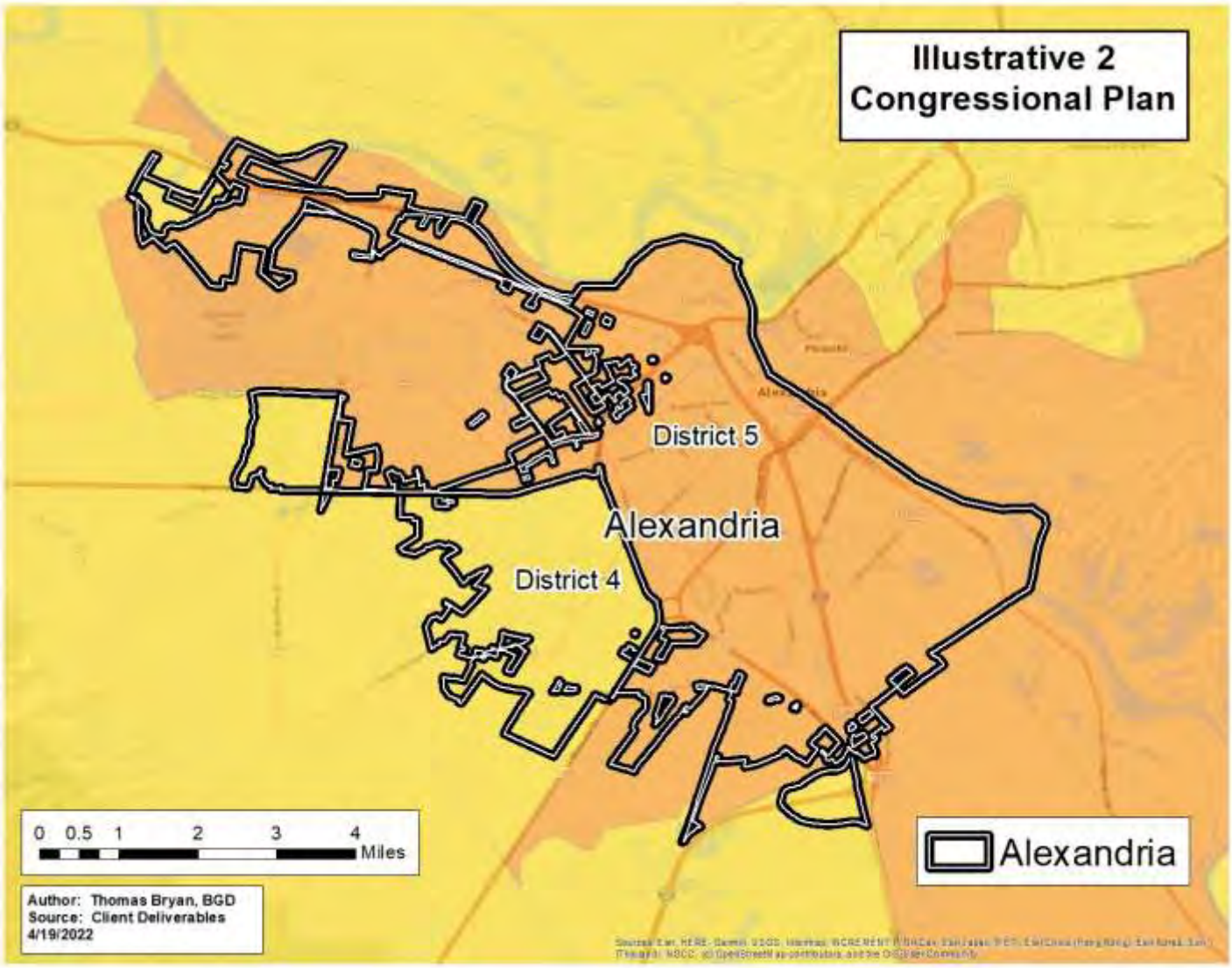
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

U. Alexandria Galmon Illustrative 1 Plan Split



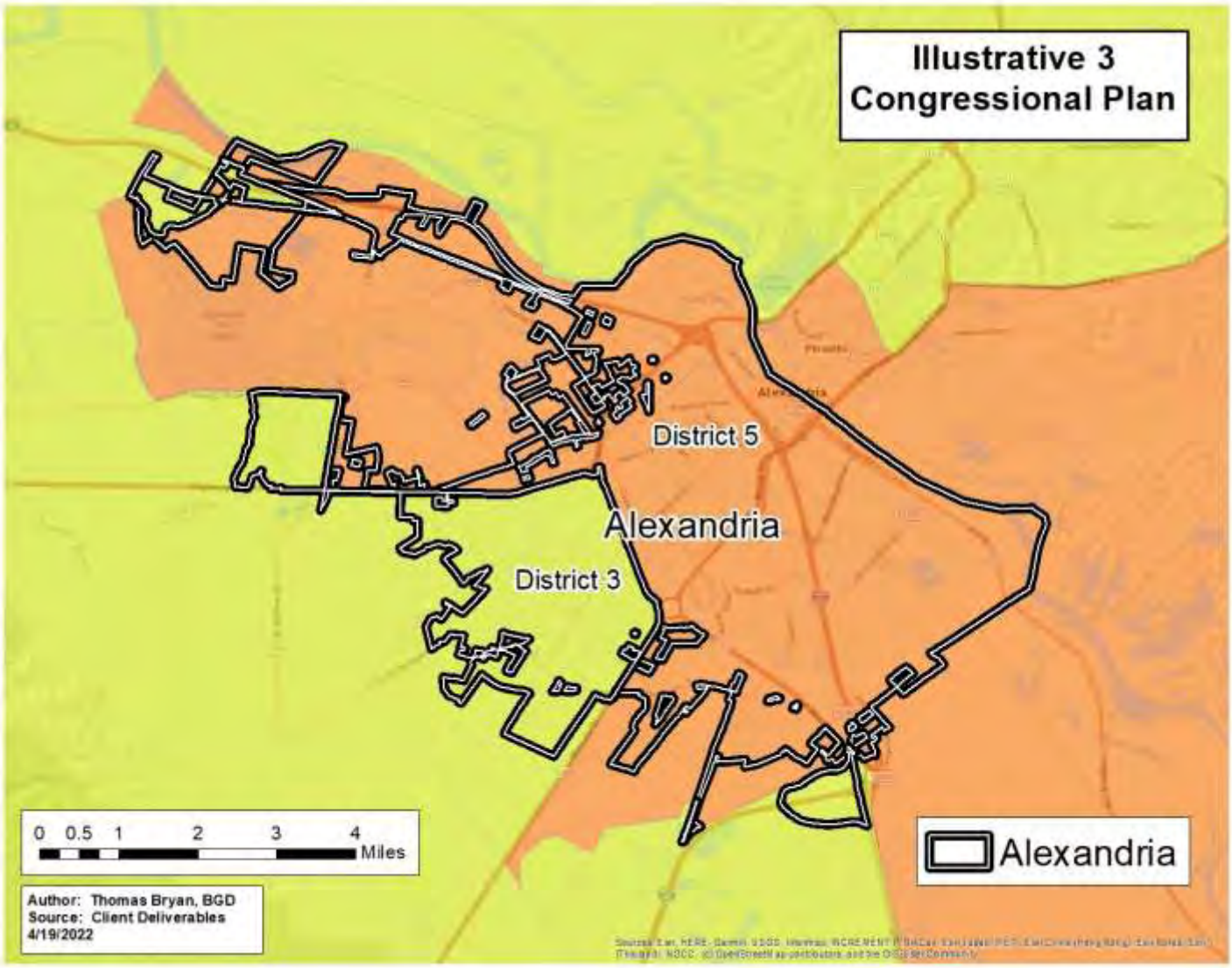
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

V. Alexandria Galmon Illustrative 2 Plan Split



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

W. Alexandria Galmon Illustrative 3 Plan Split

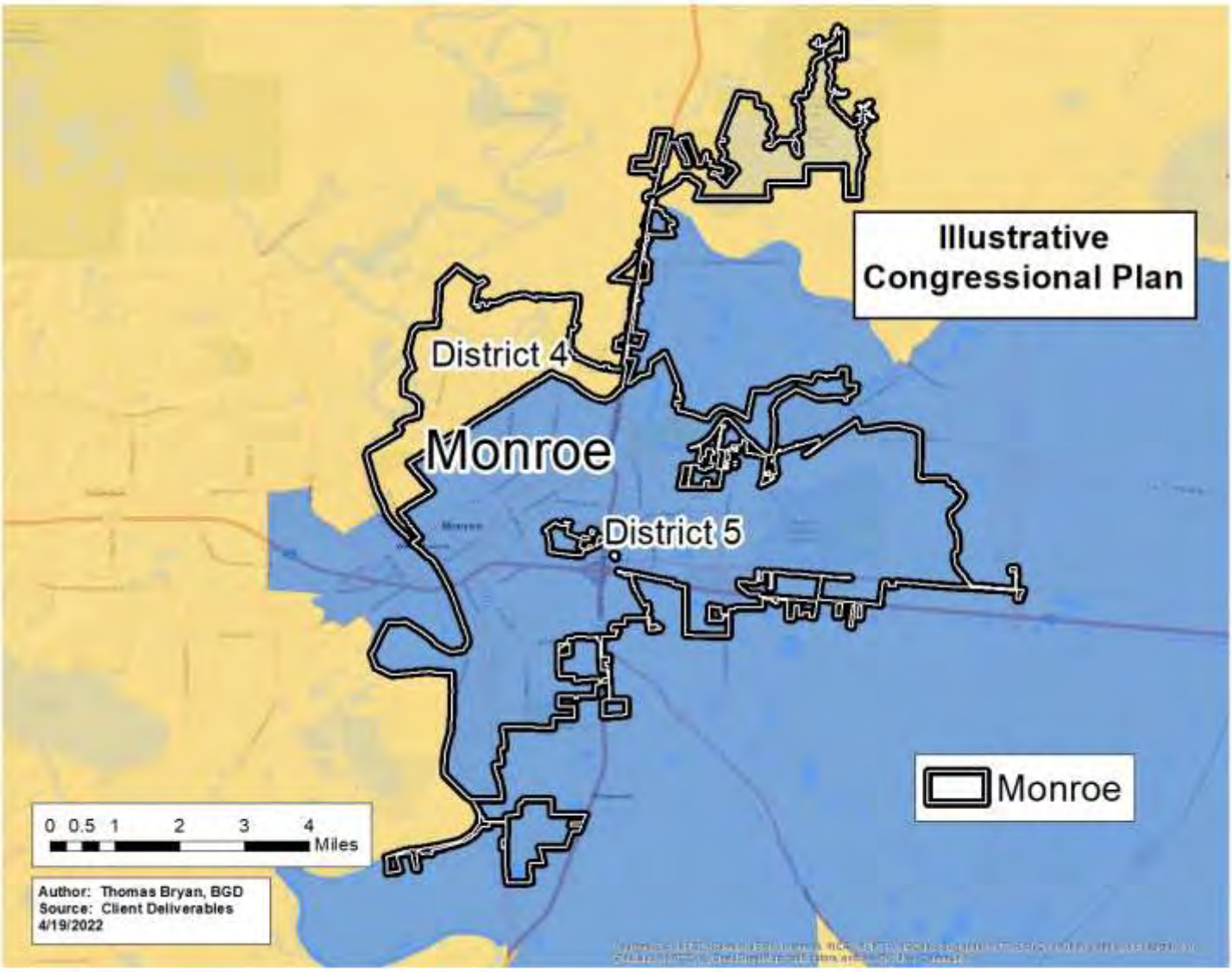


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Monroe

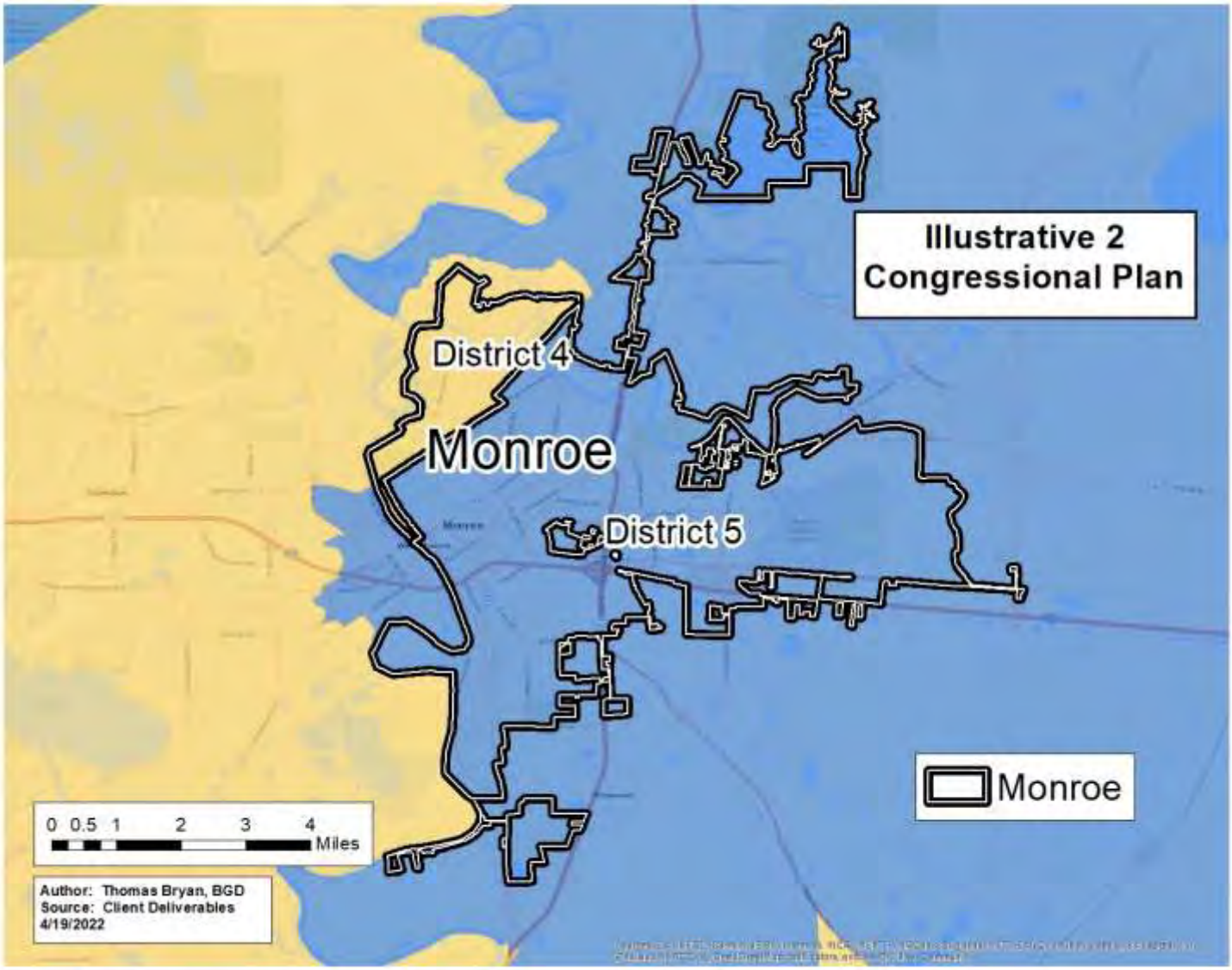
City Splits by Plan

X. Monroe Robinson Illustrative Plan Split (the Enrolled Plan and Galmon Illustrative 1 Plan do not split Monroe)



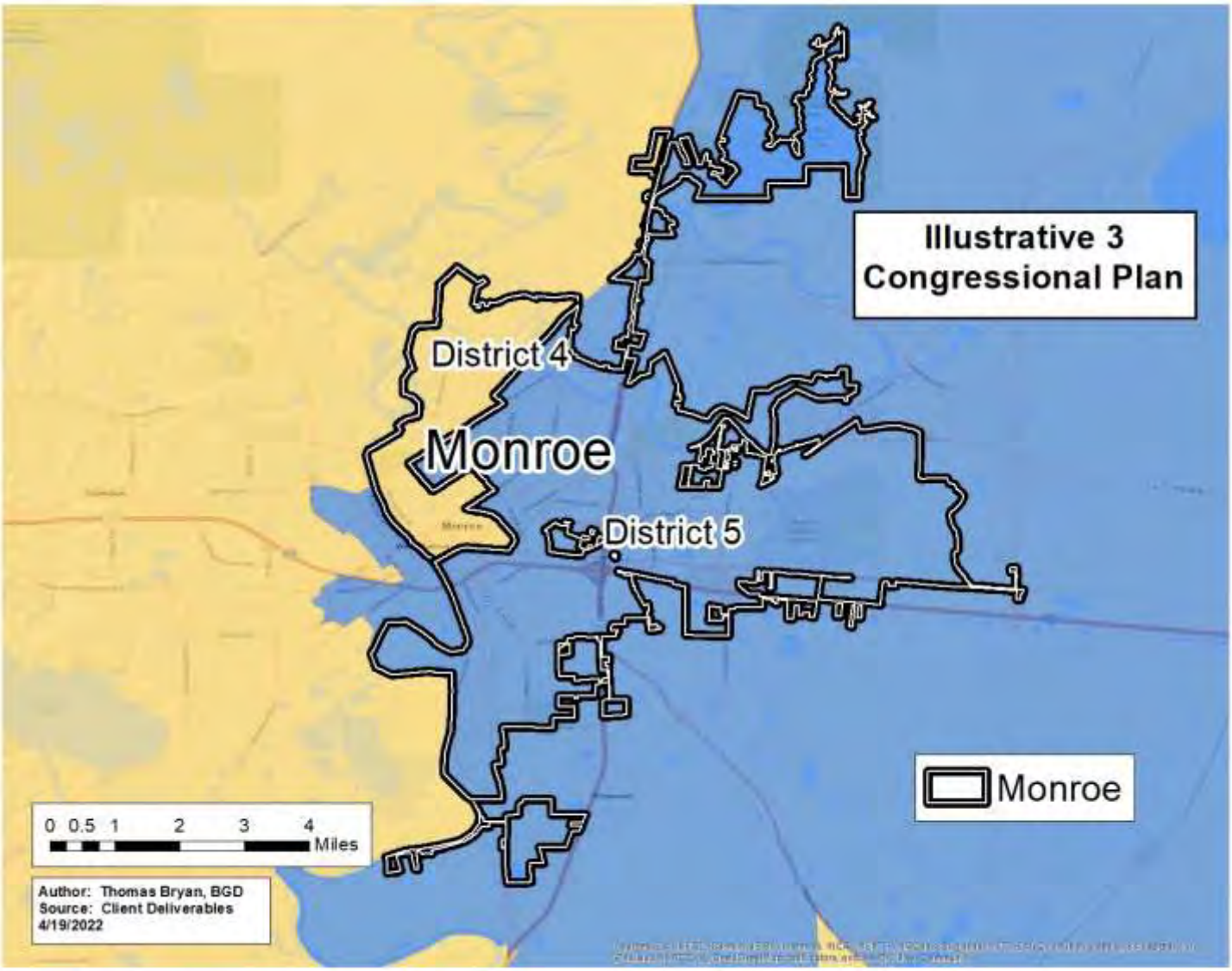
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Y. Monroe Galmon Illustrative 2 Plan Split



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

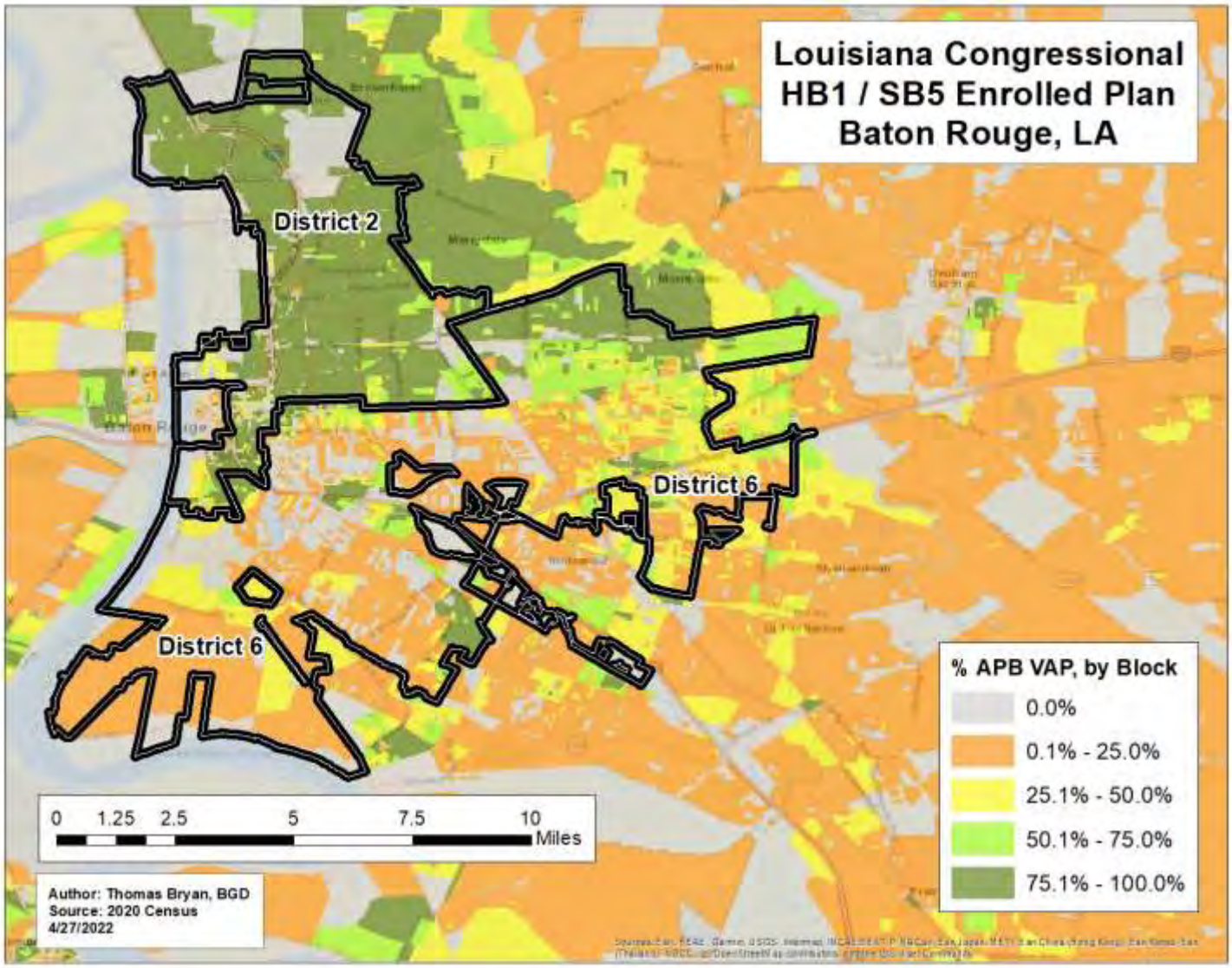
Z. Monroe Galmon Illustrative 3 Plan Split



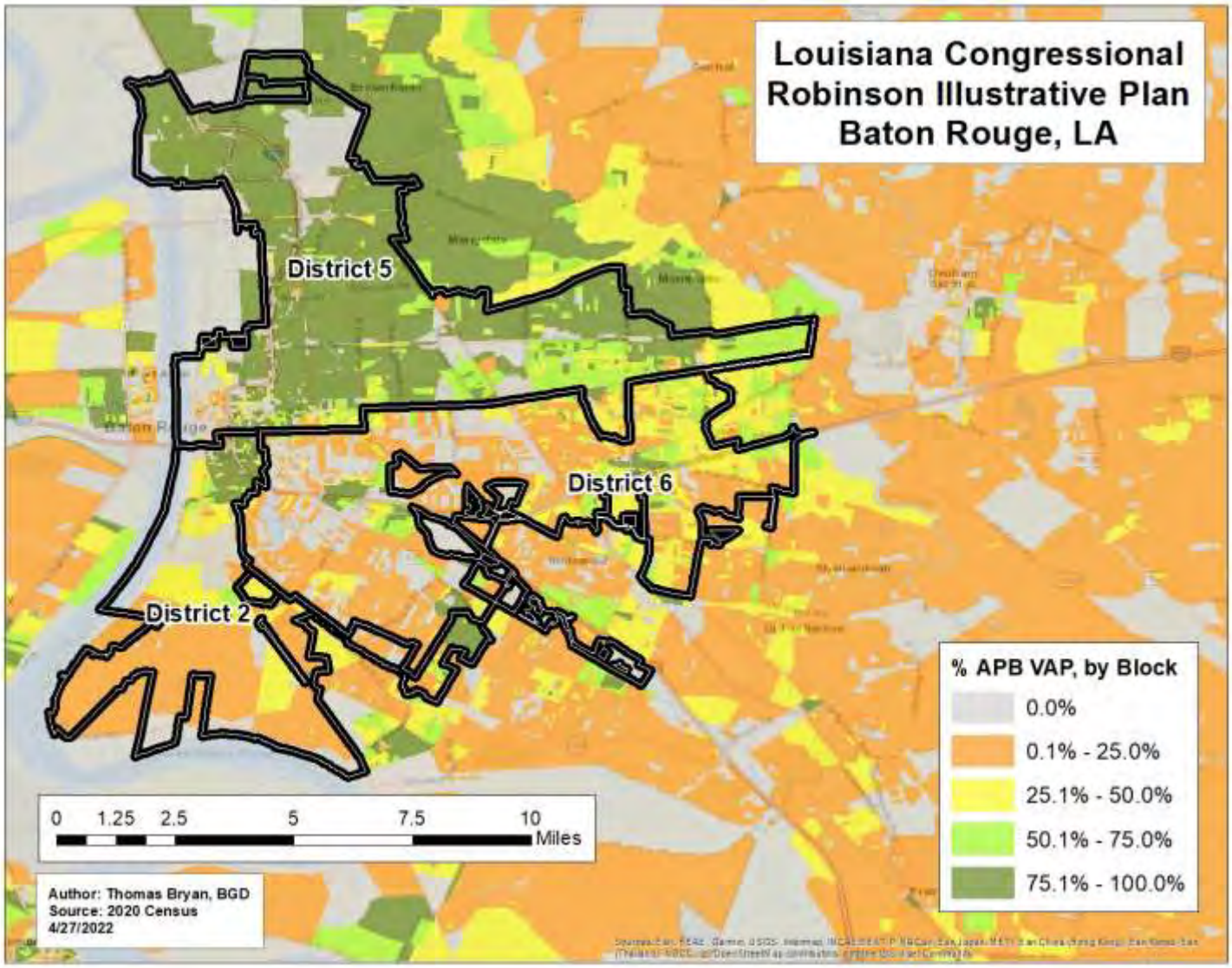
Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Baton Rouge
City Splits by Race
by Plan

AA. Baton Rouge HB1 / SB5 Enrolled Plan Split by % Any Part Black VAP



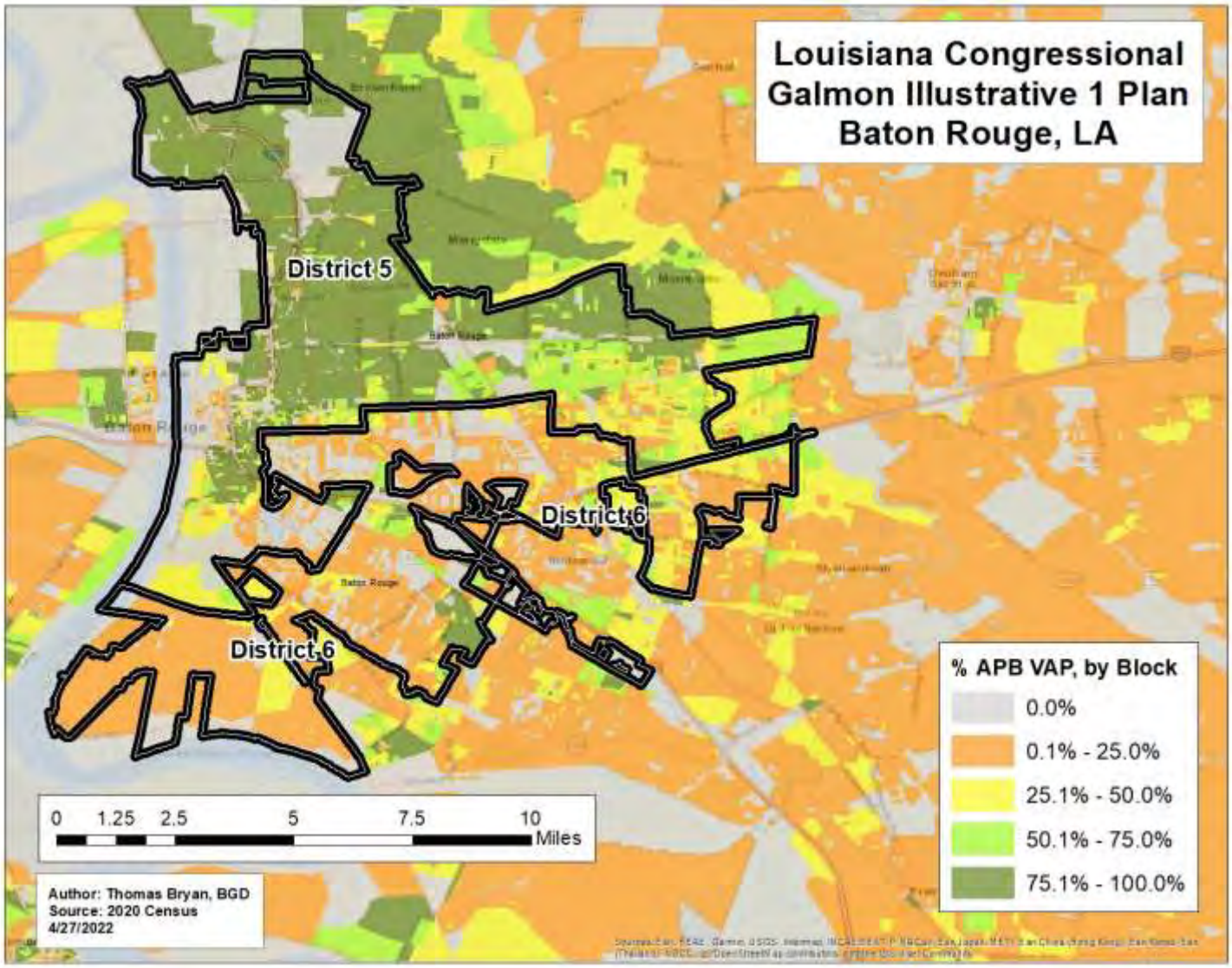
BB. Baton Rouge Robinson Illustrative Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

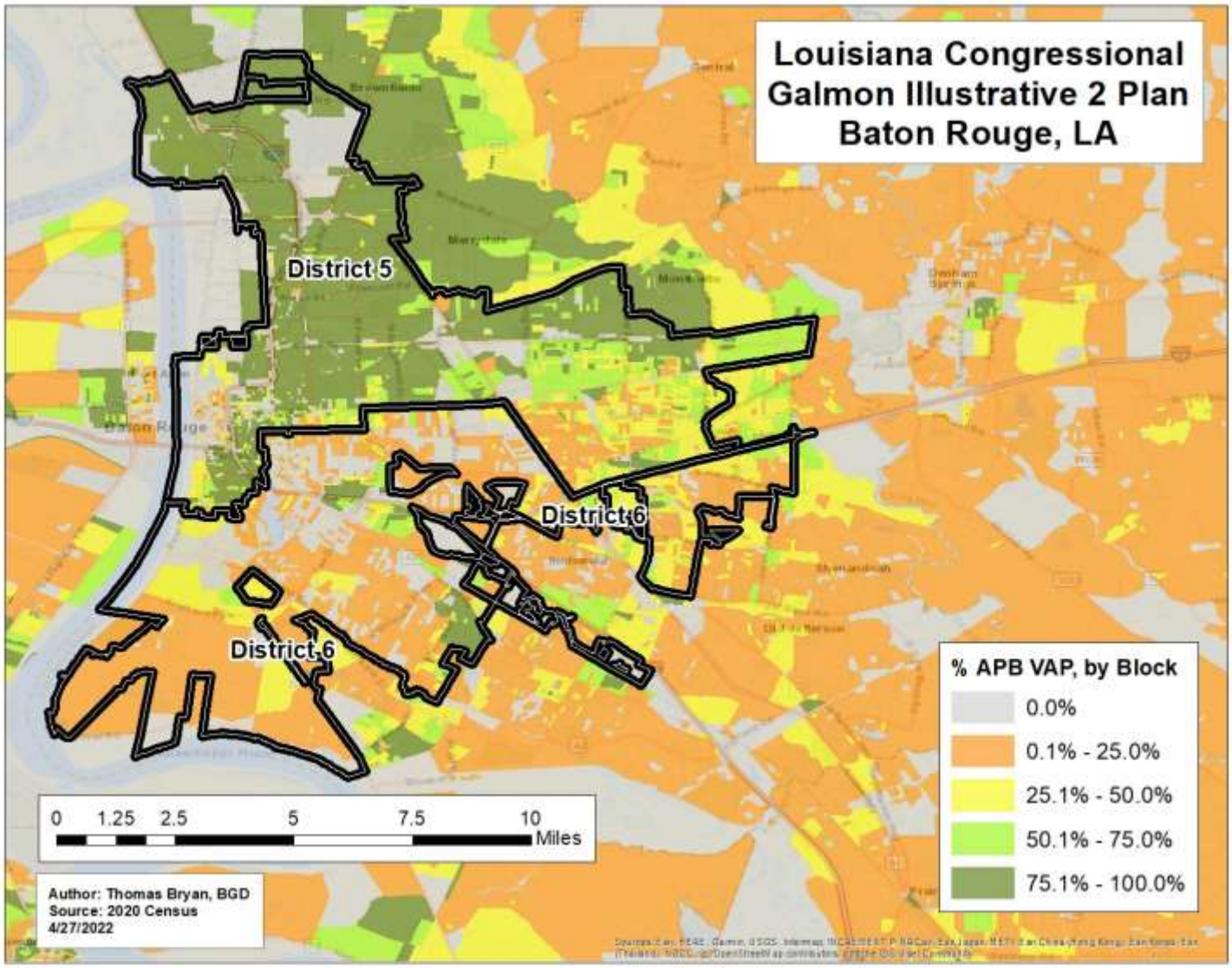
CC. Baton Rouge Galmon Illustrative 1 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

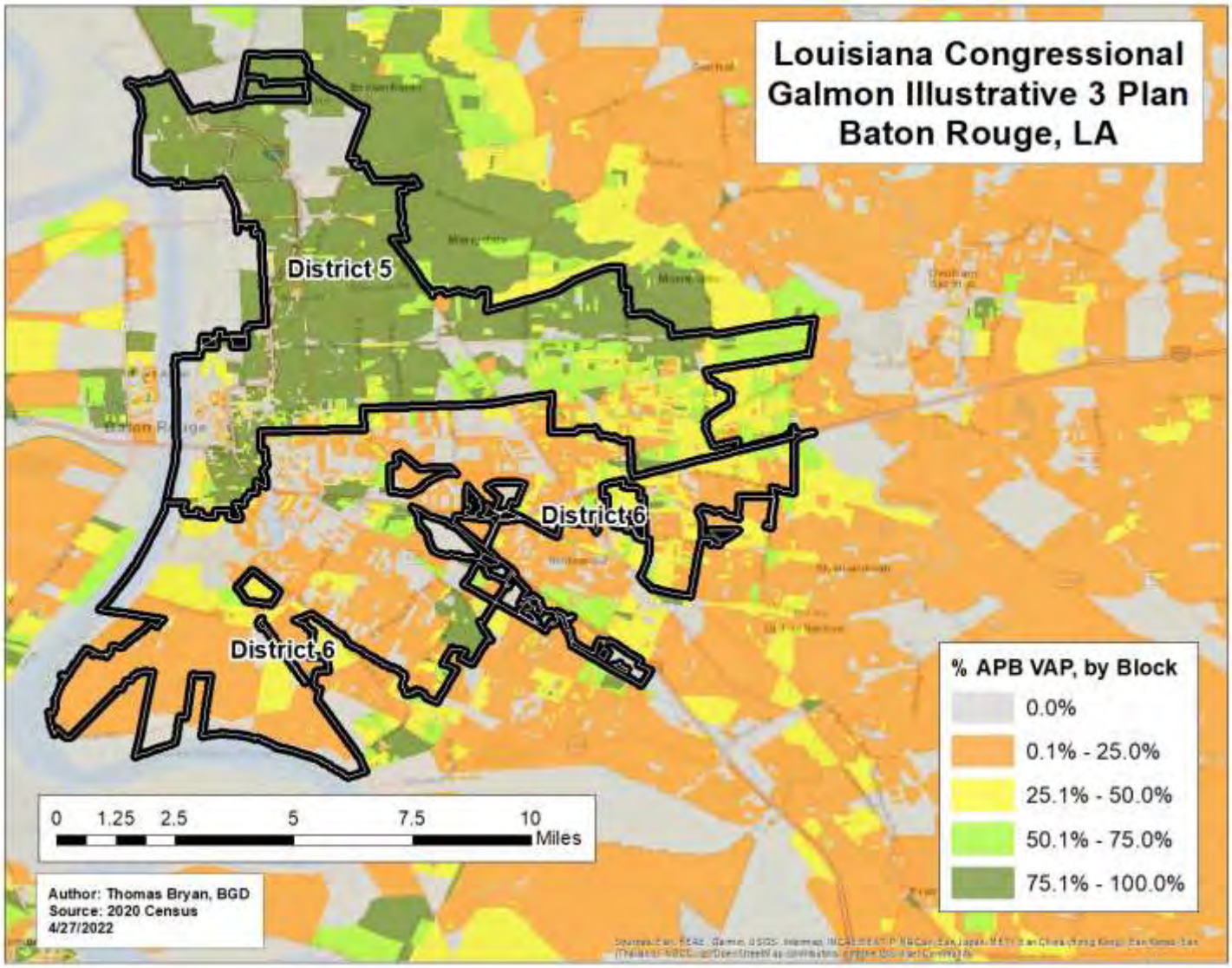
DD. Baton Rouge Galmon Illustrative 2 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

EE. Baton Rouge Galmon Illustrative 3 Plan Split by % Any Part Black VAP

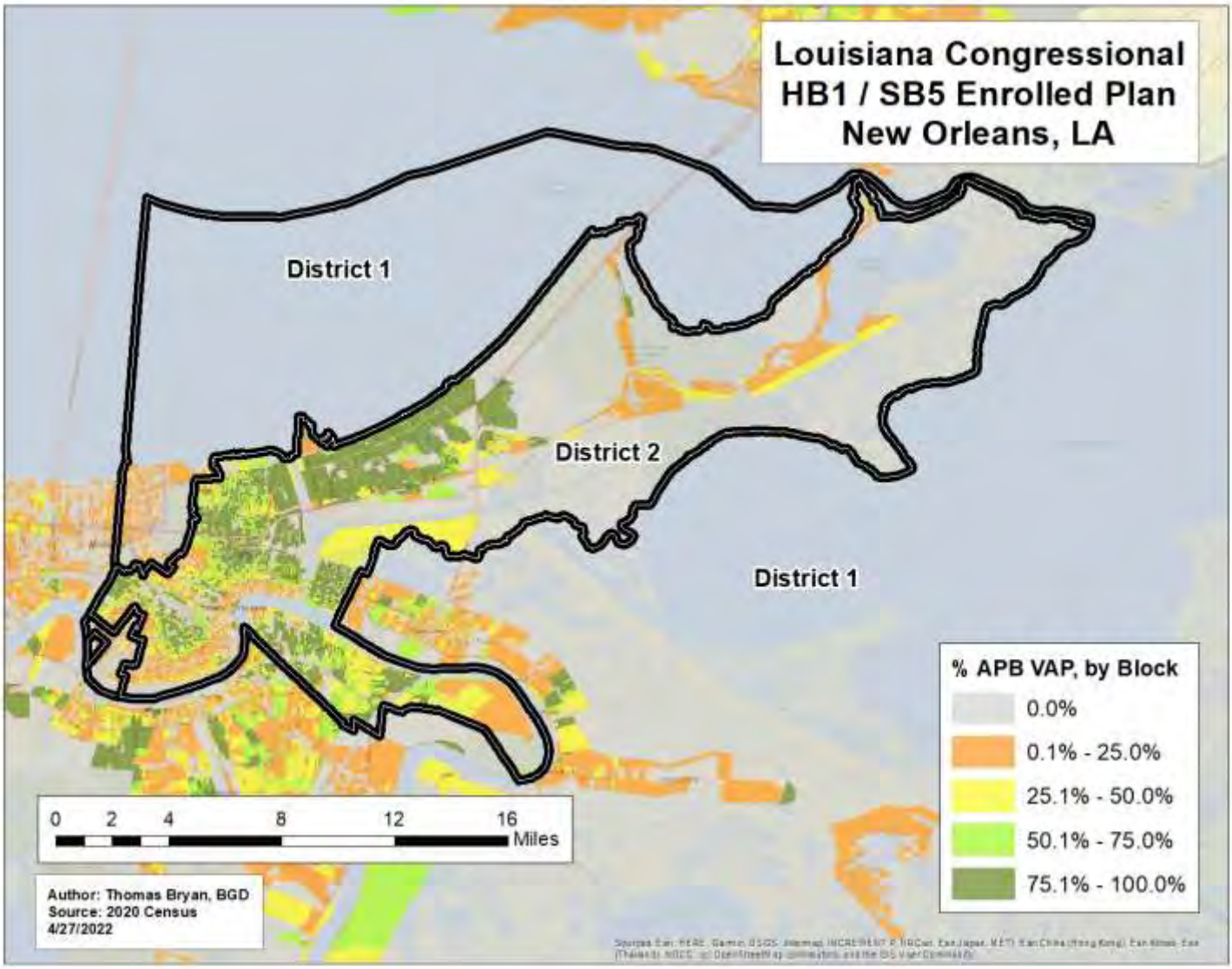


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

New Orleans
City Splits by Race
by Plan

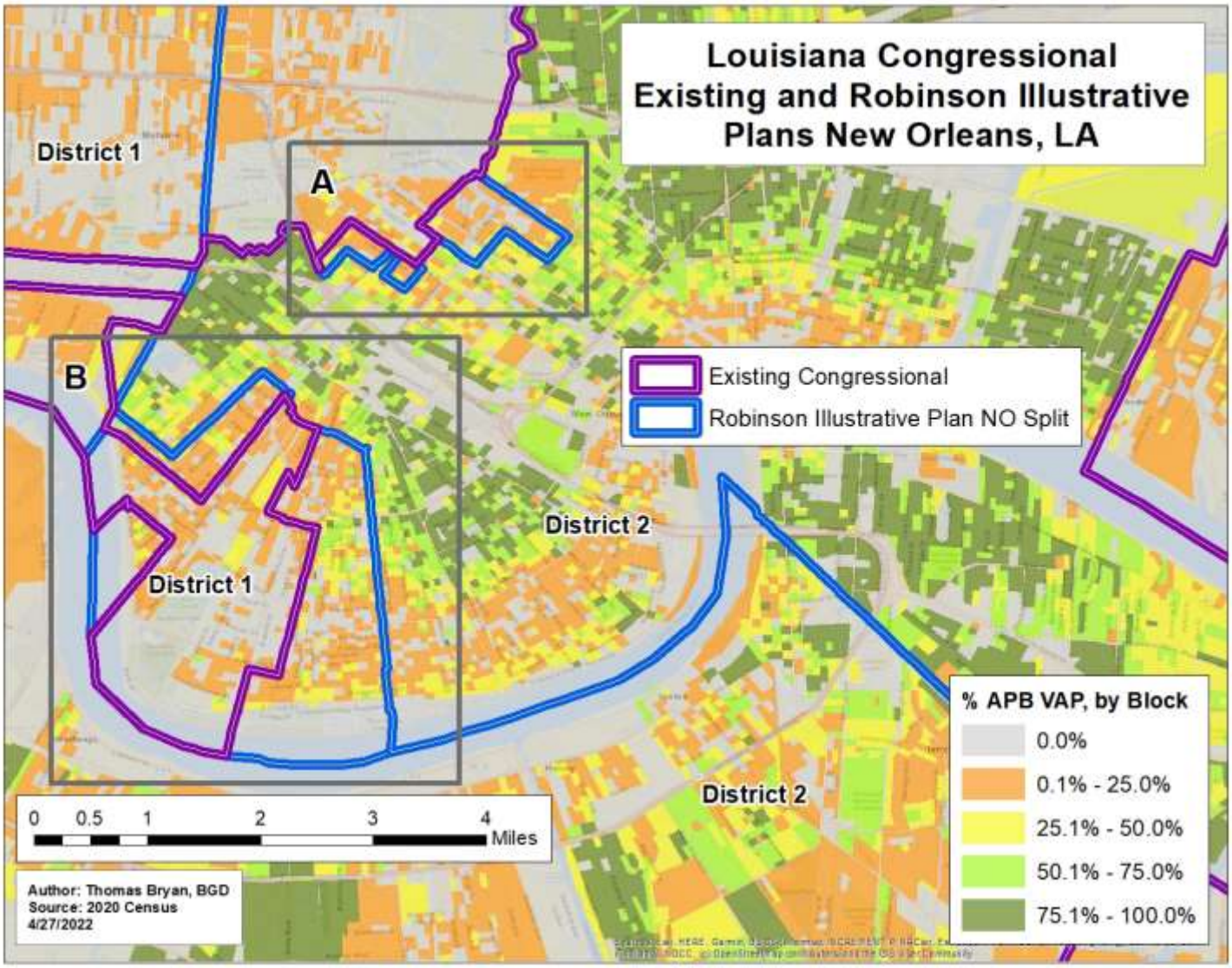
FF. New Orleans HB1 / SB5 Enrolled Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

GG. New Orleans Existing Plan and Robinson Illustrative Plan by % Any Part Black VAP

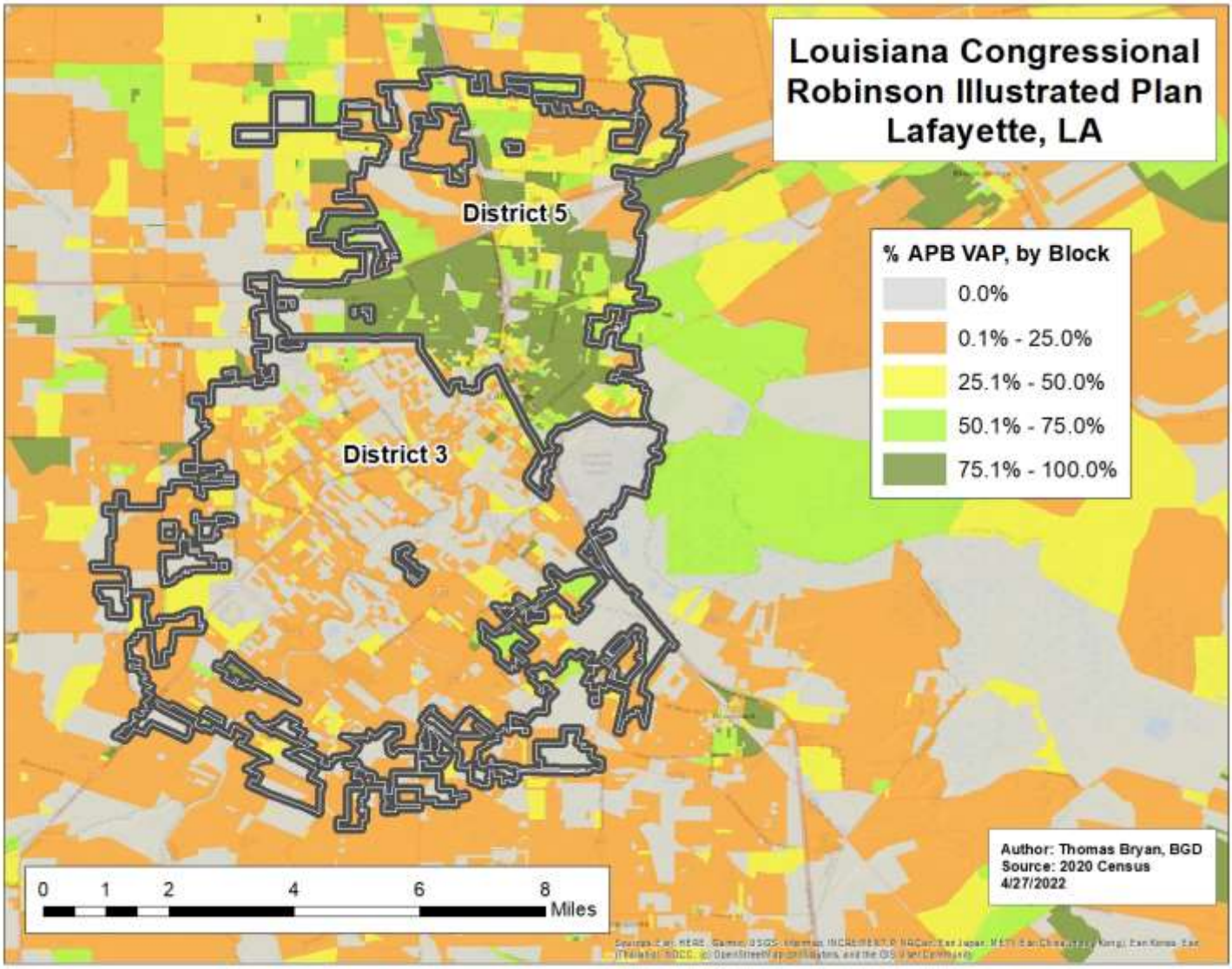


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

Lafayette
City Splits by Race
by Plan

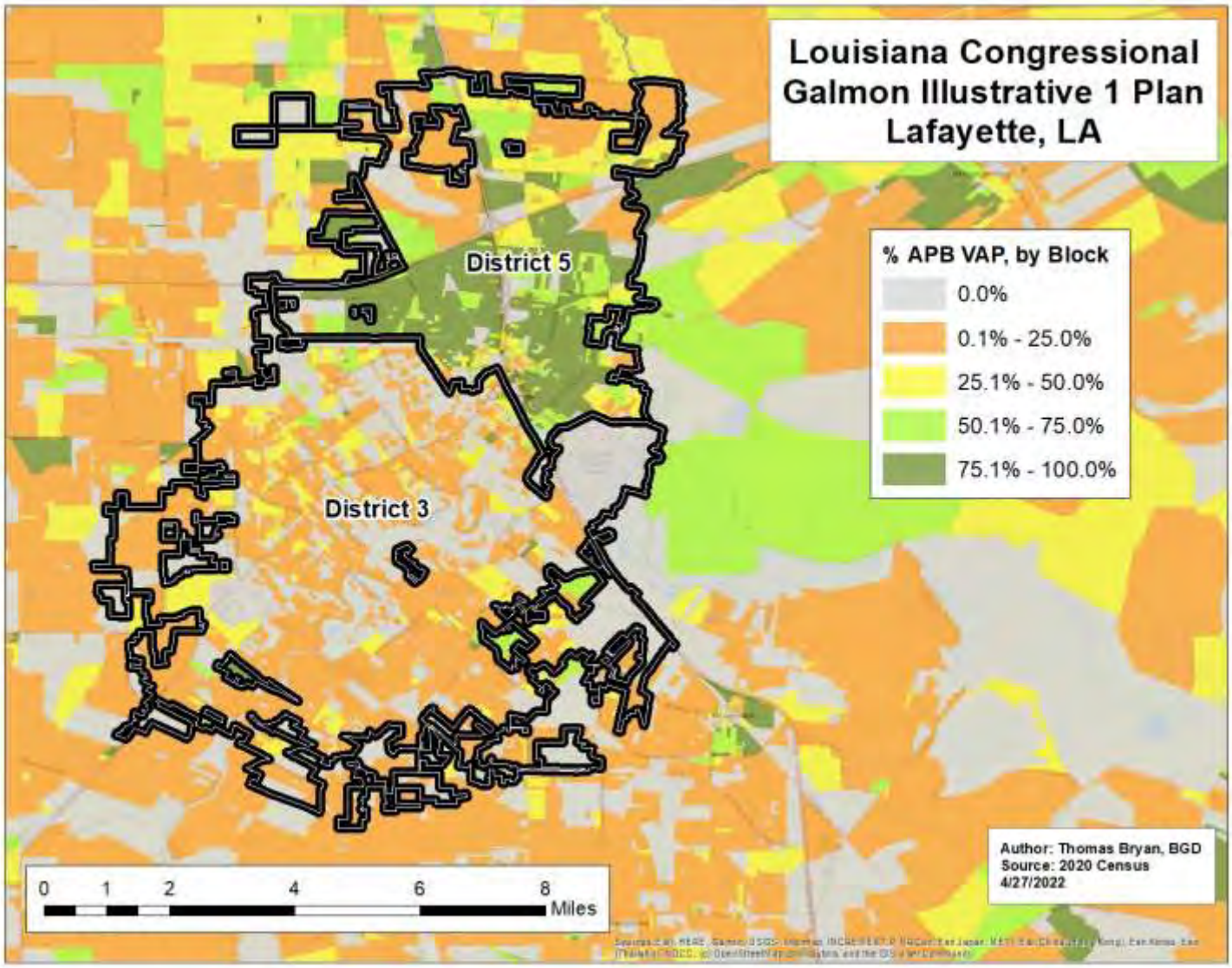
HH. Lafayette Robinson Illustrative Plan Split by % Any Part Black VAP (the Enrolled Plan does not split Lafayette)



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

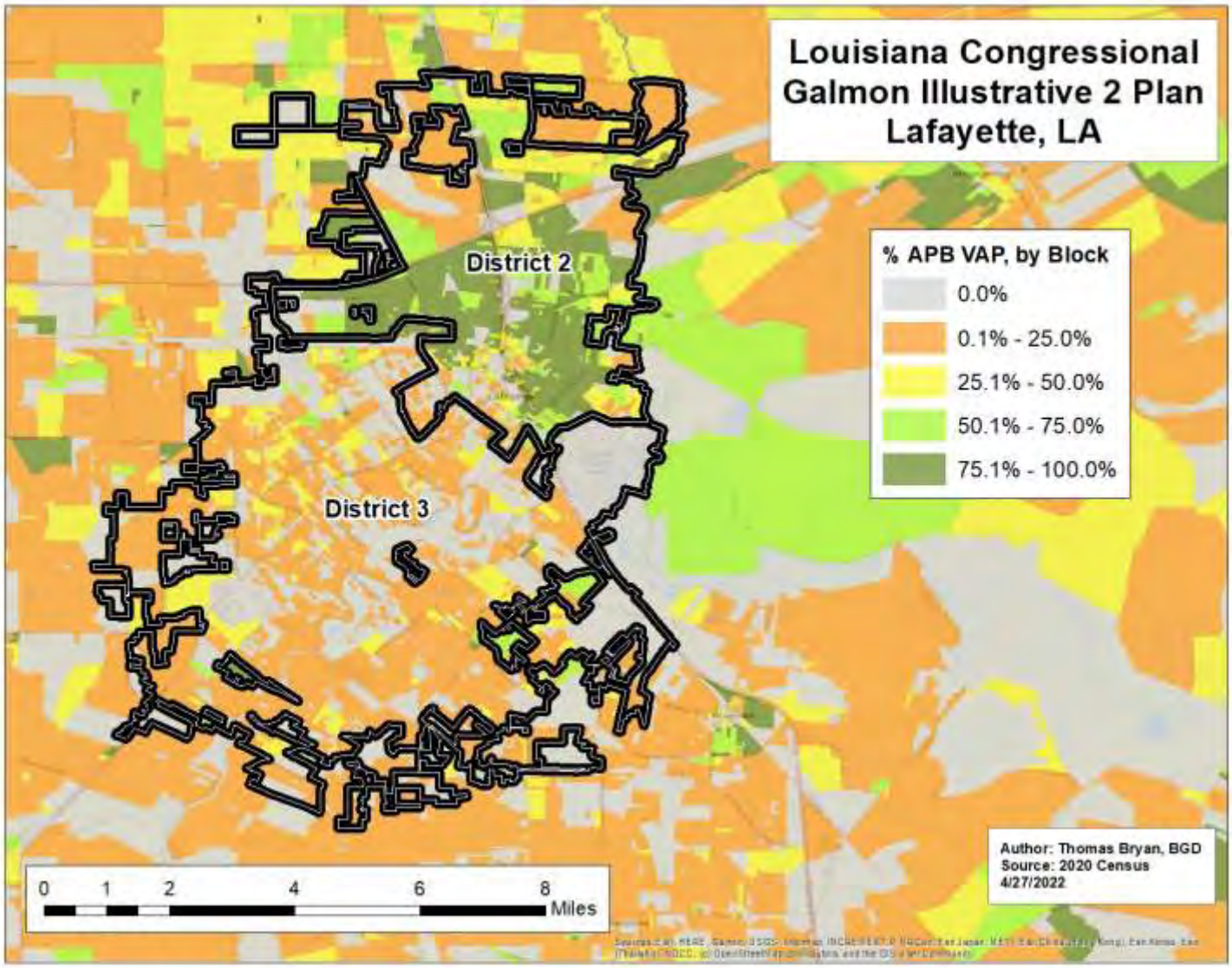
II. Lafayette Galmon Illustrative 1 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

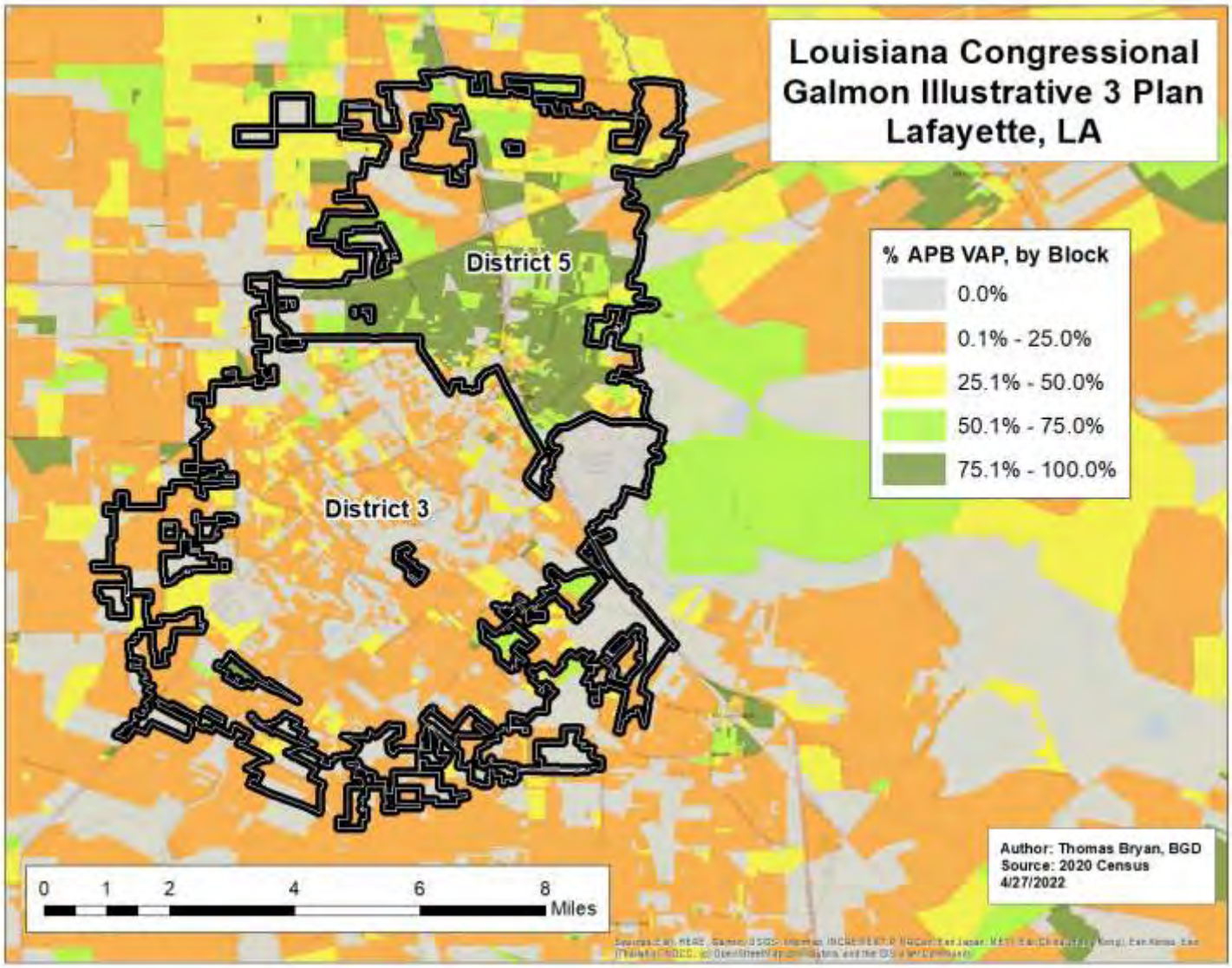
JJ. Lafayette Galmon Illustrative 2 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

KK. Lafayette Galmon Illustrative 3 Plan Split by % Any Part Black VAP

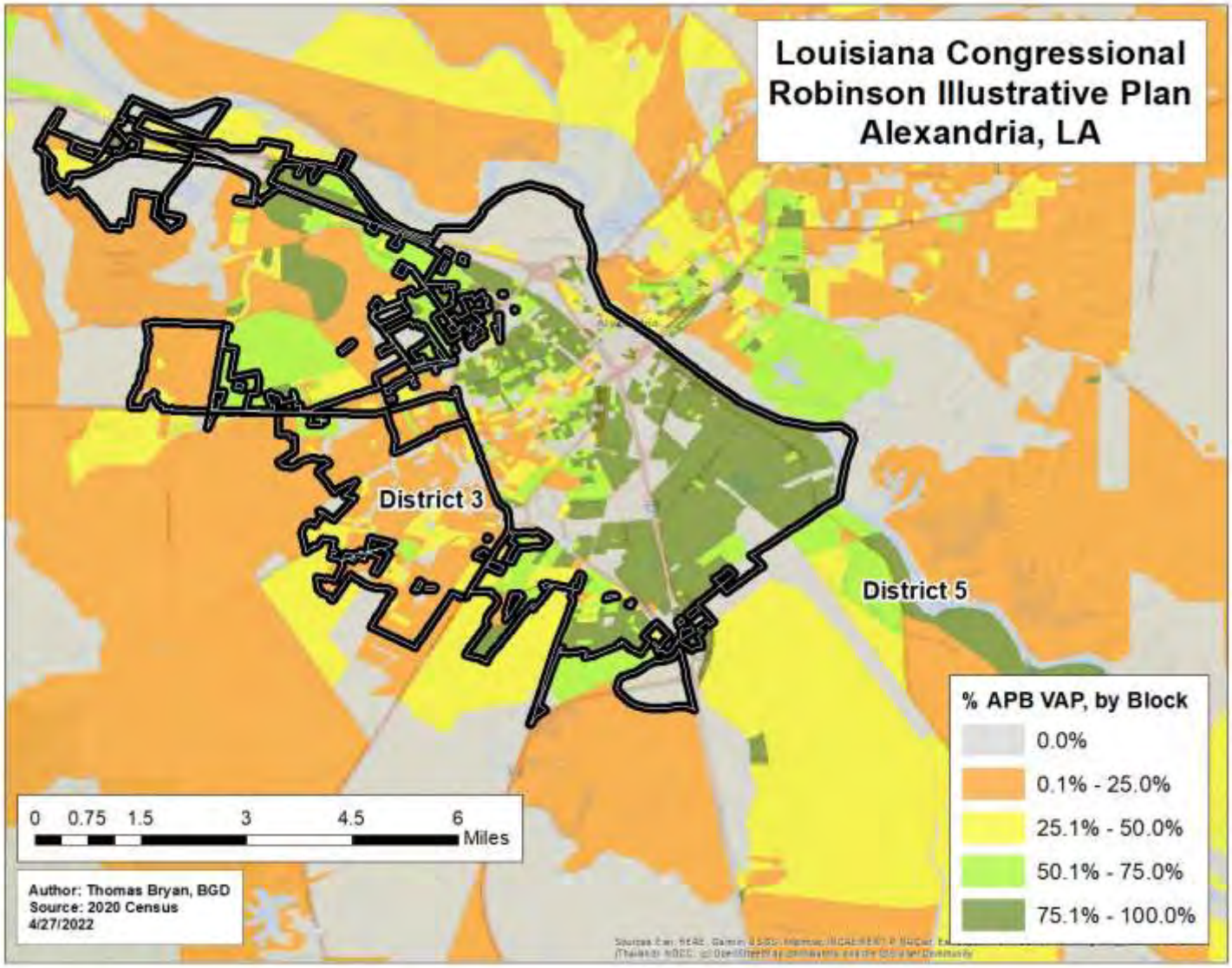


Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

Alexandria
City Splits by Race
by Plan

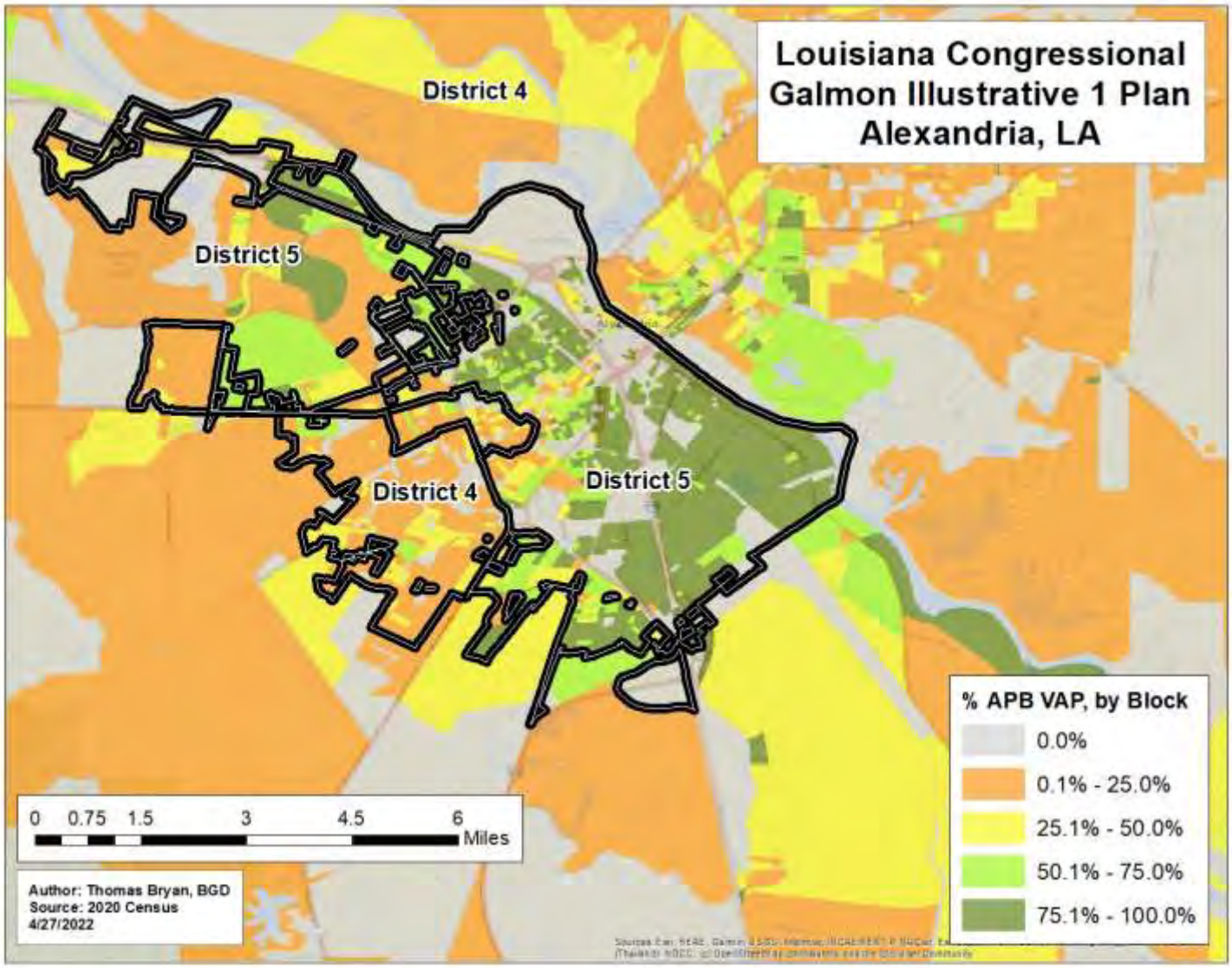
LL. Alexandria Robinson Illustrative Plan Split by % Any Part Black VAP (the Enrolled Plan does not split Alexandria)



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

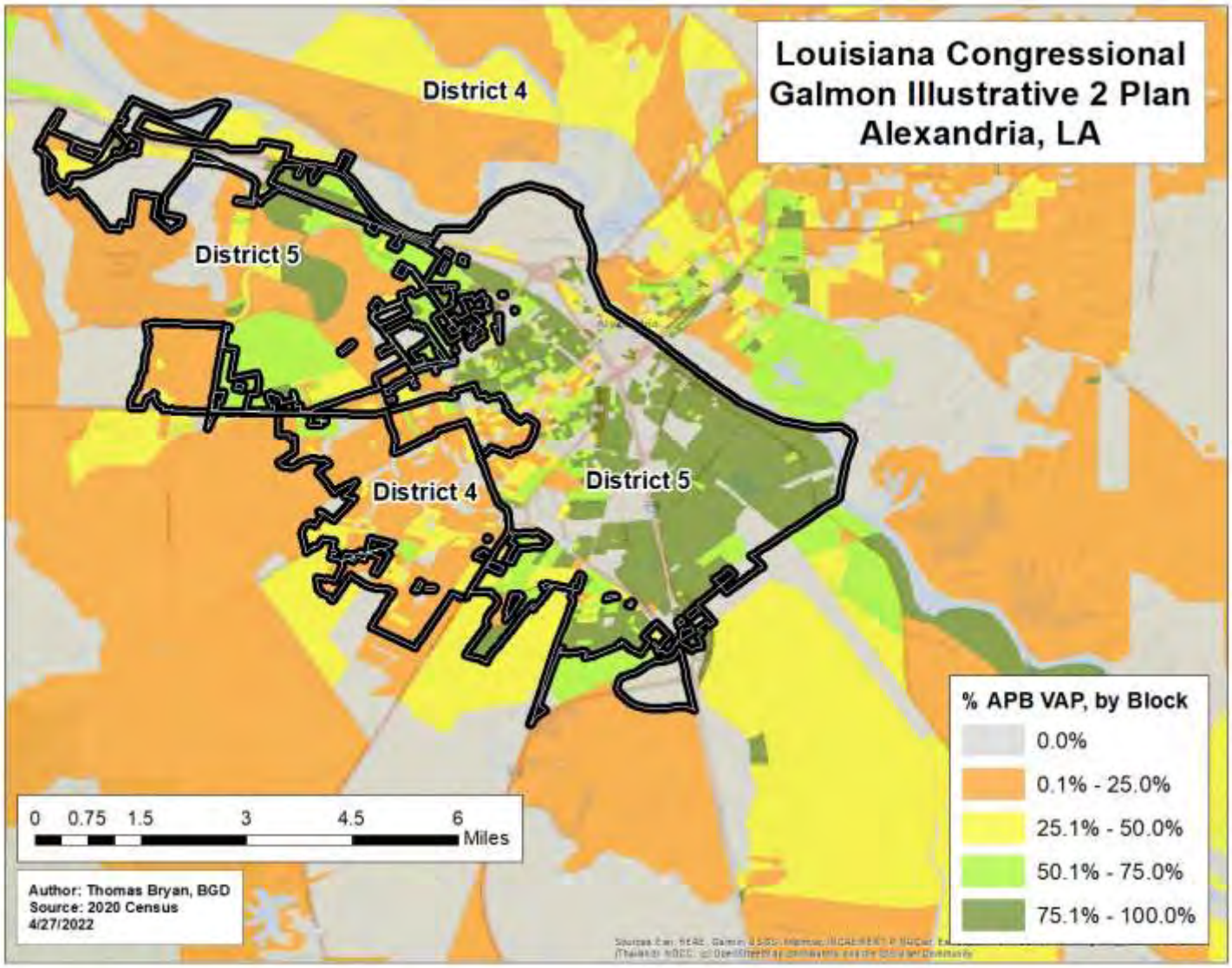
MM. Alexandria Galmon Illustrative 1 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

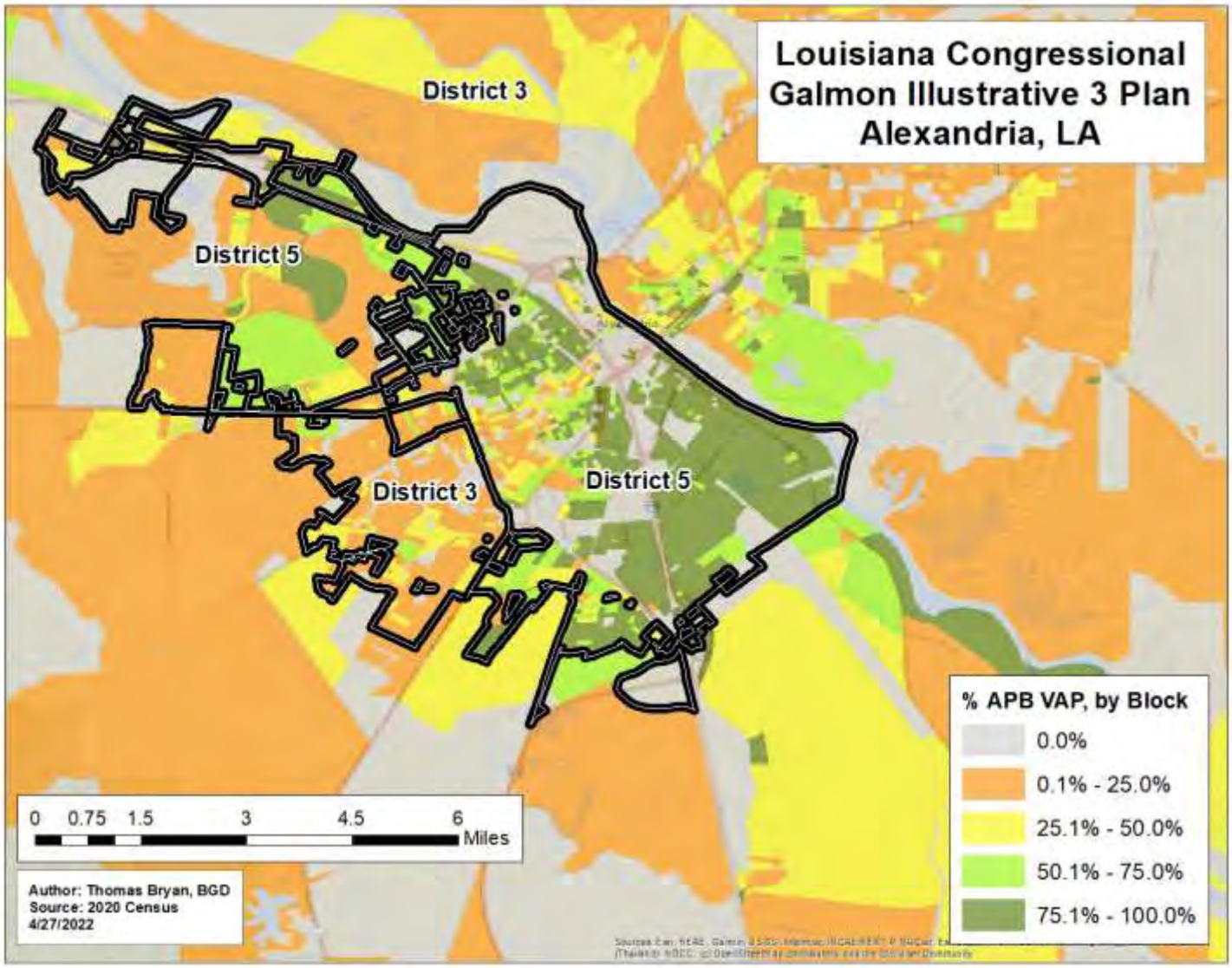
NN. Alexandria Galmon Illustrative 2 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

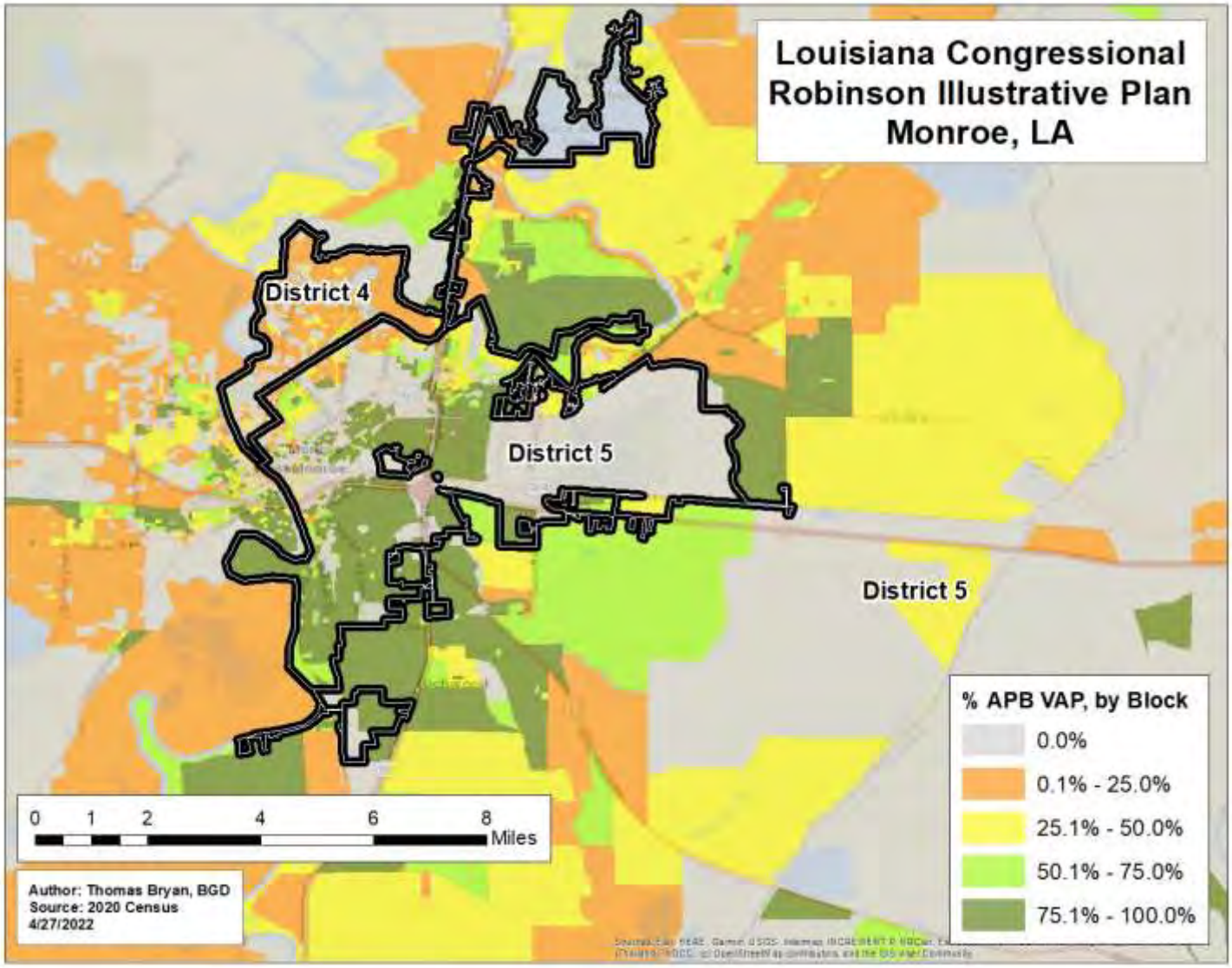
OO. Alexandria Galmon Illustrative 3 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

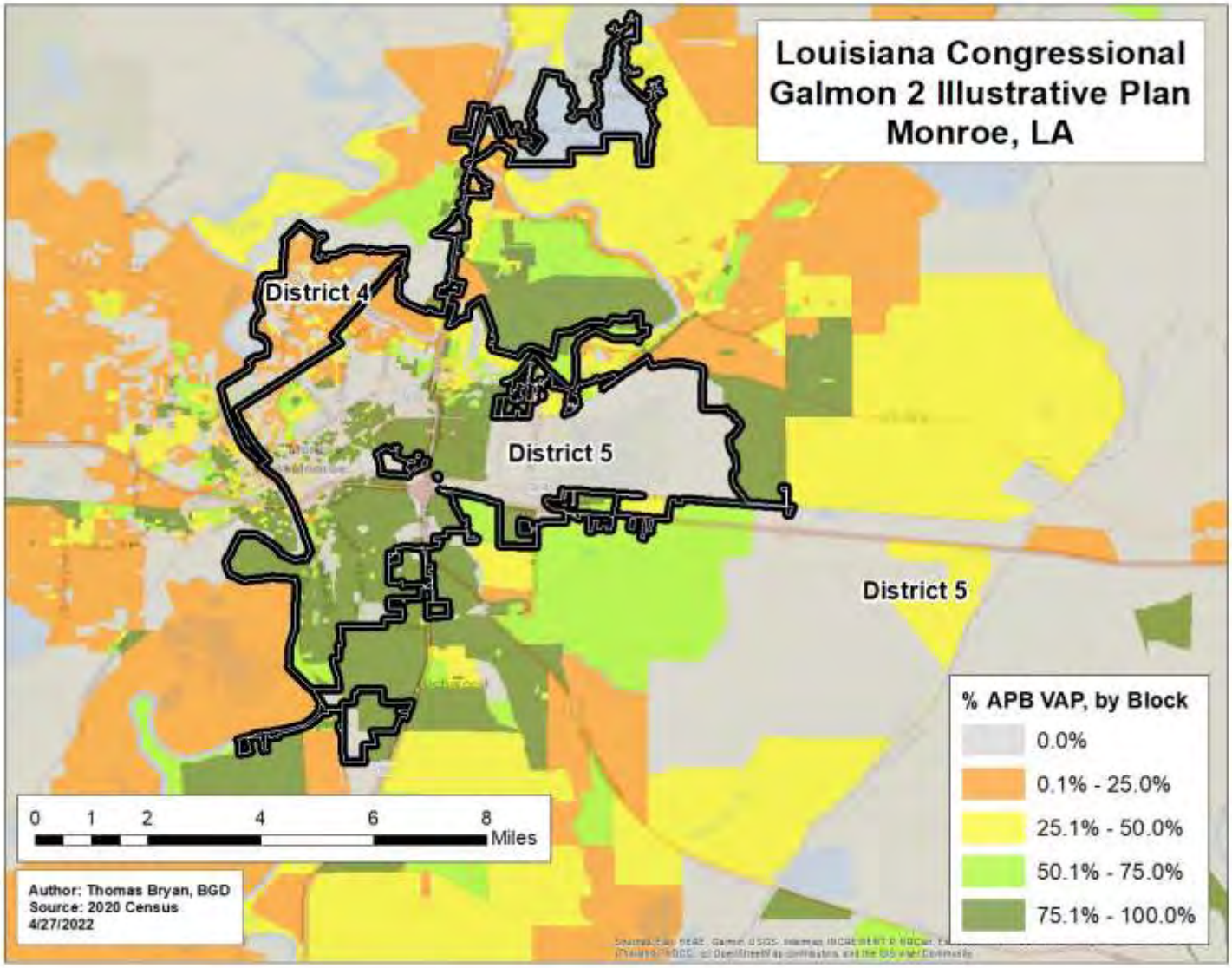
PP. Monroe Robinson Illustrative Plan Split by % Any Part Black VAP (the Enrolled Plan and Galmon Illustrative 1 Plan do not split Monroe)



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

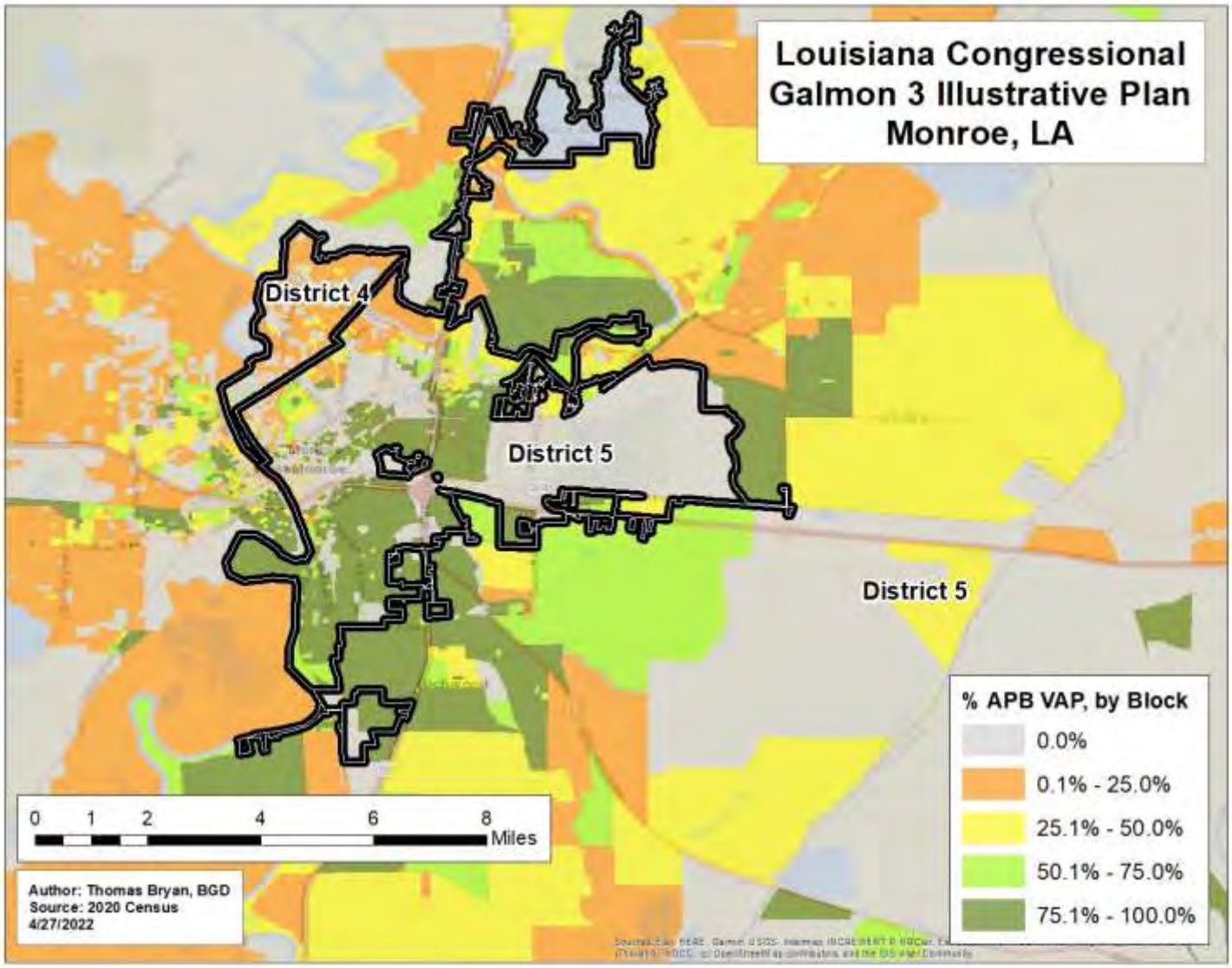
QQ. Monroe Galmon Illustrative 2 Plan Split by % Any Part Black VAP (the Galmon 1 Illustrative Plan does not split Monroe)



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

RR. Monroe Galmon Illustrative 3 Plan Split by % Any Part Black VAP



Note: The city boundary is extended through the middle of the city - following its division by the boundaries of the new plan. The line dividing the city is not an administrative boundary.

Shown by 2020 Census Block

Appendix 5 Thomas Bryan CV

Thomas M. Bryan

425-466-9749
tom@bryangeodemo.com

Introduction

I am an applied demographic, analytic and research professional who leads a team of experts in state and local redistricting cases. I have subject matter expertise in political and school redistricting and Voting Rights Act related litigation, US Census Bureau data, geographic information systems (GIS), applied demographic techniques and advanced analytics.

Education & Academic Honors

2002 MS, Management and Information Systems - George Washington University

2002 GSA CIO University graduate* - George Washington University

1997 Graduate credit courses taken at University of Nevada at Las Vegas

1996 MUS (Master of Urban Studies) Demography and Statistics core - Portland State University

1992 BS, History - Portland State University

Bryan GeoDemographics, January 2001-Current: Founder and Principal

I founded Bryan GeoDemographics (BGD) in 2001 as a demographic and analytic consultancy to meet the expanding demand for advanced analytic expertise in applied demographic research and analysis. Since then, my consultancy has broadened to include litigation support, state and local redistricting, school redistricting, and municipal infrastructure initiatives. Since 2001, BGD has undertaken over 150 such engagements in three broad areas:

1) state and local redistricting,
2) applied demographic studies, and
3) school redistricting and municipal Infrastructure analysis.

The core of the BGD consultancy has been in state and local redistricting and expert witness support of litigation. Engagements include:

Granted by the General Services Administration (GSA) and the Federal IT Workforce Committee of the CIO Council. http://www.gwu.edu/~mastergw/programs/mis/pr.html

State and Local Redistricting

- 2021: Retained as demographic and redistricting expert for the Wisconsin Legislature in *Johnson v. Wisconsin Elections Commission*, No. 2021AP001450-OA (Wis. Supreme Court) and related Wisconsin redistricting litigation. Offering opinions on demography and redistricting for redistricting plans proposed as remedies in impasse suit. The Wisconsin Supreme Court decided in favor of the Democratic Governor's plan on March 2, 2022. This decision was appealed to SCOTUS. On March 25, 2022 - SCOTUS returned the case to the Wisconsin Supreme Court. On April 16, 2022, the Wisconsin Supreme Court found in favor of the Wisconsin Legislative plan and the case was resolved.
    - https://www.wpr.org/us-supreme-court-rejects-legislative-map-drawn-evers-was-endorsed-wisconsin-supreme-court
    - https://www.nytimes.com/2022/04/15/us/wisconsin-districts-gerrymander-supreme-court.html

- 2021: Retained as demographic and redistricting expert by the State of Alabama Attorney General's office. Currently serving as the State's demographic and redistricting expert witness in the matters of *Milligan v. Merrill*, *Thomas v. Merrill* and *Singleton v. Merrill* over Alabama's Congressional redistricting initiatives. On January 24, 2022, a 3-judge district court found against the State of Alabama. The State of Alabama subsequently appealed to SCOTUS. On February 7, 2022 - SCOTUS put the lower courts decision on hold and agreed to hear the case. Outcome is pending.
    - https://www.nytimes.com/2022/02/07/us/politics/supreme-court-alabama-redistricting-congressional-map.html

- 2021: Retained as nonpartisan demographic and redistricting expert by counsel in the State of North Carolina to prepare commissioner redistricting plans for Granville County, Harnett County, Jones County and Nash County. Each proposed plan was approved and successfully adopted.

- 2021: Served as Consultant to the Arizona Independent Redistricting Commission, presenting "Pros and Cons of (Census data) Differential Privacy". July 13, 2021.
    - https://irc.az.gov/sites/default/files/meeting-agendas/Agenda%207.13.21.pdf

- 2021: Retained as demographic and redistricting expert by Democratic Counsel for the State of Illinois in the case of *McConchie v. State Board of Elections*. Prepared expert report in defense of using the American Community Survey to comply with state constitutional requirements in the absence of the (then) delayed Census 2020 data.
    - https://redistricting.lls.edu/case/mcconchie-v-ill-state-board-of-elections/.

- 2021: Retained by counsel for the Chairman and staff of the Texas House Committee on Redistricting as a consulting demographic expert. Texas House Bill 1 subsequently passed by the Legislature 83-63.
    - https://capitol.texas.gov/BillLookup/History.aspx?LegSess=873&Bill=HB1

- 2021: In the matter of the *State of Alabama, Representative Robert Aderholt, William Green and Camaran Williams v. the US Department of Commerce; Gina Raimondo; the US Census Bureau and Ron Jarmin* in US District Court of Alabama Eastern Division. Prepared a demographic report for Plaintiffs analyzing the effects of using Differential Privacy on Census Data in Alabama and was certified as an expert witness by the Court.
    - https://www.alabamaag.gov/Documents/news/Census%20Data%20Manipulation%20Lawsuit.pdf
    - https://redistricting.lls.edu/case/alabama-v-u-s-dept-of-commerce-ii/

- 2020: In the matter of The Christian Ministerial Alliance (CMA), *Arkansas Community Institute v. the State of Arkansas.* In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Providing demographic and analytic litigation support.
    - https://www.naacpldf.org/wp-content/uploads/CMA-v.-Arkansas_FILED-without-stamp.pdf

- 2020: In the matter of *Aguilar, Gutierrez, Montes, Palmer and OneAmerica v. Yakima County* in Superior Court of Washington under the Washington Voting Rights Act ("WVRA" Wash. Rev. Code § 29A.92.60). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Providing demographic and analytic litigation support.
    - https://bloximages.newyork1.vip.townnews.com/yakimaherald.com/content/tncms/assets/v3/editorial/a/4e/a4e86167-95a2-5186-a86c-bb251bf535f1/5f0d01eec8234.pdf.pdf

- 2018-2020: In the matter of *Flores, Rene Flores, Maria Magdalena Hernandez, Magali Roman, Make the Road New York, and New York Communities for Change v. Town of Islip, Islip Town Board, Suffolk County Board of Elections* in US District Court. On behalf of Defendants - provided a critical analysis of plaintiff's demographic and environmental justice analysis. The critique revealed numerous flaws in both the demographic analysis as well as the tenets of their environmental justice argument, which were upheld by the court. Ultimately developed mutually agreed upon plan for districting.
    - https://nyelectionsnews.wordpress.com/2018/06/20/islip-faces-section-2-voting-rights-act-challenge/
    - https://www.courthousenews.com/wp-content/uploads/2018/06/islip-voting.pdf

- 2017-2020 In the matter of *NAACP, Spring Valley Branch; Julio Clerveaux; Chevon Dos Reis; Eric Goodwin; Jose Vitelio Gregorio; Dorothy Miller; and Hillary Moreau v East Ramapo Central School District (Defendant)* in United States District Court Southern District Of New York (original decision May 25, 2020), later the U.S. Second Circuit Court of Appeals. On behalf of Defendants, developed mutually agreed upon district plan and provided demographic and analytic litigation support.
    - https://www.lohud.com/story/news/education/2020/05/26/federal-judge-sides-naacp-east-ramapo-voting-rights-case/5259198002/

- 2017-2020: In the matter of *Pico Neighborhood Association et al v. City of Santa Monica* brought under the California VRA. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Providing demographic and analytic litigation support. Executed geospatial analysis to identify concentrations of Hispanic and Black CVAP to determine the impossibility of creating a majority minority district, and demographic analysis to show the dilution of Hispanic and Black voting strength in a district (vs at-large) system. Work contributed to Defendants prevailing in landmark ruling in the State of California Court of Appeal, Second Appellate District.
    - https://www.santamonica.gov/press/2020/07/09/santa-monica-s-at-large-election-system-affirmed-in-court-of-appeal-decision

- 2019: In the matter of *Johnson v. Ardoin / the State of Louisiana* in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.
    - https://www.brennancenter.org/sites/default/files/2019-10/2019-10-16-Johnson%20v_%20Ardoin-132-Brief%20in%20Opposition%20to%20MTS.pdf

- 2019: In the matter of *Suresh Kumar v. Frisco Independent School District et al*. in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support. Successfully defended.
    - https://www.friscoisd.org/news/district-headlines/2020/08/04/frisco-isd-wins-voting-rights-lawsuit
    - https://www.courthousenews.com/wp-content/uploads/2020/08/texas-schools.pdf

- 2019: At the request of the City of Frisco, TX in collaboration with demographic testifying expert Dr. Peter Morrison. Provided expert demographic assessment of the City's potential liability regarding a potential Section 2 Voting Rights challenge.

- 2019: In the matter of *NAACP v. East Ramapo Central School District* in US District Court Southern District of NY. In collaboration with demographic testifying expert Dr. Peter

Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.

- 2019: In the matter of *Johnson v. Ardoin* in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support. Prepared analysis of institutionalized prison population versus noninstitutionalized eligible to vote population.
  - https://casetext.com/case/johnson-v-ardoin

- 2019: In the matter of *Vaughan v. Lewisville Independent School District et al.* in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.
  - https://www.nbcdfw.com/news/local/lawsuit-filed-against-lewisville-independent-school-district/1125/

- 2019: In the matter of *Holloway, et al. v. City of Virginia Beach in* United States District Court, Eastern District of Virginia. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.
  - https://campaignlegal.org/cases-actions/holloway-et-al-v-city-virginia-beach

- 2018: At the request of Kirkland City, Washington in collaboration with demographic testifying expert Dr. Peter Morrison. Performed demographic studies to inform the City's governing board's deliberations on whether to change from at-large to single-member district elections following enactment of the Washington Voting Rights Act. Analyses included gauging the voting strength of the City's Asian voters and forming an illustrative district concentrating Asians; and compared minority population concentration in pre- and post-annexation city territory.
  - https://www.kirklandwa.gov/Assets/City+Council/Council+Packets/021919/8b_SpecialPresentations.pdf#:~:text=RECOMMENDATION%3A%20It%20is%20recommended%20that%20City%20Council%20receive,its%20Councilmembers%20on%20a%20citywide%2C%20at-%20large%20basis

- 2018: At the request of Tacoma WA Public Schools in collaboration with demographic testifying expert Dr. Peter Morrison. Created draft concept redistricting plans that would optimize minority population concentrations while respecting incumbency. Client will use this plan as a point of departure for negotiating final boundaries among incumbent elected officials.

- 2018: At the request of the City of Mount Vernon, Washington., in collaboration with demographic testifying expert Dr. Peter Morrison. Prepared a numerous draft concept plans

that preserves Hispanics' CVAP concentration. Client utilized draft concept redistricting plans to work with elected officials and community to agree upon the boundaries of six other districts to establish a proposed new seven-district single-member district plan.

- 2017: In the matter of *Pico Neighborhood Association v. City of Santa Monica*. In collaboration with demographic testifying expert Dr. Peter Morrison. Worked to create draft district concept plans that would satisfy Plaintiff's claim of being able to create a majority-minority district to satisfy Gingles prong 1. Such district was not possible, and the Plaintiffs case ultimately failed in California State Court of Appeals Second Appellate District.
  - https://law.justia.com/cases/california/court-of-appeal/2020/b295935.html

- 2017: In the matter of *John Hall, Elaine Robinson-Strayhorn, Lindora Toudle, Thomas Jerkins, v. Jones County Board of Commissioners*. In collaboration with demographic testifying expert Dr. Peter Morrison. Worked to create draft district concept plans to resolve claims of discrimination against African Americans attributable to the existing at-large voting system.
  - http://jonescountync.gov/vertical/sites/%7B9E2432B0-642B-4C2F-A31B-CDE7082E88E9%7D/uploads/2017-02-13-Jones-County-Complaint.pdf

- 2017: In the matter of *Harding v. County of Dallas* in U.S. District Court. In collaboration with demographic testifying expert Dr. Peter Morrison. In a novel case alleging discrimination *against* white, non-Hispanics under the VRA, I was retained by plaintiffs to create redistricting scenarios with different balances of white-non-Hispanics, Blacks and Hispanics. Deposed and provided expert testimony on the case.
  - https://www.courthousenews.com/wp-content/uploads/2018/08/DallasVoters.pdf

- 2016: Retained by The Equal Voting Rights Institute to evaluate the Dallas County Commissioner existing enacted redistricting plan. In collaboration with demographic testifying expert Dr. Peter Morrison, the focus of our evaluation was twofold: (1) assess the failure of the Enacted Plan (EP) to meet established legal standards and its disregard of traditional redistricting criteria; (2) the possibility of drawing an alternative Remedial Plan (RP) that did meet established legal standards and balance traditional redistricting criteria.
  - http://equalvotingrights.org/wp-content/uploads/2015/01/Complaint.pdf

- 2016: In the matter of *Jain v. Coppell ISD et al* in US District Court. In collaboration with demographic testifying expert Dr. Peter Morrison. Consulted in defense of Coppell Independent School District (Dallas County, TX) to resolve claims of discriminatory at-large voting system affecting Asian Americans. While Asians were shown to be sufficiently numerous, I was able to demonstrate that they were not geographically concentrated - thus successfully proving the Gingles 1 precondition could not be met resulting the complaint being withdrawn.
  - https://dockets.justia.com/docket/texas/txndce/3:2016cv02702/279616

- 2016: In the matter of *Feldman et al v. Arizona Secretary of State's Office et al* in SCOTUS. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided analytics on the locations and proximal demographics of polling stations that had been closed subsequent to *Shelby County v. Holder* (2013) which eliminated the requirement of state and local governments to obtain federal preclearance before implementing any changes to their voting laws or practices. Subsequently provided expert point of view on disparate impact as a result of H.B. 2023. Advised Maricopa County officials and lead counsel on remediation options for primary polling place closures in preparation for 2016 elections.
    - https://arizonadailyindependent.com/2016/04/05/doj-wants-information-on-maricopa-county-election-day-disaster/
    - https://www.supremecourt.gov/DocketPDF/19/19-1257/142431/20200427105601341_Brnovich%20Petition.pdf

- 2016: In the matter of *Glatt v. City of Pasco, et al.* in US District Court (Washington). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided analytics and draft plans in defense of the City of Pasco. One draft plan was adopted, changing the Pasco electoral system from at-large to a six-district + one at large.
    - https://www.pasco-wa.gov/DocumentCenter/View/58084/Glatt-v-Pasco---Order---January-27-2017?bidId=
    - https://www.pasco-wa.gov/923/City-Council-Election-System

- 2015: In the matter of *The League of Women Voters et al. v. Ken Detzner et al* in the Florida Supreme Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Performed a critical review of Florida state redistricting plan and developed numerous draft concept plans.
    - http://www.miamiherald.com/news/politics-government/state-politics/article47576450.html
    - https://www.floridasupremecourt.org/content/download/322990/2897332/file/OP-SC14-1905_LEAGUE%20OF%20WOMEN%20VOTERS_JULY09.pdf

- 2015: In the matter of *Evenwel, et al. v. Abbott / State of Texas* in SCOTUS. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Plaintiffs. Successfully drew map for the State of Texas balancing both total population from the decennial census and citizen population from the ACS (thereby proving that this was possible). We believe this may be the first and still only time this technical accomplishment has been achieved in the nation at a state level. Coauthored SCOTUS Amicus Brief of Demographers.
    - https://www.supremecourt.gov/opinions/15pdf/14-940_ed9g.pdf

- https://www.scotusblog.com/wp-content/uploads/2015/08/Demographers-Amicus.pdf

- 2015: In the matter of *Ramos v. Carrollton-Farmers Branch Independent School District* in US District Court (Texas). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Used 2009-2013 5-year ACS data to generate small-area estimates of minority citizen voting age populations and create a variety of draft concept redistricting plans. Case was settled decision in favor of a novel cumulative voting system.
  - https://starlocalmedia.com/carrolltonleader/c-fb-isd-approves-settlement-in-voting-rights-lawsuit/article_92c256b2-6e51-11e5-adde-a70cbe6f9491.html

- 2015: In the matter of *Glatt v. City of Pasco et al.* in US District Court (Washington). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Consulted on forming new redistricting plan for city council review. One draft concept plan was agreed to and adopted.
  - https://www.pasco-wa.gov/923/City-Council-Election-System

- 2015: At the request of Waterbury, Connecticut, in collaboration with demographic testifying expert Dr. Peter Morrison. As a result of a successful ballot measure to convert Waterbury from an at-large to a 5-district representative system, consulted an extensive public outreach and drafted numerous concept plans. The Waterbury Public Commission considered alternatives and recommended one of our plans, which the City adopted.
  - http://www.waterburyobserver.org/wod7/node/4124

- 2014-15: In the matter of *Montes v. City of Yakima* in US District Court (Washington). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Analytics later used to support the Amicus Brief of the City of Yakima, Washington in the U.S. Supreme Court in *Evenwel v. Abbott*.
  - https://casetext.com/case/montes-v-city-of-yakima-3

- 2014: In the matter of *Harding v. County of Dallas* in the US Court of Appeals Fifth Circuit. In the novel case of Anglo plaintiffs attempting to claim relief as protected minorities under the VRA. Served as demographic expert in the sole and limited capacity of proving Plaintiff claim under Gingles prong 1. Claim was proven. Gingles prongs 2 and 3 were not and the case failed.
  - https://electionlawblog.org/wp-content/uploads/Dallas-opinion.pdf

- 2014: At the request of Gulf County, Florida in collaboration with demographic testifying expert Dr. Peter Morrison. Upon the decision of the Florida Attorney General to force inclusion of prisoners in redistricting plans – drafted numerous concept plans for the Gulf County Board of County Commissioners, one of which was adopted.

- http://myfloridalegal.com/ago.nsf/Opinions/B640990E9817C5AB85256A9C00631387

- 2012-2015: In the matter of *GALEO and the City of Gainesville* in Georgia. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants -consulted on defense of existing at-large city council election system.
    - http://atlantaprogressivenews.com/2015/06/06/galeo-challenges-at-large-voting-in-city-of-gainesville/

- 2012-: Confidential. Consulted (through Morrison & Associates) to support plan evaluation, litigation, and outreach to city and elected officials (1990s - mid-2000s). Executed first statistical analysis of the American Community Survey to determine probabilities of minority-majority populations in split statistical/administrative units of geography, as well as the cumulative probabilities of a "false-negative" minority-majority reading among multiple districts.

- 2011-: Confidential. Consulted on behalf of plaintiffs in Committee (Private) vs. State Board of Elections pertaining to citizen voting-age population. Evaluated testimony of defense expert, which included a statistical evaluation of Hispanic estimates based on American Community Survey (ACS) estimates. Analysis discredited the defendant's expert's analysis and interpretation of the ACS.

School Redistricting and Municipal Infrastructure Projects

BGD worked with McKibben Demographics from 2004-2012 providing expert demographic and analytic support. These engagements involved developing demographic profiles of small areas to assist in building fertility, mortality and migration models used to support long-range population forecasts and infrastructure analysis in the following communities:

Fargo, ND 10/2012
Columbia, SC 3/2012
Madison, MS 9/2011
Rockwood, MO 3/2011
Carthage, NY 3/2011
NW Allen, IN 9/2010
Fayetteville, AR 7/2010
Atlanta, GA 2/2010
Caston School Corp., IN 12/09
Rochester, IN 12/09
Urbana, IL 11/09
Dekalb, IL 11/09
Union County, NC 11/09
South Bend, IN 8/09
Lafayette, LA 8/09
Fayetteville, AR 4/09
New Orleans, LA 4/09
Wilmington New Hanover 3/09
New Berry, SC 12/08
Corning, NY 11/08
McLean, IL 11/08
Lakota 11/08
Greensboro, NC 11/08
Charleston, SC 8/08
Woodland, IL 7/08
White County, IN 6/08
Gurnee District 56, IL 5/08
Central Noble, IN 4/08
Charleston First Baptist, SC 4/08
Edmond, OK 4/08
East Noble, IN 3/08
Mill Creek, IN 5/06
Rhode Island 5/06
Garrett, IN 3/08
Meridian, MS 3/08
Madison County, MS 3/08
Charleston 12/07
Champaign, IL 11/07
Richland County, SC 11/07
Lake Central, IN 11/07
Columbia, SC 11/07
Duneland, IN 10/07
Union County, NC 9/07
Griffith, IN 9/07
Rensselaer, IN 7/07
Hobart, IN 7/07

Guilford 9/08

Lexington, SC 9/08

Plymouth, IN 9/08

Buffalo, NY 7/07

Oak Ridge, TN 5/07

Westerville, OH 4/07

Projects Continued

Baton Rouge, LA 4/07

Cobb County, GA 4/07

Charleston, SC District 20 4/07

McDowell County, NC 4/07

East Allen, IN 3/07

Mt. Pleasant, SC District 2 2/07

Peach County, GA 2/07

North Charleston, SC District 4 2/07

Madison County, MS revisions 1/07

Portage County, IN 1/07

Marietta, GA 1/07

Porter, IN 12/06

Harrison County, MS 9/06

New Albany/Floyd County, IN 9/06

North Charleston, SC 9/06

Fairfax, VA 9/06

Coleman 8/06

DeKalb, GA 8/06

LaPorte, IN 7/06

NW Allen, IN 7/06

Brunswick, NC 7/06

Carmel Clay, IN 7/06

Calhoun, SC 5/06

Hamilton Community Schools, IN 4/06

Dilworth, MN 4/06

Hamilton, OH 2/06

Allen County 11/05

Bremen, IN 11/05

Smith Green, IN 11/05

Steuben, IN 11/05

Plymouth, IN 11/05

North Charleston, SC 11/05

Huntsville, AL 10/05

Dekalb, IN 9/05

East Noble, IN 9/05

Valparaiso, IN 6/05

Penn-Harris-Madison, IN 7/05

Elmira, NY 7/05

South Porter/Merriville, IN 7/05

Fargo, ND 6/05

Washington, IL 5/05

Addison, NY 5/05

Kershaw, SC 5/05

Porter Township, IN 3/05

Portage, WI 1/05

East Stroudsburg, PA 12/04

North Hendricks, IN 12/04

Sampson/Clinton, NC 11/04

Carmel Clay Township, IN 9/04

SW Allen County, IN 9/04

East Porter, IN 9/04

Allen County, IN 9/04

Duplin, NC 9/04

West Noble, IN 2/06

New Orleans, LA 2/06

Norwell, IN 2/06

Middletown, OH 12/05

West Noble, IN 11/05

Madison, MS 11/05

Fremont, IN 11/05

Concord, IN 11/05

Hamilton County / Clay TSP, IN 9/04

Hamilton County / Fall Creek TSP, IN 9/04

Decatur, IN 9/04

Chatham County / Savannah, GA 8/04

Evansville, IN 7/04

Madison, MS 7/04

Vanderburgh, IN 7/04

New Albany, IN 6/04

Publications

- In the matter of *Banerian v. Benson*, No. 1:22-CV-00054-RMK-JTN-PLM, in US District Court of the Western District of Michigan. Assessing the performance of plaintiff and defendant plans against the Michigan Constitution and traditional redistricting principles.

- In the matter of *Johnson v. Wisconsin Elections Commission*, No. 2021AP001450OA, in the Supreme Court of Wisconsin. Assessing the features of proposed redistricting plans by the Wisconsin Legislature and other parties to the litigation. December 2021.

- In the matters of *Caster v. Merrill* and *Milligan v. Merrill* in US District Court of the Northern District of Alabama. Civil Action NOs. 2:21-cv-01536-AMM; 2:21-cv-01530-AMM. Declaration of Thomas Bryan. Assessing the compliance and performance of the demonstrative VRA congressional plans of Dr. Moon Duchin and Mr. William Cooper. December 2021.

- In the matter of *Milligan v. Merrill* in US District Court of the Northern District of Alabama. Civil Action NO. 2:21-cv-01530-AMM. Declaration of Thomas Bryan. Assessing the compliance and performance of the Milligan and State of Alabama congressional redistricting plans. December 2021.

- In the matter of *Singleton v. Merrill* in US District Court of the Northern District of Alabama. Civil Action NO. 2:21-cv-01291-AMM. Declaration of Thomas Bryan. Assessing the compliance and performance of the Singleton and State of Alabama congressional redistricting plans. December 2021.

- "The Effect of the Differential Privacy Disclosure Avoidance System Proposed by the Census Bureau on 2020 Census Products: Four Case Studies of Census Blocks in Alaska" PAA Affairs, (with D. Swanson and Richard Sewell, Alaska Department of Transportation and Public Facilities). March 2021.
    - https://www.populationassociation.org/blogs/paa-web1/2021/03/30/the-effect-of-the-differential-privacy-disclosure?CommunityKey=a7bf5d77-d09b-4907-9e17-468af4bdf4a6 .
    - https://redistrictingonline.org/2021/03/31/study-census-bureaus-differential-privacy-disclosure-avoidance-system-produces-produces-concerning-results-for-local-jurisdictions/
    - https://www.ncsl.org/research/redistricting/differential-privacy-for-census-data-explained.aspx

- In the matter of the *State of Alabama, Representative Robert Aderholt, William Green and Camaran Williams v. the US Department of Commerce; Gina Raimondo; the US Census Bureau*

and Ron Jarmin in US District Court of Alabama Eastern Division. Declaration of Thomas Bryan, Exhibit 6. Civil Action NO. 3:21-CV-211, United States District Court for Middle Alabama, Eastern Division. Assessing the impact of the U.S. Census Bureau's approach to ensuring respondent privacy and Title XIII compliance by using a disclosure avoidance system involving differential privacy. March 2021.

- https://redistricting.lls.edu/wp-content/uploads/AL-commerce2-20210311-PI.zip

- Peter A. Morrison and Thomas M. Bryan, Redistricting: A Manual for Analysts, Practitioners, and Citizens (2019). Springer Press: Cham Switzerland.

- "Small Area Business Demography." in D. Poston (editor) Handbook of Population, 2nd Edition. (2019). Springer Press: London (with P. Morrison and S. Smith).

- "From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses." *Social Science Quarterly*. (with M.V. Hood III and Peter Morrison). March 2017
  - http://onlinelibrary.wiley.com/doi/10.1111/ssqu.12405/abstract

- In the Supreme Court of the United States Sue Evenwel, Et Al., *Appellants,* V. Greg Abbott, in his official capacity as Governor of Texas, et al., *Appellees. On appeal from the United States District Court for the Western District of Texas*. Amicus *Brief of Demographers Peter A. Morrison, Thomas M. Bryan, William A. V. Clark, Jacob S. Siegel, David A. Swanson, and The Pacific Research Institute* - As *amici curiae* in support of Appellants. August 2015.
  - www.scotusblog.com/wp-content/uploads/2015/08/Demographers-Amicus.pdf)

- Workshop on the Benefits (and Burdens) of the American Community Survey, Case Studies/Agenda Book 6 "Gauging Hispanics' Effective Voting Strength in Proposed Redistricting Plans: Lessons Learned Using ACS Data." June 14–15, 2012
  - http://docplayer.net/8501224-Case-studies-and-user-profiles.html

- "Internal and Short Distance Migration" by Bryan, Thomas in J. Siegel and D. Swanson (eds.) The Methods and Materials of Demography, Condensed Edition, Revised. (2004). Academic/Elsevier Press: Los Angeles (with D. Swanson and P. Morrison).

- "Population Estimates" by Bryan, Thomas in J. Siegel and D. Swanson (eds.) The Methods and Materials of Demography, Condensed Edition, Revised. (2004). Academic/Elsevier Press: Los Angeles (with D. Swanson and P. Morrison).

- Bryan, T. (2000). U.S. Census Bureau Population estimates and evaluation with loss functions. *Statistics in Transition,* 4, 537–549.

Professional Presentations and Conference Participation

- "Redistricting 101: A Tutorial" 2022 Population Association of America Applied Demography Conference, February 2022. With Dr. Peter Morrison.

- Session Chairman on Invited Session "Assessing the Quality of the 2020 Census", including Census Director Ron Jarmin at the 2020 Population Association of America meeting May 5, 2021.
    - https://paa2021.secure-platform.com/a/organizations/main/home

- "The Effect of the Differential Privacy Disclosure Avoidance System Proposed by the Census Bureau on 2020 Census Products: Four Case Studies of Census Blocks in Alaska". 2021 American Statistical Association - Symposium on Data Science and Statistics (ASA-SDSS). With Dr. David Swanson.
    - https://ww2.amstat.org/meetings/sdss/2021/index.cfm

- "New Technical Challenges in Post-2020 Redistricting" 2020 Population Association of America Applied Demography Conference, 2020 Census Related Issues, February 2021. With Dr. Peter Morrison.
    - https://www.youtube.com/watch?v=ETvvoECt9sc&feature=youtu.be

- "Tutorial on Local Redistricting" 2020 Population Association of America Applied Demography Conference, February 2021. With Dr. Peter Morrison.
    - https://www.youtube.com/watch?v=ETvvoECt9sc&feature=youtu.be

- "Demographic Constraints on Minority Voting Strength in Local Redistricting Contexts" 2019 Southern Demographic Association meetings (coauthored with Dr. Peter Morrison) New Orleans, LA, October 2019. Winner of annual E. Walter Terrie award for best state and local demography presentation.
    - http://sda-demography.org/2019-new-orleans

- "Applications of Big Demographic Data in Running Local Elections" 2017 Population and Public Policy Conference, Houston, TX.

- "Distinguishing 'False Positives' Among Majority-Minority Election Districts in Statewide Congressional Redistricting," 2017 Southern Demographic Association meetings (coauthored with Dr. Peter Morrison) Morgantown, WV.

- "Devising a Demographic Accounting Model for Class Action Litigation: An Instructional Case" 2016 Southern Demographic Association (with Peter Morrison), Athens, GA.

- "Gauging Hispanics' Effective Voting Strength in Proposed Redistricting Plans: Lessons Learned Using ACS Data." 2012 Conference of the Southern Demographic Association, Williamsburg, VA.
- "Characteristics of the Arab-American Population from Census 2000 and 1990: Detailed Findings from PUMS." 2004 Conference of the Southern Demographic Association, (with Samia El-Badry) Hilton Head, SC.
- "Small-Area Identification of Arab American Populations," 2004 Conference of the Southern Demographic Association, Hilton Head, SC.
- "Applied Demography in Action: A Case Study of Population Identification." 2002 Conference of the Population Association of America, Atlanta, GA.

Primary Software Competencies

ESRI ArcGIS: advanced

SAS: intermediate

Microsoft Office: advanced

Professional Affiliations

International Association of Applied Demographers (Member and Board of Directors)

American Statistical Association (Member)

Population Association of America (Member)

Southern Demographic Association (Member)

American BAR Association (Affiliated Professional: Solo, Small Firm and General Practice Division)

Relevant Work Experience

January 2001- April 2003 ESRI Business Information Solutions / Demographer

Responsibilities included demographic data management, small-area population forecasting, IS management and software product and specification development. Additional responsibilities included developing GIS-based models of business and population forecasting, and analysis of emerging technology and R&D / testing of new GIS and geostatistical software.

May 1998-January 2001 U.S. Census Bureau / Statistician

Responsibilities: developed and refined small area population and housing unit estimates and innovative statistical error measurement techniques, such as Loss Functions and MAPE-R.

Service

Eagle Scout, 1988, Boy Scouts of America. Member of the National Eagle Scout Association. Involved in leadership of the Boy Scouts of America Heart of Virginia Council.

References

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EXHIBIT S

STATE 2a

Supplemental Expert Report
of
Thomas M. Bryan
Expert in Demography for the
Louisiana Attorney General

Robinson v. Ardoin

and

Galmon v. Ardoin

May 5, 2022

EXPERT REPORT OF THOMAS M. BRYAN

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I. EXECUTIVE SUMMARY

1. I was engaged by the Louisiana Attorney General's office to assess the characteristics of five congressional redistricting plans and to determine:
   a. whether the plans meet the numerosity criteria from the first prong of Gingles[1]; and
   b. if there was evidence that race appeared to predominate in the design of any of the plans.

II. ASSIGNMENT

2. Subsequent to my initial report, I have been provided two rebuttal reports, by Mr. William Cooper and Mr. Anthony Fairfax. This supplemental report assesses Mr. Cooper's new Illustrative 4 Plan and detailed measurement of multi-race population. [2]

3. My conclusions remain the same as in my initial report.

---

[1] Under the Gingles test, plaintiffs must show the existence of three preconditions:

- The racial or language minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district";
- The minority group is "politically cohesive" (meaning its members tend to vote similarly); and
- The "majority votes sufficiently as a bloc to enable it ...to usually to defeat the minority's preferred candidate."

[2] As of the time of filing of this report, I have not received the electronic files for Mr. Fairfax's Illustrative 2 Plan, so I have been unable to analyze it and therefore do not address it in this report.

III. REDISTRICTING PERFORMANCE

A. Population and Characteristics

4. The VAP by race and ethnicity by district for the Enrolled Plan is shown in **Appendix 1.A**. The Enrolled Plan has one solidly Black district majority (District 2) no matter the definition of Black that is used. The VAP by race and ethnicity for the Robinson Illustrative Plan and the Galmon Illustrative Plans 1-4 are shown in **Appendix 1.B through Appendix 1.F**. The new Galmon Illustrative 4 Plan is similar to other Illustrative Plans, as it offers two districts that are Black majority, but only by the Any Part Black (APB) definition[3].

5. The Census Bureau reports some 288 different population counts for each level of Census geography in the country (71 in P1 "Race", 73 in P2 "Hispanic or Latino, and Not Hispanic or Latino by Race", 71 in P3 "Race for the Population 18 Years and Over" and 73 in P4 "Hispanic or Latino, and Not Hispanic or Latino by Race for the Population 18 Years and Over". In **Appendix 1.G** through **Appendix 1.J**, I document each of these unique combinations and their associated numeric population counts (and percent of total) for Louisiana from the 2020 Census PL94-171 dataset.[4]

- As shown in **Appendix 1.G,** there are 32 possible Black alone or in combination possibilities for Table P1 (total population).
- As shown in **Appendix 1.H**, there are 64 possible Black alone or in combination possibilities when divided by Hispanic origin for Table P2 (total population).[5]
- As shown in **Appendix 1.I,** there are 32 possible Black alone or in combination possibilities for Table P3 (voting age population).
- As shown in **Appendix 1.J**, there are 64 possible Black alone or in combination possibilities when divided by Hispanic origin Table P4 (voting age population).

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[3] This definition is what I refer to as "Any Part" or "All" Black This definition counts a minority by race alone or in combination with other races (no matter how many other races are mentioned) as well as by Hispanic. Beyond the DOJ definition for example – if someone responds to the census by self-identifying as Black, white, Asian, Native Hawaiian Pacific Islander, American Indian Alaskan Native and "some other" – then by the "Any Part Black" definition they are counted as Black even though it was only one of races reported. For the purposes of the Louisiana analysis - we use this definition to refer to Any Part Black (or "APB").

[4] https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html

[5] As noted previously, the Census Bureau considers "Hispanic" to be an 'ethnic' designation and not a 'racial' designation, so a person can be "Black, Non-Hispanic" or "Black, Hispanic."

6. For the purposes of redistricting, there are multiple definitions of race to consider. The first is race alone. This is the most exclusive definition, excluding minorities from a racial category who are multi-race or of Hispanic origin. This is the definition that has been used historically, prior to the evolution of the multi-race definition in the census. In **Appendix 1.J**, we can see that the number of Black alone, non-Hispanic VAP is 1,066,511 (29.9% of total VAP).

   - The addition of Black and white in combination, not Hispanic (the first level DOJ definition) adds 18,172 (0.5% of 3,570,548 total VAP) for a total Black DOJ population of 1,084,683.
   - The addition of Black in combination with other races, not Hispanic, adds 16,011 more (0.5% of 3,570,548 total VAP) for a larger total Black, all races but not Hispanic population of 1,100,694 (this result is only to demonstrate the cumulative math, this is not an estimate used anywhere else in our analysis).
   - In addition to this, there are 15,075 Black alone or in combination with other race *Hispanics* (0.4% of 3,570,548 total VAP) which includes 7,243 Hispanic Black alone, and 7,832 Hispanic Black multi-race - for a grand total Any Part Black of 1,115,769.

7. These constituent, Black multi-race and Black Hispanic (of any race) VAP populations add a total of 49,258 (or an incremental 1.38% of the total VAP of 3,570,548) to the BNH definition, to achieve the APB result of 1,115,769. By this math, I am *unable* to verify the statement on P.5, Para 13 of the Fairfax supplemental report, "The State of Louisiana has a significant amount of multi-race Black persons (3.26%). It is my opinion that the Black multi-race population is significant enough to warrant adding to the Black population in a district."

8. For the purposes of the Voting Rights Act, the DOJ has provided "Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for redistricting and methods of electing government bodies"[6]. They say, "Where there are significant numbers of such responses, the Department will, as required by both the OMB guidance and judicial opinions, allocate these responses on an iterative basis to each of the component single-race categories for analysis." The DOJ does not make clear what "significant" is, and I am not aware of any demographic literature that has examined or reviewed this specific language in this context.

[6] https://www.justice.gov/opa/press-release/file/1429486/download

9. Even if we *did* have a bright line definition of what "significant" is from the DOJ – their next guidance makes the measurement of these multi-race and ethnic populations open to interpretation. They state:

> "If there are significant numbers of responses in a jurisdiction that self-identify as Hispanic/Latino and one or more minority races (for example, Hispanics/Latinos who list their race as Black/African American), the Department will conduct its initial analysis by allocating those responses to the Hispanic/Latino category and then repeat its analysis by allocating those responses to the relevant minority race category."

10. As stated in my initial report, there are a variety of ways to allocate populations in demography. Since 15,075 (30.6%) of the incremental 49,258 multi-race, ethnic Black population are Hispanic Blacks, if and how this population gets allocated to the Black category could be definitive when there are illustrative districts that are a majority-minority by only hundreds of people classified as "Black".

11. The table below illustrate that the Plaintiff's new Illustrative 4 Plan does not have any districts that meet the Gingle's criteria of majority under the Black alone or Black DOJ definition. All of the Plaintiff's Illustrative Plans, including this latest Illustrative 4 plan, have two majority VAP districts only when using the APB definition including Blacks who self-identify as Hispanic as well.

12. I detail the percent Black characteristics of the new Plaintiff Illustrative 4 Plan in ***Table III.A.1***.

    a. District 2 has a Black alone VAP share of 47.67% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 48.31% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.06%, or a majority only when every combination of Black alone or in combination is considered.

    b. District 5 has a Black alone VAP share of 48.86% - not a majority. With the addition of Black and white population comprising the DOJ definition, that share rises to 49.46% - also not a majority. When Any Part Black (APB) is considered – the share rises to 50.29%, or a majority only when every combination of Black alone or in combination is considered.

Table III.A.1 Galmon Illustrative 4 Plan Black Share of Voting Age Population

Illustrative 4 Plan	Black Alone	Black DOJ	Any Part Black
1	16.91%	17.31%	18.14%
2	**47.67%**	**48.31%**	**50.06%**
3	18.59%	19.14%	19.79%
4	30.34%	30.82%	31.47%
5	**48.86%**	**49.46%**	**50.29%**
6	16.50%	16.88%	17.38%

13. Next, I am going to detail the specific characteristics of the Black population that make up the difference between the Black DOJ definition and the Any Part Black (APB) definition. In the Illustrative 4 Plan, District 2, the VAP is 603,596 – which means it needs 301,798 + 1 Black population to be >50%. The BNH population in District 2 is 287,725. If you add Black in combination with all other races, not Hispanic, you get 295,510 (or only 48.96% Black). District 2 needs the addition of 6,288 + 1 more Black Hispanics before it hits the 50% majority tipping point. The plan actually adds 6,643 Black Hispanics to get to an APB majority of 302,153 (50.06%), or 353 more Black Hispanics than needed to make a 50% + 1 APB target number.

14. In District 5, the VAP is 593,324 – which means it needs 296,662 + 1 Black population to be >50%. The BNH population in District 5 is 289,884. If you add Black in combination with all other races, not Hispanic, you get 296,493 (or only 49.97% Black). District 5 needs the addition of 169 more Black Hispanics before it hits the majority 50% tipping point. The plan actually adds 1,861 Black Hispanics to get to an APB majority of 298,354 (50.29%).

15. In both District 2 and District 5 of the Illustrative 4 Plan, a determination of whether Blacks are in fact majority districts comes down to the interpretation of specifically what multi-racial or ethics categories should be included. This finding is consistent and applicable to the other Illustrative plans presented by the Plaintiffs. If the definition of "significant" was intended to be numeric, it is difficult to envision that the DOJ had a number such as 1.38% (49,258[7] out of 3,570,548 LA VAP population) in mind. Or even if you divide 49,258 by the APB VAP population of 1,115,769 – that only results in an estimate within the Black population of 4.41%. An opinion that the definition of "significant" is relevant here would have us believe that it is *any* value, no matter how small, that results in a majority district is "significant".

[7] See Para 7. 49,258 is the incremental Black VAP population beyond Black alone, including Black DOJ population.

16. In conclusion, I do not offer an expert opinion on what the correct definition of Black is to use in determining "majority", and I do not offer an opinion on what the standard of "significant population" is or should be. I offer these points to illustrate that what constitutes a majority-minority is clouded by complex demographic definitions.

B. District Boundaries, Parish and Place Geographic Splits Analysis.

17. The US Census Bureau provides useful details in understanding the number and characteristics of these geographic layers in Louisiana, as follows:[8]

- Parishes: There are 64 county equivalents in Louisiana known as parishes.
- Places: There are 488 places in Louisiana; 304 incorporated places and 184 census designated places (CDPs). The incorporated places consist of 69 cities, 128 towns, and 107 villages.

18. An examination of the number of place splits by plan in ***Table III.B.1*** shows the Enrolled Plan with 19 place splits. The Illustrative Plan follows with slightly more at 21, and the Illustrative Plans 1-4 follow with 13, 16, 16 and 16 place splits respectively. What is significant is *how* each of these plans splits places – when they do.

Table III.B.1 Place Splits by Plan

Plan	Split	Unsplit
HB1 Enrolled	19	285
Illustrative	21	283
Illustrative 1	13	291
Illustrative 2	16	288
Illustrative 3	16	288
Illustrative 4	16	288

19. In the course of my analysis, I created tables showing not only the number of splits for each plan – but the size and population characteristics of the pieces that result from each place split. In **Appendix 2 Illustrative 4 Plan Place Splits Analysis** I show the total population (and share) and the APB population (and share) for each place piece split, by plan. My findings here are consistent with earlier findings, insofar as the Black population is split significantly differently than the total population, by place.

[8] https://www.census.gov/geographies/reference-files/2010/geo/state-local-geo-guides-2010/louisiana.html and current TIGER shapefiles

20. As with my initial report, I created a series of maps showing the splits of Louisiana places to visually illustrate the demographics of the pieces that were split. I focus this analysis on Baton Rouge and Lafayette, but a visual analysis of other places shows my observations there are generalizable to other places in the state.

21. Galmon Illustrative 4 Plan Place Splits by Race: As with my assessment of the Robinson Illustrative Plan and Galmon Plans 1-3 in my initial report, the Illustrative 4 Plan divides Louisiana's cities by race, very carefully. Plan 4 appears to most closely resemble Plan 1 – with enhancements to reduce VTD splits. In **Map Appendix B, Baton Rouge Split by Race** is shown with % Any Part Black (APB) by 2020 Census Block. As with the earlier Galmon Illustrative Plans, District 5 appears to be cut off the northern half (predominantly Black) part of the city. The remaining (predominantly white) part of the city is again left to District 6. As with the division of Baton Rouge, an examination of **Map Appendix C Lafayette Split by Race again** shows the city almost perfectly divided cleanly along racial lines, north and south.

22. An examination of the number of parish splits by plan in ***Table III.B.2*** shows the Enrolled Plan with the most splits – at 15. The Robinson Illustrative plan follows with 14, and the Galmon Illustrative Plans follow with 10, 11, 10 and 10 Parish splits respectively.

Table III.B.2 Parish Splits by Plan

Plan	Split	Unsplit
HB1 Enrolled	15	49
Illustrative	14	50
Illustrative 1	10	54
Illustrative 2	11	53
Illustrative 3	10	54
Illustrative 4	10	54

IV. CONCLUSION

23. For the reasons stated in this report and illustrated in the Appendices - I still conclude that the Plaintiff's Illustrative Plans fail the voting age population and numerosity requirements for the majority minority districts using the Black alone non-Hispanic category and the Black DOJ formulation. Only when one adds multi-race Black with two up to additional five races in combination with persons who are both Black and Hispanic do you achieve two majority minority districts with > 50% of Black VAP.

* * *

Submitted: May 5, 2022

Thomas M. Bryan

Appendix 1 Demographics

A. HB1 / SB5 Enrolled Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH NH	All Other NH	Hispanic
1	601,559	420,268	81,105	72,977	42,503	65,811
2	600,203	179,129	352,018	338,179	35,854	47,041
3	586,488	392,996	144,434	137,106	28,899	27,487
4	591,095	343,535	199,907	192,343	31,174	24,043
5	597,389	360,144	196,617	190,118	25,558	21,569
6	593,814	386,038	141,688	135,788	34,277	37,711
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

B. Robinson Illustrative Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	603,084	394,140	110,315	101,553	42,773	64,618
2	603,764	218,098	307,670	294,198	40,066	51,402
3	586,948	428,229	105,115	98,440	31,630	28,649
4	596,366	357,220	190,267	183,466	31,689	23,991
5	589,193	252,112	306,701	298,337	20,064	18,680
6	591,193	432,311	95,701	90,517	32,043	36,322
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

C. Galmon Illustrative 1 Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	599,826	396,685	109,041	101,677	41,193	60,271
2	603,092	225,537	302,513	288,076	37,720	51,759
3	586,519	415,185	115,841	108,807	31,869	30,658
4	596,695	357,357	189,880	183,088	31,611	24,639
5	592,316	260,464	296,402	287,986	23,698	20,168
6	592,100	426,882	102,092	96,877	32,174	36,167
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

D. Galmon Illustrative 2 Plan: Voting Age Population by Race and Ethnicity

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	598,980	399,732	98,862	91,591	42,331	65,326
2	606,036	229,831	306,982	292,507	36,913	46,785
3	585,553	406,600	126,424	119,366	29,970	29,617
4	592,745	369,521	169,811	163,140	34,225	25,859
5	593,183	261,385	296,852	288,597	23,038	20,163
6	594,051	415,041	116,838	111,310	31,788	35,912
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

E. Galmon Illustrative 3 Plan: Voting Age Population Characteristics

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
1	599,586	394,484	111,043	104,032	40,627	60,443
2	603,092	225,537	302,513	288,076	37,720	51,759
3	586,927	426,910	105,558	98,724	32,336	28,957
4	597,083	352,454	196,784	189,789	31,104	23,736
5	589,070	249,264	304,153	295,866	22,326	21,614
6	594,790	433,461	95,718	90,024	34,152	37,153
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

F. Galmon Illustrative 4 Plan: Voting Age Population Characteristics

District	Total Pop	WNH Pop	APB NH	BNH Pop	Other NH	Hispanic
01	599,404	396,822	108,721	101,388	41,063	60,131
02	603,596	226,410	302,153	287,725	37,620	51,841
03	586,230	414,576	116,020	108,993	31,926	30,735
04	596,127	359,047	187,628	180,873	31,702	24,505
05	593,324	259,437	298,354	289,884	23,610	20,393
06	591,867	425,818	102,893	97,648	32,344	36,057
Grand Total	**3,570,548**	**2,082,110**	**1,115,769**	**1,066,511**	**198,265**	**223,662**

G. Louisiana Total Population with Black Alone and in Combination P1

P1 Total Pop	#	% of Total
Total:	4,657,757	100.0%
Black or African American alone	**1,464,023**	**31.4%**
White; Black or African American	**43,631**	**0.9%**
Black or African American; American Indian and Alaska Native	7,332	0.2%
Black or African American; Asian	2,323	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander	419	0.0%
Black or African American; Some Other Race	13,305	0.3%
White; Black or African American; American Indian and Alaska Native	4,955	0.1%
White; Black or African American; Asian	985	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander	121	0.0%
White; Black or African American; Some Other Race	2,995	0.1%
Black or African American; American Indian and Alaska Native; Asian	137	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	40	0.0%
Black or African American; American Indian and Alaska Native; Some Other Race	374	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	170	0.0%
Black or African American; Asian; Some Other Race	128	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	46	0.0%
White; Black or African American; American Indian and Alaska Native; Asian	339	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	46	0.0%
White; Black or African American; American Indian and Alaska Native; Some Other Race	1,250	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	64	0.0%
White; Black or African American; Asian; Some Other Race	67	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	30	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	38	0.0%
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	21	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	47	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	82	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	95	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	3	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	11	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	8	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	33	0.0%
Black Alone or In Combination	**1,543,119**	**33.1%**

H. Louisiana Total Population with Black Alone and in Combination by Hispanic Origin P2

P2 Total Pop by Hispanic	#	% of Total		Hispanic (P1 - P2)	% of Total
Not Hispanic or Latino:	4,335,208	93%		322,549	6.9%
Black or African American alone	**1,452,420**	**31%**		**11,603**	**0.2%**
White; Black or African American	**41,902**	**0.9%**		**1,729**	**0.0%**
Black or African American; American Indian and Alaska Native	6,931	0.1%		401	0.0%
Black or African American; Asian	2,185	0.0%		138	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander	371	0.0%		48	0.0%
Black or African American; Some Other Race	6,202	0.1%		7,103	0.2%
White; Black or African American; American Indian and Alaska Native	4,341	0.1%		614	0.0%
White; Black or African American; Asian	886	0.0%		99	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander	112	0.0%		9	0.0%
White; Black or African American; Some Other Race	1,525	0.0%		1,470	0.0%
Black or African American; American Indian and Alaska Native; Asian	119	0.0%		18	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	36	0.0%		4	0.0%
Black or African American; American Indian and Alaska Native; Some Other Race	230	0.0%		144	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	136	0.0%		34	0.0%
Black or African American; Asian; Some Other Race	74	0.0%		54	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	20	0.0%		26	0.0%
White; Black or African American; American Indian and Alaska Native; Asian	253	0.0%		86	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	37	0.0%		9	0.0%
White; Black or African American; American Indian and Alaska Native; Some Other Race	450	0.0%		800	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	49	0.0%		15	0.0%
White; Black or African American; Asian; Some Other Race	32	0.0%		35	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	16	0.0%		14	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	26	0.0%		12	0.0%
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	18	0.0%		3	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0.0%		1	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	41	0.0%		6	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	51	0.0%		31	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	48	0.0%		47	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0.0%		2	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	7	0.0%		4	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	8	0.0%		0	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	20	0.0%		13	0.0%
Black Alone or In Combination, non-Hispanic and Hispanic	**1,518,547**	**32.6%**		**24,572**	**0.5%**

I. Louisiana Voting Age Population with Black Alone and in Combination P3

P3 VAP	Louisiana	% of Total
Total:	3,570,548	100.0%
Black or African American alone	**1,073,754**	**30.1%**
White; Black or African American	**18,851**	**0.5%**
Black or African American; American Indian and Alaska Native	5,100	0.1%
Black or African American; Asian	1,299	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander	248	0.0%
Black or African American; Some Other Race	9,241	0.3%
White; Black or African American; American Indian and Alaska Native	3,096	0.1%
White; Black or African American; Asian	406	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander	65	0.0%
White; Black or African American; Some Other Race	1,642	0.0%
Black or African American; American Indian and Alaska Native; Asian	98	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	25	0.0%
Black or African American; American Indian and Alaska Native; Some Other Race	260	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	103	0.0%
Black or African American; Asian; Some Other Race	82	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	28	0.0%
White; Black or African American; American Indian and Alaska Native; Asian	197	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	27	0.0%
White; Black or African American; American Indian and Alaska Native; Some Other Race	875	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	45	0.0%
White; Black or African American; Asian; Some Other Race	40	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	22	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	26	0.0%
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	19	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	25	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	62	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	77	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	3	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	11	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	8	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	33	0.0%
Black Alone or In Combination	**1,115,769**	**31.2%**

J. Louisiana Total Population with Black Alone and in Combination by Hispanic Origin P4

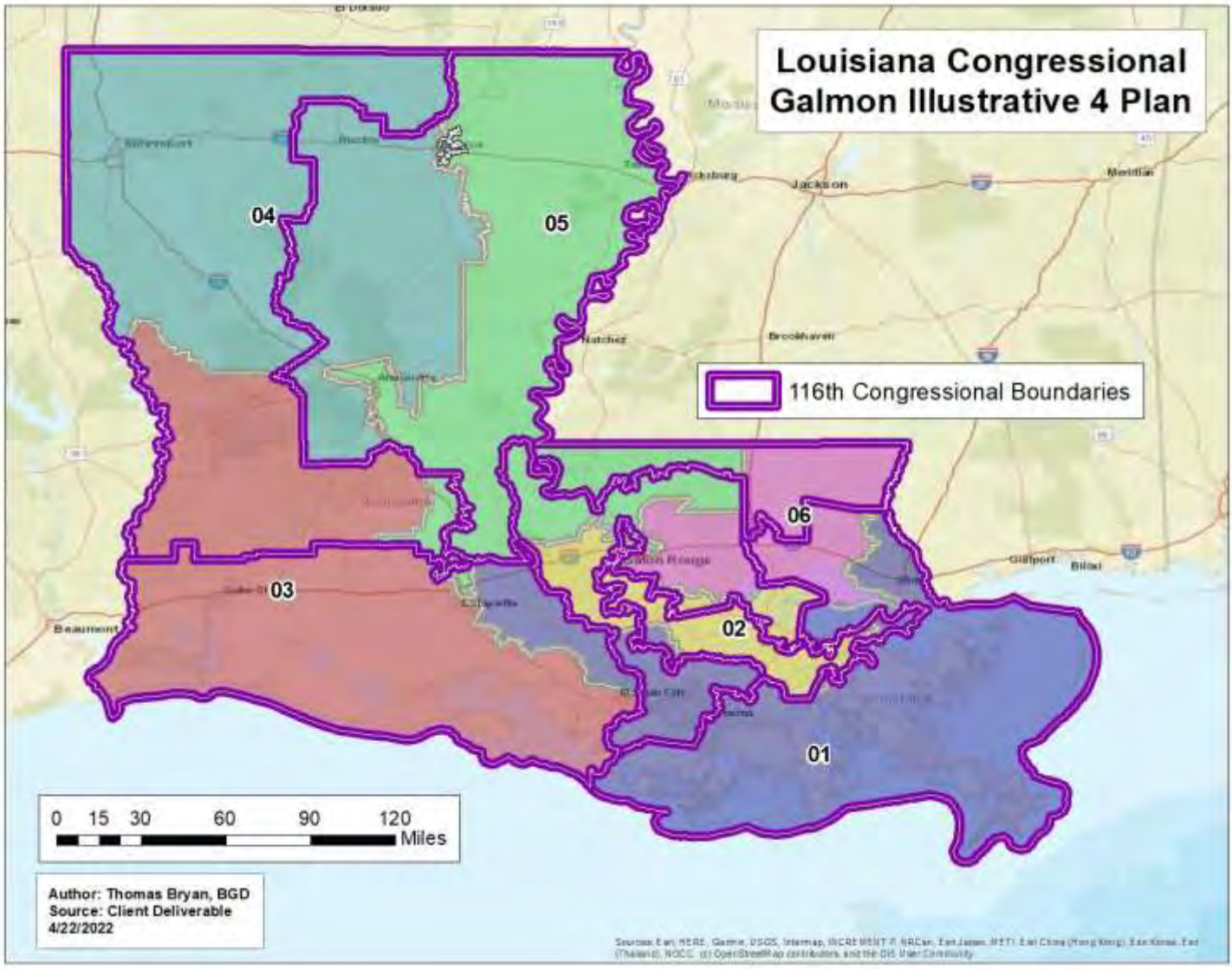
P4 VAP by Hispanic	Louisiana	% of Total		Hispanic (P3 - P4)	% of Total
Not Hispanic or Latino:	3,346,886	93.7%		223,662	6.3%
Black or African American alone	**1,066,511**	**29.9%**		**7,243**	**0.2%**
White; Black or African American	**18,172**	**0.5%**		**679**	**0.0%**
Black or African American; American Indian and Alaska Native	4,858	0.1%		242	0.0%
Black or African American; Asian	1,215	0.0%		84	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander	226	0.0%		22	0.0%
Black or African American; Some Other Race	4,426	0.1%		4,815	0.1%
White; Black or African American; American Indian and Alaska Native	2,752	0.1%		344	0.0%
White; Black or African American; Asian	366	0.0%		40	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander	56	0.0%		9	0.0%
White; Black or African American; Some Other Race	920	0.0%		722	0.0%
Black or African American; American Indian and Alaska Native; Asian	83	0.0%		15	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Oth	21	0.0%		4	0.0%
Black or African American; American Indian and Alaska Native; Some Other Race	177	0.0%		83	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	83	0.0%		20	0.0%
Black or African American; Asian; Some Other Race	50	0.0%		32	0.0%
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	9	0.0%		19	0.0%
White; Black or African American; American Indian and Alaska Native; Asian	153	0.0%		44	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian a	25	0.0%		2	0.0%
White; Black or African American; American Indian and Alaska Native; Some Other Race	338	0.0%		537	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	34	0.0%		11	0.0%
White; Black or African American; Asian; Some Other Race	24	0.0%		16	0.0%
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Oth	13	0.0%		9	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian a	21	0.0%		5	0.0%
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	16	0.0%		3	0.0%
Black or African American; American Indian and Alaska Native; Native Hawaiian and Oth	0	0.0%		1	0.0%
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Othe	25	0.0%		0	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Haw	42	0.0%		20	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Some Othe	42	0.0%		35	0.0%
White; Black or African American; American Indian and Alaska Native; Native Hawaiian a	1	0.0%		2	0.0%
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Sor	7	0.0%		4	0.0%
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian a	8	0.0%		0	0.0%
White; Black or African American; American Indian and Alaska Native; Asian; Native Haw	20	0.0%		13	0.0%
Black Alone or In Combination, non-Hispanic and Hispanic	**1,100,694**	**30.8%**		**15,075**	**0.4%**

Appendix 2 Illustrative 4 Plan Place Splits Analysis

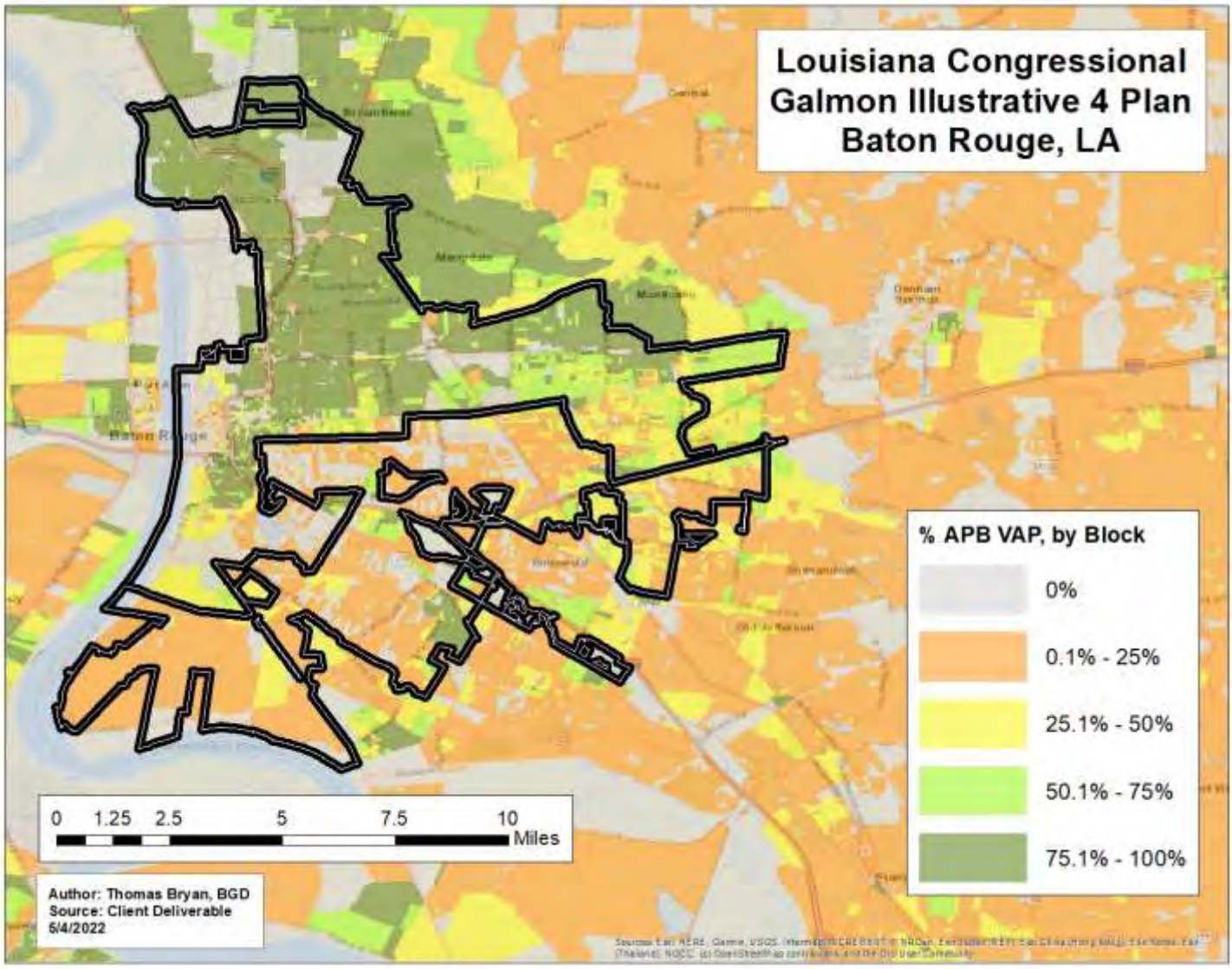
Place Name	District	Total	Total Percent	Black	Black Percent
Alexandria city	4	10,793	23.8%	1,939	18.0%
	5	34,482	76.2%	23,792	69.0%
Arnaudville town	1	39	3.9%	5	12.8%
	5	970	96.1%	127	13.1%
Ball town	4	31	0.8%	6	19.4%
	5	3,930	99.2%	516	13.1%
Baton Rouge city	5	143,479	63.1%	105,132	73.3%
	6	83,991	36.9%	20,965	25.0%
Broussard city	1	190	1.4%	25	13.2%
	3	13,227	98.6%	2,323	17.6%
Carencro city	3	29	0.3%	3	10.3%
	5	9,243	99.7%	4,561	49.3%
Eunice city	3	302	3.2%	31	10.3%
	5	9,120	96.8%	3,487	38.2%
Kenner city	1	56,858	85.6%	9,803	17.2%
	2	9,590	14.4%	6,021	62.8%
Lafayette city	3	82,561	68.0%	12,482	15.1%
	5	38,813	32.0%	26,872	69.2%
Mandeville city	1	0	0.0%	0	0.0%
	6	13,192	100.0%	707	5.4%
Morgan City city	1	0	0.0%	0	0.0%
	3	11,472	100.0%	2,766	24.1%
New Iberia city	1	25,204	88.3%	12,460	49.4%
	3	3,351	11.7%	830	24.8%
New Orleans city	1	33,047	8.6%	2,459	7.4%
	2	350,950	91.4%	216,510	61.7%
Pineville city	4	289	2.0%	48	16.6%
	5	14,095	98.0%	5,085	36.1%
West Monroe city	4	8,264	63.1%	1,737	21.0%
	5	4,839	36.9%	3,164	65.4%
Zachary city	5	19,303	99.9%	9,040	46.8%
	6	13	0.1%	0	0.0%

Appendix 4 Louisiana Maps

A. Galmon Illustrative 4 Plan and Existing Plan



B. Baton Rouge Galmon Illustrative 4 Plan Split by % Any Part Black VAP



C. Lafayette Galmon Illustrative 4 Plan Split by % Any Part Black VAP

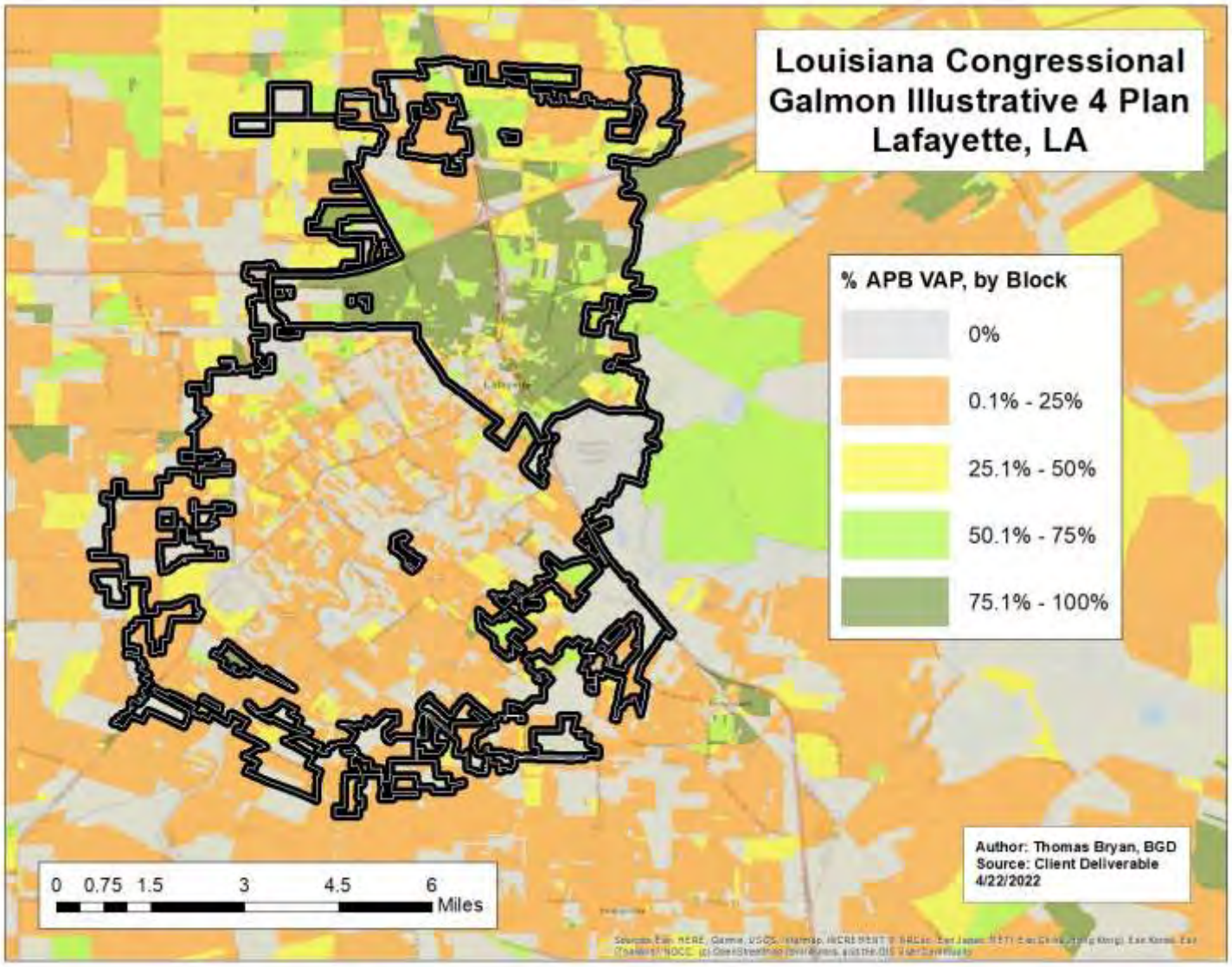


EXHIBIT T

STATE 2b

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON., *et al.* Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al* Defendant and Intervenor-Defendants,	Case No.: 3:22-cv-00211-SDD-SDJ
AND	(c/w)
EDWARD GALMON, SR., *et al.* Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al.* Defendant and Intervenor-Defendants.	Case No.: 3:22-cv-00214-SDD-SDJ

NOTICE OF CORRECTED DATA

Intervenor-Defendant the State of Louisiana (the "State") by and through Jeff Landry, Attorney General, respectfully filed this Notice of Corrected Data and states as follow:

1. On May 5, 2022, the State's demographic expert, Thomas M. Bryan prepared a Supplemental Expert Report where he assessed Mr. William Cooper's new Illustrative 4 Plan that was first presented to him in Mr. Cooper's rebuttal report. In

Mr. Bryan's assessment, he performed a detailed measurement of multi-race population associated the new Illustrative Plan 4.

2. As part of this supplemental assessment, Mr. Bryan provided an Appendix 2, which provided an analysis of the place splits in Illustrative Plan 4. Mr. Bryan provided similar documents as appendixes to his original report where he reviewed the place splits in Plaintiffs' other illustrative plans.

3. Following the submission of his supplemental report, Mr. Bryan discovered a small computation error that had no effect on his final determinations that arose from his analysis contained in Appendix 2.

4. In his May 5, 2022 submitted supplemental report, the Black values were divided by the total population in each row, rather than being divided by the share of Black (which adds to 100%). While not necessarily an error, this computation was inconsistent with how Mr. Bryan calculated percentages in his original report (divided by share of Black). As such, Mr. Bryan has provided a consistent computation for Appendix 2 of his supplemental report (replacing page 17 of that report), which is attached hereto as Exhibit A.

5. There are no other known computation errors in Mr. Bryan's supplemental report.

6. A Declaration of Thomas M. Bryan is attached hereto as Exhibit B.

Dated: May 10, 2022

Respectfully Submitted,

Jeff Landry
Louisiana Attorney General

/s/Angelique Duhon Freel

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*admitted *pro hac vice*
** admission *pro hac vice* forthcoming

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Counsel for Intervenor-Defendant the State of Louisiana

CERTIFICATE OF SERVICE

I CERTIFY I have served the foregoing was served on counsel for the parties via electronic means on May 10, 2022.

/s/Phillip M. Gordon
Phillip Gordon
Counsel for the State of Louisiana

EXHIBIT A

Appendix 2 Illustrative 4 Plan Place Splits Analysis

Place Name	District	Total	Total Percent	# Black	Black % (Original by Row)	Black % (Revised by Column)
Alexandria city	4	10,793	23.8%	1,939	18.0%	7.5%
	5	34,482	76.2%	23,792	69.0%	92.5%
Arnaudville town	1	39	3.9%	5	12.8%	3.8%
	5	970	96.1%	127	13.1%	96.2%
Ball town	4	31	0.8%	6	19.4%	1.1%
	5	3,930	99.2%	516	13.1%	98.9%
Baton Rouge city	5	143,479	63.1%	105,132	73.3%	83.4%
	6	83,991	36.9%	20,965	25.0%	16.6%
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	3	13,227	98.6%	2,323	17.6%	98.9%
Carencro city	3	29	0.3%	3	10.3%	0.1%
	5	9,243	99.7%	4,561	49.3%	99.9%
Eunice city	3	302	3.2%	31	10.3%	0.9%
	5	9,120	96.8%	3,487	38.2%	99.1%
Kenner city	1	56,858	85.6%	9,803	17.2%	62.0%
	2	9,590	14.4%	6,021	62.8%	38.0%
Lafayette city	3	82,561	68.0%	12,482	15.1%	31.7%
	5	38,813	32.0%	26,872	69.2%	68.3%
Mandeville city	1	0	0.0%	0	0.0%	0.0%
	6	13,192	100.0%	707	5.4%	100.0%
Morgan City city	1	0	0.0%	0	0.0%	0.0%
	3	11,472	100.0%	2,766	24.1%	100.0%
New Iberia city	1	25,204	88.3%	12,460	49.4%	93.8%
	3	3,351	11.7%	830	24.8%	6.2%
New Orleans city	1	33,047	8.6%	2,459	7.4%	1.1%
	2	350,950	91.4%	216,510	61.7%	98.9%
Pineville city	4	289	2.0%	48	16.6%	0.9%
	5	14,095	98.0%	5,085	36.1%	99.1%
West Monroe city	4	8,264	63.1%	1,737	21.0%	35.4%
	5	4,839	36.9%	3,164	65.4%	64.6%
Zachary city	5	19,303	99.9%	9,040	46.8%	100.0%
	6	13	0.1%	0	0.0%	0.0%

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON., *et al.* Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al* Defendant and Intervenor-Defendants,	Case No.: 3:22-cv-00211-SDD-SDJ
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EDWARD GALMON, SR., *et al.* Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, *et al.* Defendant and Intervenor-Defendants.	Case No.: 3:22-cv-00214-SDD-SDJ

DECLARATION OF EXPERT THOMAS M. BRYAN

Comes Now Thomas M. Bryan, and states as follows:

1. I have been retained by the State of Louisiana in the above referenced matter to provide my expert opinion as to the demographic characteristics and impacts of the Louisiana Enrolled Plan and the Plaintiff's Illustrative Plans. I am over the age of 18 and of sound mind.

2. I make the statements below based on my personal knowledge, information, and belief.

3. On or about May 5, 2022, I prepared a Supplemental Expert Report where I assessed Mr. William Cooper's new Illustrative 4 Plan that was first presented to me in Mr. Cooper's rebuttal report. In my assessment, I performed a detailed measurement of multi-race population associated the new Illustrative Plan 4.

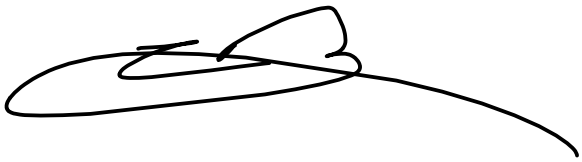
4. As part of this supplemental assessment, I provided an Appendix 2, which provided an analysis of the place splits in Illustrative Plan 4. I provided similar documents as appendixes to my original report where I reviewed the place splits in Plaintiffs' other illustrative plans.

5. As I reviewed this analysis following its submission, I discovered a small computation error that had no effect on my final determinations that arose from this analysis.

6. In my May 5, 2022 submitted supplemental report, the Black values were divided by the total population in each row, rather than being divided by the share of Black (which adds to 100%). While not necessarily an error, this computation was inconsistent with how I calculated percentages in my original report (divided by share of Black). As such, I have provided a consistent computation for Appendix 2 of my supplemental report which is attached hereto as Ex. 1.

7. There are no other computation errors I have identified in my supplemental report.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 10th day of May 2022.



By: Thomas M. Bryan