No. 21A_____

In the Supreme Court of the United States

KYLE ARDOIN,
IN HIS CAPACITY AS THE
LOUISIANA SECRETARY OF STATE, ET AL.,
Applicants,

v.

PRESS ROBINSON, ET AL.,
Respondents.

APPENDIX TO EMERGENCY APPLICATION FOR STAY

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TABLE OF CONTENTS

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:

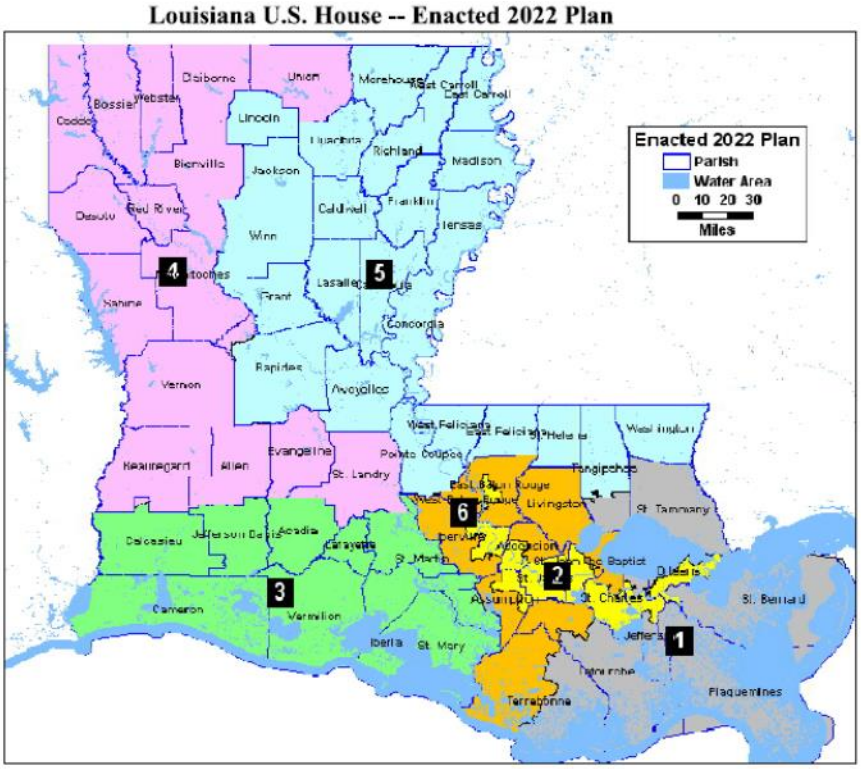
> Joint Rule No. 21. Redistricting criteria
>
> A. To promote the development of constitutionally and legally acceptable redistricting plans, the Legislature of Louisiana adopts the criteria contained in this Joint Rule, declaring the same to constitute minimally acceptable criteria for consideration 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 –

[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

[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,

[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

[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

[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

[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*.

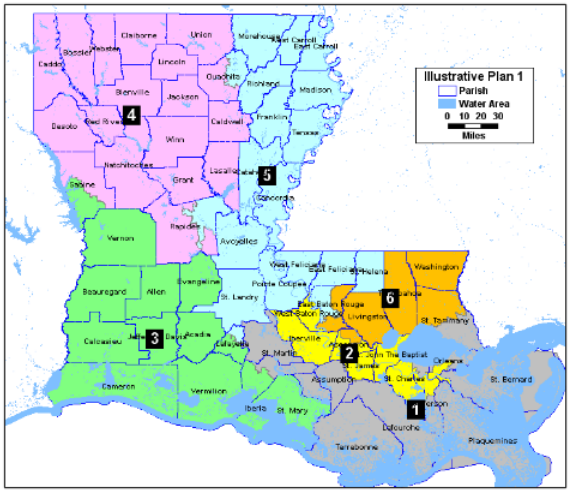
Louisiana – 1990 to 2020 Census
Population by Race and Ethnicity

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%

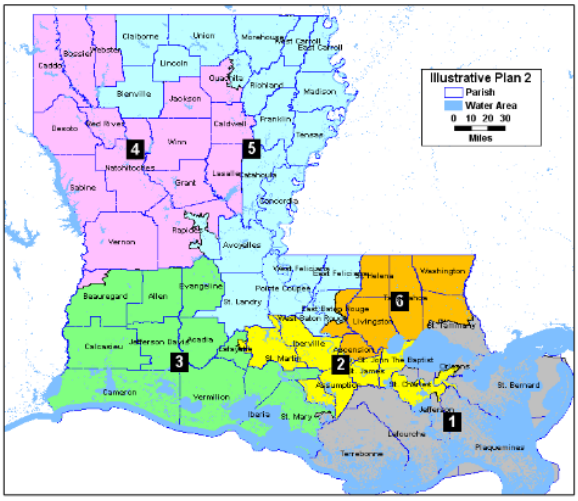
[117]

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]

Illustrative Plan 1



Illustrative Plan 2



[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

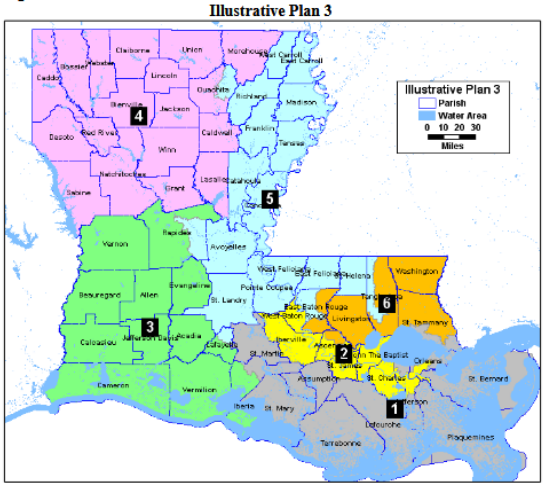
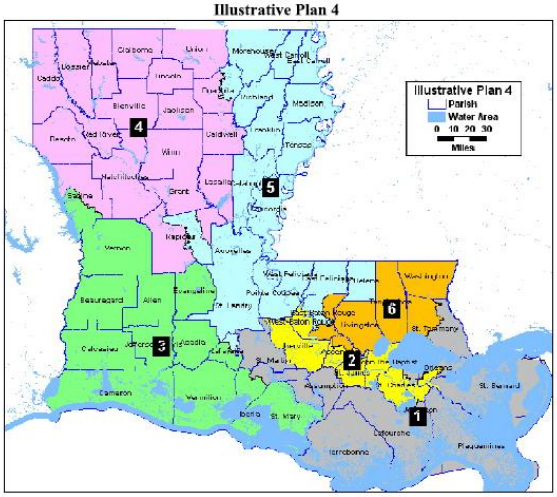


Figure 1
Illustrative Plan 4



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:

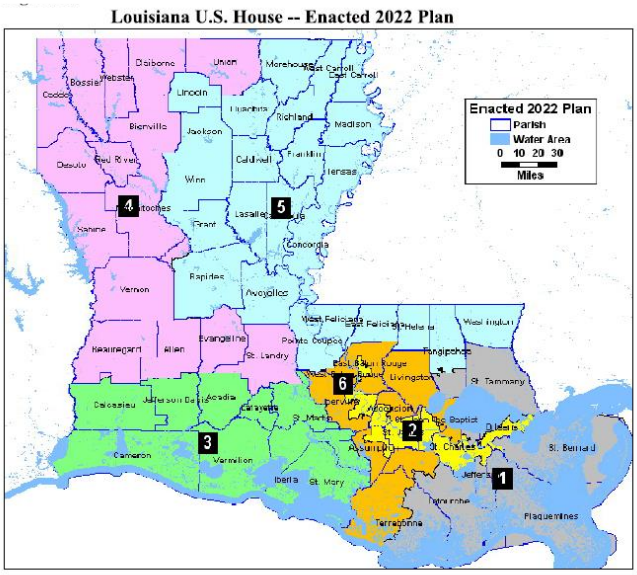
Plan	Reock			Polsby-Popper		
[redacted]	[redacted]	Low	High	[redacted]	Low	High
HB 1						
Mean of All Districts	.37	.18	.50	.16	.06	.34
CD 2	.18	[redacted]	[redacted]	.06	[redacted]	[redacted]
Illustrative Plan 1						
Mean of All Districts	.36	.23	.53	.19	.09	.27
CD 2	.23	[redacted]	[redacted]	.15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

[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.

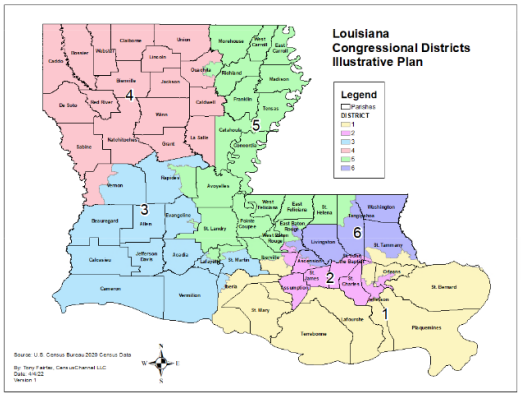
On cross-examination, Cooper again emphasized that although Plaintiffs did *ask* him to draw maps with two majority-minority districts, he did not have a goal of creating create two such districts no matter what. He asserted that he followed traditional principles and considered all of the relevant factors. 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

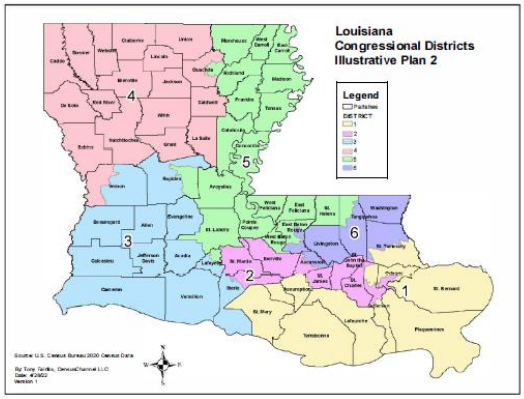
[130] *Id*. at p. 20.

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]

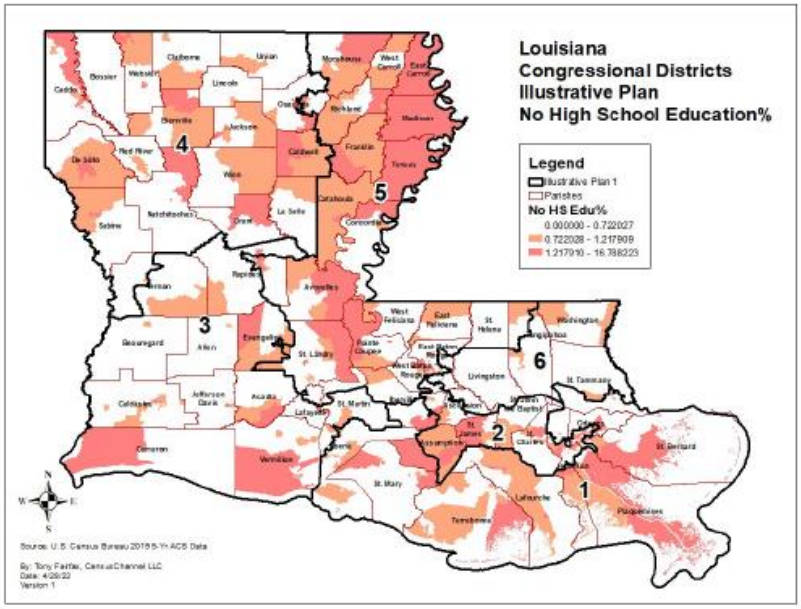
Fairfax concludes that his "Illustrative Plan 2 in addition to performing better than the HB1 Plan, exceeds many of Illustrative Plan 1's performance on state and traditional

[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.

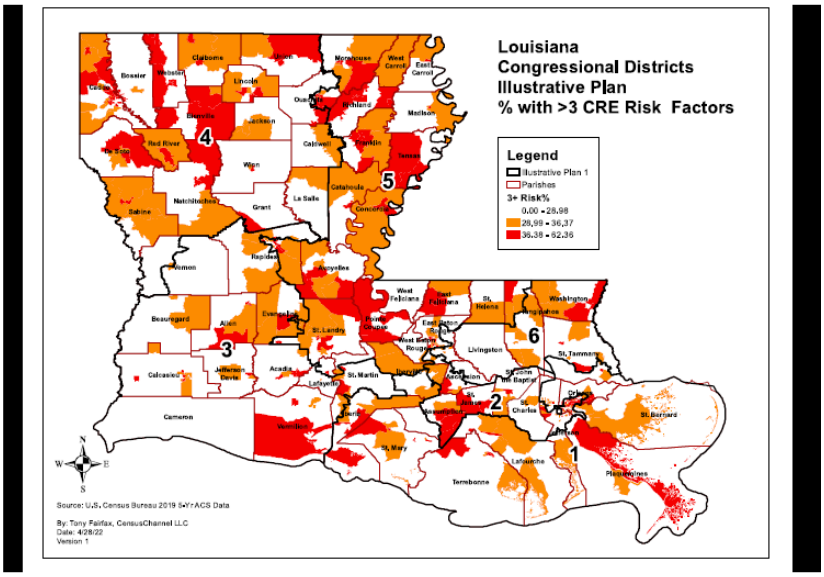
Fairfax testified that socioeconomic data was another important guiding factor for assessing communities of interest and to ensure respect for commonalities in mapping the districts. He explained how he used the mapping software's capabilities to overlay data onto his proposed districts related to, for 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]

[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.

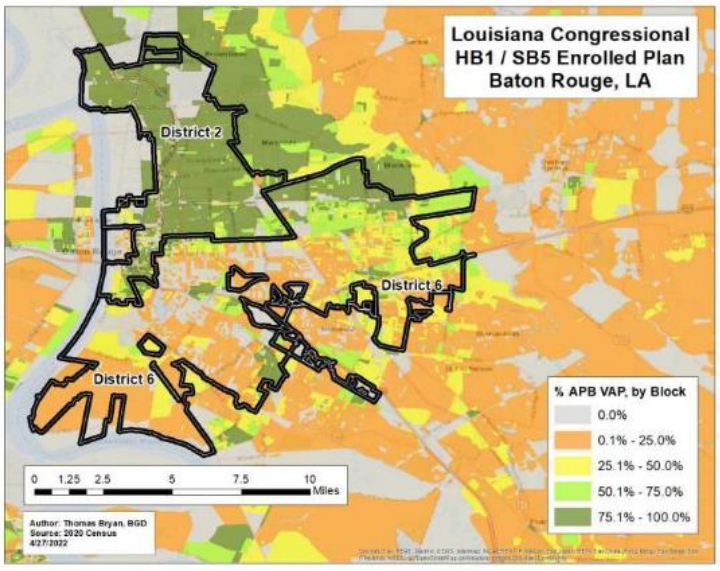
On cross-examination, Bryan agreed that the district court in *Caster v Merrill*, where he offered testimony, found that Any Part Black was the proper metric to apply in Section 2 cases. Bryan testified that he does not have an opinion about the appropriate

[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

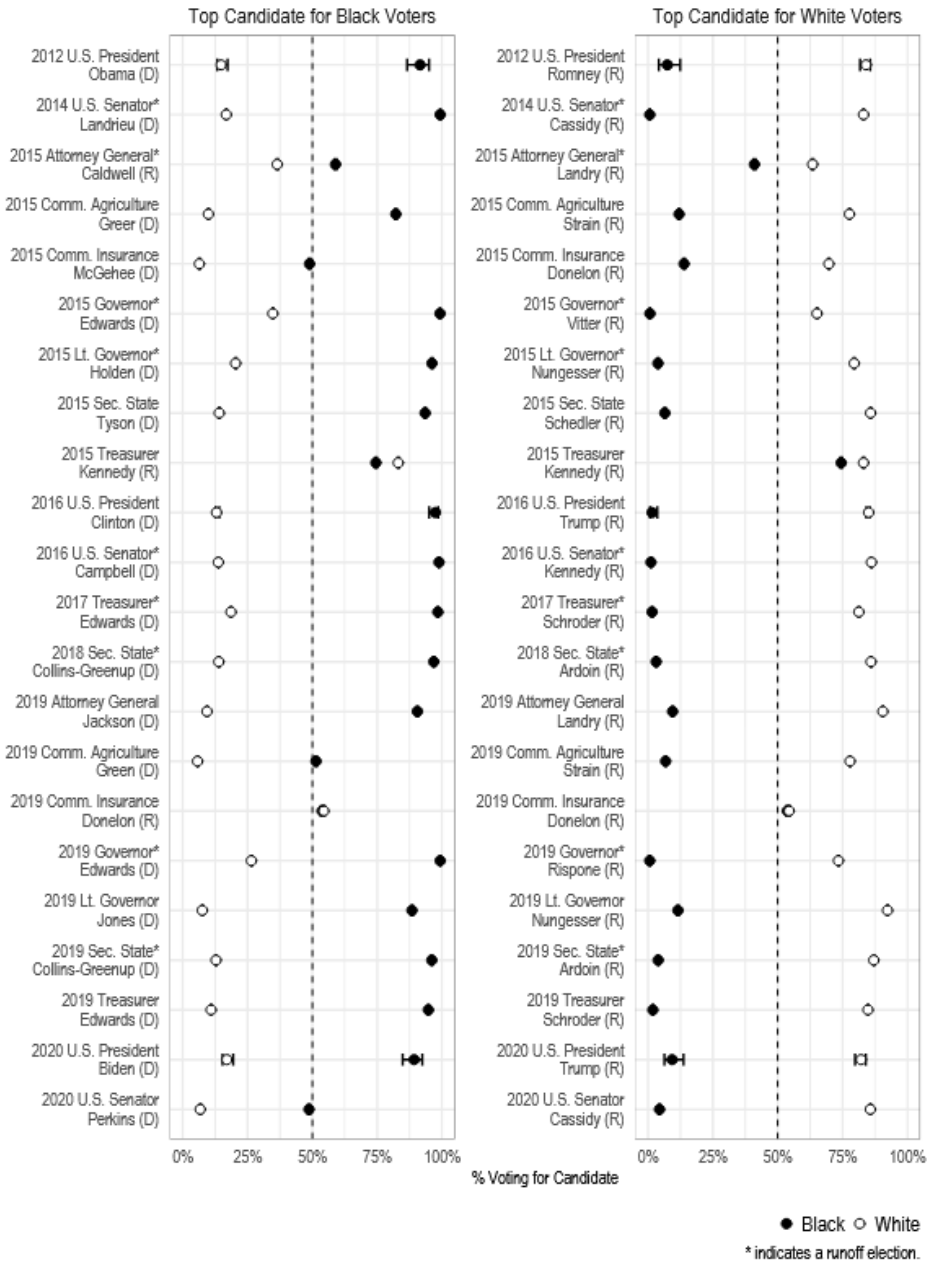
[169] *Growe v. Emison*, 507 U.S. 25, 40 (1993)(citing *Gingles*, 478 U.S., at 50–51).
[170] GX-2; GX-30, admitted as substantive evidence without objection.
[171] GX-2, p. 3.
[172] *Id*.
[173] *Id*.

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	Party	Race	Vote	Estimates for Black Voters: EI RxC	95% confidence interval	EI 2x2	ER	HP	Estimates for White Voters: 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:

[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]

[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 WHITES
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

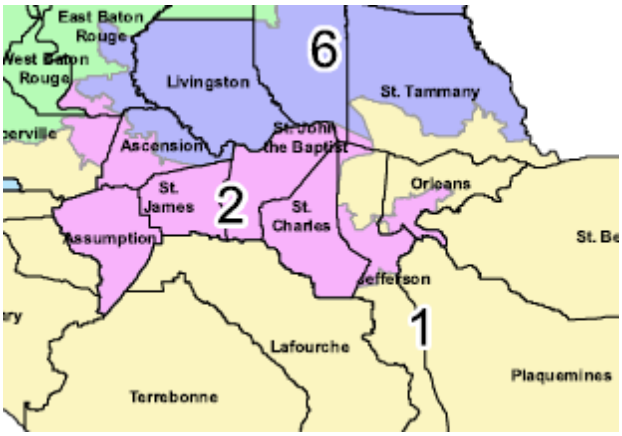
heard. When the vote came in to override Governor Edwards' veto, McClanahan testified that he saw legislators high-fiving one another, cheering, and jumping in the air. To him, this was a slap in the face of everyone who had participated in the process.

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]

[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

[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]

[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.

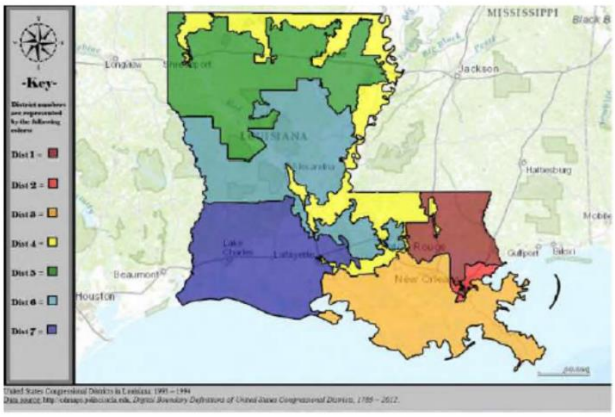
3. Equal Protection: *Hays* and Racial Gerrymandering

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]

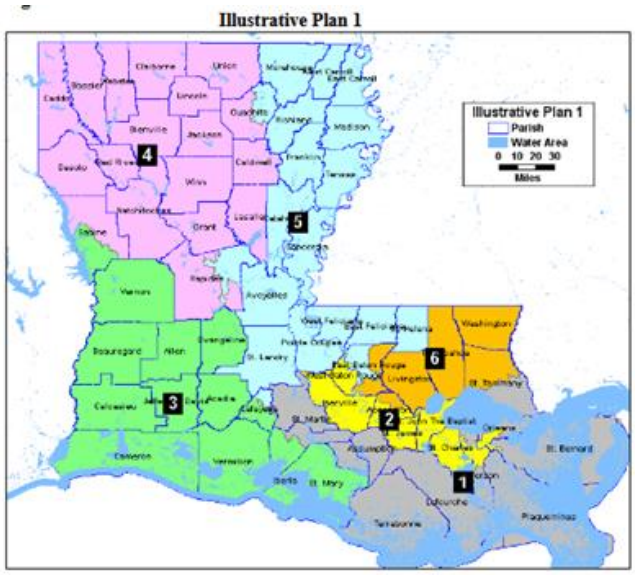
After the Western District's ruling, the Legislature adopted a new redistricting plan, and the finding of racial gerrymandering was vacated and remanded for further consideration in light of the new plan.

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:



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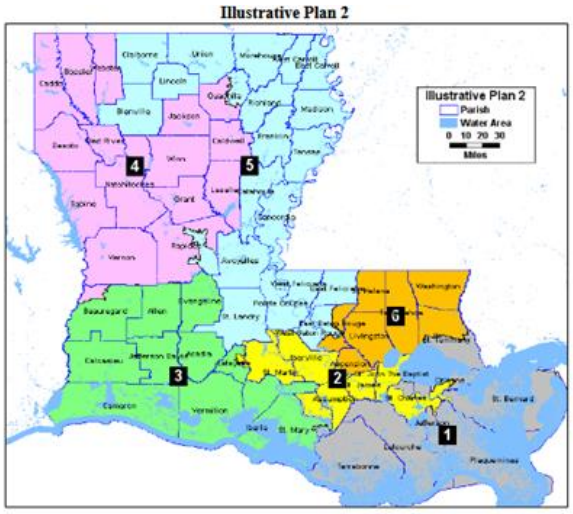
[281] Rec. Doc. No. 109, p. 12.
[282] *Id.*
[283] GX-1, p. 26.

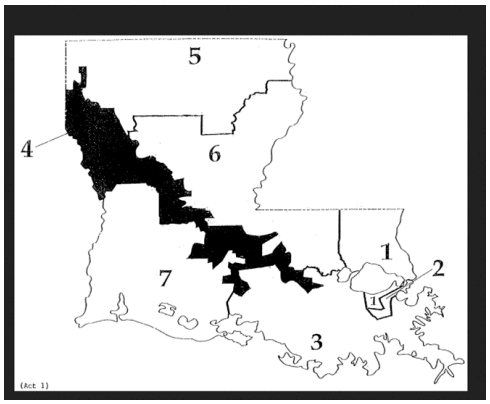
Instead of a narrow and jagged band reaching from the far northwest of the state all the way south toward the Gulf Coast, Cooper's map appears as a relatively compact, reasonable shape. Cooper's Illustrative Plan 2 reaches further to the northwest, but still avoids the plunge to the coast:



[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

[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

[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

[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*.

[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

[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,

[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

[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.

[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

[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

[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:

[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]

[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.

[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.

[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

[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

[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

[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]

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[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

[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).

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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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
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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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**Pro Hac Vice Motions Granted*

4889-1522-3073 v.1

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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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

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

This matter is before the Court on the *Joint Motion to Stay Pending Appeal*[1] filed by Defendant, Louisiana Secretary of State Kyle Ardoin, and the Intervenor Defendants, Senate President Page Cortez, Speaker Clay Schexnayder, and Attorney General Jeff Landry. The *Galmon* and *Robinson* Plaintiffs filed separate *Oppositions*.[2] For the reasons that follow, the *Motion* is DENIED.

On a motion to stay, the Court "considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."[3]

[1] Rec. Doc. No. 177.
[2] Rec. Doc. Nos. 180, 181.
[3] *Nken v. Holder*, 556 U.S. 418, 426 (2009).

Defendants have not shown that the Court erred in its application of the prevailing law to the facts adduced at the hearing.

Defendants' argument that they will be irreparably harmed absent a stay is disingenuous. Defendants contend that a stay is necessary to avoid "compromising the State's election administration during an election year."[4] But, in March 2022, Senate President Cortez and House Speaker Schexnayder represented to another court that Louisiana's "election calendar is one of the latest in the nation";[5] that "the election deadlines that actually impact voters do not occur until October 2022";[6] and that "there remains several months. . .to complete the process."[7]

The Court finds that Plaintiffs will suffer substantial harm if a stay is granted. Given that there has been no showing of error in the Court's application of the prevailing law, and considering that the Legislators' representations indicate that there is ample time to consider and enact remedial maps, a halt to the remedy process "will substantially injure the other parties."[8] A stay increases the risk that Plaintiffs do not have an opportunity to vote under a non-dilutive congressional map until 2024, almost halfway through this census cycle.

Finally, the Court finds that the public interest lies in conducting elections under a legal map.

Defendants argue for a "'relaxed' interpretation"[9] of the stay standard, citing Justice Kavanaugh's concurrence in *Merrill v. Milligan*, wherein he discussed the propriety of a stay "in the period close to an election."[10] The Court finds the concurrence inapplicable. Where, as here,

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[4] Rec. Doc. No. 177-1, p. 9.
[5] Rec. Doc. No. 173, p. 11 (citing GX-32, p. 8).
[6] *Id*. (citing GX-32, p. 5).
[7] *Id*.
[8] Note 3, *supra.*
[9] Rec. Doc. No. 177-1, p. 4.
[10] *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

"election deadlines that actually impact voters do not occur until October 2022,"[11] we are not in "a period close to an election."[12]

Nor is the Court persuaded that the rules of the legislature requiring seven days' notice of an extraordinary session, three days for bill readings and committee hearings, among other things, indicate the necessity of a stay. If Defendants need more time to accomplish a remedy for the Voting Rights Act violation, the Court will favorably consider a *Motion* to extend the time to allow the Legislature to complete its work. As Plaintiffs point out, allowing for seven days' notice of the start of the session and three days for bill reading would require ten days total, and this Court gave the Legislature fourteen. So, seven days are available to comply with this Court's order. Defendants' argument about the "unworkable" deadline is insincere and not persuasive.

The Court also declines to enter an administrative stay. This decision "falls within the 'power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'"[13]

ACCORDINGLY,

IT IS HEREBY ORDERED that Defendants' *Joint Motion to Stay*[14] is DENIED.

Signed in Baton Rouge, Louisiana this 9th day of June, 2022.

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

[11] Note 5, *supra*.
[12] Note 10, *supra*.
[13] *In re Abbott*, 800 F. App'x 296, 298 (5th Cir. 2020)(quoting *Landis v. N. Am. Co.,* 299 U.S. 248, 254 (1936)).
[14] Rec. Doc. No. 177.

United States Court of Appeals for the Fifth Circuit

No. 22-30333

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 Louisiana State Conference, *also known as* NAACP; Power Coalition for Equity and Justice,

Plaintiffs—Appellees,

versus

Kyle Ardoin, *in his official capacity as Secretary of State for Louisiana*,

Defendant—Appellant,

Clay Schexnayder; Patrick Page Cortez; State of Louisiana - Attorney General Jeff Landry,

Intervenor Defendants—Appellants,

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

Plaintiffs—Appellees,

versus

No. 22-30333

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

Defendant —Appellant,

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; STATE OF LOUISIANA - ATTORNEY GENERAL JEFF LANDRY,

Movants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:22-CV-211
USDC No. 3:22-CV-214

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the motion of Appellants Clay Schexnayder and Patrick Page Cortez for an administrative stay of the district court's June 6, 2022 injunction is GRANTED pending further review of this court.

IT IS FURTHER ORDERED that Appellees file their responses to the motion with the Clerk's Office no later than 4 p.m. on Friday, June 10, 2022.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 09, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-30333 Robinson v. Ardoin
USDC No. 3:22-CV-211
USDC No. 3:22-CV-214

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: _____
Charles B. Whitney, Deputy Clerk
504-310-7679

Mrs. Angelique Duhon Freel
Ms. Renee Marie Knudsen
Mr. Michael L. McConnell
Mr. Michael Warren Mengis
Ms. Jennifer Wise Moroux
Ms. Elizabeth Baker Murrill
Mr. Richard Bryan Raile
Mr. Adam Savitt
Mr. John Carroll Walsh

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 12, 2022
Lyle W. Cayce
Clerk

No. 22-30333

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 LOUISIANA STATE CONFERENCE, *also known as* NAACP; POWER COALITION FOR EQUITY AND JUSTICE,

Plaintiffs—Appellees,

versus

KYLE ARDOIN, *in his official capacity as* SECRETARY OF STATE FOR LOUISIANA,

Defendant—Appellant,

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; LOUISIANA ATTORNEY GENERAL JEFF LANDRY,

Intervenor Defendants—Appellants,

EDWARD GALMON, SR.; CIARA HART; NORRIS HENDERSON; TRAMELLE HOWARD,

Plaintiffs—Appellees,

No. 22-30333

versus

KYLE ARDOIN, *in his official capacity as* SECRETARY OF STATE FOR LOUISIANA,

Defendant —Appellant,

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; LOUISIANA ATTORNEY GENERAL JEFF LANDRY,

Movants—Appellants.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC Nos. 3:22-CV-211 & 3:22-CV-214

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

Before the court are three emergency motions to stay, pending appeal, an order of the district court that requires the Louisiana Legislature to enact a new congressional map with a second black-majority district. Although we must acknowledge that this appeal's exigency has left us little time to review the record, we conclude that, though the plaintiffs' arguments and the district court's analysis are not without weaknesses, the defendants have not met their burden of making a "strong showing" of likely success on the merits. Nor do we conclude that the cautionary principle from *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), prevents the ordered remedy from taking effect. So we vacate the administrative stay and deny the motion for stay pending appeal.

Nevertheless, we expedite this appeal to the next available merits panel, to be selected at random from the regular merits panels already

scheduled to hear cases the week of July 4, 2022. Either before or after argument that week, that merits panel may, in its discretion, opt to reimpose a stay, and its more comprehensive review may well lead it to rule in the defendants' favor on the merits. The plaintiffs have prevailed at this preliminary stage given the record as the parties have developed it and the arguments presented (and not presented). But they have much to prove when the merits are ultimately decided.

I.

A fuller account of this case's factual background and procedural history can be found in the district court's thorough opinion. *Robinson v. Ardoin*, No. 22-CV-211, 2022 WL 2012389 (M.D. La. June 6, 2022). For purposes of this expedited decision, we summarize only the salient points. This case arises from Louisiana's congressional redistricting process. After the 2020 census, the state was apportioned six seats , the same number as during the previous redistricting cycle. The Louisiana Legislature thus enacted a map that, like the one in force during the last decade, created just one black-majority district, in the state's southeast. The Governor vetoed the map, but the Legislature overrode his veto on March 30, 2022. Later that day, the plaintiffs brought this action.

The plaintiffs claim that, under the Voting Rights Act ("VRA") as interpreted by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), Louisiana was required to create a second black-majority district. They sought a preliminary injunction to require the Legislature to do so in time for the 2022 election.

After a five-day evidentiary hearing, the district court issued a 152-page ruling and order granting the plaintiffs' motion. The district court concluded that the plaintiffs had carried their burden under *Gingles*. That ruling meant that the plaintiffs had shown that (1) Louisiana's black population is

sufficiently large and compact to form a majority in a second district, (2) the black population votes cohesively, and (3) whites tend to vote as a bloc usually to defeat black voters' preferred candidates. *Id.* at 50–51. The district court gave the Legislature until June 20 to enact a remedial plan that would then be used in the November primary election.[1]

The defendant, along with two intervenors (collectively "the defendants"), appealed that decision, and that appeal will be decided in due course by a merits panel of this court. Today, as a motions ("administrative") panel, we consider only the defendants' emergency motions for stay pending appeal. To decide those motions, we consider "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quotation omitted).

We review the district court's legal conclusions *de novo* and its factual findings for clear error. *NAACP v. Fordice*, 252 F.3d 361, 364–65 (5th Cir. 2001). A finding is clearly erroneous where, after reviewing the entire record, we are "left with the definite and firm conviction" that the district court erred. *Id.* at 365 (quotation omitted).

[1] We take judicial notice that on June 7, 2022, in response to the order *a quo*, the Governor called a special session of the Legislature to begin June 15. By letter to the legislative leadership dated June 10, partly in response to this panel's administrative stay, the Governor expressed hope that that stay would be lifted but concluded by stating, "Should the [Fifth Circuit] retain a stay over [the district court's] decision, I agree that further action of the legislature should be delayed until the Fifth Circuit can review the merits of [that] decision."

II.

We begin with the defendants' likelihood of success on the merits. The defendants posit four ways the district court erred. *First*, they say the court used an unduly expansive measure of the black voting-age population (BVAP). Landry Mot. at 16–17. *Second*, they claim the plaintiffs' illustrative plans relied on insufficiently compact districts. Ardoin Mot. at 8; Schexnayder Mot. at 12–15; Landry Mot. at 17–22. *Third*, they aver that if the state had implemented the plaintiffs' illustrative plans, it would have engaged in an unconstitutional racial gerrymander. Ardoin Mot. at 5–6; Schexnayder Mot. at 12–15; Landry Mot. at 23–24. *Fourth*, they contend that the plaintiffs failed to show white bloc voting in light of evidence indicating substantial white crossover voting. Ardoin Mot. at 7; Schexnayder Mot. at 8–12; Landry Mot. at 24–27.

A.

The first *Gingles* precondition requires plaintiffs to show that a minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50. To do that, plaintiffs must first define the minority group.

The plaintiffs defined Louisiana's black population to include anyone who identifies as at least partially black. *Robinson*, 2022 WL 2012389, at *9. That metric, which the parties call "Any Part Black," would count as black a potential voter who identifies, for example, as both black and American Indian. The parties discussed two alternative metrics. One is "DOJ Black," which counts as black a voter who identifies as either solely black or as both black and white. *Id.* at *20. The "DOJ Black" metric would not count as black a voter who identifies, for example, as both black and Asian. The other alternative, which the parties call "Single-Race Black," counts a voter as black only when the voter identifies as black and no other race. *Id.* at *34.

The district court adopted the "Any Part Black" metric. *Ibid.* The defendants claim that decision "contorted" the first *Gingles* precondition. Landry Mot. at 16. They observe that the "Any Part Black" metric "includes persons who may be 1/7th Black and who also self-identify as both Black and Hispanic." Landry Mot. at 17.

True. But we do not appreciate that observation's significance. As the district court noted, the Supreme Court has confronted this question before.[2] It explained that the DOJ Black metric "may have more relevance if the case involves a comparison of different minority groups." *Ibid.* But where "the case involves an examination of only one minority group's" voting strength, the Court considered it "proper to look at *all* individuals who identify themselves as black." *Ibid.*

We have no reason to part from that holding. This case, like *Georgia v. Ashcroft*, presents no need for comparing minority groups. The plaintiffs seek another BVAP-majority district at the expense of a white-majority district. So the district court did not err by using the "Any Part Black" metric to calculate BVAP. The defendants are unlikely to succeed on that basis.

B.

The defendants' next claim also relates to the first *Gingles* precondition—specifically, its requirement that the minority group be "reasonably compact." *LULAC v. Perry*, 548 U.S. 399, 430 (2006). They say that the population of black voters in the plaintiffs' new majority-minority district cannot satisfy that precondition. Landry Mot. at 15–24; Ardoin Mot.

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[2] *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003), *superseded by statute on other grounds*, Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577, *as recognized in Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 276–77 (2015).

at 8; *see also* Schexnayder Mot. at 12–15. That new district is Congressional District 5 ("CD 5"). Although its exact borders vary,[3] CD 5 stretches from Louisiana's northern border down to Baton Rouge and Lafayette. *See Robinson*, 2022 WL 2012389, at *10, *12.

The plaintiffs' showing of compactness is not airtight. But to warrant a stay, the defendants must make a "strong showing" that they are likely to succeed on the merits. *Nken*, 556 U.S. at 434. And from the record before us, we cannot conclude that the district court erred in holding that the plaintiffs satisfied *Gingles*'s compactness requirement. As the court observed, the "[d]efendants did not meaningfully refute or challenge Plaintiffs' evidence on compactness." *Robinson*, 2022 WL 2012389, at *36. Instead, they put all their eggs in the basket of racial gerrymandering, which we discuss below.

That tactical choice has consequences. It leaves the plaintiffs' evidence of compactness largely uncontested. And based on that evidence, we hold that the defendants have not shown that they are likely to succeed on the merits.

Before explaining why, we should first relate the law governing *Gingles*'s compactness requirement. Importantly, that requirement relates to the compactness of the *minority population* in the proposed district, not the proposed district itself. *LULAC*, 548 U.S. at 433. Although *Gingles* itself described the precondition as a requirement that the minority population be "geographically compact," 478 U.S. at 50, there is more to compactness than geography. Unfortunately, the Supreme Court has not developed a "precise rule" for evaluating all facets of that requirement. *LULAC*, 548 U.S. at 433.

[3] The plaintiffs have introduced six illustrative maps.

But it has identified a few factors.

Beyond geography, plaintiffs must also show that putting the minority population into one district is consistent with "traditional districting principles such as maintaining communities of interest and traditional boundaries." *Ibid.* (quotation omitted); *see also id.* at 432 (noting the importance of the district's population having similar "needs and interests"). Thus, combining "discrete communities of interest"—with "differences in socio-economic status, education, employment, health, and other characteristics"—is impermissible. *Id.* at 432 (quotation omitted). Finally, compactness must be shown on a district-by-district basis, for a "generalized conclusion" cannot adequately answer "the relevant local question whether the precondition[ ] would be satisfied as to each district." *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1250 (2022) (per curiam) (quotation omitted).

The plaintiffs introduced evidence sufficient to show that the population of black voters in their illustrative CD 5 likely satisfied the first *Gingles* precondition.

First, like the district court, we think the illustrative CD 5 appears geographically compact upon a visual inspection. *See Robinson*, 2022 WL 2012389, at *39. To assess geographical compactness, we may examine the shape of proposed districts. *See Bush v. Vera*, 517 U.S. 952, 980–81 (1996). And the illustrative versions of CD 5 largely appear compact to the naked eye. They all have their rectangular core in the parishes in the northeastern region of Louisiana between its border with Arkansas and Baton Rouge. *Robinson*, 2022 WL 2012389, at *10, *12. Indeed, the illustrative CD 5 typically appears just as compact as the benchmark CD 5, if not more so. All have their core in the delta parishes of northeast Louisiana. *See Robinson*, 2022 WL 2012389, at *2, *10, *12. And although the illustrative versions of CD 5 have small tendrils that jut into parts of central Louisiana, they also

eliminate part of a tendril in the benchmark CD 5 that extends deep into southeastern Louisiana, capturing all but one parish that borders Mississippi. *Compare id.* at *10, *12, *with id.* at *2.

The district court, however, also assessed geographic compactness with mathematical measures provided by the plaintiffs' map-drawing experts, William Cooper and Anthony Fairfax. *See id.* at *35–36. Those experts showed that the districts in their illustrative plans had better Reock, Polsby-Popper, and Convex Hull scores on average than the districts in the benchmark plan. *See id.* at *36. The problem with that analysis is that it addresses compactness on a plan-wide basis, not a district-by-district basis—as the first *Gingles* precondition requires. *Wis. Legislature*, 142 S. Ct. at 1250. Thus, we cannot rely on that evidence to conclude that the minority population in the plaintiffs' proposed district is geographically compact. Even so, our visual inspection of the proposed CD 5 leads us to agree with the district court that the plaintiffs likely showed that it was geographically compact.

Second, as the district court concluded, the illustrative maps respect traditional redistricting criteria. Both map-drawers testified that they took criteria such as "political subdivision lines, contiguity" and "the Legislature's Joint Rule 21" into account when drawing their maps. *Robinson*, 2022 WL 2012389, at *10, *13. Fairfax also said he grouped populations with similar economic demographics together and attempted to keep census designated places together when possible. *Id.* at *13–14. And Cooper stated that he had declined to draw maps for plaintiffs in the past when doing so would require him to violate traditional redistricting criteria. *Id.* at *11. The district court found both of those experts credible based on their extensive experience in this area, the analytical quality of their reports, their perceived candor, and their ability to respond to cross-examination persuasively. *Id.* at *38–39. Thus, their testimony indicates that the districts they drew—

including CD 5—are likely consistent with traditional redistricting criteria. Accordingly, the population of black voters in those districts is likely to be reasonably compact as well.

Unfortunately, the district court also made the same mistake here that it did in analyzing geographical compactness—namely, analyzing consistency with traditional redistricting criteria on a plan-wide basis. Specifically, the court corroborated the experts' representations by comparing the number of split political subdivisions in the illustrative and benchmark plans. *See id.* at *39. But once again, the *Gingles* inquiry relates to specific districts—not redistricting plans as a whole. *Wis. Legislature*, 142 S. Ct. at 1250. The district court thus erred by failing to focus on the compactness of the black population in the plaintiffs' specific proposed districts. Even so, the rest of its analysis is enough to show that the plaintiffs are likely to succeed in showing the first *Gingles* precondition. We thus do not disturb the district court's finding on this point.

Finally, as the district court concluded, the illustrative CD 5 preserves communities of interest. The plaintiffs introduced extensive lay testimony supporting their claim that the black populations in the illustrative CD 5 were culturally compact. Those witnesses testified that the black populations in those regions share family, culture, religion, sports teams, and the media they consume. *Robinson*, 2022 WL 2012389, at *15. They also emphasized the educational ties between northeastern Louisiana and the Baton Rouge area, including the fact that many residents of the delta parishes attend college at Southern University in Baton Rouge. *Ibid.* Likewise, they noted that the black voters in those regions share the same economic interests in the petroleum and sugarcane industries. *Id.* at *16. And all this testimony went unrebutted: The "[d]efendants did not call any witnesses to testify about communities of interest." *Id.* at *40. Accordingly, we must agree with the district court that the plaintiffs showed that their proposed CD 5 respected

communities of interest.

Granted, the plaintiffs' evidence has weaknesses. But at this pre-merits stage, it is stronger than the evidence produced by the defendants. Again, as the district court observed, the "[d]efendants did not meaningfully refute or challenge Plaintiffs' evidence on compactness"; they instead tried to show racial gerrymandering. *Id.* at *36. Indeed, actions speak louder than words, and the defendants mention very little of what they introduced before the district court in connection with the compactness inquiry in their motions for a stay. Although that would be grounds enough for us to reject the defendants' position in this posture, we discuss what little evidence the defendants introduced in the interest of showing that the district court's conclusion on compactness was not erroneous despite its analytical errors. That's because the testimony the defendants introduced in the district court only obliquely and unpersuasively supports their claim that CD 5's black population is not compact.

First, the defendants' expert Dr. Thomas Bryan observed that the illustrative districting exercised "surgical" precision in splitting Baton Rouge and Lafayette between congressional districts such that the black neighborhoods were included in CD 5. *Id.* at *17. Those split political divisions tend to show that CD 5 breached a traditional redistricting criterion in those locations and raise the possibility that CD 5 divides communities of interest based in a single municipality. But providing evidence of a minor departure in one area of the district has only limited probative value with respect to the compliance of the district with traditional redistricting criteria *on the whole*. And any implication that the proposed CD 5 splits up communities of interest in Baton Rouge and Lafayette is outweighed by the plaintiffs' direct testimony that the black populations in CD 5 are culturally compact.

Second, the defendants' expert Dr. Christopher Blunt introduced evidence relating to simulations of redistricting. Dr. Blunt ran 10,000 simulations of redistricting in Louisiana and concluded that his simulated districts never had a majority of black voters and were more compact than those in the illustrative plans. *Id.* at *18–19. By his own admission, however, he did not take communities of interest, previous district boundaries, or municipal boundaries into account when programming his simulations. *Id.* at *19. And as the district court observed, "Dr. Blunt has no experience, skill, training or specialized knowledge in the simulation analysis methodology that he employed to reach his conclusions." *Id.* at *37. Thus, because of Dr. Blunt's shortcomings as a witness and the fact that his simulations "did not incorporate the traditional principles of redistricting required by law," the district court concluded that "his opinions merit little weight." *Ibid.* In accord with that finding of fact, we discount his opinion as well for whatever purpose it could serve in showing the compactness (or lack thereof) among the black voting population.

Third, the defendants' expert Dr. M.V. Hood III analyzed the core retention of the districts in the illustrative and benchmark plans. *Id.* at *19–20. He testified that the districts in the plaintiffs' illustrative plans—including CD 5—had lower core retention on average than the districts in the enacted plan. *Ibid.* But that analysis has little value, for the defendants have not explained why Louisiana's previous districting should be used as a measuring stick for compactness. Accordingly, Dr. Hood's analysis has little value in evaluating whether the plaintiffs satisfied the compactness requirement.

Finally, the defendants also introduced the testimony of their expert Dr. Alan Murray, who analyzed the spatial distribution of the black voting age population and the white voting age population in Louisiana. *Id.* at *20. He concluded that "the Black and White populations in Louisiana are

heterogeneously distributed" across the state. *Id.* at *38. But that statewide analysis has limited probative value with respect to the compactness of the black voting population that would reside in plaintiffs' proposed district—especially in light of the plaintiffs' direct evidence supporting compactness. Therefore, the district court did not err in giving that analysis little weight.

The arguments that the defendants make on appeal fare no better—especially since they have the burden to make a "strong showing" that the district court erred. *Nken*, 556 U.S. at 434. *First*, they say that CD 5 spans long distances. Landry Mot. at 21–22; Ardoin Mot. at 8; Schexnayder Mot. at 13. But they do not explain why those distances are too great—especially for rural regions such as the delta parishes included in CD 5. Indeed, it is not unusual for districts in rural parts of Louisiana to span such distances. Accordingly, that observation does not displace the district court's conclusion that plaintiffs had satisfied the compactness inquiry.

Second, the defendants say that the plaintiffs' proposal combines populations of voters that are not culturally compact. *See LULAC*, 548 U.S. at 430–35. The Attorney General maintains that the plaintiffs "reach[ed] out to grab small and apparently isolated minority communities" to pack into CD 5 by stretching some of their illustrative districts down to Lafayette and Baton Rouge, splitting those cities and including only black neighborhoods in CD 5. *See* Landry Mot. at 17–21 (quoting *LULAC*, 548 U.S. at 433). The Secretary of State also observes that the illustrative CD 5 combines rural populations in northern Louisiana with urban populations in Baton Rouge, which have distinct interests. Ardoin Mot. at 8. But Dr. Bryan made the same observations before the district court, and we reject these arguments here for the same reasons. That evidence only moderately weighs against a finding of compactness, and it is outweighed by the evidence plaintiffs introduced in favor of that finding.

Finally, the defendants claim that the district court analyzed only the compactness of the plaintiffs' proposed districts when it should have analyzed the compactness of the black population instead. Landry Mot. at 22–23; Ardoin Mot. at 8. The district court, the defendants observe, credited the plaintiffs' expert testimony that their districts were more compact on average throughout the state. Landry Mot. at 22–23; Ardoin Mot. at 8. As we have explained, we agree that was error (although for a different reason).[4] But once again, we conclude that that error is not fatal to the district court's overall finding that plaintiffs have shown that the black voting population in CD 5 is likely to be compact.[5]

In sum, the plaintiffs have much to prove when the merits are ultimately decided. But our review is limited by the evidence and arguments that defendants chose to present in the district court and on appeal, with the burden on the defendants to show that a stay is appropriate. *Nken*, 556 U.S. at 434. When we consider the record as the parties have developed it, the defendants have not shown they are likely to succeed on the merits of their appeal.

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[4] It is a correct statement of law to say that the compactness of the minority population—not the proposed district—is what matters for the first *Gingles* precondition. *LULAC*, 548 U.S. at 433. But the geographic compactness of a district is a reasonable proxy for the geographic compactness of the minority population *within* that district, which is one factor in the compactness inquiry.

[5] The Attorney General also complains that the plaintiffs ran their calculations using an incorrect measure of the size of the black population and that their proposed districts barely qualify as majority-black districts. *See* Landry Mot. at 16–17. But we have already explained why the plaintiffs' measure is consistent with Supreme Court precedent. And if their measure is accurate, then the fact that their proposed districts have only small majorities of black voters does not prevent them from satisfying the first *Gingles* precondition.

C.

The defendants further suggest that they will succeed on the merits because the "Plaintiffs' illustrative plans are plainly racial gerrymanders." Ardoin Mot. at 5; *see also* Schexnayder Mot. at 13, Landry Mot. at 23. Race was undoubtedly a factor in the drawing of the illustrative maps. But, as the district court noted, racial consciousness in the drawing of illustrative maps does not defeat a *Gingles* claim. And even if it did, the defendants have not shown that the plaintiffs' maps prioritized race so highly as to commit racial gerrymandering, or that complying with the district court's order would require the Legislature to adopt a predominant racial purpose.

Racial gerrymandering is prohibited by the Equal Protection Clause of the Fourteenth Amendment. *Shaw v. Reno*, 509 U.S. 630, 642 (1993). A state racially gerrymanders when it assigns its citizens to legislative districts based on their race, such that "one district [contains] 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." *Id.* at 647. The Supreme Court has, however, recognized high bars to challenging supposed racial gerrymanders. For a legislative map to constitute a racial gerrymander, a challenger must show that race was the "predominant factor" in its design, such that "the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

The defendants point out that the illustrative maps presented by the plaintiffs were drawn with race in mind. Cooper, a key expert relied on by plaintiffs to meet the first prong of *Gingles*, freely admitted that the plaintiffs had "specifically asked" him to draw maps with two minority-majority

districts.[6] *Robinson*, 2022 WL 2012389, at *47. And as noted above, the maps proposed by the plaintiffs featured districts that, the defendants say, split cities and encompass geographically divergent communities. The defendants also point to the work of their own experts, including Dr. Blunt, who ran thousands of random simulations but was unable to produce any black-majority districts. *Id.* at *18.

But despite that evidence, the defendants have not overcome the district court's factual findings indicating that the illustrative maps are not racial gerrymanders. Cooper and the plaintiffs' other key expert, Anthony Fairfax, both testified that, while they considered race, they did not subordinate race to other redistricting criteria, and the district court deemed that testimony credible. *Id.* at *47. As explained above, both experts weighed racial considerations alongside traditional factors such as communities of interest and respect for political subdivisions. On the other hand, the defendants' experts often ignored those same traditional factors. That omission, along with other shortcomings of expertise and demeanor, led the district court to deem the testimony of the defendants' experts on the question of predominant racial purpose to be "poorly supported," *id.* at *36, "merit[ing] little weight," *id.* at *37, and "unilluminating," *id.* at *38.

Neither are the plaintiffs' proposed maps so bizarrely shaped as to be "unexplainable on grounds other than race." *Shaw*, 509 U.S. at 643 (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). As explained above, other factual findings by the district court, based on expert and lay testimony presented by the plaintiffs, indicate that the boundaries of the illustrative maps have at least some basis in traditional districting

[6] Cooper's "admission" is unsurprising because determining whether another majority-minority district can be drawn consistent with traditional districting principles is the purpose of a *Gingles* claim.

principles such as communities of interest. The proposed districts also tend to be as geographically compact as the current map, and neither our visual inspection nor the defendants' analysis indicates that any districts are particularly unnatural. Though the plaintiffs considered race, the defendants have not shown that that consideration predominated over more traditional redistricting principles. The inference of racial intent is an intensely factual process, *see Arlington Heights*, 429 U.S. at 266, and the unchallenged findings of the district court foreclose the defendants' contention that the plaintiffs' illustrative maps are racial gerrymanders.

Moreover, even if the plaintiffs had engaged in racial gerrymandering as they drew their hypothetical maps, it would not follow that the Legislature is required to do the same to comply with the district court's order. Illustrative maps are just that—illustrative. The Legislature need not enact any of them. For similar reasons, we have rejected the proposition that a plaintiff's attempt to satisfy the first *Gingles* precondition is invalid if the plaintiff acts with a racial purpose. *See Clark v. Calhoun Cnty.*, 88 F.3d 1393, 1406–07 (5th Cir. 1996).[7]

The plaintiffs have proposed several alternative maps, and the Legislature has previously considered maps that would create two minority-majority districts. *Robinson*, 2022 WL 2012389, at *5. The Legislature will be free to consider all those proposals or come up with new ones and to weigh whatever factors it chooses alongside the requirements of *Gingles*. The task will no doubt be difficult, but the Legislature will benefit from a strong

[7] Contrary to the Attorney General's position, that holding has not been overruled by the Supreme Court's observation that *Gingles* plaintiffs must demonstrate that their proposed districts will perform to elect minority-preferred candidates. *See Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018); *Harding v. Cnty. of Dallas*, 948 F.3d 302, 309–11 (5th Cir. 2020).

presumption that it acts in good faith. *See Miller*, 515 U.S. at 915.

The defendants observe that all the plaintiffs' maps have one feature in common: They combine "East Baton Rouge [Parish] with the Delta Parishes." Schexnayder Reply at 6. They claim that the first *Gingles* precondition cannot be satisfied without that feature, but that its "racial design" is "clear." *Ibid*. Yet as we have explained, the plaintiffs advanced race-neutral reasons supporting that combination, and the district court accepted them. Moreover, it does not necessarily follow that, for a *Gingles* claim to succeed, there must be more than one way to draw a compliant, non–racially gerrymandered district. The plaintiffs have shown that it is possible to draw a second *Gingles* district while giving due weight to traditional redistricting criteria; that is enough.

We do not rule out that a *Gingles* showing transparently dependent on racial gerrymandering might fail under *Gingles*'s totality-of-the-circumstances assessment. *Gingles*, 478 U.S. at 43; Schexnayder Reply at 5–6. But where, as here, the district court's findings suggest that racial gerrymandering is far from inevitable, that doctrine presents no obstacle to orders like the one issued by the district court.

The defendants and their *amici* are not the first to point out that the doctrine of racial gerrymandering exists in some tension with *Gingles*. Weigh race too heavily and a legislature risks violating the Constitution; weigh it too lightly and a legislature risks violating the VRA. *See, e.g.*, *Perez*, 138 S. Ct. at 2315. Legislators who are found to have racially gerrymandered often insist that they were merely seeking to comply with *Gingles*. *See, e.g.*, *Cooper v. Harris*, 137 S. Ct. 1455, 1468–69 (2017). But that friction remains part of the law, and it is not for us to resolve. If the plaintiffs' *Gingles* showing is invalid because of racial gerrymandering, it is difficult to see how any *Gingles* showing could be successful. *Gingles* remains good law, and so the defendants have

not shown that they are likely to succeed on that basis.

D.

The defendants' final merits challenge concerns the third *Gingles* precondition. Plaintiffs seeking to compel states to create more majority-minority districts must show 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 51. The plaintiffs must show that such bloc voting would be present in the *challenged* districting plan. *Harris*, 137 S. Ct. at 1470; *LULAC*, 548 U.S. at 427; *Growe v. Emison*, 507 U.S. 25, 40 (1993). And that conclusion must be true for voters in a particular location; recall that a "generalized conclusion" cannot adequately answer "the relevant local question whether the preconditions would be satisfied as to each district." *Wis. Legislature*, 142 S. Ct. at 1250 (quotation omitted).

So the question posed by the third *Gingles* precondition is concrete: If the state's districting plan takes effect, will the voting behavior of the white majority cause the relevant minority group's preferred candidate "usually to be defeated"? *Covington v. North Carolina*, 316 F.R.D. 117, 171 (M.D.N.C. 2016) (three-judge court) (emphasis omitted), *aff'd*, 137 S. Ct. 2211 (2017) (mem.). Although the answer will likely depend in some measure on the number of white voters who buck racial trends and vote for the minority-preferred candidate, the proportion of these so-called "crossover" votes is not directly relevant. Instead, white crossover voting is indirectly relevant because it influences the outcome of elections and, therefore, what really matters for the third *Gingles* precondition: whether minority-preferred candidates would usually lose under the challenged plan. *See, e.g.*, *Westwego Citizens for a Better Gov't v. City of Westwego*, 946 F.2d 1109, 1119 (5th Cir. 1991).

The district court concluded that, without a new majority-minority district, white bloc voting would prevent black voters who satisfy the first and

second *Gingles* preconditions from electing their preferred candidates. *Robinson*, 2022 WL 2012389, at *50–51. The court primarily relied on the plaintiffs' two experts, who explained that, despite some white crossover voting, "no Black-preferred candidate" had won a statewide or congressional race in the elections they examined except in CD 2, the preexisting majority-minority district. *Id.* at *50. And it dismissed the testimony of the defendants' experts, who pointed to some examples where whites did not vote as a bloc or where black voters would have been able to elect the candidates of their choice if the proposed maps had been in place. *Id.* at *50–51. It reasoned that those experts' examples were based on a single, unusual election—the 2020 Presidential Contest—and relied on "limited data" or "outlier[s]," unlike the analyses offered by the plaintiffs' experts. *Id.*

Whether bloc voting will usually defeat black voters' attempts to elect their preferred candidates is a question of fact. *Rangel v. Morales*, 8 F.3d 242, 245 (5th Cir. 1993). Nevertheless, we review *de novo* the district court's application of the legal standard for bloc voting.

The defendants challenge that application. They say the "district court failed to ask the correct legal question." Schexnayder Mot. at 11. And they claim that the plaintiffs "failed to prove, or even address," the question of whether white crossover voting was "legally significant," which is to say that it would normally cause minority voters' preferred candidates to lose. *Id.* at 8–9 (quotation omitted). In their telling, the plaintiffs' experts established only that "black voters and white voters voted differently." *Id.* at 9 (quotation omitted).

We disagree. The district court framed the legal question correctly. Although it discussed crossover voting, it explained that "crossover voting was *inherently* included in" the plaintiffs' experts' analysis. *Robinson*, 2022 WL 2012389, at *51 (emphasis added). It concluded that "the levels [of

crossover voting the experts] found were insufficient to swing the election for the Black-preferred candidate in any of the contests they examined." *Id.* In other words, the district court relied on the experts' analysis to answer the right question: whether black voters' preferred candidates could *win* the proposed district under the enacted maps. *Contra* Schexnayder Reply at 3. And the plaintiffs' experts tailored their analysis to that question. They considered the outcomes of elections, not the abstract behavior of voters by race. *Robinson*, 2022 WL 2012389, at *50.[8]

Next, the defendants claim that *Covington* supports their position. Schexnayder Mot. at 8–12; Schexnayder Reply at 3. They correctly observe that the question under *Covington* is whether, without a VRA remedy, the minority voters' preferred candidate will usually lose. 316 F.R.D. at 170–71. But the defendants then explain that this case is like *Covington* because all experts acknowledge that some parts of Louisiana enjoy significant white crossover voting. Schexnayder Mot. at 10–11.

That contention loses the plot. As the defendants themselves have explained, crossover voting is not relevant *per se*; it is relevant only for its effect on the *outcome* of elections.[9] Crossover voting in unspecified locations

[8] As we did in the context of the first *Gingles* precondition, we reiterate that what matters for the third *Gingles* precondition is whether black voters *in the proposed district* could elect the candidates of their choice under the challenged districting, not whether black voters in all parts of the state could. *See Wis. Legislature*, 142 S. Ct. at 1250. Thus, the experts' analysis of white bloc voting statewide was not strictly relevant. But those experts also analyzed voting behavior "in the enacted plan districts that would contribute voters to an additional Black opportunity congressional district." *Robinson*, 2022 WL 2012389, at *50. Accordingly, their analysis is enough to support the district court's conclusion that the plaintiffs were likely to succeed on their claims—especially given the defendants' weak evidence and the deference we owe to the district court.

[9] *See* Schexnayder Reply at 1 ("The [third precondition] question does not turn on 'any' crossover voting but on *whether it is sufficiently robust that 'a VRA remedy' is unnecessary to ensure equal opportunity*." (emphasis added)).

that can range as high as "26%," Schexnayder Mot. at 11, is not enough to defeat the district court's conclusions about the likely future outcomes of elections. Doing so would require more persuasive evidence that reveals the likely outcomes in elections in a particular district at issue. *See Wis. Legislature*, 142 S. Ct. at 1250.

Even less relevant is the defendants' observation that a hypothetical district could elect black-preferred candidates with as little as 40% BVAP. Landry Mot. at 25–26; Schexnayder Mot. at 11; *see* Schexnayder Reply at 3. That observation fails to account for the third *Gingles* precondition's focus on the *actual* challenged districting. *Harris*, 137 S. Ct. at 1470; *LULAC*, 548 U.S. at 427; *Growe*, 507 U.S. at 40. As the plaintiffs observe, it would be bizarre if a state could satisfy its VRA obligations merely by pointing out that it could have—but did not—give minority voters an opportunity to elect candidates of their choice without creating a majority-minority district. Robinson Response at 16. To the extent that the defendants intend to contest the district court's factual findings, this observation is inadequate to show clear error, at least for the purposes of our preliminary review in deciding these motions for a stay.

The defendants also claim that the court's decision is incompatible with *Harris*. Ardoin Mot. at 7; Schexnayder Reply at 2–3. After *Harris*, the plaintiffs cannot rely, defendants say, on the "black population in [East Baton Rouge Parish], where there is substantial crossover voting." Ardoin Mot. at 7. Because they cannot satisfy the first *Gingles* precondition without those voters, the argument goes, the plaintiffs cannot succeed. *Ibid.*

That position misconstrues *Harris*. There, the Supreme Court confronted a wholly different scenario. Race predominated in the state's districting process, *Harris*, 137 S. Ct. at 1468–69, and the state claimed that that predominance was necessary to comply with the VRA, *id.* at 1469. Part of its

stated rationale included the mistaken assumption that, to satisfy the VRA, minority groups who satisfied the first and second *Gingles* preconditions but could not satisfy the third precondition on account of crossover voting were nonetheless entitled to a majority-minority district. *See id.* at 1472; *see also Bartlett v. Strickland*, 556 U.S. 1, 14–15 (2009) (plurality opinion). But the Court reaffirmed the principle that the third precondition is a *sine qua non* of a *Gingles* claim. *Harris*, 137 S. Ct. at 1472. If a minority group can already elect its preferred candidates, it does not matter whether that ability accrues in a majority-minority or a performing crossover district.

Harris means these plaintiffs could not satisfy the third *Gingles* precondition if they *usually* were able to elect candidates of their choice. But that is not what the district court found. *Harris* does not mean that the third *Gingles* precondition is unsatisfied if some black voters necessary to form a majority happen to reside near white voters who share their political beliefs. That fact could *influence* the dispositive question, but the defendants have not presented sufficient evidence for us to conclude that the district court's factual findings were clearly erroneous.[10]

Finally, the defendants say the district court improperly "shift[ed] the [plaintiffs'] burden" to prove white bloc voting onto the defendants. Schexnayder Mot. at 12. They claim the court relied on the defense's failure to produce "sufficient data." *Ibid.* (quoting *Robinson*, 2022 WL 2012389,

[10] We do not address the related question whether the third *Gingles* precondition can be satisfied where a substantial portion of the minority voters included in the *Gingles* coalition will already be able to elect candidates of their choice under the enacted plan because they live in a majority-minority district. That could be true of East Baton Rouge Parish voters who live in the enacted CD 2, which is a majority-minority district that is likely to elect black-preferred candidates. But no party has asked us to decide that question. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). The defendants have instead focused on the presence of white crossover voting around those minority voters.

at *51).

But the defendants mischaracterize the district court's analysis. It said that one of the defendants' experts failed to support his *opinion* with "sufficient data," *Robinson*, 2022 WL 2012389, at *51, not that the defendants had failed to produce sufficient data to support a hypothetical burden. A court does not impose a burden of proof on a party by observing that the party's rebuttal evidence is uncompelling. Instead, it concludes that the other party has met its burden of proof.

* * *

None of the defendants' merits challenges to the district court's order carries the day. We thus conclude that the defendants have not met their burden of showing likely success on the merits. Because likelihood of success is "arguably the most important factor," that fact weighs heavily against the stay. *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005).

III.

It is beyond dispute that the defendants would suffer irreparable harm absent a stay. "When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013). That harm is especially clear in voting rights cases: Wrongly enjoined maps may be restored, but "[s]etting aside an election is a drastic remedy" that courts seldom undertake. *Rodriguez v. Bexar Cnty.*, 385 F.3d 853, 859 n.2 (5th Cir. 2004). Not using the state's enacted maps will irreparably injure the defendants, so this prong favors the requested stay.

IV.

We next decide whether the balance of equities and the public interest

favor a stay. *See Tex. Democratic Party v. Abbott*, 961 F.3d 389, 397 (5th Cir. 2020). The equities favor a stay if it would benefit the defendants more than it would harm the nonmovants. *See Nken*, 556 U.S. at 434. We then must ask whether a stay would serve the public interest. *Ibid.* Those factors merge where the state seeks to stay an injunction against its legislative enactments. That's because the state's interest in enforcing its laws merges with the public's interest in the same. *E.g.*, *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam). Thus, if the equities favor the nonmovants, so will the public interest. *See Tex. Democratic Party*, 961 F.3d at 412.

The defendants offer three reasons why those factors favor a stay. *First*, they say that *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), precludes an injunction months before the November primaries. *Second*, they contend that we should stay the case pending the outcome of *Merrill v. Milligan*, which the Supreme Court will hear next term. *Third*, they complain that the district court did not give the Legislature enough time to adopt remedial maps.

None of those grounds supports a stay.

A.

The defendants first invoke the principle of election nonintervention, which they attribute to *Purcell*. Enjoining election laws before an election may confuse voters, and that risk, *Purcell* says, "will increase" as the election nears. *Id.* at 5. We and the Supreme Court have applied *Purcell* to stay injunctions that threaten to confuse voters, unduly burden election administrators, or otherwise sow chaos or distrust in the electoral process.[11] In one

[11] *See, e.g.*, *Tex. All. for Retired Ams. v. Hughs*, 976 F.3d 564, 566–67 (5th Cir. 2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam); *Benisek v. Lamone*, 138 S. Ct. 1942, 1945 (2018) (per curiam); *Moore v. Harper*, 142

formulation, *Purcell* asks whether obeying the district court's injunction would "be feasible without significant cost, confusion, or hardship." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). If not, the defendants might be entitled to a stay.

But the defendants have not identified a comparable case where we or the Supreme Court has applied *Purcell*'s principle. Here, the primary elections are five months away. The earliest impending deadline by which candidates must qualify for the primaries is June 22. *Robinson*, 2022 WL 2012389, at *60. Most candidates qualify for the primaries later by paying a small filing fee; the deadline for that is more than a month away. *Ibid.* Overseas absentee ballots need not be mailed until late September, and early voting begins in October. *Ibid.*

The classic *Purcell* case is different. It concerns an injunction entered days or weeks before an election—when the election is already underway. In *Veasey v. Perry*, 769 F.3d 890, 892 (5th Cir. 2014), we stayed an injunction entered nine days before the start of early voting. In *Texas Alliance*, we stayed an injunction entered eighteen days before the start of early voting. 976 F.3d at 567. In *Texas Democratic Party*, we stayed an injunction entered "weeks" before the start of in-person voting. 961 F.3d at 411. *Purcell* itself stayed an order changing election laws twenty-nine days before an election. *Tex. All.*, 976 F.3d at 567. And the Supreme Court has blocked injunctions entered five,[12] thirty-three,[13] and sixty days[14] before Election Day. Even *Merrill*, an

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S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring); *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring).

[12] *RNC*, 140 S. Ct. at 1206–07.

[13] *Tex. All.*, 976 F.3d at 566 (citing *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014)).

[14] *Id.* at 567 (citing *Husted v. Ohio State Conf. of the NAACP*, 573 U.S. 988 (2014)).

outlier cited by the defendants, Schexnayder Reply at 10, stayed an election less than four months away, where absentee voting would start in about two months, 142 S. Ct. at 888 (Kagan, J., dissenting).

That is not to say that *Purcell* is just a tallying exercise. It is not. Even where an election is many months away, the movant's showing a likelihood of success on the merits, for example, may counsel in favor of staying a district court's injunction.[15] But previous applications of *Purcell* differ enough from this case that we must inquire further.

In hopes of showing that the district court's injunction implicates *Purcell*, the defendants highlight the testimony of Sherri Hadskey, the state elections commissioner. Ardoin Mot. at 14–15. According to the defendants, Hadskey stressed three injuries that might result from the injunction.

First, Hadskey represented that "a new congressional plan," *id.* at 14, would require the state "to reassign voters who are in new congressional districts" under the enjoined maps to the remedial districts required by the district court, *id.* at 15. About 250,000 of those voters already have received notice of their districts under the enacted maps, and the defendants say informing those voters of yet another change to their districts could confuse them. *Ibid.*

We don't doubt that multiple mailings could confuse some voters. But at this early stage, any confusion would be minimal. More than enough time remains for the state to assuage any uncertainty before the primary elections. This is not a case, for example, where many voters already have cast ballots

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[15] *Cf. Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (noting that *Purcell*'s application reflects "ordinary stay principles"); *see also Nken*, 556 U.S. at 434 ("The first two factors of the traditional standard" for evaluating a stay—irreparable injury and the likelihood of success on the merits—"are the most critical.").

or submitted ballot applications, such that conducting an election with new lines would throw into doubt whether those votes would count or whether voters should request new ballots. *See, e.g.*, *LULAC v. Abbott*, No. 1:21-CV-991, 2022 WL 1410729, at *31 (W.D. Tex. May 4, 2022) (three-judge court). Here, weeks remain before the earliest candidate filing deadline, and months remain before the primary elections.

Second, Hadskey noted that the June 22 deadline for candidates to qualify for office by petition is fast approaching. *Ibid.* "If congressional candidates do not meet" that deadline, the defendants state, "the candidates will have to pay a filing fee and qualify by" late July. Ardoin Mot. at 15.

But the defendants have not shown that those deadlines implicate the *Purcell* principle. The June 22 deadline applies only to the few candidates who choose to qualify by nominating petition, and the record suggests that adjusting that deadline would not impact voters. *Robinson*, 2022 WL 2012389, at *60. It merits mention that even this June 22 deadline was extended by the district court to July 8. *Robinson*, 2022 WL 2012389, at *63. On that score, we also remind the parties and the district court that as this litigation progresses, "[i]f time presses too seriously, the District Court has the power appropriately to extend" that deadline and other "time limitations imposed by state law." *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972). And we agree with the district court that the State has enough time to implement new maps without having to change the more popular July filing deadline. *See Robinson*, 2022 WL 2012389, at *59. After all, as the district court recounted, Hadskey herself testified that after the enacted map became law, her office updated their records and notified affected voters in less than three weeks. *Ibid.* Yet almost six weeks remain before the July filing deadline. Those facts also discredit the defendants' assertion that the district court's injunction will rush election administrators, causing them to make more mistakes. *See* Ardoin Mot. at 17. The risk of mistakes is

relevant under *Purcell*, but we agree with the district court that the injunction does not meaningfully increase that risk.

Third, Hadskey identified other administrative burdens that an injunction would cause. The defendants highlight several of those burdens, including the need to "conduct[ ] yearly maintenance on scanners and voting equipment" and to review the voter rolls for accuracy—a process that the defendants say began on May 23. *Id.* at 15. Hadskey also noted the risk posed by a national paper shortage, which could threaten the state's ability to produce enough ballot envelopes. *Robinson*, 2022 WL 2012389, at *32.

We agree with the district court: The defendants have not shown that bearing those administrative burdens while complying with the challenged injunction would inflict more than ordinary "bureaucratic strain" on state election officials. *Id.* at *60. Notably, the district court credited the testimony of the Governor's executive counsel, who explained that Louisiana has significant experience adjusting the time, place, and manner of elections and has the administrative capacity to draw a new map before this election. *See id.* at *31, *60. On the other hand, the district court found unconvincing the aforementioned testimony of Hadskey. Ultimately, the district court found 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." *Id.* at *59. The court further explained that it did not perceive any specific reasons why voter notices could not be sent out in time. *Ibid.*; *see also Purcell*, 549 U.S. at 5 (finding error for court of appeals not to defer to discretion of district court).

It is axiomatic that injunctions in voting-rights cases burden the defendants. But the question, under *Purcell*, is not whether an injunction would burden the defendants, but whether that burden is intolerable—that is, whether the defendants cannot bear it "without significant cost, confusion,

or hardship." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Here, the burdens threatened by the injunction are, as far as the defendants have shown, entirely ordinary.

Take, for example, the national paper shortage that the defendants invoked at the district court. Though we can imagine a case where a paper shortage would augment the hardship of an injunction, this is not that case. No ballots have been printed for the November primaries, and the number of ballots needed for the elections will not change if district lines are altered. *Robinson*, 2022 WL 2012389, at *59. Changing the lines would mean that the defendants must mail new notices to many voters. But the district court doubted that a paper shortage, even if it complicated matters, could prevent the State from notifying voters of their districts before the elections months away. Moreover, the district court found that the State's digital voter outreach "can also provide information about any district changes." *Ibid.*

The defendants cite no case applying *Purcell* to stay an injunction this far from an election. Nor have they shown that the risks of chaos, distrust, or voter confusion at the heart of *Purcell* are present here. As Justice Kavanaugh made clear, the *Purcell* doctrine is about voter confusion and infeasibility, not administrative convenience. So we will not stay the order on that ground.

B.

The defendants next maintain that this proceeding should have been stayed pending the Supreme Court's decision in *Merrill*. The district court denied a similar motion, Dkt. 135, but that decision is not before us. Here, we decide only whether *Merrill*'s pendency justifies staying the injunction, and it does not.

It is true that *Merrill* (Sup. Ct. 21-1086), concerns many of the same issues as this case: The *Merrill* plaintiffs sued under *Gingles*, claiming that the VRA required the state of Alabama to create an additional minority-

majority district. The Court's resolution of that case might, or might not, shed light on this one.

But the Court plans to consider *Merrill* during October Term 2022. That means that any decision likely will come long after the 2022 elections, which are the subject of this appeal, have taken place. In that context, staying these proceedings would not promote judicial economy, and the defendants do not explain how a stay would serve the parties' interests. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).[16] We do not grant the defendants' requested stay on this ground.

C.

The defendants also urge us to stay the district court's order to give the Louisiana Legislature more time to enact a remedial plan. Schexnayder Mot. at 18. But they have not explained why they cannot enact a new plan in the time that the district court allotted, so we will not stay the injunction on that ground.

The defendants complain that the district court gave the Louisiana Legislature only fourteen days—until June 20—"to enact a remedial plan." *Robinson*, 2022 WL 2012389, at *1. Because the Legislature's regular session has ended, Schexnayder Mot. at 18, the defendants say that any redistricting effort would have to proceed in a special session, LA. CONST. art. III, § 2(B). But a special session requires seven days' notice, *ibid.*, and the

[16] *See also Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring in grant of stay) ("[T]he principal dissent is wrong to claim that the Court's stay order makes any new law regarding the Voting Rights Act. The stay order does not make or signal any change to voting rights law."); *id.* at 882 (Roberts, C.J., dissenting from grant of stay) ("I respectfully dissent from the stays granted in these cases because, in my view, the District Court properly applied existing law in an extensive opinion with no apparent errors for our correction.").

Legislature cannot enact a bill without reading it "at least by title on three separate days in each house" and holding a public hearing, *id.* art. III, § 15(D). Those requisites would leave the Legislature only five working days to craft new redistricting maps. Schexnayder Mot. at 18. So the defendants conclude that "[t]he district court set the Legislature up to fail." *Ibid.*

In theory, that complaint could justify narrowing the district court's remedy. A stay pending appeal "suspends judicial alteration of the status quo," *Veasey*, 870 F.3d at 392 (cleaned up); the Supreme Court has stressed that courts should afford legislatures "a reasonable opportunity" to fix constitutionally defective maps, *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); and unduly shortening the time to enact curative maps could rob a legislature of that opportunity. That lost chance would burden the defendants, and "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

But the defendants request a stay—not more limited relief. And while five legislative days is not much time, the defendants do not explain, beyond bare assertion, how or why that period is too short. And the record suggests that period *would* suffice. Before enacting the maps contested here, the Legislature considered "alternative maps with two majority-minority districts." *Robinson*, 2022 WL 2012389, at *5. Thus, the special session would not start from scratch. *Id.* at *31. We conclude that a stay is not necessary. This is especially so because, as the district court stressed in refusing to stay its order pending appeal, "[i]f Defendants need more time" to draw a new map, the district court would "favorably consider a Motion to extend the time to allow the Legislature to complete its work." Dkt. 182 at 3 (emphasis omitted).

V.

For the foregoing reasons, the administrative stay is VACATED, and the motions for stay pending appeal are DENIED. This appeal is *sua sponte* EXPEDITED.

We direct the Clerk to issue an expedited briefing schedule and to calendar this matter for argument before the next available randomly selected merits panel that is already scheduled to hear arguments during the week of July 4, 2022. Our ruling here concerns only the motions for stay pending appeal; "our determinations are for that purpose" only "and do not bind the merits panel." *Veasey*, 870 F.3d at 392. At this preliminary, non-merits stage, the defendants have merely fallen short of carrying their burden. That said, neither the plaintiffs' arguments nor the district court's analysis is entirely watertight. And it is feasible that the merits panel, conducting a less-rushed examination of the record in the light of differently framed arguments, may well side with the defendants.

United States Court of Appeals

FIFTH CIRCUIT
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June 12, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-30333 Robinson v. Ardoin
USDC No. 3:22-CV-211
USDC No. 3:22-CV-214

Enclosed is the opinion entered in the case captioned above.

An expedited briefing schedule will issue under separate cover.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: _____
Charles B. Whitney, Deputy Clerk
504-310-7679

Mr. John Nelson Adcock
Ms. Leah Camille Aden
Ms. Morgan Brungard
Mrs. Angelique Duhon Freel
Mr. Phillip Michael Gordon
Ms. Renee Marie Knudsen
Mr. Edmund Gerard LaCour Jr.
Mr. Patrick T. Lewis
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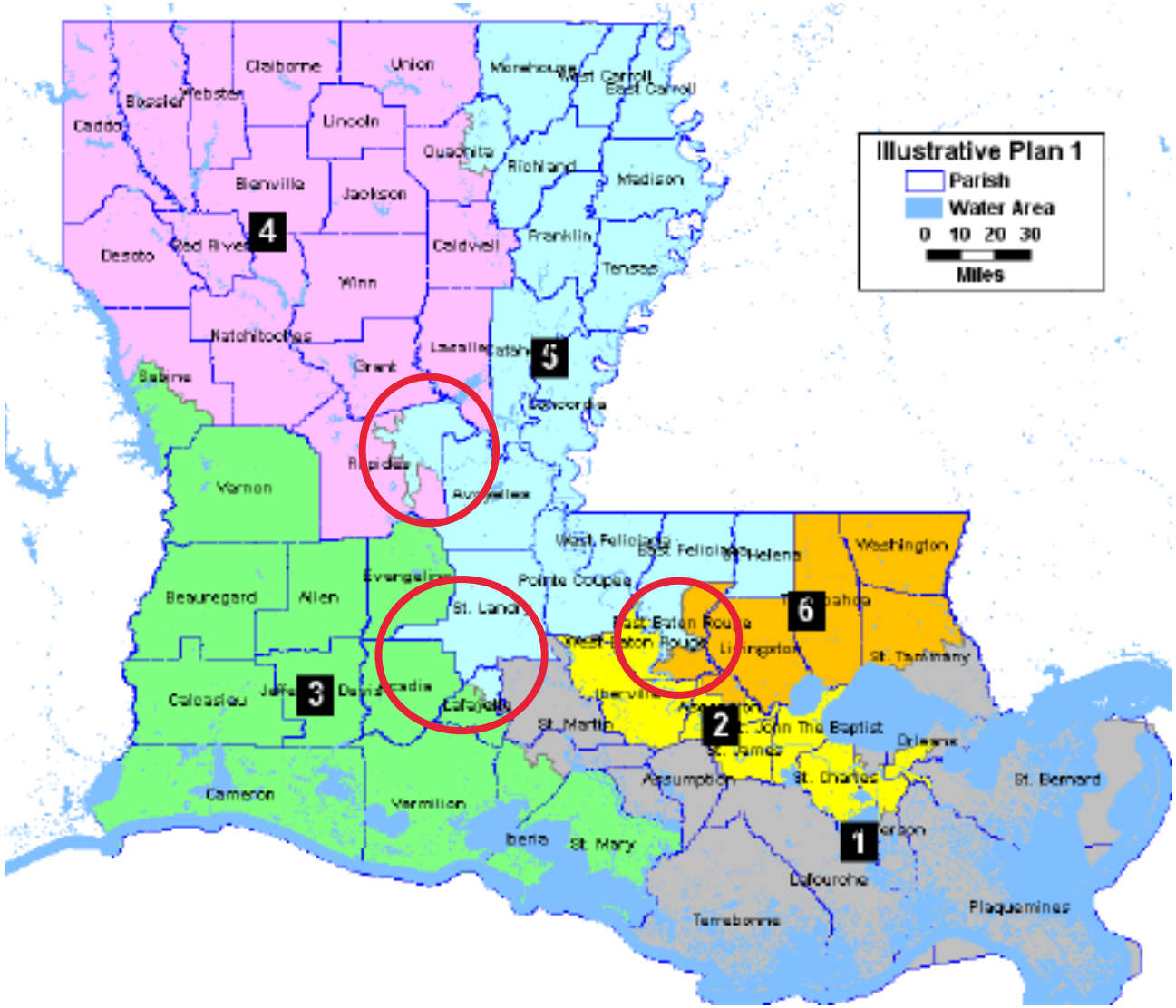
Ms. Jennifer Wise Moroux
Ms. Elizabeth Baker Murrill
Mr. Richard Bryan Raile
Mrs. Alyssa Riggins
Ms. Kathryn C. Sadasivan
Mr. Adam Savitt
Ms. Olivia Nicole Sedwick
Mr. Jason Brett Torchinsky
Mr. Jeffrey M. Wale
Mr. John Carroll Walsh

ILLUSTRATIVE MAPS FROM WILLIAM COOPER'S EXPERT REPORTS[1]

[1] Illustrative Maps contained herein were produced by Plaintiffs' experts, which were admitted into evidence below. Applicants have altered originals by circling for emphasis.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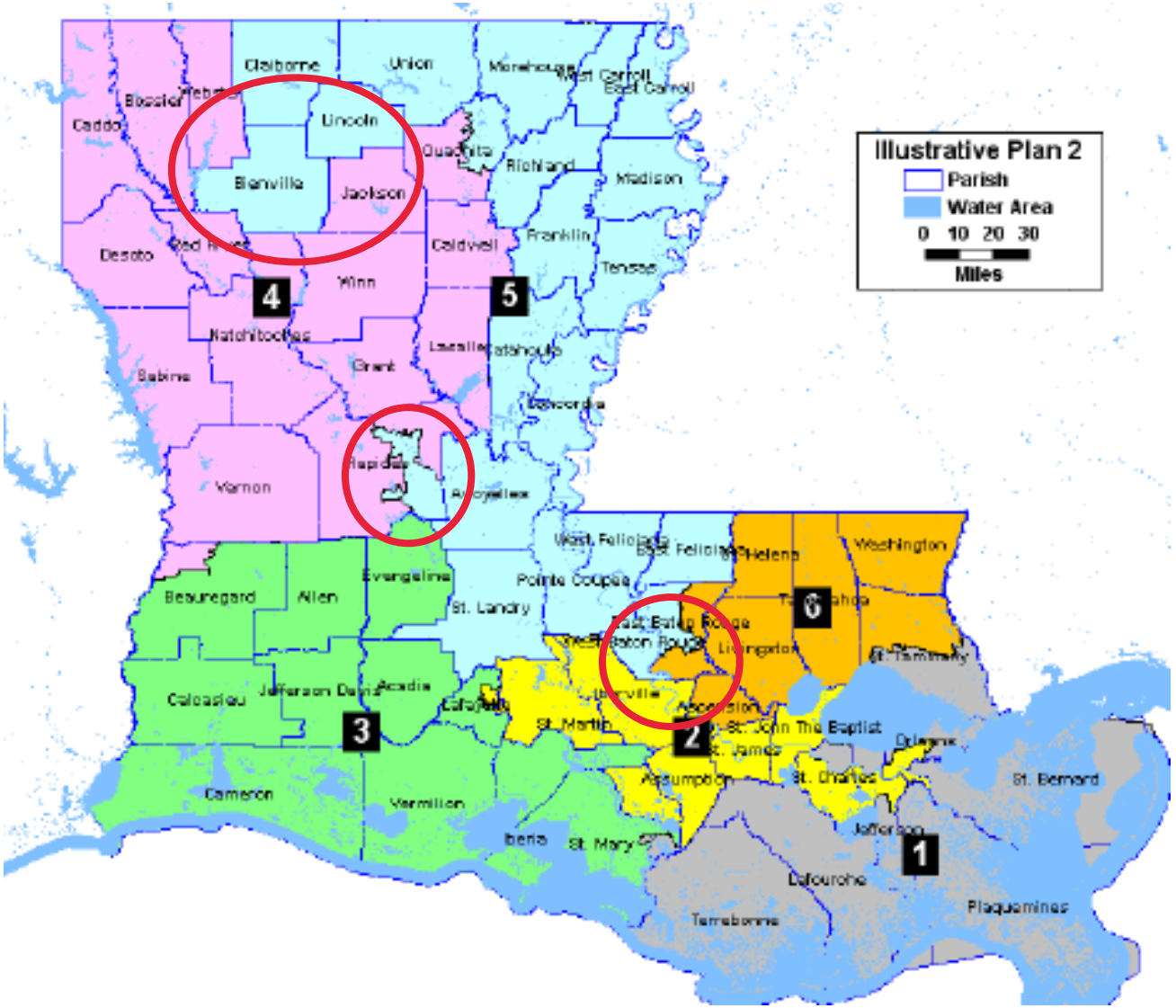
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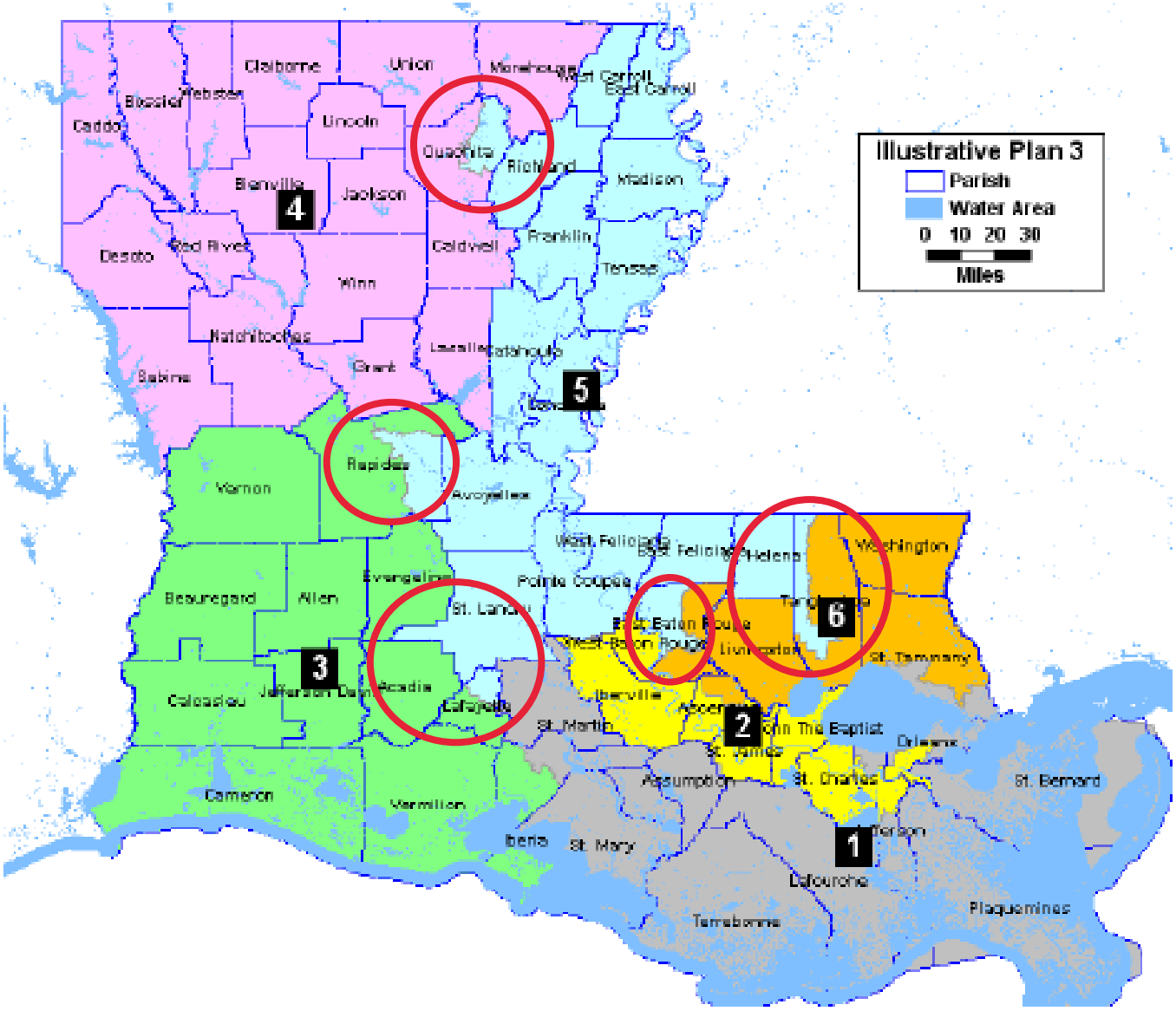
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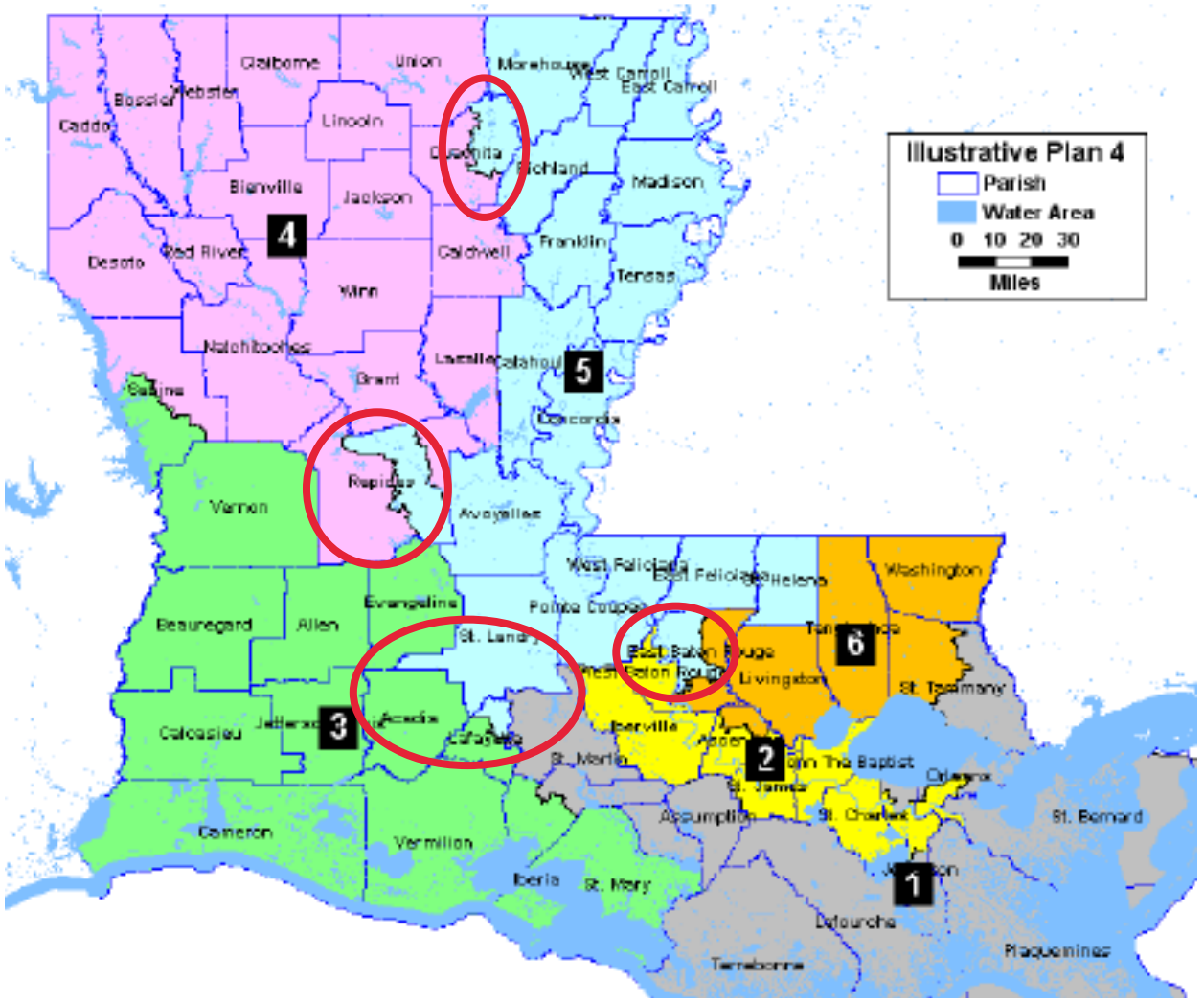
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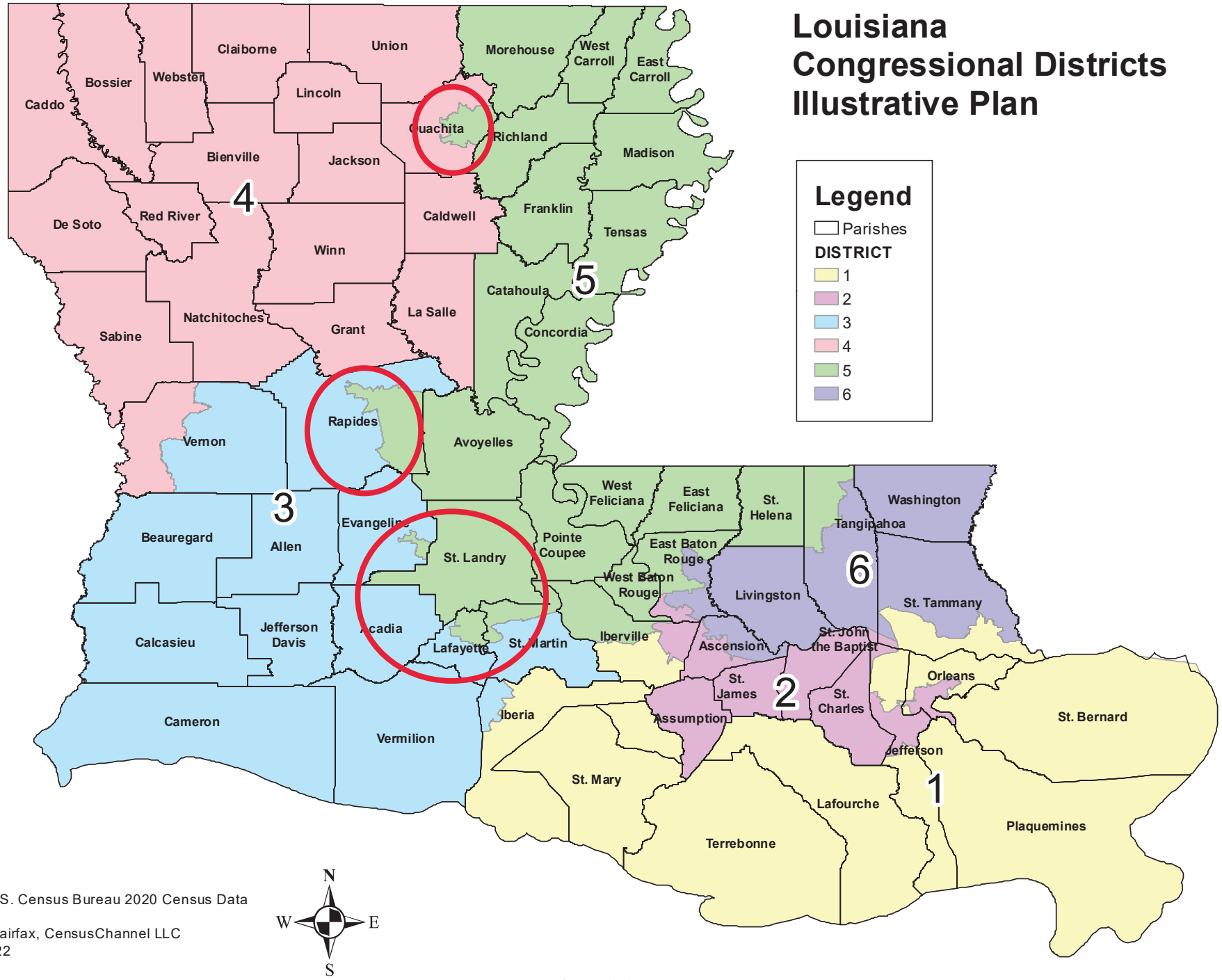
ILLUSTRATIVE MAPS FROM TONY FAIRFAX'S EXPERT REPORTS[2]

[2] Illustrative Maps contained herein were produced by Plaintiffs' experts, which were admitted into evidence below. Applicants have altered originals by circling for emphasis.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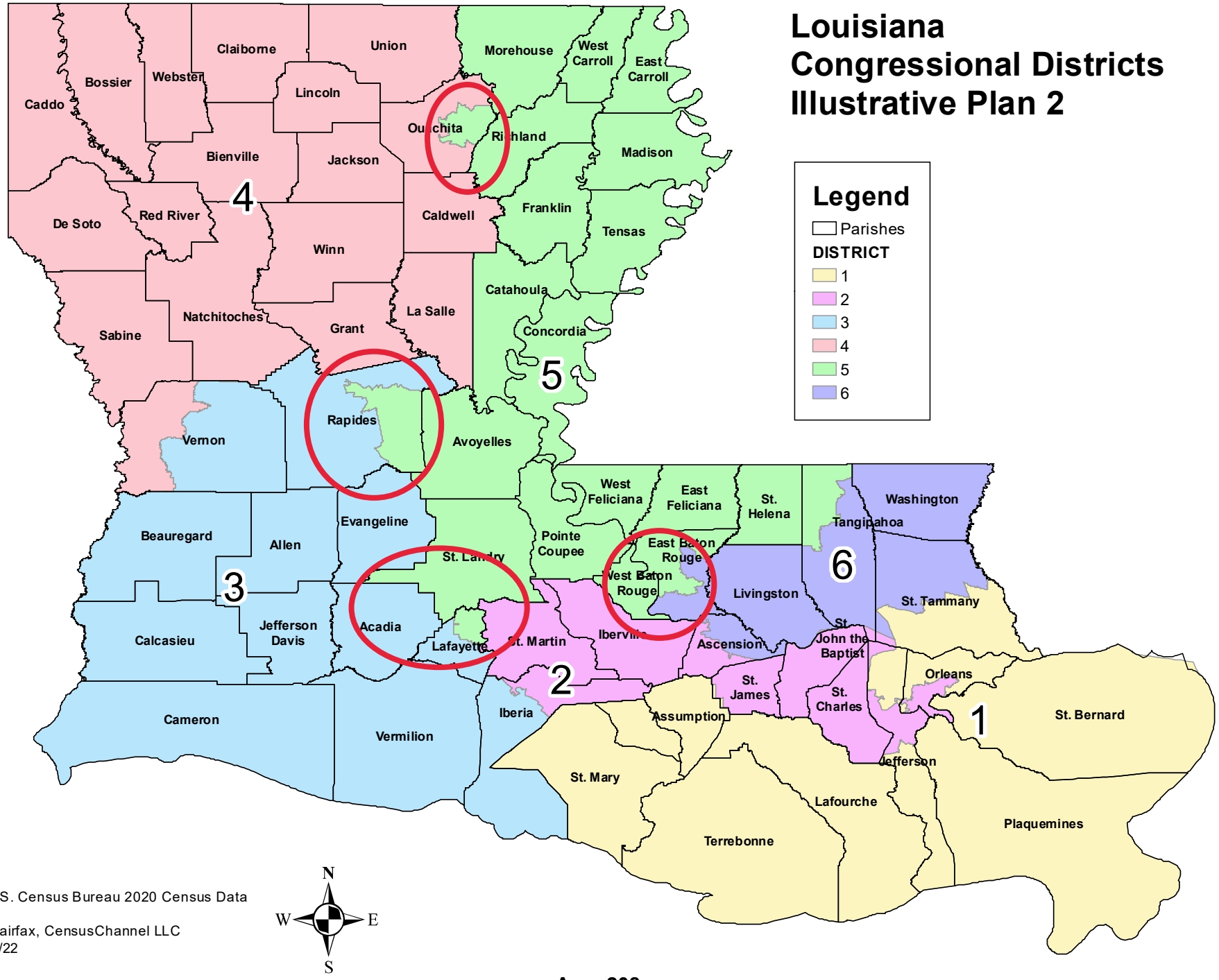
By: Tony Fairfax, CensusChannel LLC
Date: 4/4/22
Version 1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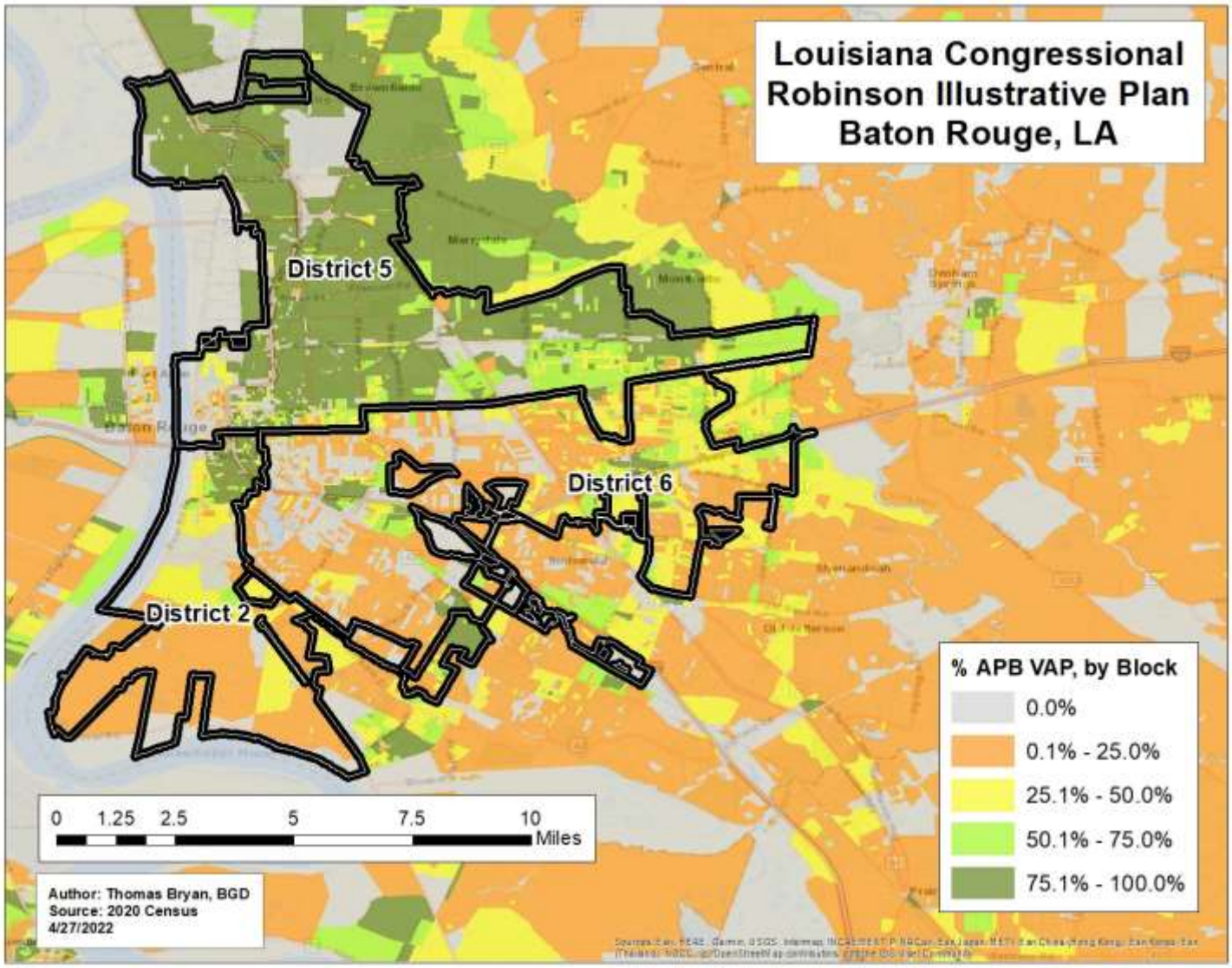
Source: U.S. Census Bureau 2020 Census Data
By: Tony Fairfax, CensusChannel LLC
Date: 4/28/22
Version 1

EXEMPLAR MAPS OF CITY SPLITS BY RACE FROM THOMAS BRYAN'S EXPERT REPORT [3]

[3] Exemplar Maps contained herein were produced by Defendants' expert Thomas Bryan, and were admitted into evidence.

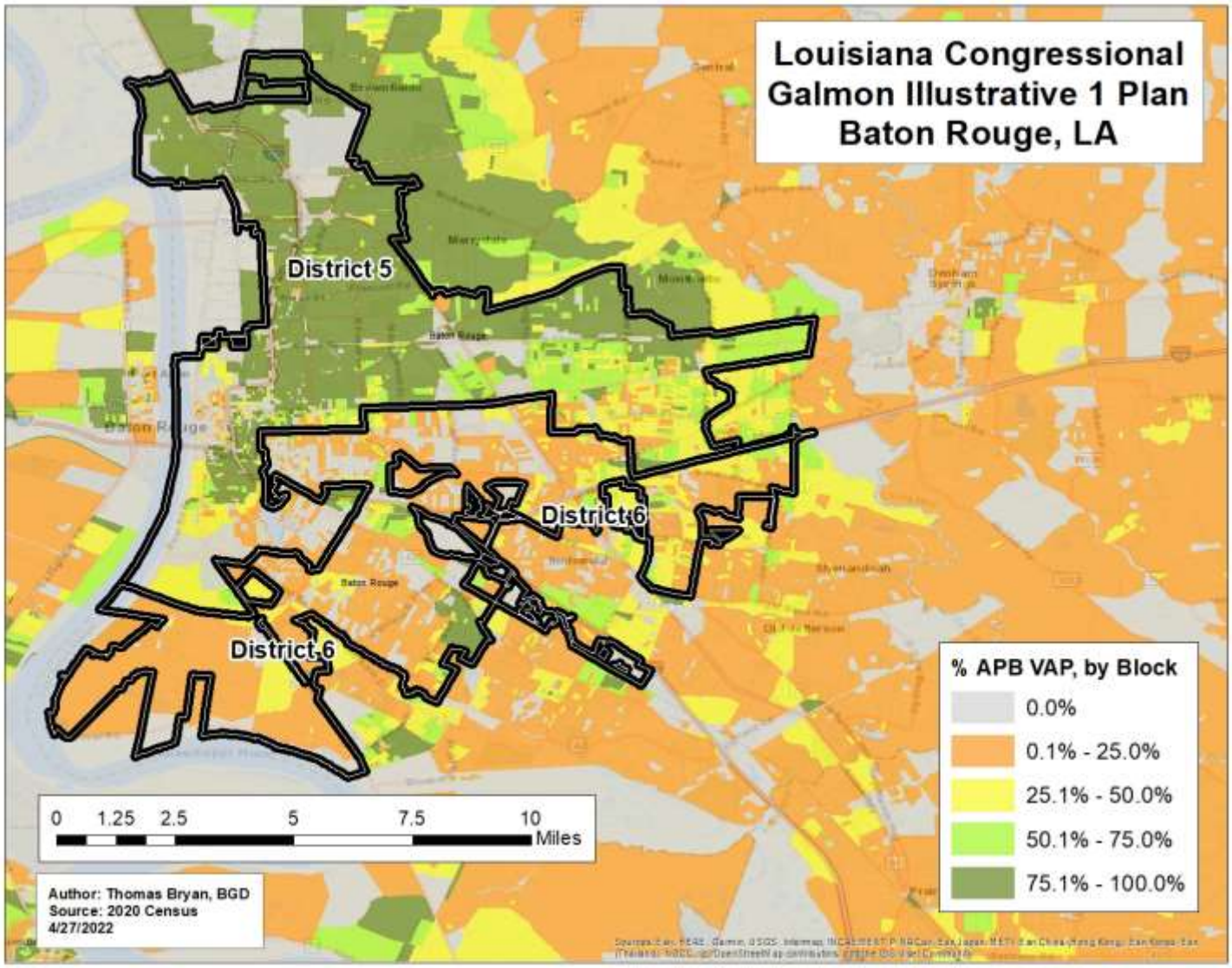
BB. Baton Rouge Robinson Illustrative Plan Split by % Any Part Black VAP



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

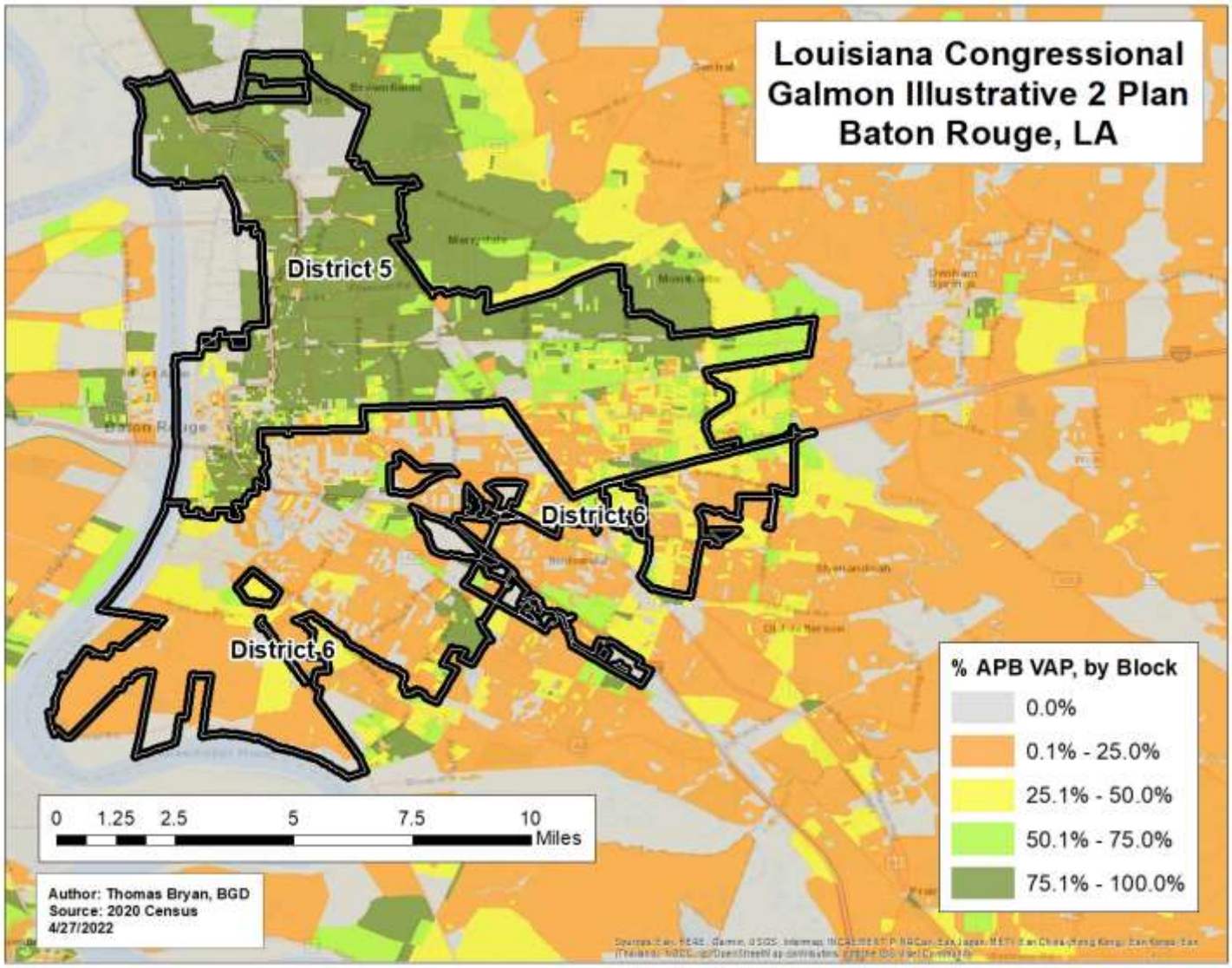
CC. Baton Rouge Galmon Illustrative 1 Plan Split by % Any Part Black VAP



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

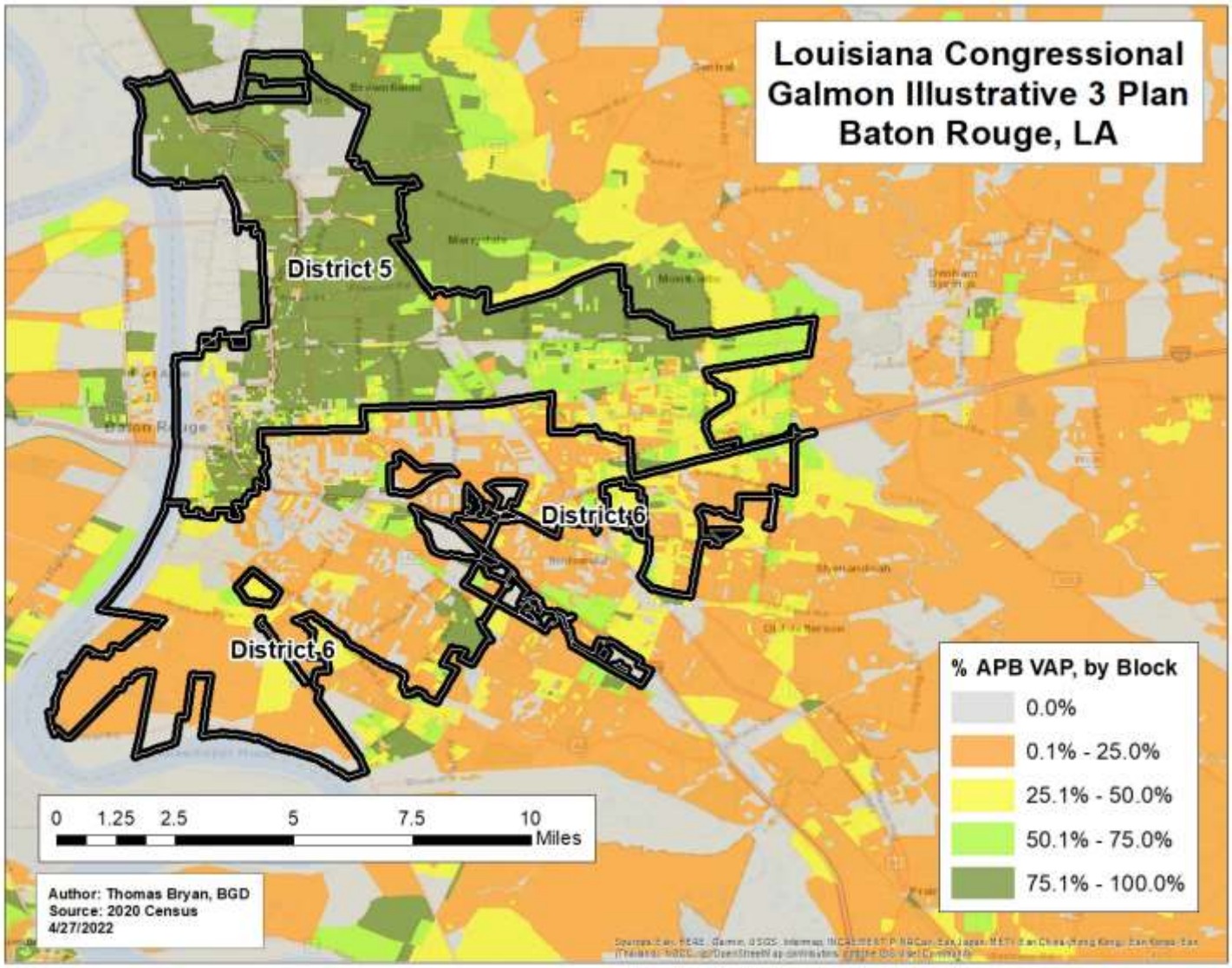
DD. Baton Rouge Galmon Illustrative 2 Plan Split by % Any Part Black VAP



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

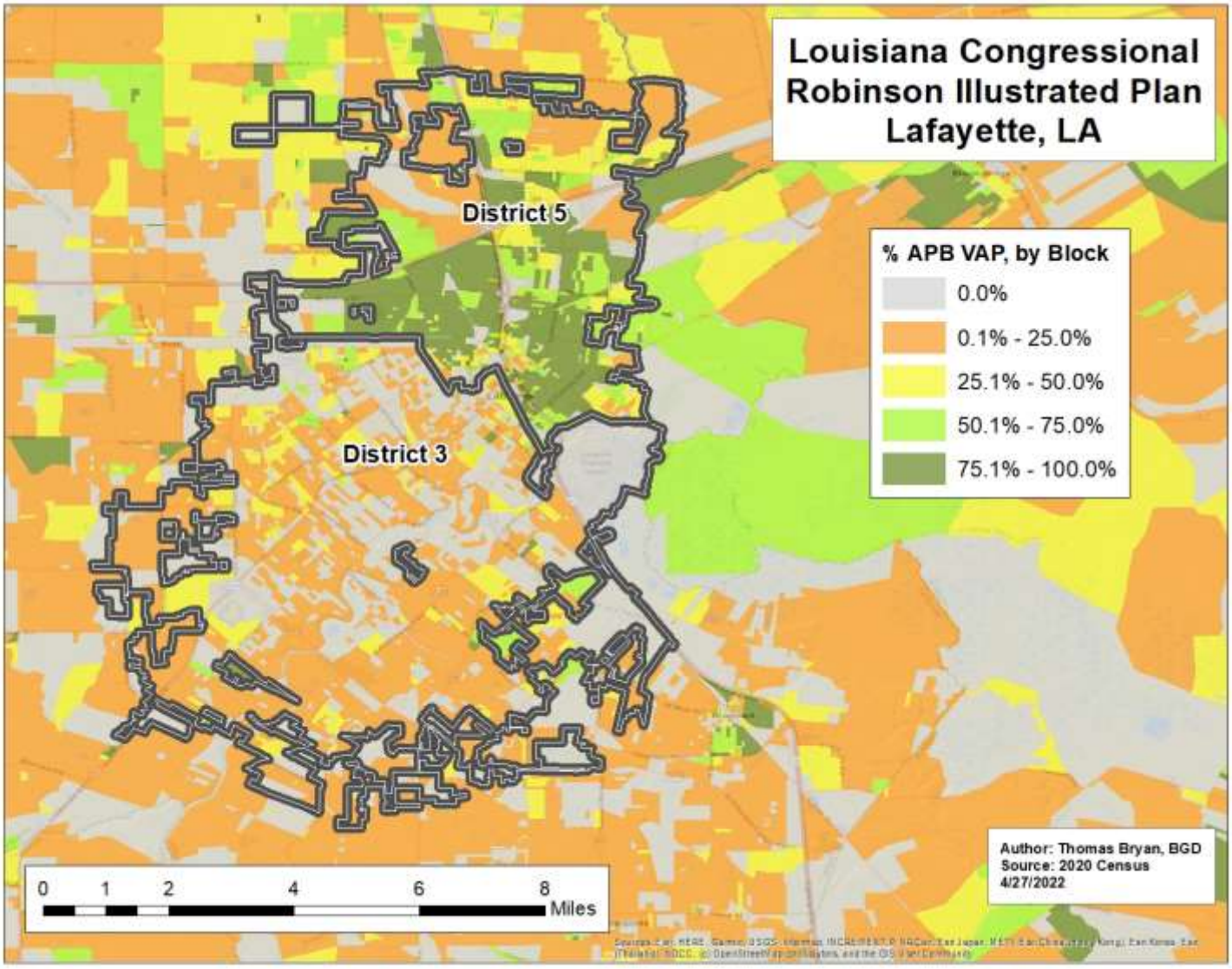
EE. Baton Rouge Galmon Illustrative 3 Plan Split by % Any Part Black VAP



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

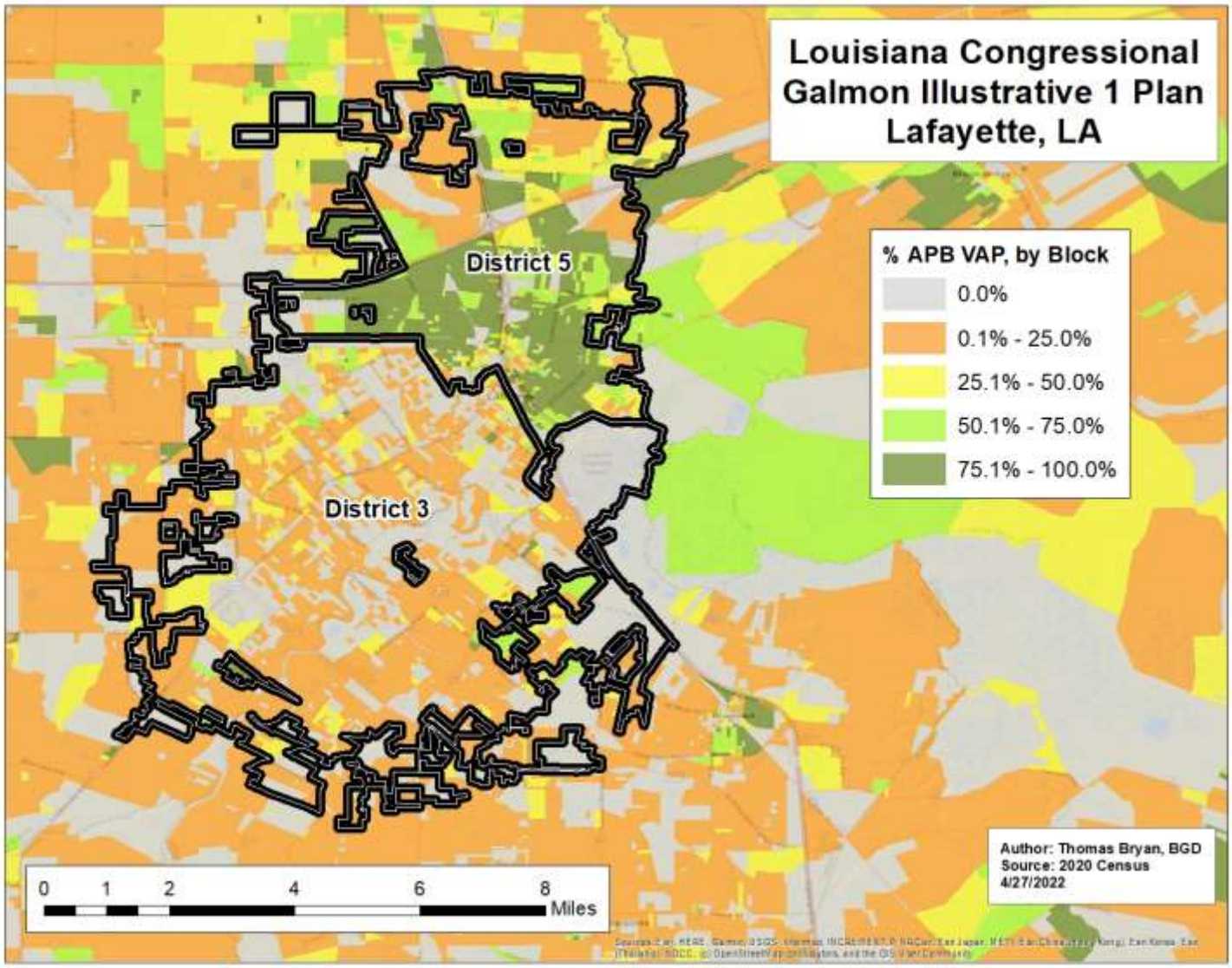
HH. Lafayette Robinson Illustrative Plan Split by % Any Part Black VAP (the Enrolled Plan does not split Lafayette)



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

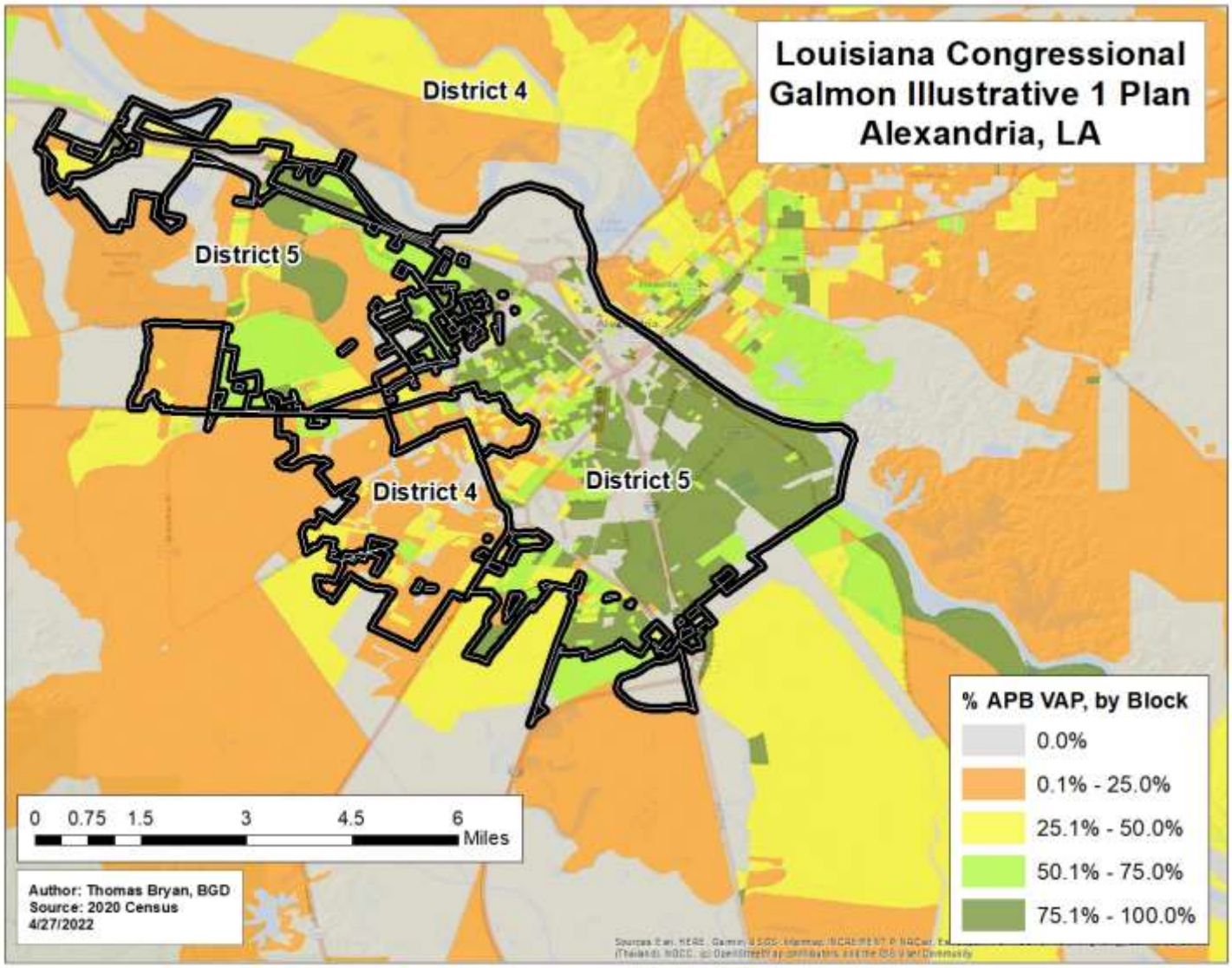
II. Lafayette Galmon Illustrative 1 Plan Split by % Any Part Black VAP



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

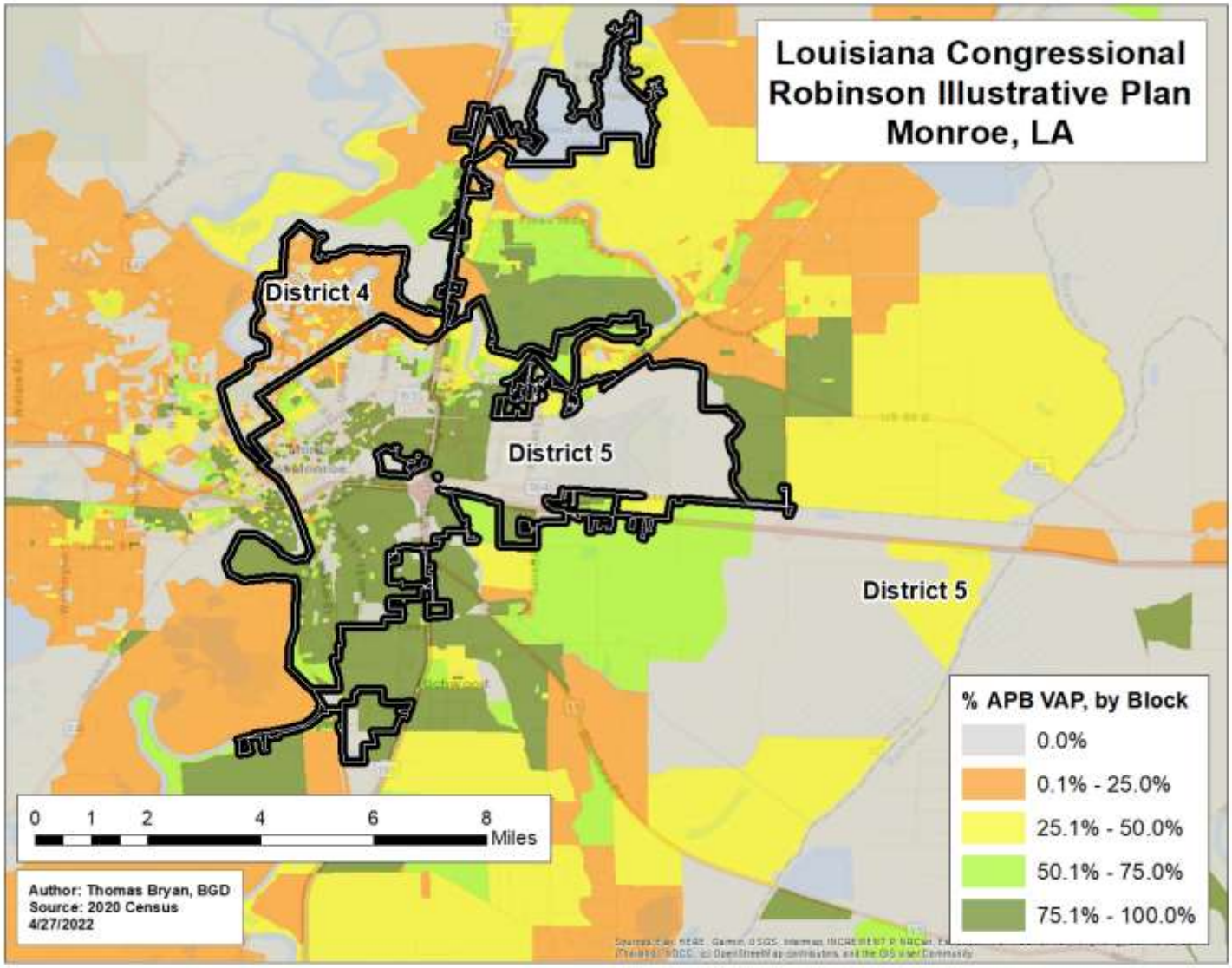
MM. Alexandria Galmon Illustrative 1 Plan Split by % Any Part Black VAP



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

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.

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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.

TABLE OF CONTENTS

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. The State of Louisiana

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. Dr. Alan Murray

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.

/s/ Erika Dackin Prouty
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IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al, CASE NO.
Plaintiffs,
3:22-cv-00211-SDD-SDJ
v

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, c/w
Defendant.

EDWARD GALMON, SR., et al, CASE NO.
Plaintiffs,
3:22-cv-00214-SDD-SDJ
v

R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State,
Defendant.

PROCEEDINGS

INJUNCTION HEARING

Held on Monday, May 9, 2022

Before The

HONORABLE SHELLY DICK

Judge Presiding

Baton Rouge, Louisiana

REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
CERTIFIED COURT REPORTER

sure I understand from your -- your direct testimony. Would you agree with me that House Bill 1 is functionally a carbon copy of the 2011 congressional plan for Louisiana?

A. I stated that in my declaration. There are minor differences, but it's basically a carbon copy, right.

Q. Okay. And I believe you testified on direct examination that your assignment in this case was to determine if Louisiana's black population was sufficiently large geographically compact, excuse me, to permit two majority black districts; did I hear that right?

A. Yes.

Q. Okay. So is it fair to say that your goal from the outset was to draw two majority-minority districts from the get-go, right?

A. No. It was not my 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 black districts. I had to balance out the population from peer-reviewed 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

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EDWARD GALMON, SR., et al, CASE NO.
Plaintiffs,
3:22-cv-00214-SDD-SDJ
v

R. KYLE ARDOIN, in his official capacity as Louisiana Secretary of State,
Defendant.

PROCEEDINGS

INJUNCTION HEARING

Held on Friday, May 13, 2022

Before The

HONORABLE SHELLY DICK

Judge Presiding

Baton Rouge, Louisiana

REPORTED BY:CHERIE' E. WHITE
CCR (LA), CSR (TX), CSR (MS), RPR
CERTIFIED COURT REPORTER

operations, elections business and elections services; and I oversee the administration of the elections process.

Q. All right.

MR. STRACH:

Forest, could we pull up Ms. Hadskey's affidavit, which is SOS-1?

TRIAL TECH:

(Complied.)

BY MR. STRACH:

Q. Ms. Hadskey, does this appear to be a copy of the affidavit declaration you submitted in this case?

A. Yes, it does.

Q. And does this affidavit outline your professional background and current duties?

A. Yes, it does.

Q. All right. Then we won't go into detail on that.

MR. STRACH:

You can take it down, Forest.

TRIAL TECH:

(Complied.)

BY MR. STRACH:

Q. Thank you, Ms. Hadskey.

Do your duties include the new redistricting plans at the state and federal level?

A. Yes, it does.

Q. All right. So let's focus in here on what we are all here about, the congressional redistricting plans in terms of the enacted plan, the enacted congressional plan.

What is the current status of the readiness of that plan for the 2022 election?

A. The parishes that had changes, 15 of them have already been completed, the voter cards to the 250,000 voters have been sent, and we are preparing now for the next session of redistricting.

Q. All right. Is there -- is there a deadline coming up on June 22nd?

A. Yes.

Q. What is that deadline?

A. So the deadline on June 22nd is the deadline for all school board redistricting plans to be provided to the state. Also, it's the deadline for a petition to be submitted by anyone who would like to qualify, and they have to have the appropriate number of signatures, which they

have 120 days to get those signatures.

Q. All right. So on June 22nd, folks who want to get on the ballot through a nominated petition have to submit that petition by that date?

A. Correct. With all of the signatures, which will be submitted to the registrars for verification.

Q. All right. And so is your office ready and prepared for that deadline as of today?

A. We are, because the cards have notified the voters which districts they are in, the people that want to qualify for nominating petition will have the correct areas that they need to get the signatures from.

Q. All right. When is the qualifying deadline for congressional candidates who want to pay a filing fee?

A. Qualifying deadline is -- well, qualifying is the 20th, 21st and 22nd of July.

Q. All right. So you're working between now obviously and June 22nd and July 20th. What kind of activities is your office engaged in and facing between now and 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

those acts or any legislation that changes our certificates or registration forms or any part of the election process, we have to update that information. We have to train on that information and we have to get everything printed to be able to provide for everyone, every registered voter I should say.

Q. All right. Do you have any duties with regard to constitutional amendments?

A. Yes. The constitutional amendments, once they come out of the legislature, we are responsible to write the summaries, have the summaries placed in order, then it has to be improved by the attorney general and we have a very limited amount of time to get that onto the instructions and the posters for the voters to be able to have those at the precincts.

Q. All right. So the canvas, what exactly is the canvas? Describe that process for us.

A. So canvas is where we are comparing to NOCCA, we are comparing to the USPS; and if there's changes in a registered voter's address or changes in a registered voter's name, etc., 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

required for the plan so that the voters are informed and are given the correct districts that they need to have a ballot for.

Q. And you mentioned that when you were coding the current plan, that was about 15 parishes that you had to code?

A. That's correct.

Q. And in the illustrative plans, approximately how many parishes would you have to redo or do again to code those plans in the system?

A. It appears to be 25, approximately 25.

Q. All right. And so if you were -- if you were required to undo the 15 parishes, redo 25 parishes, you would be doing that while all this other work is going on in your office, correct?

A. Correct. And it's very cumbersome and I think you can understand when you have a new registrant or a moved registrant and you are incorporating these plans and then you have to put this additional person into this plan and figure out all of the districts that they should 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

elections. One of those is the paper shortage.

We attempted to get the envelopes for our absentee by mail process and we searched -- actually the division of administration assisted us in searching the entire United States to try and find the paper to produce our envelopes. They also reached out to Canada and fortunately at the last minute we were able to find one paper mill that could provide the paper that we need; however, it's, of course, at a much higher rate of pay, rate of cost.

Q. All right. So in light of all the many activities your office is engaged in, if you had to do a new congressional plan sometime within the next few months, what is your assessment of whether you could -- you could pull that off error free?

A. I'm extremely concerned. I'm very concerned because when you push -- when you push people to try 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.

Q. Okay. So, broadly speaking, aside from just election administration, are there any other factors that concern you in considering the election schedule this year?

A. Yes. Unfortunately and sadly, for the last two years, it's been -- the last -- the last two years have been the hardest in my entire career. I have no way of knowing if COVID is going to come back up this coming fall, and that 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

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
JUNE 16, 2022
CHIEF DISTRICT JUDGE SHELLY D. DICK

PRESS ROBINSON, ET AL	**CIVIL ACTION**
VERSUS	
KYLE ARDOIN, ET AL	**NO. 22-211-SDD-SDJ**

CONSOLIDATED WITH

EDWARD GALMON, SR., ET AL	**CIVIL ACTION**
VERSUS	
KYLE ARDOIN, ET AL	**NO. 22-214-SDD-SDJ**

This matter came on this day for hearing on *Motion for Extension of Time to Enact Plan.*[1]

PRESENT: **John N. Adcock, Esq.**
Tracie L. Washington, Esq.
Counsel for Robinson Plaintiffs

Darrel James Papillion Esq.
Jennifer Wise Moroux, Esq.
Counsel for Galmon Plaintiffs

Katherine L. McKnight, Esq.
Efrem Mark Braden, Esq.
Counsel for Clay Schexnayder and Patrick Page Cortez

Stephen M. Irving, Esq.
Ernest L. Johnson, I, Esq.
Counsel for Louisiana Legislative Black Caucus

[1] Rec. Doc. No. 188.

The following persons are sworn and testify:

Senate President Patrick Page Cortez
House Speaker Clay Schexnayder

Exhibits filed.

Counsel present argument.

For oral reasons given, the Court DENIES the *Motion for Extension of Time to Enact Plan*.

The Court orders the parties to file briefs by 5:00pm setting forth their proposals for the nature and timeline of the judicial redistricting process in the event that the Legislature is unable to enact a remedial map. The Court specifies that each side will be permitted to offer one proposed remedial map.

* * * * *

C: CV 25b; T: 1.5 hrs.

PROCEEDINGS

(CALL TO THE ORDER OF COURT.)

THE COURT: GOOD MORNING. BE SEATED.

CALL THE CASE PLEASE.

THE COURTROOM DEPUTY: THIS IS CIVIL ACTION NO. 22-11 PRESS ROBINSON AND OTHERS VERSUS KYLE ARDOIN AND OTHERS; AND 22-214, EDWARD GALMON, SR., AND OTHERS VERSUS KYLE ARDOIN, ET AL.

THE COURT: OKAY. GOOD MORNING, EVERYONE. BEFORE I ASK FOR APPEARANCES, LET ME JUST ASSURE YOU THAT WE WILL NOT BE LONG THIS MORNING. THE COURT IS MINDFUL OF THE IMPORTANT WORK OF THE LEGISLATURE, SO THE COURT INTENDS TO KEEP THIS AS SHORT AND AS DIRECT AS POSSIBLE. BUT THE COURT IS INTERESTED IN HEARING FROM HOUSE SPEAKER SCHEXNAYDER AND SENATE PRESIDENT CORTEZ REGARDING THE MOTION FOR EXTENSION AND ANY ARGUMENT OF THE PARTIES.

SO WITH THAT, THE PARTIES CAN MAKE THEIR APPEARANCES, PLEASE.

MR. PAPILLION: GOOD MORNING, YOUR HONOR. DARREL PAPILLION ON BEHALF OF THE GALMON PLAINTIFFS, ALONG WITH JENNIFER MOROUX.

THE COURT: GOOD MORNING.

MR. ADCOCK: GOOD MORNING, YOUR HONOR. JOHN ADCOCK ON BEHALF OF THE ROBINSON PLAINTIFFS.

THE COURT: GOOD MORNING.

MS. WASHINGTON: GOOD MORNING, YOUR HONOR. TRACIE WASHINGTON ON BEHALF OF THE ROBINSON PLAINTIFFS.

THE COURT: GOOD MORNING.

MR. IRVING: GOOD MORNING, YOUR HONOR. STEVE IRVING SO BEHALF OF THE LEGISLATIVE BLACK CAUCUS INTERVENOR.

THE COURT: GOOD MORNING.

MR. JOHNSON: GOOD MORNING, YOUR HONOR. ERNEST JOHNSON ALONG WITH STEVE IRVING REPRESENTING THE LOUISIANA LEGISLATIVE BLACK CAUCUS.

THE COURT: GOOD MORNING, SIR.

COUNSEL?

MS. MCKNIGHT: GOOD MORNING, YOUR HONOR. KATE MCKNIGHT FOR LEGISLATIVE INTERVENORS. ALONG WITH ME ARE MARK *BRADEN* AND MICHAEL MENGIS.

THE COURT: GOOD MORNING.

MR. FREEL: GOOD MORNING, YOUR HONOR. ANGELIQUE FREEL AND CAREY TOM JONES HERE FOR INTERVENOR STATE OF LOUISIANA THROUGH ATTORNEY GENERAL JEFF LANDRY.

THE COURT: THERE IS NO MOTION FROM THE INTERVENORS. I APPRECIATE YOU BEING HERE, BUT THE COURT WILL NOT REQUIRE ANYTHING FROM YOU SINCE WE

DON'T -- YOU DON'T REALLY NECESSARILY HAVE A -- WELL, yOU DON'T HAVE A MOTION BEFORE THE COURT. BUT I APPRECIATE YOU BEING HERE ON BEHALF OF THE ATTORNEY GENERAL.

OKAY. THE PLAINTIFF MAY CALL THEIR FIRST WITNESS. I'M SORRY. THE MOVANT. MY APOLOGIES, MS. MCKNIGHT.

MS. MCKNIGHT: YOUR HONOR, THANK YOU.

WE INTEND TO REST PRIMARILY ON THE ARGUMENTS IN OUR MOTION. WE MAY HAVE A FEW RESPONSES TO WHAT PLAINTIFFS HAVE FILED LAST NIGHT WITH THE COURT.

I NEED TO RAISE A PROCEDURAL ISSUE THAT HAS COME TO OUR ATTENTION SINCE MONDAY WHEN WE FILED OUR MOTION FOR EXTENSION. THAT PROCEDURAL ISSUE IS THAT IF THIS COURT ALLOWS EXTRA TIME, A NEW EXTRAORDINARY SESSION WILL NEED TO BE CALLED. THAT NEW SESSION REQUIRES SEVEN-DAY NOTICE. AND PARDON ME, YOUR HONOR. YOU MAY ALREADY BE AWARE OF THIS. BUT I WANTED TO MAKE SURE IT WAS CLEAR --

THE COURT: I READ THE BRIEFS, BUT GO AHEAD. I'D LIKE TO HEAR ABOUT IT. BUT I READ THE BRIEFS. I'M AWARE OF IT.

MS. MCKNIGHT: OKAY. SO JUST WHAT WOULD HAPPEN IF THIS COURT, LET'S SAY, ALLOWS MORE TIME,

THE LEGISLATURE WOULD NEED TO HAVE EITHER THE GOVERNOR ISSUE A NEW EXTRAORDINARY SESSION NOTICE --

THE COURT: OR THEY CAN DO IT THEMSELVES WITH MAJORITY RULE. CORRECT?

MS. MCKNIGHT: THAT IS CORRECT, YOUR HONOR. THE ONLY REASON I DIDN'T RAISE THAT FIRST, YOUR HONOR, IS THAT TAKES MORE TIME, AND WE UNDERSTAND THIS COURT IS INTERESTED IN AN EXPEDITED PROCESS.

THE COURT: WHY DOES IT TAKE MORE TIME?

MS. MCKNIGHT: TO GATHER SIGNATURES. IT TAKES MORE TIME TO GATHER SIGNATURES THAN IT DOES FOR THE GOVERNOR.

THE COURT: IT'S SIGNATURES, OR YOU CAN'T JUST DO IT ON THE FLOOR?

MS. MCKNIGHT: WELL, YOUR HONOR, THAT'S BEYOND MY CAN AT THIS POINT. I UNDERSTOOD --

THE COURT: I'D LIKE TO HEAR FROM YOUR CLIENTS REGARDING THAT.

MS. MCKNIGHT: OKAY. I'LL MAKE SURE --

THE COURT: GO AHEAD.

MS. MCKNIGHT: SO I JUST WANTED TO MAKE SURE IT WAS CLEAR FOR THE COURT HOW THIS WOULD -- HOW IT WOULD PLAY OUT SO THE COURT ISN'T SURPRISED BY THE FACT THAT IF ADDITIONAL TIME IS ALLOWED, THERE IS NO WAY TO AMEND THE EXISTING NOTICE FROM THE GOVERNOR

FOR THE CURRENT EXTRAORDINARY SESSION. THAT MEANS THAT EVEN IF THIS COURT ALLOWS MORE TIME, THE GOVERNOR COULD NOT SAY *I'M GOING TO AMEND MY NOTICE TO EXTEND THE DATE TO CONFORM WITH WHAT THE JUDGE HAS ALLOWED*.

INSTEAD WE UNDERSTAND WHAT MUST HAPPEN IS THE CURRENT EXTRAORDINARY SESSION WILL END ON JUNE 20TH. THEN ANY ADDITIONAL TIME WOULD NEED TO BE IN ANOTHER EXTRAORDINARY SESSION, AND IT WOULD NEED SEVEN DAYS' ADVANCE NOTICE. SO I JUST WANT TO GIVE YOU A GAME ABOUT -- IF, LET'S SAY, THE GOVERNOR TOMORROW ISSUES A NOTICE FOR AN EXTRAORDINARY SESSION, THE EARLIEST THAT EXTRAORDINARY SESSION COULD BEGIN WOULD BE NEXT FRIDAY, JUNE 24.

THE COURT: WHY CAN THIS COURT NOT UNDER ITS INHERENT POWER WAIVE THAT SEVEN-DAY NOTICE OR ORDER THAT SEVEN-DAY NOTICE BE SUSPENDED?

MS. MCKNIGHT: YOUR HONOR, I HAVE NOT LOOKED AT THAT QUESTION. AND THERE ARE LAWYERS WHO ARE MORE KNOWLEDGEABLE ABOUT THAT THAN I AM.

THE COURT: WHAT IS THE PURPOSE OF THE SEVEN-DAY NOTICE?

MS. MCKNIGHT: I BELIEVE IT'S TO ENSURE THAT THERE IS SUFFICIENT TIME FOR MEMBERS FROM ALL OVER --

THE COURT: TO GET HERE.

MS. MCKNIGHT: -- THE STATE TO TRAVEL.

THE COURT: AND THEY'RE HERE.

MS. MCKNIGHT: THERE MAY BE OTHER ISSUES, BUT THAT'S THE ONE IN MY MIND.

THE COURT: I'VE THOUGHT ABOUT THIS, AND I'VE WONDERED ABOUT WHAT THE WORK-AROUND, IF THERE IS ANY, AND WHAT IS THE PURPOSE OF THE SEVEN-DAY NOTICE. AND IT WOULD SEEM TO THE COURT THAT THE PURPOSE OF THE SEVEN-DAY NOTICE IS TO ALLOW MEMBERS OF THE LEGISLATURE TO TRAVEL FROM THEIR RESPECTIVE DISTRICTS, THEIR RESPECTIVE HOME SITES TO ATTEND A SPECIAL SESSION OR A REGULAR SESSION. THAT MAKES SENSE TO ME. AND I DON'T KNOW HOW LONG AGO THOSE RULES WERE PASSED. THEY MAY HAVE BEEN PASSED BACK IN THE DAY WHEN THERE WAS HORSE AND BUGGY, FOR ALL I KNOW. BUT BE THAT AS IT MAY, IT IS THE RULES THAT WE OPERATE UNDER, BUT THEY ARE HERE.

AND SO THE QUESTION IN TERMS OF IS THERE SOME IMPAIRMENT OF FAIRNESS OR SOME -- YEAH, THAT'S THE BEST I CAN COME UP WITH. THAT IF THE COURT ORDERS THAT THE SEVEN-DAY NOTICE PERIOD BE SUSPENDED AND THAT THERE BE A CONTINUATION OF THE LEGISLATIVE PROCESS IMMEDIATELY FOLLOWING THIS DETERMINATION OF THIS PARTICULAR EXTRAORDINARY SESSION.

MS. MCKNIGHT: I BELIEVE I HEAR -- I HEAR WHAT YOUR HONOR IS SAYING. I THINK IN ADDITION TO TRAVEL IT WOULD JUST SIMPLY BE SCHEDULES, YOU KNOW, ALLOWING MEMBERS TIME TO -- THIS IS A PART-TIME LEGISLATURE WHERE MANY OF THESE MEMBERS HAVE PROFESSIONS OUTSIDE OF THE LEGISLATURE AND MAKE PLANS BASED ON EXTRAORDINARY SESSION NOTICES. THERE MAY BE OTHER ISSUES. BUT I WANTED TO MAKE SURE YOU KNEW THAT I DON'T THINK IT'S LIMITED TO TRAVEL. WE CAN --

THE COURT: LET'S HEAR FROM -- I'M ASSUMING YOUR CLIENTS ARE INTIMATELY FAMILIAR WITH THE RULES MORE SO THAN AM I, AND I'M SURE YOU'RE PROBABLY A LITTLE MORE APPRISED OF THE NUANCES OF THE PROCEDURAL RULES.

WHILE YOU'RE HERE, THOUGH, CAN YOU ADDRESS THE INVITATION THAT THE PLAINTIFFS HAVE PROVIDED, FRANKLY, TO ADDRESS THE DELAY AND YOUR *PURCELL* ARGUMENTS?

MS. MCKNIGHT: I SEE. IS THAT -- ARE YOU ASKING ABOUT WHETHER LEGISLATIVE INTERVENORS ARE WILLING TO WAIVE THEIR *PURCELL* ARGUMENT?

THE COURT: I'M ASKING IF YOU'RE GOING TO ADVANCE THESE DELAYS AS ADDITIONAL *PURCELL* ARGUMENTS. I'M NOT ASKING YOU TO WAIVE ANYTHING. I'M ASKING YOU IF YOU'RE GOING USE THIS IN CONTRAVENTION OF FEDERAL

RULE OF CIVIL PROCEDURE 16 TO ADVANCE *PURCELL* ARGUMENTS THAT THERE ARE -- THAT THESE DELAYS HAVE NOW BROUGHT US TOO CLOSE TO THE ELECTION.

MS. MCKNIGHT: YOUR HONOR, TO BE CLEAR, OUR POSITION HAS BEEN CONSISTENT THAT *PURCELL* ALREADY APPLIES, IT'S ALREADY TOO LATE. ONE OF THE REASONS WHY IT IS ALREADY --

THE COURT: THEN WHY ARE YOU ASKING FOR MORE TIME?

MS. MCKNIGHT: TO COMPLY WITH YOUR ORDER. YOUR ORDER ALLOWS AND RECOGNIZES THE LEGISLATURE'S RIGHT TO HAVE A FIRST BITE AT THE REMEDIAL APPLE.

THE COURT: AND I'M TRYING TO GIVE THEM THAT. AND YESTERDAY THEY MET FOR 90 MINUTES.

MS. MCKNIGHT: PARDON ME?

THE COURT: YESTERDAY THEY MET FOR 90 MINUTES.

MS. MCKNIGHT: YOU'RE RIGHT, YOUR HONOR. THEY BEGAN THE LEGISLATIVE PROCESS. AND I BELIEVE YOU'LL HEAR TESTIMONY THAT THEY HAVE SUSPENDED RULES, WHERE IT WAS POSSIBLE TO SUSPEND RULES, TO ADVANCE BILLS.

THE COURT: I'M AWARE, AND THAT SHOWS GOOD FAITH.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

THE *PURCELL* ARGUMENT IS THAT IT'S -- AND BEAR WITH ME, YOUR HONOR. WE APPRECIATE RESPECTFULLY THAT THIS DOES NOT -- THIS IS NOT CONSISTENT WITH WHAT YOUR COURT HAS ORDERED.

THE *PURCELL* ARGUMENT APPLIES PRIMARILY BECAUSE THERE IS NOT ENOUGH TIME TO ALLOW THIS PIECE OF LITIGATION TO MAKE ITS WAY THROUGH THE ENTIRE PROCESS OF LITIGATION. THAT INCLUDES REMEDIAL PLAN; IT INCLUDES ALLOWING THE LEGISLATURE TIME TO HAVE A MEANINGFUL LEGISLATIVE DELIBERATIVE PROCESS TO PROVIDE A REMEDY. AND ALSO *PURCELL* ALLOWS TIME FOR AN APPEAL.

WE DO NOT BELIEVE THIS COURT HAS TIME TO DO THAT. THAT'S WHAT -- THAT IS OUR CONSISTENT POSITION. IF THIS COURT ALLOWS ADDITIONAL TIME NOW, THE REASON WE'RE ASKING FOR IT IS WE'VE MADE IT CLEAR THAT IT'S NOT ENOUGH TIME TO HAVE A MEANINGFUL DELIBERATIVE PROCESS TO PREPARE A REMEDIAL PLAN, PERIOD. SIX DAYS IS NOT, AND I THINK YOU'LL HEAR TESTIMONY FROM THE LEGISLATORS ON THAT POINT. YOU'VE ALREADY SEEN IT IN THEIR DECLARATION.

THESE REDISTRICTING BILLS, AS YOU KNOW, ARE VERY COMPLEX. THEY INVOLVE A NUMBER OF PRECINCTS. THE DETAIL IN THESE LAWS ARE EXTRAORDINARY COMPARED TO OTHER BILLS. IT TAKES TIME

TO MOVE THEM THROUGH THE PROCESS. THAT'S WHY WE'RE MOVING FOR ADDITIONAL TIME. WE'VE MADE NOTE THAT IT'S NOT ENOUGH TIME TO DO IT, AND THAT'S WHY WE MADE THE MOTION BASED ON YOUR COURT -- YOUR INVITATION AND A REFERENCE BY THE FIFTH CIRCUIT AS WELL, THAT IF THERE WAS NOT ENOUGH TIME, WE SHOULD ASK FOR MORE.

THE COURT: OKAY. THANK YOU. I DON'T WANT TO CUT YOU OFF. IS THERE ANYTHING ELSE THAT YOU WANT TO ADD BEFORE YOU CALL YOUR WITNESSES?

MS. MCKNIGHT: THE ONLY OTHER THING I'D LIKE TO ADD, YOUR HONOR, THERE WAS SOME -- THERE WAS A POINT RAISED BY PLAINTIFFS ABOUT THE REMEDIAL PROCESS AND THE TIMING OF IT. AND I DON'T KNOW IF YOUR HONOR WOULD LIKE ME TO TALK ABOUT THAT NOW OR LATER. WE BELIEVE THE COURT NEEDS MORE INFORMATION ABOUT WHAT OTHER COURTS HAVE SAID THAT REMEDIAL PROCESS SHOULD LOOK LIKE, INCLUDING GOVERNING LAW THAT REQUIRES THIS COURT ALLOW TIME FOR THINGS LIKE DISCOVERY.

THE COURT: WELL, IN THE INTEREST OF GETTING THESE NICE PEOPLE BACK TO THEIR JOBS -- AND FRANKLY, I'M IN THE MIDDLE OF A TWO-WEEK TRIAL MYSELF. SO IN ORDER TO GET THE COURT BACK ON TO ITS SCHEDULE, LET'S STICK WITH THE MOTION AT HAND, WHICH IS THE MOTION FOR EXTENSION OF TIME. THE COURT IS PREPARED TO ADDRESS THE REMEDIAL PHASE. AND PERHAPS WE CAN DO

THAT AT THE CLOSE OF THE TESTIMONY IN A FACTUAL MATTER THAT'S AT HAND AND DEAL WITH THAT. THAT'S MORE OF A LEGAL ISSUE THAT WE CAN CERTAINLY HAMMER OUT AS LAWYERS. SO LET'S DO IT THAT WAY.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME.

MS. MCKNIGHT: WE WOULD LIKE TO CALL PRESIDENT PATRICK PAGE CORTEZ TO THE STAND.

(WHEREUPON, PRESIDENT PATRICK PAGE CORTEZ, BEING DULY SWORN, TESTIFIED AS FOLLOWS.)

THE COURT: GOOD MORNING, SIR.

THE COURTROOM DEPUTY: IF YOU WOULD, PLEASE STATE YOUR NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: MY FULL NAME IS PATRICK PAGE CORTEZ. P-A-T-R-I-C-K P-A-G-E C-O-R-T-E-Z.

THE COURT: GO AHEAD, MS. MCKNIGHT.

MS. MCKNIGHT: THANK YOU.

DIRECT EXAMINATION

BY MS. MCKNIGHT:

Q MR. PRESIDENT, COULD YOU EXPLAIN YOUR ROLE IN THE LEGISLATURE.

A I SERVE SENATE DISTRICT 23 AS THE STATE SENATOR. I WAS ELECTED BY THE BODY OF THE SENATE TO BE THE PRESIDING OFFICER. I SERVE AS THE PRESIDENT.

Q AND NOW WE ARE HERE TODAY TO DISCUSS A

MOTION FOR EXTENSION OF TIME TO ENACT A PLAN. YOU SUBMITTED A DECLARATION RELATED TO THAT MOTION. IS THAT RIGHT?

A THAT'S CORRECT.

Q I DON'T WANT TO GO THROUGH AND REPEAT WHAT'S IN THAT DECLARATION. YOUR HONOR ALREADY HAS THAT IN THE RECORD. I WOULD LIKE TO ASK YOU TO EXPLAIN IN GENERAL WHAT THAT DECLARATION PROVIDES THE COURT.

A SO THE DECLARATION BASICALLY LAYS OUT THE PROCESS -- THE LEGISLATIVE PROCESS THAT IS REQUIRED BY THE CONSTITUTION; AND THAT IS THAT ALL BILLS SUBMITTED FOR DISCUSSION SHALL GET THREE READINGS IN EACH CHAMBER AND BE -- REQUIRE A HEARING IN A COMMITTEE ROOM IN EACH CHAMBER. THOSE -- SOME OF THAT PROCESS CAN BE SUSPENDED BY RULE.

BUT THE PROCESS IN GENERAL IS ABOUT A TEN-DAY PROCESS WITHOUT SUSPENSIONS OF RULES.

Q AND I KNOW --

A MINIMUM.

Q PARDON ME.

A MINIMUM, WITHOUT A CONFERENCE. IT COULD BE LONGER.

Q NOW, I UNDERSTOOD YOU TO JUST DESCRIBE THE MINIMUM OF THE PROCESS IN GENERAL. COULD I ASK YOU SPECIFICALLY ABOUT PASSING A REDISTRICTING PLAN IN

THE LEGISLATURE. WHAT WOULD BE A REASONABLE AMOUNT OF TIME TO PASS A REDISTRICTING PLAN IN THE LEGISLATURE?

A THERE ARE SOME -- ALMOST 4,000 PRECINCTS. AND EACH REDISTRICTING BILL IS WRITTEN WITH EACH OF THOSE PRECINCTS BEING REQUIRED TO BE PLACED INTO A CONGRESSIONAL DISTRICT. THE LAW REQUIRES THAT EACH CONGRESSIONAL DISTRICT BE AS CLOSE TO EQUAL IN POPULATION WITH THE OTHERS.

ANY BILL THAT IS FILED AND ANY BILL THAT IS AMENDED IS SUBJECT TO MUCH LOCAL INPUT AS WELL AS MEMBER INPUT OF THE LEGISLATURE. AMENDMENTS CAN BE OFFERED IN COMMITTEE, AND OFTEN ARE, TO CHANGE THE MAKEUP OF DISTRICTS. BECAUSE OF CONCERNS FROM THEIR DISTRICT BACK HOME, THEIR LOCALS, THEIR CONSTITUENTS, WE HAVE MADE IT OUR PROCESS TO BE TRANSPARENT. AND WHEN A CHANGE OCCURS, THERE IS A RIPPLE EFFECT AMONGST ALL PRECINCTS, AND SO WE ALLOW THE BILLS IN COMMITTEE TO LIE OVER IF AN AMENDMENT HAS BEEN ADDED SUCH THAT THE PUBLIC COULD UNDERSTAND AND THE MEMBERS COULD UNDERSTAND WHAT THE CHANGE EFFECTIVELY DID TO THE BILL.

Q IN YOUR VIEW, ARE REDISTRICTING BILLS SIMPLE BILLS TO GET THROUGH THE LEGISLATURE?

A PROBABLY THE MOST DIFFICULT BILL OF THE

TENURE -- AS A TENURED LEGISLATOR, I'VE BEEN -- 15 YEARS IN THE LEGISLATURE, I'VE BEEN THROUGH TWO REDISTRICTING SESSIONS. AND THEY ARE THE MOST DIFFICULT BILLS, INCLUDING THE BUDGET BILLS. THEY'RE MORE DIFFICULT BECAUSE THEY'RE MORE EMOTIONAL, THEY'RE VERY PERSONAL, AND YOUR DISTRICTS WILL FIGHT VERY HARD -- YOUR CONSTITUENTS WILL FIGHT VERY HARD TO HAVE YOU COMPLY WITH WHAT THEY WANT. AND SO IT'S VERY PAROCHIAL.

Q NOW, YOU SUBMITTED THIS DECLARATION ON MONDAY. SINCE THAT DATE, HAS THE LEGISLATURE GONE INTO EXTRAORDINARY SESSION?

A YES.

Q AND HAS THE LEGISLATURE MADE ANY EFFORT -- AND LET ME FOCUS SPECIFICALLY ON THE SENATE -- MADE ANY EFFORT TO EXPEDITE ITS PROCEEDINGS?

A YES.

Q IN WHAT WAY?

A THE FIRST READING REQUIRED BY THE CONSTITUTION IS AN INTRODUCTORY READING. THE BILL THEN LIES OVER FOR THE SECOND DAY TO GET A SECOND READING AND A REFERRAL TO COMMITTEE.

QUITE OFTEN WHAT WE DO IS WE SUSPEND THE RULE TO ALLOW THE FIRST AND SECOND READINGS TO BE HELD ON THE FIRST DAY AND THE REFERRAL TO COMMITTEE

TO OCCUR ON THE FIRST DAY. YESTERDAY WE DID DO THAT.

Q NOW, AS YOU SIT HERE TODAY, CAN YOU SPEAK FOR ANY OTHER MEMBERS OF THE LEGISLATURE?

A NO.

Q AS YOU SIT HERE TODAY, CAN YOU PROMISE THE COURT A CERTAIN OUTCOME OF THIS DELIBERATIVE PROCESS?

A NO. NO. NOT ON ANY BILL EVER.

Q AND DO YOU SIT HERE TODAY TO SPEAK FOR THE SECRETARY OF STATE?

A NO.

MS. MCKNIGHT: THANK YOU, YOUR HONOR. THOSE ARE THE ONLY QUESTIONS I HAVE.

THE COURT: DO THE PLAINTIFFS HAVE ANY CROSS?

MR. ADCOCK: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. ADCOCK:

Q HOW WOULD YOU LIKE ME TO REFER TO YOU? AS MR. PRESIDENT?

A YOU CAN CALL ME PAGE.

Q PAGE. OKAY, PAGE.

THE COURT: MR. ADCOCK, WHY DON'T YOU INTRODUCE YOURSELF.

MR. ADCOCK: JOHN ADCOCK ON BEHALF OF THE ROBINSON PLAINTIFFS. THANK YOU, JUDGE.

THE COURT: THANK YOU, SIR.

BY MR. ADCOCK:

Q NOW, YOU MENTIONED SUSPENDING THE RULES TO SEND A BILL TO COMMITTEE. CORRECT?

A YES.

Q AND THAT'S FOR THE COMMITTEE TO CONSIDER A REDISTRICTING BILL IN THIS CASE. CORRECT?

A TO CONSIDER ANY BILLS REFERRED TO THAT COMMITTEE.

Q RIGHT. BUT IN THIS CASE THESE ARE REDISTRICTING BILLS?

A THIS IS -- THE CALL IS LIMITED TO THE REDISTRICTING.

Q RIGHT. SO THEY'RE ONLY GOING TO BE CONSIDERING REDISTRICTING BILLS, THIS SPECIAL SESSION?

A CORRECT.

Q NOW, YOU -- NOW, COMMITTEES CAN HOLD HEARINGS BEFORE THE SESSION. CORRECT?

A THEY CAN HOLD INTERIM MEETINGS. BUT NONE OF THE INTERIM MEETINGS HAVE THE ABILITY TO DO ANYTHING WITH REGARDS TO TAKING ACTION.

Q BUT COMMITTEES CAN HOLD HEARINGS OUTSIDE THE SESSION. CORRECT?

A TRADITIONALLY COMMITTEE HEARINGS HAVE BEEN

HELD IN THE INTERIM, WHICH WOULD BE OUTSIDE OF SESSION, YES.

Q RIGHT. AND THEY CAN DO THAT ANY TIME THEY WANT. CORRECT?

A WITH THE REQUEST OF THE PRESIDING OFFICER AND APPROVAL OF THE PRESIDING OFFICER. THE CHAIRMAN OF THE COMMITTEE CAN REQUEST TO HAVE AN INTERIM MEETING, BECAUSE THAT DOES REQUIRE PER DIEMS AND TRAVEL EXPENSES FOR THE -- I'M GOING TO SPEAK ON BEHALF OF THE SENATE -- FOR THE SENATE TO AFFORD.

AND SO THE TOPIC OF THE INTERIM MEETING WOULD BE SUBMITTED TO THE PRESIDING OFFICER FOR APPROVAL.

Q AND THEY CAN TAKE EVIDENCE, HEAR WITNESSES AT THOSE HEARINGS OUTSIDE OF SESSION. CORRECT?

A THEY CAN DO WHATEVER THE PRESIDING OFFICER ALLOWS THEM TO DO UNDER THE REQUEST.

Q AND THIS MOTION WAS FILED ON JUNE 14. CORRECT?

A THIS COURT ORDER? THIS --

Q NO. NO. THE MOTION YOU FILED THAT WE'RE HERE ON WAS ON -- TWO DAYS AGO FILED. CORRECT?

A THANK YOU FOR CLARIFYING. YES.

Q AND THE LAST SESSION ENDED ON JUNE 6. CORRECT?

A YES.
Q OKAY. BETWEEN JUNE 6 AND JUNE 14, NO COMMITTEES HELD A HEARING ON THESE CONGRESSIONAL MAPS. CORRECT?
A NOT THAT I'M AWARE OF, NO.
Q BETWEEN JUNE 6 AND JUNE 14, NO COMMITTEES SCHEDULED A HEARING ON THESE CONGRESSIONAL MAPS. CORRECT?
A THAT'S CORRECT.
Q NOW, WHETHER IT'S A REGULAR SESSION OR A SPECIAL SESSION, YOU NORMALLY ALLOW MEMBERS TO PREFILE BILLS. CORRECT?
A CORRECT.
Q AND THAT CAN BE DONE FOR A SPECIAL SESSION SEVERAL DAYS OR A WEEK IN ADVANCE. CORRECT?
A WELL, THE SPECIAL SESSION, THE CONSTITUTION REQUIRES THAT A SEVEN-DAY PRIOR NOTICE BE GIVEN TO THE CALL OF THE LEGISLATURE. THAT'S -- SO NO ONE CAN FILE A BILL UNTIL SUCH TIME THAT THE CALL HAS BEEN GIVEN. OTHERWISE THEY WOULDN'T KNOW WHAT'S WITHIN THE CALL AND WHAT CAN BE LEGISLATED TO.
SO UPON THE CALL OF THE SESSION, THE ANSWER WOULD BE YES. AT THAT POINT THE PRESIDING OFFICERS GENERALLY DETERMINE WHETHER PREFILING WILL BE ALLOWED OR NOT.

Q RIGHT. AND SO IT CAN BE ALLOWED RIGHT AFTER THE CALL IS MADE. CORRECT?

A CORRECT.

Q AND THE CALL FOR THIS SPECIAL SESSION WAS DONE SEVEN DAYS PRIOR TO THE SESSION BEGINNING. CORRECT?

A CORRECT.

Q AND SO THE BILLS WEREN'T ALLOWED TO BE PREFILED UNTIL THE DAY BEFORE THIS SESSION BEGAN. CORRECT?

A I BELIEVE THAT'S CORRECT.

Q SO THAT COULD HAVE BEEN --

A IN THE SENATE. I CAN'T SPEAK FOR THE HOUSE.

Q SURE. BUT THAT COULD HAVE BEEN DONE A WEEK PRIOR. CORRECT?

A THERE WAS NO REQUEST MADE OF ME PRIOR TO THAT. THE FIRST REQUEST WAS MADE THE DAY BEFORE BY THE SECRETARY OF THE SENATE: *WOULD YOU ALLOW FOR PREFILING?* AND I SAID, *YES*.

Q SO NO ONE ASKED YOU TO DO -- TO PREFILE ANY BILLS BEFORE --

A NO, SIR.

Q -- THE DAY BEFORE THE SESSION STARTED --

A NO, SIR.

Q -- JUNE 14?

NO ONE WAS CALLING SENATE STAFF OR YOUR OFFICE ASKING TO PREFILE BILLS. IS THAT CORRECT?

A I CAN'T SPEAK TO WHAT OTHER MEMBERS WERE DOING. EACH MEMBER IS AN INDEPENDENT ELECTED OFFICIAL, AND THE STAFF IS -- THEY HAVE ACCESS TO THE STAFF. EVERY MEMBER HAS ACCESS TO THE STAFF. AND THAT'S LEGISLATIVE PRIVILEGE WHAT THEY DISCUSS WITH THE STAFF, SO I WOULDN'T KNOW WHO WAS CALLING OR NOT CALLING OTHER THAN ME.

Q SO YOU DON'T KNOW IF LEGISLATORS WERE CONTACTING YOUR STAFF TO -- LET ME FINISH -- CONTACTING YOUR STAFF INQUIRING ABOUT THE ABILITY TO PREFILE BILLS BEFORE JUNE 14? THAT'S YOUR TESTIMONY?

A I WOULD NOT BE AWARE OF THAT, NO.

Q EVEN IF THEY WERE CALLING YOUR STAFF?

A WHEN YOU SAY *YOUR STAFF,* YOU'RE ASSUMING THAT THE STAFF ALL WORKS FOR ME. THEY WORK FOR THE MEMBERS. THEY DON'T WORK JUST FOR ME. SO THE SENATE STAFF WOULD BE PROBABLY A BETTER TERM.

BUT QUITE FRANKLY, IT HAS BEEN SOMEWHAT THE PRACTICE THAT SOMETIMES HOUSE MEMBERS CALL SENATE STAFF AND SOMETIMES SENATE MEMBERS CALL HOUSE STAFF. BUT IN THIS CONTEXT -- I BELIEVE WHAT YOU'RE ASKING IS WOULD I BE AWARE OF A SENATOR FROM A DIFFERENT DISTRICT CONTACTING A STAFF ATTORNEY ABOUT A

REDISTRICTING BILL PRIOR TO THIS SESSION. I WOULD NEVER BE AWARE OF THAT. NOR WOULD THEY BE AWARE IF I HAD CONTACTED THE STAFF IN A REQUEST -- WHAT THEY CALL A BILL REQUEST -- TO GET A BILL REQUEST PUT IN PLACE.

Q YOU AGREE THAT ASKING TO PREFILE BILLS FROM ANOTHER MEMBER IS AN IMPORTANT REQUEST. CORRECT?

A DO I THINK THAT'S IMPORTANT?

Q YES.

A SURE.

Q OKAY. AND WHEN PEOPLE CAN PREFILE BILLS BEFORE THE LEGISLATIVE SESSION STARTS, THAT ALLOWS FOR MEMBERS AND CONSTITUENTS TO COME AND TALK TO THAT MEMBER ABOUT THE BILL THEY PREFILE. CORRECT?

A I GUESS IT WOULD BE, YEAH.

Q TO RAISE CONCERNS ABOUT THAT BILL AND ALLOW THEM TO OFFER AMENDMENTS ABOUT THAT BILL BEFORE THE SESSION STARTS. CORRECT?

MS. MCKNIGHT: OBJECTION, YOUR HONOR. HE'S PUTTING WORDS IN HIS MOUTH. THE PRESIDENT IS ABLE TO EXPLAIN THE VALUE OF THESE BILLS. WE'D LIKE TO GIVE HIM A CHANCE TO RESPOND, BUT I THINK IT'S OBJECTIONABLE TO PUT WORDS IN HIS MOUTH.

THE COURT: OKAY. MAKE AN OBJECTION UNDER THE RULES OF EVIDENCE AND STAND WHEN YOU ADDRESS THE

COURT AND DON'T GIVE SPEAKING OBJECTIONS.

YOUR OBJECTION SHOULD SAY WHATEVER IT SAYS, BUT IT SHOULD BE A RULE OF EVIDENCE OBJECTION.

MR. ADCOCK, DO YOU WISH TO RESPOND TO THE OBJECTION?

MR. ADCOCK: I'LL MOVE ON, JUDGE. THANK YOU.

BY MR. ADCOCK:

Q NOW, YESTERDAY THERE WERE NO BILLS ENTERED ON THE SENATE SIDE OF THE LEGISLATURE. CORRECT?

A THERE WERE TWO BILLS.

Q THERE WERE TWO BILLS ENTERED ON THE SENATE SIDE. AND WHEN WILL THEY BE CONSIDERED IN COMMITTEE?

A MY UNDERSTANDING IS THEY'RE BEING CONSIDERED THIS MORNING.

Q AND THEY PROPOSE CERTAIN MAPS FOR CONGRESSIONAL DISTRICTS. CORRECT?

A CORRECT.

Q OKAY. AND IT'S POSSIBLE FOR BILLS TO BE SUBMITTED IN EACH HOUSE SIMULTANEOUSLY. CORRECT?

A CORRECT.

Q OKAY. AND FOR EACH HOUSE TO CONSIDER THEM SIMULTANEOUSLY. CORRECT?

A EACH CHAMBER IS A SEPARATE ENTITY. I LIKE TO SAY A DIFFERENT CORPORATION. AND SO THE SENATE

BUSINESS IS TAKEN UP IN THE SENATE. AND ONLY WHEN THEY CONCLUDE THE BUSINESS DO THEY SEND IT OVER TO THE HOUSE FOR THE HOUSE TO TAKE UP THE SENATE BILLS; AND CONVERSELY, ONLY WHEN THE HOUSE FORWARDS A BILL TO THE SENATE DOES THE SENATE TAKE UP A HOUSE BILL.

Q BUT BOTH HOUSES CAN CONSIDER ESSENTIALLY THE SAME IDENTICAL BILL AT THE SAME TIME?

A OH, SURE. YEAH.

Q AND THAT'S NOT BEING DONE IN THIS CASE?

A WELL, I CAN'T SPEAK TO THAT.

Q YOU'RE THE PRESIDENT OF THE SENATE, SIR.

A I APPRECIATE THAT. I'M AWARE OF THAT.

Q YOU CAN'T SPEAK TO WHAT'S BEEN PENDING IN EACH HOUSE?

A SO --

MS. MCKNIGHT: OBJECTION, YOUR HONOR. PARDON ME, MR. PRESIDENT.

HE'S TALKING -- MR. ADCOCK IS SPEAKING OVER THE PRESIDENT. I'D ASK THAT HE'S ALLOWED TO FINISH HIS ANSWER.

THE COURT: I'M GOING TO GIVE HIM SOME LATITUDE. HE HAS HIM ON CROSS. JUST PAUSE AND LET HIM ANSWER.

AND, SIR, YOU DO THE SAME, AND WE'LL -- THAT WAY WE'LL ALL BE ABLE TO HEAR EACH OTHER.

MR. ADCOCK: I'M SORRY, JUDGE.

BY THE WITNESS:

A YES, SIR. THANK YOU FOR THE QUESTION. I WOULD LIKE TO ANSWER IT.

EACH OF THESE BILLS THAT HAVE BEEN FILED -- I DON'T KNOW THE NUMBER OF PAGES, BUT I'M GOING TO SUGGEST THEY'RE 50 OR SO PAGES -- PRIMARILY ARE FILLED WITH A BUNCH OF PRECINCTS. AND THE PRECINCTS ARE DEDICATED TO PARTICULAR CONGRESSIONAL DISTRICTS. THEY DO HAVE MAPS IN THEM AS ILLUSTRATION OF WHAT THE INTENDED PRECINCTS WOULD APPLY TO ON A MAP. THEY ALSO HAVE REGIONAL MAPS, BECAUSE IN A REGULAR LEGAL PAPER YOU CAN'T DRILL DOWN TO THE CITY PRECINCT LEVEL ON A MAP. GENERALLY IT'S MUCH BETTER TO DO IT ON A BIG SCREEN WHERE YOU CAN ACTUALLY BACK OUT OF IT OR, I SHOULD SAY, MAGNIFY IT SUCH THAT YOU CAN SEE IF A PRECINCT ON THE NORTH SIDE OF THE STREET IS INCLUDED IN THE DISTRICT VERSUS THE ONE ON THE SOUTH SIDE. YOU WOULD NOT KNOW THAT FROM JUST THE REGULAR LEGAL SHEET OF PAPER THAT IT'S ON.

SO TO ANSWER YOUR QUESTION, I HAVE NOT READ THE BILLS IN THE HOUSE BECAUSE THEY'RE OF NO IMPORTANCE TO ME AT THIS POINT BECAUSE I SERVE IN THE SENATE. I WOULD PROBABLY THINK THAT IF I'M ON -- THIS IS A PERSONAL NOTE, YOUR HONOR, IF I COULD. AS

A LEGISLATOR, I GENERALLY BRIEFED MOST OF THE BILLS, BUT I READ THE BILLS THAT WERE COMING BEFORE THE COMMITTEES I SERVED ON BECAUSE THOSE ARE THE ONES I NEEDED TO HAVE THE MOST INTIMATE KNOWLEDGE OF BECAUSE THOSE ARE THE ONES I WAS GOING TO BE ASKED TO TAKE ACTION ON FIRST.

IF I WASN'T ON THE PARTICULAR COMMITTEE, I WOULD WAIT TILL THE COMMITTEE DID ITS JOB TO SEE WHAT THE FINAL PRODUCT WOULD BE OUT OF COMMITTEE AFTER AMENDMENTS WERE ADOPTED AND IT WOULD -- COULD HAVE CHANGED DRAMATICALLY BEFORE IT GETS TO THE FULL CHAMBER FOR A VOTE.

SO I WANT TO ANSWER YOUR QUESTION AND I'M -- I DON'T THINK I SHOULD -- I COULD KNOW EXACTLY WHAT'S GOING ON IN THE HOUSE WHEN I WAS PRESIDING OVER THE SENATE YESTERDAY AND TRYING TO GET TWO BILLS IN THE SENATE REFERRED TO THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEE. AND I HOPE THAT ANSWERS YOUR QUESTION.

Q NOW, YOU SAID YOU NEED TO HEAR FROM -- THESE TWO BILLS YOU SAID IN THE SENATE, HAVE THEY BEEN READ?

A WELL, THE READING IS THE READING OF THE TITLE.

Q HAS IT BEEN READ?

A IT WAS READ ON ITS FIRST AND SECOND READING

YESTERDAY AND REFERRED TO THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEE FOR SCHEDULING.

Q NOW, YOU WENT THROUGH IN YOUR AFFIDAVIT, YOUR DECLARATION TO THIS COURT, THAT IT'S IMPORTANT FOR LEGISLATORS TO HEAR FROM CONSTITUENTS ABOUT WHAT'S IN THESE REDISTRICTING BILLS AND GET INPUT FROM CONSTITUENTS. CORRECT?

A THAT'S CORRECT.

Q BUT YOU HAD THREE MONTHS OF ROADSHOWS TO HEAR FROM LOUISIANA CITIZENS ABOUT WHAT KIND OF CONGRESSIONAL MAP THEY WOULD LIKE TO HAVE. CORRECT?

A THAT'S CORRECT.

Q AND THAT WAS ALL OVER THE STATE?

A THAT'S CORRECT. BUT JUST TO BE CLEAR, THAT WAS THE ROADSHOW THAT WAS PUT ON BY BOTH THE HOUSE & GOVERNMENTAL AFFAIRS AND THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEES JOINTLY.

MEMBERS OF EACH REGIONAL DELEGATION DID SHOW UP WHILE THEY WERE IN THAT AREA OF THE STATE. SO I WOULD NOT CATEGORIZE IT AS EVERY MEMBER OF THE LEGISLATURE WAS AT EVERY ROADSHOW MEETING. AND THERE WERE DIFFERENT COMMENTS MADE RELATIVE TO THE DIFFERENT REGIONS AT THE DIFFERENT SHOWS.

Q RIGHT. BUT THEY WERE OPEN TO THE PUBLIC?

A OH, ABSOLUTELY.

Q AND YOU COULD ACCESS WHAT WAS SAID AND --

A ABSOLUTELY.

Q -- TESTIFIED TO THOSE AT THOSE HEARINGS?

A YEAH. THERE WAS PUBLIC TESTIMONY, YES.

Q -- IF A MEMBER WANTED TO, ABOUT THE MAPS THAT ARE UNDER CONSIDERATION?

A COULD YOU RESTATE YOUR QUESTION?

Q YOU COULD REFERENCE THE TESTIMONY GIVEN AT THESE HEARINGS ABOUT THE MAPS UNDER CONSIDERATION IF ONE WANTED TO. CORRECT?

A I DON'T THINK SO, BECAUSE THE MAPS -- AT LEAST IN THE SENATE, ONE OF THE MAPS WAS A PREVIOUSLY FILED MAP, ONE OF THEM IS NOT. SO THERE WOULD BE NO WAY TO KNOW IF THE -- WITHIN THE CONTEXT OF THE STATEMENT MADE AT A REGIONAL MEETING WHERE NO MAPS WERE BEING PRESENTED, IF THAT STATEMENT WOULD HOLD TRUE AFTER THIS MAP HAS BEEN PRESENTED.

Q AT THESE MEETINGS PEOPLE WERE TALKING ABOUT WHAT KIND OF CONGRESSIONAL MAP THEY WANT. CORRECT?

A GENERALITIES.

Q YES. AND SPECIFICALLY PEOPLE WERE SAYING THAT THEY WANT A CONGRESSIONAL MAP WITH TWO DISTRICTS THAT COULD ELECT AN AFRICAN-AMERICAN REPRESENTATIVE TO CONGRESS. CORRECT?

MS. MCKNIGHT: YOUR HONOR, OBJECTION TO THE

EXTENT IT MISSTATES THE RECORD.

MR. ADCOCK: WELL, HE CAN TELL ME WHETHER THAT'S HIS UNDERSTANDING.

THE COURT: OVERRULED.

BY THE WITNESS:

A YEAH, I THINK THERE WERE MANY STATEMENTS MADE ABOUT ALL KINDS OF DIFFERENT DISTRICTS. I WOULD SAY THAT YOU'RE ASKING ABOUT ONE PARTICULAR STATEMENT THAT WAS MADE. I'M SURE IT WAS MADE, BUT THERE WERE OTHER STATEMENTS MADE RELATIVE TO OTHER DISTRICTS. SO I DON'T THINK THAT IT'S A ONE-SIZE-FITS-ALL THAT THAT'S THE ONLY STATEMENT THAT WAS EVER MADE AT A REGIONAL MEETING.

Q AND DURING THE FIRST EXTRAORDINARY SESSION THIS YEAR WHERE YOU DEALT WITH REDISTRICTING, THERE WERE COMMITTEE HEARINGS DURING THAT SESSION, TOO?

A PLENTY, YES. WE REDISTRICTED A MULTITUDE OF MAPS, EVERYTHING FROM THE LOUISIANA STATE SENATE, THE HOUSE OF REPRESENTATIVES, THE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, THE PUBLIC SERVICE COMMISSION. SO WE DEALT WITH MULTIPLE MAPS, WITH MULTIPLE PRECINCTS BEING MOVED AROUND, AND MULTIPLE AMENDMENTS ON BOTH THE HOUSE AND THE SENATE SIDE.

Q AND THERE WAS TESTIMONY ABOUT THE BILL THAT WAS PASSED INTO LAW AT THAT SESSION, TOO. CORRECT?

A YOU'RE TALKING ABOUT THE CONGRESSIONAL MAP?

Q YES, SIR.

A THERE WAS PLENTY OF TESTIMONY ON ALL THE MAPS IN COMMITTEE.

Q INCLUDING THAT MAP THAT WAS PASSED?

A THAT'S CORRECT.

Q AND SO THIS LEGISLATURE DURING THIS SPECIAL SESSION COULD REFERENCE THE ROADSHOWS AND THE COMMITTEE HEARINGS FROM THAT PREVIOUS SESSION. CORRECT?

A I GUESS SOME COULD CHOOSE TO. I CAN'T SPEAK TO WHAT LEGISLATORS WOULD DO.

Q I'M SAYING THEY COULD DO THAT IF THEY WANTED TO.

A IS IT POSSIBLE? YES, IT'S POSSIBLE. IS IT LIKELY? I WOULD SAY, IN MY OPINION, YOUR HONOR, IT'S NOT LIKELY BECAUSE EVERY MAP IS A NEW BILL AND YOU WOULDN'T REFERENCE AN OLD BILL WHEN YOU'RE SPEAKING ABOUT A NEW BILL.

Q IN FACT, THE LEGISLATURE OFTEN REFERS TO TESTIMONY OR EVIDENCE PRESENTED AT COMMITTEES FROM PREVIOUS SESSIONS. CORRECT?

A I'M SORRY?

MS. MCKNIGHT: OBJECT. PARDON ME. GO AHEAD.

A I WANTED TO SEE IF YOU COULD RESTATE IT. I DIDN'T QUITE HEAR WHAT --

Q SURE. IN FACT, THE LEGISLATURE OFTEN REFERS TO TESTIMONY OR EVIDENCE PRESENTED AT COMMITTEES FROM PREVIOUS SESSIONS?

A I DON'T KNOW THAT *OFTEN* WOULD BE A GOOD CHARACTERIZATION. BUT I WOULD SAY THAT CERTAINLY IN COMMITTEES YOU REFER TO BILLS THAT WERE PASSED DECADES AGO. YOU REFER TO DEBATES THAT WERE HEARD. SOMETIMES MEMBERS WILL SAY *I WASN'T HERE WHEN THAT DEBATE WAS HAD. I'M NEW NEWLY ELECTED*. I'M SURE YOU CAN REFERENCE THINGS IN COMMITTEE. WE PROBABLY HAVE DONE THAT.

Q NOW, BEAR WITH ME ON THIS. SO THE CURRENT SESSION RUNS TO JUNE 20. YOU'RE AWARE YOUR MOTION REQUEST THAT THIS COURT EXTEND THE TIMELINE FOR YOU TO PASS A BILL FROM JUNE 20 TO JUNE 30. CORRECT?

A THAT'S CORRECT.

Q OKAY. NOW, THAT WOULD MEAN HAVING A SPECIAL SESSION FROM JUNE 21 TO JUNE 30. CORRECT?

A I'M NOT SURE THAT THAT WOULD BE POSSIBLE.

Q I'M NOT ASKING IF IT'S POSSIBLE. I'M JUST SAYING THAT WOULD MEAN YOU WOULD HAVE TO EXTEND THE SESSION TO JUNE 30 OR CALL AN ADDITIONAL SESSION. THAT'S ALL I'M ASKING.

MS. MCKNIGHT: OBJECTION; IT'S A COMPLEX QUESTION. I'D ASK HIM TO BREAK IT UP.

MR. ADCOCK: I THINK HE CAN HANDLE HIMSELF, JUDGE. IT'S A PRETTY SIMPLE QUESTION.

THE COURT: OVERRULED.

BY THE WITNESS:

A I'M GOING TO START WITH A LITTLE BIT OF BACKGROUND. THE CONSTITUTION REQUIRES A SEVEN-DAY PRIOR NOTICE TO THE CALL OF A SESSION. THE CONSTITUTION ALSO SAYS THAT YOU CANNOT AMEND THE TERMINUS DATE, THE ENDING DATE OF A SESSION. THE CONSTITUTION ALSO SAYS THAT YOU CANNOT CALL AN EXTRAORDINARY SESSION ON TOP OF AN EXTRAORDINARY SESSION.

SO THE ONLY SOLUTION POSSIBLE IS THE GOVERNOR CANNOT CALL ANOTHER SPECIAL SESSION BECAUSE HIS CALL IS IN PLACE. THE LEGISLATURE COULD CALL THEMSELVES INTO A SPECIAL SESSION AT A FUTURE DATE WITH A SEVEN-DAY PRIOR NOTICE. SO TODAY IS THE 16TH. AND I DON'T KNOW -- I DON'T WANT TO BE MISQUOTED, BUT IF I COUNTED SEVEN DAYS FROM TODAY, IT WOULD BE THE 23RD.

SO TO SUGGEST THAT WE COULD GO INTO SESSION ON THE 21ST, WHICH WAS YOUR QUESTION, WOULD BE AN ERRONEOUS QUESTION. IT WOULD -- WE CANNOT UNDER THE

CONSTITUTION, SO LONG AS WE FOLLOW THE CONSTITUTION. I DON'T KNOW ANYBODY IN THE LEGISLATURE WHO SWORE TO UPHOLD THE CONSTITUTION THAT WOULD BE WILLING TO VIOLATE IT.

SO WITH THAT, I'M GOING TO TELL YOU THAT IN MY -- AND I DON'T WANT TO BE QUOTED AS THE PARTICULAR DATE. BUT IT WOULD BE A SEVEN-DAY -- FROM THE TIMELINE OF GETTING 20 SENATORS AND 53 HOUSE MEMBERS TO AGREE TO A CALL, IT WOULD BE SEVEN DAYS PRIOR, WHICH I THINK IS THE 23RD OF JUNE. AND THEN YOU COULD CALL IT FOR -- YOU COULD PUT AN END DATE WHENEVER YOU WANT. THAT'S PART OF -- AND THEN YOU WOULD LIST WHAT IS INCLUDED IN THE CALL.

Q NOW, WHEN THE SESSION ENDED ON JUNE 6, YOU WERE AWARE THAT THIS JUDGE WAS CONSIDERING WHETHER THE MAP PASSED BY THE LEGISLATURE VIOLATED THE VOTING RIGHTS ACT. CORRECT?

A I KNEW THAT THERE WAS A COURT CASE THAT WAS BEING DELIBERATED. AND I WAS NOTIFIED ACTUALLY BY THE GOVERNOR. HE ASKED ME TO COME UP TO HIS OFFICE WHEN WE CONCLUDED THE SESSION.

MR. ADCOCK: YOUR HONOR, CAN I OBJECT? THIS IS NONRESPONSIVE. I'M TRYING TO GET THROUGH HERE. I THINK YOU WANTED TO FINISH BY 10:30.

THE COURT: LET HIM FINISH HIS RESPONSE.

AND THEN LET'S TRY TO MOVE ON AFTER THAT.

BY THE WITNESS:

A SO THE ANSWER IS I FOUND OUT FROM THE GOVERNOR HIMSELF WHEN I WENT UP TO HIS OFFICE THAT THE ORDER HAD BEEN -- AND HE WAS --

THE COURT: ON JUNE 6TH.

MR. ADCOCK: YEAH.

BY THE WITNESS:

A AT THE VERY END OF SESSION IT GETS VERY BUSY. WE HAVE A LOT OF CONFERENCE COMMITTEE REPORTS. I WAS BEHIND THE DAIS AND I DID NOT GET NOTIFICATION UNTIL THE GOVERNOR CALLED ME AND SAID CAN YOU COME UP AS SOON AS IT'S OVER WITH? I'D LIKE TO TALK TO YOU.

Q **THAT** NOT MY QUESTION. SO YOU WERE AWARE ON JUNE 6 THAT THE COURT WAS CONSIDERING?

A THE COURT WAS -- YES. YES, I WAS AWARE THAT THE COURT WAS DELIBERATING THIS, YES.

Q YOU'RE A PARTY TO THIS CASE. CORRECT?

A YES.

Q SO YOU COULD HAVE -- THE LEGISLATURE COULD HAVE CALLED A SPECIAL SESSION ON JUNE 6. CORRECT?

A NO. YOU MEAN ENTERED A CALL?

Q YOU COULD HAVE CALLED --

A **SUBMITTED A CALL?**

Q -- SPECIAL SESSION ON JUNE 6. YOU COULD

HAVE CALLED IT FOR JUNE 14 TO JULY 12 OR JULY 13, 30 DAYS. THE CONSTITUTION ALLOWS YOU TO DO THAT. CORRECT?

A WE -- YES, THE CONSTITUTION DID ALLOW -- WOULD HAVE ALLOWED US TO DO THAT.

Q **SO** YOU COULD HAVE DONE THAT ON JUNE 6. RIGHT? AND WE COULD HAVE STARTED YOU KNOW JUNE 14 OR SOMETHING.

A ROUGHLY, YES.

Q INSTEAD OF JUNE 23RD?

A YES. BUT --

Q **NOW, IF ANYONE --**

A **BUT** IF YOU'LL ALLOW ME TO ANSWER THAT COMPLETELY. YES, I COULD HAVE, BUT WHEN I LEFT THE DAIS AND WENT UP TO THE GOVERNOR'S OFFICE, HE NOTIFIED ME THAT HE WAS CALLING A SPECIAL SESSION AND SAID *YOU'LL BE RECEIVING IT SHORTLY*. SO FROM A PURE TIMING PERSPECTIVE, FOR ME TO HAVE SAID GOVERNOR, DON'T DO THAT. I'M GOING TO GO DOWN AND GET 20 SIGNATURES, I WOULD HAVE HAD TO THEN WALK ACROSS TO THE SPEAKER AND SAY YOU HAVE TO GO GET 53 SIGNATURES. AND EVERYBODY WAS PACKING UP TO GO HOME.

I THINK FROM A PRACTICAL PERSPECTIVE IT WAS MUCH EASIER FOR THE GOVERNOR TO CALL IT BECAUSE IT TAKES ONE SIGNATURE VERSUS THE 73 SIGNATURES THAT WE

WOULD HAVE HAD TO ACQUIRE WHILE EVERYBODY WAS LEAVING UPON WHAT WE CALL FINAL ADJOURNMENT OR SIGNI DIE.

Q YOU'RE TELLING THE COURT HERE TODAY THAT FIVE DAYS IS NOT ENOUGH TIME TO PASS A CONGRESSIONAL BILL. CORRECT?

A I'M NOT SAYING IT'S NOT ENOUGH TIME. I'M SAYING IT'S UNLIKELY. IT'S VERY, VERY, VERY UNLIKELY.

Q DID YOU TELL THE GOVERNOR THAT WHEN HE TOLD YOU HE WAS GOING TO CALL A SPECIAL SESSION FROM JUNE 15 TO JUNE 20?

A WE HAD A SHORT CONVERSATION. I WILL TELL YOU PART OF THE CONVERSATION WAS THAT --

MR. ADCOCK: YOUR HONOR, I'M TRYING TO GET THE COURT OUT OF HERE. THIS IS NON-RESPONSIVE ANSWERS.

THE COURT: RESTATE YOUR QUESTION AGAIN, SIR. TRY TO ANSWER HIS QUESTIONS, PLEASE.

MR. ADCOCK: YES. THANK YOU, JUDGE.

BY MR. ADCOCK:

Q DID YOU TELL THE -- DID YOU TELL THE GOVERNOR THAT FIVE DAYS WAS NOT ENOUGH TO PASS A REDISTRICTING BILL?

A I CAN'T RECALL EXACTLY. BUT I WOULD SAY I SUGGESTED THAT THAT WAS A VERY SHORT PERIOD OF TIME

TO DO SOMETHING AS BIG AS PASS IT. SO DID I TELL HIM EXACTLY THOSE WORDS? I CAN'T RECALL. BUT IN THE CONTEXT OF OUR MEETING, WHICH WAS VERY SHORT, I SAID *I DON'T KNOW HOW WE'RE GOING TO GET THAT DONE.*

Q IN THE LEGISLATIVE SESSION YOU KNEW THE JUDGE WAS CONSIDERING THESE MAPS AND MAY -- MAY REQUEST THE LEGISLATURE TO DRAW ANOTHER MAP. CORRECT? AS A POSSIBILITY?

A YES. YES.

Q FROM MAY 15 TO MAY -- OR JUNE 1ST TO JUNE 6TH, YOU COULD HAVE CORRALLED VOTES AND SIGNATURES TO CALL A SPECIAL SESSION IN THE EVENT THE COURT WANTED TO DO THAT. CORRECT? IF YOU WANTED TO?

A I THINK THAT THERE IS PROBABLY A LACK OF UNDERSTANDING OF WHAT GOES ON IN THE LEGISLATURE AT THE LAST WEEK OF THE LEGISLATURE. AND SO TO SUGGEST THAT I WOULD HAVE BEEN SPENDING TIME TRYING TO GET VOTES ON A PROCLAMATION WHEN I WAS TRYING TO GET CONFERENCE COMMITTEE REPORTS FINALIZED SO WE COULD TAKE THEM UP ON FINAL ADOPTION AND TRYING TO GET BILLS PASSED IN THE OTHER HOUSE. AND I WILL SAY THIS JUST AS A BACKDROP: THERE WERE A LARGE NUMBER OF BILLS THAT WERE HUNG UP ON THE HOUSE CALENDAR THAT WERE SENATE BILLS AND HOUSE BILLS THAT WERE TRYING TO GET FINAL PASSAGE IN THE LAST HOUR THAT DIDN'T EVEN

GET A VOTE BECAUSE OF THE AMOUNT OF RUSH OVER THE LAST THREE TO FOUR DAYS OF THE SESSION.

THE COURT: PRESIDENT CORTEZ, I'M GOING TO ASK THAT YOU PLEASE ANSWER THE QUESTIONS. I UNDERSTAND THAT IT'S -- THAT THERE ARE SOME NUANCES TO THE LEGISLATIVE PROCESS AND IT'S IMPORTANT THAT WE UNDERSTAND IT. HOWEVER, I'D LIKE TO GET YOU BACK TO YOUR JOBS AND SO I'M GOING TO ASK THAT YOU ANSWER THE QUESTIONS THAT ARE POSED TO YOU. AND I'M CERTAIN THAT, QUITE FRANKLY, YOU PROBABLY DON'T WANT TO LOOK DEFENSIVE, SO MAYBE JUST ANSWER THE QUESTIONS.

THE WITNESS: THANK YOU, YOUR HONOR.

MR. ADCOCK: THANK YOU, JUDGE.

BY MR. ADCOCK:

Q BUT YOU CHOSE NOT TO TRY TO DO THAT CORRECT?

A I DIDN'T MAKE A CHOICE ONE WAY OR THE OTHER. IT JUST WASN'T ON MY RADAR.

Q YOU DIDN'T TRY TO DO THAT?

A I DIDN'T DO IT. BUT I DIDN'T TRY NOT TO DO IT. I JUST DIDN'T DO IT.

Q NOW, THE LEGISLATURE PASSED A BILL OUT OF THE FIRST SESSION EARLIER THIS YEAR, A REDISTRICTING BILL. CORRECT?

A CORRECT.

Q AND THAT WAS THE BILL THAT WAS STRUCK DOWN

BY THIS COURT?

A CORRECT.

Q AND TWO-THIRDS OF THE LEGISLATURE VOTED IN FAVOR OF THAT BILL. CORRECT?

A CORRECT.

Q NOW -- AND THEN WHEN THE LEGISLATURE OVERRODE THE VETO, THE LEGISLATIVE VETO OF THAT MAP, THERE WAS ALSO REQUIRED TWO-THIRDS OF THE VOTES. CORRECT?

A THAT'S CORRECT.

Q NOW, DO YOU AGREE THAT MEMBERS WILL NOT VOTE IN FAVOR OF ANOTHER MAP THAT COMPLIES WITH SECTION 2 OF THE VOTING RIGHTS ACT?

A I CAN'T CONTROL WHAT OTHER MEMBERS ARE GOING TO DO. NOR CAN I SPEAK TO WHAT THEY MIGHT DO.

Q WELL, YOU'RE AWARE OF --

MS. MCKNIGHT: PARDON ME, YOUR HONOR. AND MR. ADCOCK, EXCUSE ME. THIS NEEDS TO BE ON THE RECORD.

WE NEED TO LODGE A CLEAR OBJECTION THAT ANY INQUIRIES INTO THE MINDSET OF OTHER LEGISLATORS WOULD VIOLATE LEGISLATIVE PRIVILEGE. WE'D LIKE TO MAKE THAT CLEAR.

MR. ADCOCK: THAT'S FINE, JUDGE.

BY MR. ADCOCK:

Q SO LET ME JUST ASK YOU ABOUT THIS. SO -- NOW, ARE YOU AWARE THAT ON TUESDAY REPRESENTATIVE MCFARLAND TOLD THE LAFAYETTE NEWSPAPER *MY MEMBERS ARE TELLING ME THEY AREN'T GOING TO VOTE ON ANOTHER MAP*? ARE YOU AWARE HE MADE THAT STATEMENT?

A I'M NOT.

Q NOW, HE'S THE CHAIR OF THE HOUSE CONSERVATIVE CAUCUS. CORRECT?

A I DON'T SERVE IN THE HOUSE. I'M NOT SURE THAT -- WHEN I DID SERVE IN THE HOUSE THERE WAS NO SUCH THING AS A HOUSE CONSERVATIVE CAUCUS, SO I DON'T KNOW.

Q AND THEN THE HOUSE GOP CAUCUS WHO RUNS THE REPUBLICAN CAUCUS IN THE HOUSE, BLAKE MIGUEZ SAID IN THE SAME ARTICLE *I DON'T SEE REPUBLICANS SURRENDERING THIS EARLY IN THE PROCESS BEFORE THE LITIGATION IS FULLY ADJUDICATED*. DO YOU KNOW ABOUT THAT STATEMENT?

A I DON'T KNOW WHAT HE --

Q ARE YOU AWARE OF THAT STATEMENT?

A I THINK SOMEONE MAY HAVE SAID THAT HE SAID THAT. BUT I DIDN'T SEE THAT STATEMENT ANYWHERE. I DON'T -- I RARELY READ MUCH AND TRY TO FOCUS ON DOING WHAT I'M DOING.

Q YOU DON'T READ THE NEWSPAPERS?

A I READ THE ACADIAN ADVOCATE OCCASIONALLY.

Q AND BLAKE MIGUEZ IS THE HOUSE MAJORITY LEADER. RIGHT?

A HE'S THE HEAD OF THE -- I THINK IT'S CALLED THE HEAD OF THE REPUBLICAN DELEGATION.

Q AND HE ALSO SAID --

A **OR** THE CHAIRMAN. I SHOULD SAY CHAIRMAN.

Q -- IN THE NEWSPAPER *IT'S PREMATURE TO JUST GIVE UP AND START DRAWING NEW MAPS.* CORRECT?

A I'M NOT AWARE OF THAT.

Q YOU'RE NOT AWARE OF THAT. DO YOU THINK THAT'S AN IMPORTANT STATEMENT THAT THE HOUSE MAJORITY LEADER SAID THAT IN REGARDS TO THE BILLS UNDER CONSIDERATION IN THIS SPECIAL SESSION?

A I CAN'T SPEAK TO THAT. I'M DOING EVERYTHING I CAN TO ATTEMPT TO GET MAPS, BILLS INTO COMMITTEE SO THAT WE CAN DELIBERATE AS A DELIBERATIVE BODY.

Q AND YOU -- YOUR TESTIMONY TO THIS COURT IS THAT YOU WERE TRYING TO PASS A CONGRESSIONAL MAP THAT COMPLIES WITH THE VOTING RIGHTS ACT?

A THAT'S CORRECT.

Q OKAY. NOW, YOU AND SPEAKER SCHEXNAYDER ISSUED A STATEMENT ON JUNE 10. CORRECT?

A CAN YOU --

Q YOU ISSUED A STATEMENT ON JUNE 10. CORRECT?

A I DON'T KNOW. TELL ME WHAT STATEMENT IT

WAS.

Q YOU DON'T REMEMBER IF YOU ISSUED A STATEMENT?

A I DO NOT AT THIS POINT. IF YOU CAN SHARE IT WITH ME, I CAN --

Q TELL ME IF THIS IS YOUR RECOLLECTION OF WHAT THE STATEMENT SAID. QUOTE, UNTIL THE COURTS HAVE MADE A FINAL DETERMINATION ON THE CONGRESSIONAL MAPS AS THEY WERE PASSED BY A SUPER MAJORITY OF THE LEGISLATURE, WE ARE ASKING THE GOVERNOR TO RESCIND THIS SPECIAL SESSION CALL. DO YOU REMEMBER SAYING THAT?

A YES.

MS. MCKNIGHT: YOUR HONOR, I'D LIKE TO LODGE AN OBJECTION. THIS IS NOT THE PROPER WAY TO REFRESH A WITNESS'S RECOLLECTION. THE WITNESS IS ENTITLED TO SEE THE STATEMENT IN FRONT OF HIM AND REVIEW IT.

MR. ADCOCK: I'LL MOVE ON, JUDGE.

THE COURT: LET ME JUST RULE ON THE OBJECTION. IT'S OVERRULED. PLEASE MOVE ON.

BY MR. ADCOCK:

Q DO YOU REMEMBER ALSO SAYING THIS IN YOUR STATEMENT: BEFORE THE JUDICIAL REDISTRICTING PROCESS IS COMPLETE, ANY SPECIAL SESSION WOULD BE PREMATURE AND A WASTE OF TAXPAYER MONEY?

A I THINK IT WAS PART OF THAT SAME STATEMENT, YES.

Q AND YOU -- AND YOU STAND BY THOSE STATEMENTS IN FRONT OF THIS COURT?

A YES. I DO THINK THAT IT'S GOING TO BE VERY DIFFICULT TO PASS A REDISTRICTING PLAN CALLED VERY QUICKLY WITH NOT A LOT OF OPPORTUNITY TO GET BILLS IN FRONT OF OUR COMMITTEE MEMBERS.

Q UNTIL THE COURTS --

A AND A SHORT ENDING TO IT.

Q BUT UNTIL THE COURT -- YOU WANT THE COURTS TO MAKE A FINAL DETERMINATION BEFORE YOU TRY. IS THAT WHAT YOU'RE SAYING?

A NO.

Q YOU DIDN'T SAY THAT?

A NO.

MR. ADCOCK: NO MORE QUESTIONS AT THIS TIME, JUDGE.

THE COURT: IT WAS THE COURT'S INTENT TO HAVE THE PLAINTIFFS KIND OF NOT TAG TEAM, BUT I DID NOT SAY THAT. SO DO THE GALMON PLAINTIFFS HAVE ANY CROSS?

MR. PAPILLION: YOUR HONOR, THANK YOU. I WOULD VERY BRIEFLY. VERY BRIEFLY.

THE COURT: GO AHEAD.

MR. PAPILLION: THANK YOU FOR THAT. DARREL PAPILLION ON BEHALF OF THE GALMON PLAINTIFFS, YOUR HONOR.

WHAT I WAS HOPING TO DO WAS AT LEAST TO RESERVE THE OPPORTUNITY TO ARGUE ON THE TESTIMONY. BUT I DO HAVE A FEW QUESTIONS.

CROSS-EXAMINATION

BY MR. PAPILLION:

Q MR. CORTEZ, YOU WERE IN THE LEGISLATURE IN 2017?

A YES. OH, YES.

Q WHAT WAS YOUR CAPACITY AT THAT POINT?

A I WAS -- I WAS IN THE SENATE. I WAS THE CHAIRMAN OF THE SENATE COMMITTEE ON TRANSPORTATION, I WAS ON THE SENATE COMMERCE COMMITTEE, AND I WAS ON THE SENATE RETIREMENT COMMITTEE.

Q DO YOU RECALL THAT WE HAD AN EXTRAORDINARY SESSION IN 2017 IN THE STATE OF LOUISIANA?

A I CAN'T RECALL, BUT I'M SURE WE DID. THERE WERE MULTIPLE -- WE'VE HAD MULTIPLE SPECIAL SESSIONS IN MY TENURE.

Q WOULD IT SURPRISE YOU THAT IN 2017 WE HAD AN EXTRAORDINARY SESSION RELATIVE TO THE STATE BUDGET OR THAT THAT WAS ONE OF THE ISSUES UNDER CONSIDERATION?

A THAT WOULD NOT -- THAT WOULD NOT SHOCK ME TO

KNOW THAT. BUT YOU CAN -- BUT MY MEMORY IS IF I SAW IT MAYBE I WOULD BE RECALLED. BUT RIGHT NOW I CAN'T RECALL EXACTLY, BUT I'M ASSUMING WHAT YOU'RE TELLING IN IS TRUTHFUL.

Q WOULD IT SURPRISE YOU THAT IN 2017 IN AN EXTRAORDINARY SESSION IN A MATTER OF FOUR DAYS WE PASSED A STATE BUDGET AT THE STATE; THE LEGISLATURE DID?

A IN FOUR DAYS FROM THE TIME IT WAS INTRODUCED?

Q YES.

A UNTIL -- I CAN'T RECALL THAT, BUT -- THAT WASN'T DURING THE PANDEMIC, SO IT WAS PRE-PANDEMIC. I'M TRYING TO RECALL, BUT I CAN'T REALLY RECALL THAT. BUT --

Q THERE IS A RECORD OF IT. AND THE COURT CAN TAKE JUDICIAL NOTICE OF IT. I'M ASKING YOU AS THE PRESIDENT OF THE SENATE WOULD IT SURPRISE YOU THAT THE SENATE AND THE HOUSE, OUR LEGISLATURE, COULD PASS AN IMPORTANT LEGISLATIVE MEASURE IN FOUR DAYS? YOU CAN, CAN'T YOU?

A IT SEEMS UNREASONABLE IN FOUR DAYS THAT YOU WOULD PASS ANY BILL.

Q IT SEEMS UNREASONABLE. YOU'RE HERE TODAY IN COURT. YOU UNDERSTAND YOU'RE A PARTY TO THIS

LITIGATION?

A I DO.

Q IS IT -- AND YOU UNDERSTAND YOU'RE UNDER OATH?

A I'M SORRY?

Q YOU UNDERSTAND YOU'RE UNDER OATH?

A YES, SIR.

Q ARE YOU A LAWYER?

A NO, SIR.

Q YOU'VE REFERENCED THE STATE CONSTITUTION A NUMBER OF TIMES. LET ME ASK YOU THIS, SENATOR CORTEZ. DO YOU INTEND TO FOLLOW THE CONSTITUTION?

A YES, SIR.

Q IS IT YOUR UNDERSTANDING THAT THIS COURT ISSUED AN ORDER DIRECTING THE LEGISLATURE TO COMPLY WITH SECTION 2 OF THE VOTING RIGHTS ACT OF THE UNITED STATES CONSTITUTION?

MS. MCKNIGHT: OBJECTION, YOUR HONOR, TO THE EXTENT IT ASKS FOR A LEGAL CONCLUSION.

MR. PAPILLION: I'M NOT ASKING FOR A LEGAL CONCLUSION.

THE COURT: OVERRULED.

BY THE WITNESS:

A MY UNDERSTANDING WAS THE ORDER, AS I READ IT AS A NON-LAWYER, WAS TO ATTEMPT TO REMEDIATE. AND IT

GOES ON TO SAY IN THE ORDER THAT IF YOU FAIL TO REMEDIATE, THEN THE COURT WOULD REMEDIATE, I THINK IS -- I'M PARAPHRASING BECAUSE I DON'T HAVE IT IN FRONT OF ME. BUT IT WAS TO GIVE -- THE OPPORTUNITY FOR THE LEGISLATURE TO PRODUCE A REMEDIAL PLAN, I THINK IS THE VERBIAGE. BUT I READ IT OVER AND OVER. BUT AGAIN, I WANT TO SAY ON THE RECORD I'M NOT A LAWYER AND I DON'T KNOW ALL OF WHAT THAT MEANS EXCEPT THAT IN MY WORLD IT SAYS YOU OUGHT TO GO BACK INTO SESSION AND TRY TO FIX THIS AND DO SOMETHING DIFFERENT.

Q YOU WOULD AGREE WITH ME THAT IF THE LEGISLATURE, THE SENATE AND THE HOUSE WERE HIGHLY MOTIVATED TO FOLLOW THIS COURT'S ORDER -- TEN DAYS HAVE GONE BY SINCE THAT ORDER WAS ISSUED -- THAT IT WOULD BE ABLE TO ACT, WHETHER IT IS THROUGH GOING OVER THE PUBLIC COMMENTS, BY PREFILING BILLS AFTER THE GOVERNOR'S CALL, THAT THAT WORK COULD BE IN PROGRESS. RIGHT?

A IT COULD, EXCEPT FOR ONE THING. THAT DURING THAT -- THOSE DAYS THAT YOU'RE REFERENCING, THERE WAS A STAY THAT WAS ISSUED AT THE FIFTH CIRCUIT, AT WHICH TIME MANY OF THE MEMBERS IN THE SENATE -- I WON'T SPEAK FOR THE HOUSE -- SAID I'M GOING TO VACATION. THIS IS NOT GOING TO HAPPEN. AND THEN A FEW DAYS

LATER, WHICH I THINK WAS A SUNDAY, THAT STAY WAS REVERSED. AND THAT WAS EFFECTIVELY TWO DAYS BEFORE WE STARTED THE SESSION, AT WHICH TIME -- AND I DON'T WANT TO GO OVER. IF YOU WANT ME TO STOP ANSWERING --

Q NO, GO AHEAD. I'M LISTENING.

A -- I'M JUST TRYING TO GIVE YOU CONTEXT. I HAD A NUMBER OF SENATORS CALL ME AND SAY THEY WERE IN THE BRITISH VIRGIN ISLANDS; DESTIN, FLORIDA, THE MOUNTAINS AND WHEN DO THEY NEED TO BE BACK. AND MY ANSWER WAS TO THEM AS QUICKLY AS POSSIBLE. WE'RE CONVENING AT NOON ON WEDNESDAY. AND SOME OF THEM HAVE NOT RETURNED YET, BUT THEY ARE ON THEIR WAY BACK.

Q LET ME MAKE SURE. THE NEXT COUPLE OF QUESTIONS I ASK YOU OR ANY QUESTIONS, I DON'T WANT TO ASK YOU FOR A LEGAL CONCLUSION, I DON'T WANT TO ASK YOU FOR ANY ADVICE THAT YOU GOT FROM A LAWYER.

BUT WHAT YOU'RE TELLING ME OR WHAT IT SOUNDS LIKE TO ME IS YOU HEARD OR LEARNED SOMEHOW THAT THE U.S. FIFTH CIRCUIT HAD ISSUED AN ADMINISTRATIVE STAY AND THAT YOU SORT OF THOUGHT WELL, THAT MEANT THAT YOU COULD GO ON AND -- THIS COURT'S ORDER OF JUST A COUPLE OF DAYS EARLIER -- IT HAD NO EFFECT ANYMORE. RIGHT? IS THAT WHAT YOU'RE SAYING?

A THAT WAS MY UNDERSTANDING, IS THAT -- THAT

IT WAS STOPPED, YES.

Q AND AS THE -- AS THE PRESIDENT OF THE SENATE -- AGAIN, I DON'T -- I'M NOT ASKING YOU FOR A LEGAL OPINION, I'M NOT ASKING YOU FOR ANY ADVICE OF COUNSEL, ANYTHING OF THAT NATURE. DID YOU TRY TO MAKE A DETERMINATION AS TO WHETHER AN ADMINISTRATIVE STAY MIGHT BE QUICKLY LIFTED? YOU DIDN'T?

A I DID NOT. I WAS ASKED BY MEMBERS WHAT DO YOU THINK AND I SAID I HAVE NO IDEA. AND THEN IF THEY SAY WELL, CAN I GO ON MY VACATION, I SAY THAT'S YOUR DECISION. BUT I DID TELL MANY OF THEM I WOULD GET INSURANCE IF YOU'RE TAKING A FLIGHT AND SO THAT YOU DON'T LOSE YOUR MONEY.

Q DIDN'T YOU TELL THE LEGISLATURE YESTERDAY NOT TO GO ON VACATION?

A YESTERDAY?

Q YEAH. DID YOU MAKE THE STATEMENT SAYING THAT NO ONE SHOULD GO ON VACATION?

A I'M SORRY?

Q DID YOU MAKE A STATEMENT YESTERDAY THAT NO ONE SHOULD GO ON VACATION?

A I DON'T RECALL I DID.

Q LET ME --

A I DON'T RECALL -- I DON'T KNOW WHAT CONTEXT IT MAY HAVE BEEN IN.

Q I DON'T WANT TO -- YOU HAVE TO GO AND DO SOME WORK, AND SO I DON'T WANT TO HAGGLE WITH YOU ABOUT TOO MANY THINGS. I WANT THE COURT DEAL WITH THE ISSUES THAT WE HAVE TO DEAL WITH. BUT IT IS A FAIR POINT, IS IT NOT, THAT IF A MAJORITY OR A TWO-THIRDS MAJORITY OF OUR LEGISLATURE IS OF MIND TO FOLLOW THIS COURT'S ORDER, THAT THAT CAN ABSOLUTELY BE DONE IN THE TIME THAT'S ALLOTTED IN THE PRESENT SESSION? CORRECT?

A ONLY IF YOU SUSPEND THE RULES AT EVERY STEP, NO. 1. AND NO. 2, REDUCE THE TRANSPARENCY OF AMENDMENTS BEING PRESENTED TO THE PUBLIC. IF YOU'RE WILLING TO REDUCE THE TRANSPARENCY y IN THE PROCESS AND YOU'RE WILLING TO SUSPEND EVERY RULE, IT CAN BE DONE. I WOULD NOT SIT HERE AND TELL YOU IT CANNOT BE DONE.

WHAT I WOULD TELL YOU IS THAT I PERSONALLY WOULD NEVER ASK ANY LEGISLATOR TO SUSPEND A RULE IF THEY THOUGHT IT WOULD BRING LESS SHINE, LESS LIGHT ON A SUBJECT MATTER. BUT MORE SPECIFICALLY, ON A SUBJECT MATTER OF SUCH IMPORTANCE AS CONGRESSIONAL REDISTRICTING.

Q SO IN FAIRNESS, YOUR ANSWER TO MY LAST QUESTION IS *YES BUT* AND EVERYTHING YOU JUST SAID. CORRECT?

A THANK YOU. YES, I BELIEVE THAT'S CORRECT.

Q ALL RIGHT. AND SENATOR, I THINK THOSE ARE ALL THE QUESTIONS I HAVE.

A THANK YOU.

THE COURT: DO YOU HAVE ANY REDIRECT?

MS. MCKNIGHT: BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MS. MCKNIGHT:

Q MR. PRESIDENT, I HEARD PLAINTIFF'S COUNSEL ASK YOU A NUMBER OF QUESTIONS RELATED TO THE TIMING OF WORK AND WHAT YOU COULD HAVE DONE AND WHEN. SO I'D LIKE TO ASK YOU A FEW QUESTIONS RELATED TO THAT.

WHAT IS YOUR -- WHEN DID YOU FIRST LEARN THAT THIS COURT HAD ISSUED ITS PRELIMINARY INJUNCTION AS RELATES TO THE SESSION THAT YOU WERE IN ON JUNE 6?

A IT WAS THE BEST I CAN RECALL AT THE END OF THE SESSION SOMEONE THE GOVERNOR CALLED ME AND SAID I'D LIKE TO TALK TO YOU I DON'T KNOW IF YOU'RE AWARE THAT THE DISTRICT COURT HAS MADE A RULING. CAN YOU COME UP TO MY OFFICE. AND I SAID YES AS SOON AS WE ADJOURN I WILL COME ON UP.

Q AND WE ON YOUR BEHALF IN THIS CASE FILED A MOTION TO STAY THAT ORDER THAT NIGHT. IS THAT RIGHT?

A THAT'S CORRECT.

Q AND IS IT MY UNDERSTANDING THAT YOU

UNDERSTOOD THIS COURT'S ORDER WAS STAYED UNTIL SUNDAY EVENING FOUR DAYS AGO?

A THAT'S CORRECT.

Q THANK YOU, YOUR HONOR. THOSE ARE ALL THE QUESTIONS I HAVE.

THE COURT: THE COURT HAS JUST A COUPLE SIR. JUST SO THAT THE COURT CAN BETTER UNDERSTAND THE PROCESS THAT YOU'RE FACING.

COUNSEL ASKED YOU IS THERE ENOUGH TIME TO PASS THE MAPS UNDER THE CURRENT SESSION AND THE EXPIRATION OF THE CURRENT SESSION, WHICH IS MONDAY, JUNE 20TH, AND YOU SAID YES IF SUSPENDING THE RULES AND YES IF REDUCED TRANSPARENCY CAN BE DONE. SO WITH RESPECT TO SUSPENDING THE RULES, THAT'S SOMETHING THAT THE HOUSE AND THE SENATE LEADERSHIP UNDERTAKE. IS THAT CORRECT?

THE WITNESS: ANY MEMBER CAN MOVE MAKE A MOTION TO SUSPEND. THE HOUSE IS DIFFERENT FROM THE SENATE ONLY BECAUSE I SERVE THERE. THE SENATE WE SUSPEND RULES WITH THE MAJORITY VOTE. THE HOUSE SUSPENDS RULES WITH A TWO-THIRDS MAJORITY VOTE SO THERE IS A LITTLE NUANCE THERE.

THE COURT: SO EITHER YOU AS THE PRESIDING OFFICER OF THE SENATE OR ANY SENATOR CAN MOVE TO SUSPEND THE RULES?

THE WITNESS: ANY SENATOR, YES.

THE COURT: YOU'VE ALREADY SUSPENDED THE READING REQUIREMENT AND REFERRED AT LEAST NOT JUST ONE -- I'M NOT -- I'M ASKING JUST ABOUT THE SENATE SIDE. YOU'VE ALREADY DONE THAT WITH RESPECT TO THE READING OF THE BILLS THAT ARE IN THE SENATE AND REFERRED BACK TO COMMITTEE. SO SOME OF THOSE RULES HAVE BEEN SUSPENDED?

THE WITNESS: THAT'S CORRECT.

THE COURT: DO I HAVE YOUR COMMITMENT THAT YOU WILL MOVE TO SUSPEND THE RULES NECESSARY TO ACCOMPLISH THE TASK BEFORE YOU?

THE WITNESS: I AM COMMITTED TO ATTEMPTING TO DO THIS. WHAT I HAVE TO TELL YOU IS I AM ONE OF 38 MEMBERS OF THE SENATE.

THE COURT: I UNDERSTAND YOU HAVE TO HAVE --

THE WITNESS: AND THE MAJORITY, IT'S A DELIBERATIVE BODY AND THE MAJORITY WILL DETERMINE HOW QUICKLY WE MOVE. UNLIKE THE HOUSE THE MAJORITY OF THE SENATE WILL DETERMINE HOW QUICKLY WE MOVE. AND IN FAIRNESS TO YOU AND I WANT TO BE HONEST -- I DON'T THINK THERE IS A WILL BY MANY OF THE MEMBERS TO REDUCE THE TRANSPARENCY. AND SUSPENDING THE RULES WOULD REDUCE THE TRANSPARENCY TO THE PUBLIC.

THE COURT: OKAY. SO MY QUESTION THOUGH --

AND I DON'T WANT YOU TO TELL ME WHAT YOU -- I MEAN YOU DON'T KNOW WHAT YOUR COLLEAGUES ARE GOING TO DO OR NOT DO. YOUR COLLEAGUES IN THE SENATE. I UNDERSTAND THAT AND I APPRECIATE THAT. AND I'M NOT ASKING YOU TO MAKE A COMMITMENT ON THEIR BEHALF. I'M ASKING YOU IF I HAVE YOUR COMMITMENT AS THE PRESIDENT OF THE SENATE TO DO WHAT YOU CAN TO MOVE TO SUSPEND THE RULES SO THAT THIS CAN BE ACCOMPLISHED.

THE WITNESS: I'M DOING EVERYTHING I CAN.

THE COURT: NOW, WITH RESPECT TO REDUCING TRANSPARENCY, MY UNDERSTANDING IS, IS THAT WHAT THE PROCESS IS LOOKING TO ACCOMPLISH IS TO ALLOW MEMBERS OF THE PUBLIC AND CONSTITUENTS OF YOURS AND YOUR COLLEAGUES TO COMMENT AND GIVE YOU FEEDBACK ON PENDING LEGISLATION. THAT'S THE TRANSPARENCY WE'RE TALKING ABOUT.

THE WITNESS: THAT'S CORRECT.

THE COURT: THAT'S THAT PUBLIC COMMENT TRANSPARENCY. RIGHT?

THE WITNESS: THAT'S CORRECT.

THE COURT: SO WHAT ARE YOU DOING RIGHT NOW? MY UNDERSTANDING IS YOU MET YESTERDAY, YOU'RE NOT IN SESSION OBVIOUSLY NOW. YOU'VE REFERRED TWO SENATE BILLS TO COMMITTEE. SO WHAT IS HAPPENING RIGHT NOW THAT IS ENABLING THIS PUBLIC PROCESS?

THE WITNESS: THE SENATE AND GOVERNMENTAL AFFAIRS CONVENED A MEETING AT NINE A.M. THIS MORNING. THEY ARE DELIBERATING ON THE TWO BILLS AS WE SPEAK.

THE COURT: THE PUBLIC CAN COMMENT.

THE WITNESS: THE PUBLIC IS THERE. I'VE HAD A NUMBER OF MAYORS CONTACT ME SAYING THEY WERE PLANNING ON ATTENDING TO GIVE THEIR PUBLIC TESTIMONY. SO WE HAVE NINE MEMBERS OF THE SENATE AND GOVERNMENTAL AFFAIRS COMMITTEE OF THE SENATE. SO WHILE I'M EX OFFICIO I'M NOT THERE SAY SITTING AT THE DAEUS. I WOULD BE IF I WEREN'T HERE. I CAN ASK QUESTIONS. I CAN'T VOTE OR MAKE MOTIONS.

THE COURT: SO THAT PROCESS IS CONTINUING AND THE PUBLIC IS ENGAGED AND THERE IS TRANSPARENCY IN THAT PROCESS.

THE WITNESS: THAT'S CORRECT. HERE'S THE WHAT I'M IF I COULD ELABORATE ON WHAT I MEAN BY TRANSPARENCY. I SAID THIS EARLIER. THERE IS I THINK 3700 -- ROUGHLY 3700 PRECINCTS. THE BILLS THAT ARE FILED HAVE GONE TO COMMITTEE. THEY CAN OFFER AMENDMENTS IN COMMITTEE TO CHANGE THAT BILL TO FIX -- I'M JUST GOING TO USE MY LITTLE CITY -- LAFAYETTE AND ONE OF THE BILLS COMPLETELY SPLIT IN TWO: THE CITY OF LAFAYETTE AND THE PARISH OF LAFAYETTE. THERE IS A CONCERN THAT THE PARISH OF LAFAYETTE SHOULD BE IN THE

SAME CONGRESSIONAL DISTRICT. SO I'VE GOT A LOT OF PHONE CALLS ABOUT NOT WANTING THAT TO BE SPLIT UP. IF SOMEONE ON THE COMMITTEE WERE TO OFFER AN AMENDMENT TO FIX THAT, THAT WOULD HAVE A RIPPLE EFFECT THROUGHOUT BECAUSE THE CONGRESSIONAL DISTRICTS HAVE TO BE ALL EQUAL IN POPULATION. IT WOULD CHANGE PRECINCTS IN EVERY OTHER CORNER OF THE STATE. WHEN THAT HAPPENS, IT'S INCUMBENT UPON US TO THEN ALLOW THE REST OF THE STATE TO COME LOOK AND SEE WHAT IT AFFECTED IN THEIR DISTRICTS. IT'S A COMPLICATED PROCESS. AND IT'S NOT AS SIMPLE AS PASSING MEMORIALIZING MOTHER'S DAY OR SOMETHING LIKE THAT WHERE IT DOESN'T CHANGE WITH A LOT OF AMENDMENTS. THIS ONE LITTLE AMENDMENT LITERALLY RIPPLES THE WHOLE STATE.

THE COURT: WITH RESPECT TO -- YOU SAID IN ONE OF YOUR EARLIER STATEMENTS YOU TALKED ABOUT WASTE OF TAXPAYER DOLLARS ON A SPECIAL SESSION AND THEN YOU ALSO MENTIONED -- I WANT TO GET AT SOME -- WELL, YOU ALSO MENTIONED THAT YOU CAN HAVE INTERIM MEETINGS OF COMMITTEES WITH THE PRESIDING OFFICERS AUTHORITY AND THAT ONE OF THE THINGS THAT YOU LOOK AT WHEN YOU'RE DECIDING WHETHER OR NOT TO GIVE PERMISSION TO HAVE THESE MEETINGS THESE KIND OF PREFILING MEETINGS OF COMMITTEES THAT YOU LOOK AT WHAT IS THE COST TO

TAXPAYERS OF THAT. HAVE YOU LOOKED AT -- LET ME JUST PAUSE THERE. OBVIOUSLY AS ONE ALLEGIANCE TO TWO BODIES OF GOVERNANCE, YOU'RE KEENLY AWARE OF THE PUBLIC FISK AND THE COST TO TAXPAYERS. WOULD YOU AGREE WITH THAT?

THE WITNESS: ABSOLUTELY.

THE COURT: SO HAVE YOU CONSIDERED AND CAN YOU OFFER WHAT IS IT GOING TO COST THE TAXPAYERS OF THIS STATE IF YOUR EXTENSION IS GRANTED? WHAT DOES IT COST FOR ANOTHER FIVE DAYS? HAVE YOU CONSIDERED THAT.

THE WITNESS: I HAVE NOT. I USED TO KNOW THIS YOUR HONOR. I APOLOGIZE. BUT THERE WAS A CERTAIN AMOUNT THAT IT COST FOR EACH DAY THAT WE'RE IN SESSION. BUT I JUST DON'T HAPPEN TO HAVE THAT IN ONE OF MY HARD DRIVES.

THE COURT: IT'S NOT ONE OF YOUR CONSIDERATIONS IN ASKING FOR THE EXTENSION?

THE WITNESS: MY CONSIDERATION WAS NOT SO MUCH ABOUT THE ADDITIONAL DOLLARS THAT IT WOULD COST. IT WAS THE FACT THAT WE ARE SPENDING MONEY RIGHT NOW. AND I DON'T BELIEVE WE'RE GOING TO ACHIEVE THE GOAL BECAUSE OF THE TIME IT REQUIRES TO ACHIEVE THE GOAL.

THE COURT: OKAY. ALL RIGHT. AND THEN LASTLY, I READ -- AND THANK YOU FOR YOUR DECLARATION

THAT YOU FILED. I READ -- IN YOUR DECLARATION YOU STATE I UNDERSTAND THAT THE COURT HAS ORDERED THE LEGISLATURE TO DRAW A NEW CONGRESSIONAL PLAN WITH TWO MAJORITY BLACK DISTRICTS. IS THAT YOUR UNDERSTANDING OF THIS COURT'S RULING? ABSOLUTELY.

THE COURT: HAVE YOU COMMUNICATED YOUR UNDERSTANDING OF THE COURT'S RULING WITH YOUR COLLEAGUES?

THE WITNESS: I HAVE.

THE COURT: HAVE YOU DISCUSSED YOUR UNDERSTANDING OF THE COURT'S RULING WITH HOUSE SPEAKER SCHEXNAYDER?

THE WITNESS: WE HAVE DISCUSSED THE CALL, WHICH IS EFFECTIVELY YOUR ORDER. THE CALL IS THE ORDER.

THE COURT: OKAY. THAT S ALL THAT I HAVE THANK YOU VERY MUCH.

THE WITNESS: THANK YOU.

THE COURT: YOU MAY STEP DOWN. AND MR. PRESIDENT CORTEZ IS RELEASED. IF HE WANTS TO REMAIN HE MAY CERTAINLY REMAIN. I DON'T THINK WE'LL BE HERE A LOT LONGER SIR. BUT IF YOU NEED TO GET BACK TO WORK, THE COURT UNDERSTANDS.

NEXT WITNESS PLEASE.

MS. MCKNIGHT: YOUR HONOR, AS SPEAKER

SCHEXNAYDER TO BE AVAILABLE AND WE CAN CALL HIM IF THE COURT WOULD LIKE TO HEAR FROM HIM. BUT WE BELIEVE THE COURT HAS SUFFICIENT INFORMATION ON THE MOTIONS AND IN THE DECLARATION AND FROM MR. CORTEZ'S TESTIMONY THIS MORNING.

THE COURT: I THINK IT'S IMPORTANT FOR THE COURT TO UNDERSTAND WHAT'S HAPPENING ON THE HOUSE SIDE GIVEN THAT THERE HAS BEEN A REQUEST FOR EXTENSION OF TIME. SO THE COURT WOULD LIKE TO HEAR TESTIMONY.

MS. MCKNIGHT: THANK YOU YOUR HONOR. WE WOULD LIKE TO CALL THE SPEAKER, MR. CLAY SCHEXNAYDER.

(WHEREUPON, CLAY SCHEXNAYDER, BEING DULY SWORN, TESTIFIED AS FOLLOWS.)

THE COURT: GOOD MORNING MR. SPEAKER.

THE WITNESS: GOOD MORNING.

THE COURT: YOU MAY PROCEED, MS. MCKNIGHT.

BY MS. MCKNIGHT:

Q GOOD MORNING, MR. SPEAKER. COULD YOU DESCRIBE YOUR ROLE IN THE LEGISLATURE?

A I AM THE STATE REPRESENTATIVE FOR HOUSE DISTRICT 81 AND I WAS ELECTED BY MY COLLEAGUES TO BE SPEAKER OF THE HOUSE.

Q AND HAVE YOU -- HAVE YOU READ A DECLARATION SUBMITTED IN THIS MATTER BY MR. BY THE PRESIDENT

CORTEZ?

A I HAVE.

Q AND DO YOU AGREE WITH HOW HE DESCRIBED THE LEGISLATIVE PROCESS IN THAT DECLARATION?

A YES, MA'AM.

Q DID YOU DISAGREE WITH ANYTHING IN THAT DECLARATION?

A NO, MA'AM.

Q NOW, SINCE MONDAY THE DAY THAT DECLARATION WAS FILED, HAS THE HOUSE GONE INTO EXTRAORDINARY SESSION?

A WE HAVE.

Q NOW, AS YOU'RE SITTING HERE TODAY, CAN YOU SPEAK FOR ANY OTHER LEGISLATORS?

A I CANNOT.

Q AND AS YOU SIT HERE TODAY, CAN YOU PROMISE THE COURT ANY CERTAIN OUTCOME FROM THE HOUSE'S DELIBERATIVE PROCESS?

A I CANNOT.

Q FINALLY, CAN YOU SPEAK FOR THE SECRETARY OF STATE OR ANY OF THE ELECTION ADMINISTRATIVE ISSUES HE HANDLES HERE TODAY?

A NO, MA'AM.

MS. MCKNIGHT: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: CROSS.

CROSS-EXAMINATION

BY MR. ADCOCK:

Q MR. SPEAKER, JOHN ADCOCK ON BEHALF OF THE ROBINSON PLAINTIFFS.

MR. SPEAKER, WE TALKED A LOT ABOUT TIMING THIS MORNING, HOW MUCH TIME TO PASS THE BILL. DO YOU RECALL OR DO YOU KNOW THAT IN 1994 THE LOUISIANA LEGISLATURE PASSED A REDISTRICTING BILL IN SIX DAYS?

A I DO NOT. THAT WAS BEFORE MY TIME.

Q OKAY. NOW, IS THE HOUSE HOLDING ANY -- THE HOUSE OF REPRESENTATIVES HOLDING ANY COMMITTEE HEARINGS TODAY?

A THEY ARE NOT.

Q THEY ARE HOLDING COMMITTEE HEARINGS TOMORROW?

A YES, SIR.

Q WHICH COMMITTEE IS THAT?

A HOUSE (INAUDIBLE).

Q AND IT WENT INTO SESSION YESTERDAY?

A YES, SIR.

Q YOU'RE NOT HOLDING HEARINGS TODAY?

A WE ARE NOT.

Q NOW, YOU INTRODUCED A BILL FOR THIS SESSION. CORRECT?

A YES, SIR.

Q NOW, FORGIVE ME FOR THE QUALITY OF THESE COPIES THIS IS MAY I HAND THIS TO THE WITNESS, JUDGE?

THE COURT: YOU MAY APPROACH.

MR. ADCOCK: THANK YOU, JUDGE.

THE COURT: GIVE ONE TO YOUR OPPOSING COUNSEL HAVE YOU GOT ONE.

MR. ADCOCK: I'VE GIVEN A COPY TOP OPPOSING COUNSEL BEFORE THIS HEARING THIS MORNING SO.

THE COURT: OKAY.

THE COURT: YOU CAN USE THE ELMO IF YOU NEED TO.

MR. ADCOCK: THANK YOU JUDGE.

BY MR. ADCOCK:

Q NOW, MR. SPEAKER DO YOU RECOGNIZE THAT DOCUMENT?

A I DO.

Q NOW, I'M SHOWING YOU WHAT I'M GOING TO MARK AS EXHIBIT 1 ROBINSON 1. CAN YOU DESCRIBE WHAT THAT DOCUMENT IS?

A IT IS HOUSE BILL 2. IT IS A CONGRESSIONAL REDISTRICTING MAP BILL.

Q AND WHICH SESSION WAS THAT BILL INTRODUCED FOR?

A THIS WAS A BILL THAT WAS FILED IN OUR FIRST

REDISTRICTING SESSION AND IN THIS ONE.

Q SO IT'S THE BILL FILED ON TUESDAY OF THIS WEEK?

A YES.

Q AND IT WAS THE BILL FILED IN THE FIRST EXTRAORDINARY SESSION. CORRECT?

A IT IS.

Q SO THEY'RE BASICALLY THE SAME BILL?

A YES, SIR.

Q OKAY. BASICALLY THE SAME MAP?

A YES, SIR.

Q OKAY. NOW, I'M GOING TO --

MR. ADCOCK: MAY I APPROACH THE WITNESS, JUDGE?

THE COURT: YOU MAY.

MR. ADCOCK: I'M GOING TO SHOW THE WITNESS WHAT I'M MARKING AS ROBINSON EXHIBIT 2 THAT I PREVIOUSLY GIVEN TO COUNSEL.

MS. MCKNIGHT: MR. ADCOCK COULD YOU JUST BE CLEAR WHICH ONE WHETHER IT'S HOUSE BILL NO. 2 OR HOUSE BILL NO. 1.

MR. ADCOCK: SURE.

Q CAN YOU IDENTIFY THAT DOCUMENT?

A IT'S THE LOOKS LIKE THE BILL FROM THE FIRST REDISTRICTING SESSION.

Q SO ROBINSON 1 IS THE BILL THAT WAS INTRODUCED FOR THIS SESSION?

A ROBINSON 2 WAS THE ONE.

Q NO, NO. I'M SORRY. I'M CONFUSING. I APOLOGIZE THE FIRST THING I SHOWED YOU IS ROBINSON 1. THAT WAS THE BILL THAT WAS INTRODUCED ON TUESDAY.

A YES, SIR. YOU HANDED ME 2 FIRST. AND THAT'S THE ONE THAT IS FILED FOR THIS SESSION.

Q CORRECT.

A YES.

Q AND THE ONE I JUST HANDED YOU WHICH IS EXHIBIT ROBINSON EXHIBIT 2 WAS THE BILL THAT WAS FILED AND PASSED IN THE FIRST EXTRAORDINARY SESSION?

A YES, SIR.

Q IS THAT GOOD, COUNSEL?

MR. ADCOCK: MR. ADCOCK, BRIEFLY COULD YOU JUST IS THIS ROBINSON 1 AND THIS IS ROBINSON 2?

MR. ADCOCK: THIS IS ROBINSON 1.

MS. MCKNIGHT: OKAY. THAT'S 2. THANK YOU.

MR. ADCOCK: I APOLOGIZE, JUDGE. DOING THIS ON THE FLY. YOU CAN TELL I HAVE YOUNG KIDS. I'M JOKING.

BY MR. ADCOCK:

Q SO BASED YOUR TESTIMONY, THESE ARE ESSENTIALLY THE SAME MAP. SO AND THEY'RE THE SAME

DEMOGRAPHIC TOTALS, BASICALLY THE SAME BILL. CORRECT?

A YES.

Q NOW MY QUESTION IS: WHAT ANALYSIS IF ANY DID YOU DO PRIOR TO INTRODUCING THESE BILLS, WRITING THESE BILLS -- DID YOU DO WITH THESE BILLS TO SEE HOW THEY WOULD PERFORM?

A SO THE ONE WE DID IN THE FIRST EXTRAORDINARY SESSION, WE HAD PUBLIC TESTIMONY, WE HAD PUBLIC INPUT, WE HAD EVERYTHING THAT TRAVELING THE STATE THAT COMMITTEES HAD DONE. SO WE HAD INPUT FROM MULTIPLE SOURCES.

Q OKAY. DID YOU DO ANY -- DID YOU HAVE ANYONE ANALYZE ROBINSON 1 OR ROBINSON 2 FOR COMPLIANCE WITH THE VOTING SINGLE RIGHTS ACT?

A I THINK THE FIRST ONE THAT WE PASSED IN THE FIRST SESSION, REDISTRICTING SESSION, OUR STAFF AND OUR LEGAL STAFF IS THE ONES WHO PUT IT IN THE POSTURE THAT IT NEEDS TO BE IN TO BE LEGAL.

Q OKAY. I UNDERSTAND. WHEN YOU MEAN YOUR LEGAL STAFF, WHO ARE YOU TALKING ABOUT?

A OUR STAFF.

Q YOUR STAFF?

A WE HAVE STAFF AT THE CAPITOL THAT WORK ON OUR BILLS AND SO FORTH.

Q OKAY. AND WHO ARE WE TALKING ABOUT? ARE WE TALKING ABOUT LAWYERS? WE'RE TALKING ABOUT YOUR OFFICE STAFF? WE'RE --

A SOME ARE LAWYERS, SOME ARE OFFICE STAFF, DEMOGRAPHERS, SO FORTH.

Q OKAY. WHAT WERE THE NAMES OF THE DEMOGRAPHERS THAT YOU HAD ANALYZE THIS BILL?

A THE HOUSE TAP WAS TRISH LOWRY. SHE'S DONE BILLS IN THE HOUSE FOR FOUR REDISTRICTING SESSIONS. SHE'S BEEN THERE 30 SOMETHING YEARS I WOULD THINK.

Q IS SHE A DEMOGRAPHER?

A I'M NOT SURE.

Q OKAY. FORGIVE ME. I THOUGHT I HEARD IN YOUR TESTIMONY YOU SAID YOU WILL A DEMOGRAPHER LOOK AT THIS BILL.

A WELL AND HER -- HER I WOULD THINK SHE WOULD BE. BUT TO SAY THAT SHE IS THE A CERTIFIED DEMOGRAPHER I COULD NOT TESTIFY TO THAT.

Q BUT WHAT YOU'RE SAYING IS SHE HAS EXPERIENCE IN LOOKING AT?

A ABSOLUTELY.

Q AND ANALYZING REDISTRICTING BILLS?

A ABSOLUTELY.

Q FOR HOW LONG HAS SHE DONE THAT APPROXIMATELY?

A ROUGH LIKEWISE 30 YEARS.
Q ROUGHLY 30 YEARS OKAY. DID YOU HAVE AN OFFICIAL DEMOGRAPHER OR AN ACADEMIC OR ANYONE LOOK AT THE BILL YOU SUBMITTED IN THE FIRST SESSION OR THE ONE YOU SUBMITTED ON TUESDAY TO SEE IF IT COMPLIES WITH THE VOTING RIGHTS ACT?
A I HAVE NOT.
Q OTHER THAN THIS PERSON YOU JUST MENTIONED?
A THAT'S RIGHT.
Q AND YOUR OFFICE STAFF. CORRECT?
A THE OFFICE STAFF REALLY DOESN'T -- MY OFFICE STAFF DOESN'T REALLY LOOK AT BILLS IN LEGISLATION.
Q I'M TRYING TO GET AT WHAT STAFF WE'RE TALKING ABOUT. ARE WE TALKING ABOUT COMMITTEE STAFF?
A WE'RE TALKING ABOUT HOUSE STAFF.
Q HOUSE STAFF.
A HOUSE AND COMMITTEE STAFF ARE THE SAME.
Q OKAY. NOW, DID YOU GET ANY INPUT FROM ANYONE THAT ANALYZED YOUR BILL IN THE FIRST SESSION OR YOUR BILL THAT WAS INTRODUCED ON TUESDAY ABOUT WHETHER THE MAPS THAT WOULD BE GENERATED FROM THOSE BILLS WOULD ELECT OR COULD ELECT TWO AFRICAN AMERICAN -- HAVE TWO DISTRICTS TO ELECT TWO AFRICAN AMERICAN CONGRESS PERSONS?
A ON THE BILL I FILED YESTERDAY?

Q YES.

A YES. NO, I DID NOT.

Q WHAT ABOUT ON THE BILL YOU FILED AND PASSED IN THE FIRST SESSION?

A I DID NOT.

Q YOU DID NOT HAVE ANYONE GIVE YOU INPUT THAT IT WOULD RESULT IN THE ELECTION OF TWO AFRICAN AMERICAN CONGRESS PEOPLE?

A I DID NOT.

Q OKAY. NOW, DO YOU KNOW IF THE -- I'LL MOVE ON. SO BUT YOUR TESTIMONY TO THIS JUDGE IS THAT IN THE MAP THAT YOU PASSED IN THE FIRST SESSION IS THE ONE THAT WAS STRUCK DOWN BY THIS COURT. CORRECT?

A YES, SIR.

Q AND THAT YOU SUBMITTED SUBSTANTIALLY THE SAME ONE FOR THIS SESSION. CORRECT?

A YES, SIR.

Q ALL RIGHT. NO MORE QUESTIONS, JUDGE?

THE COURT: MR. PAPILLION, DO YOU HAVE ANYTHING.

MR. PAPILLION: NO YOUR HONOR THANK YOU.

THE COURT: MR. SCHEXNAYDER I HAVE A FEW OR I'M SORRY SPEAKER SCHEXNAYDER MY APOLOGIES. PUBLIC OPINION, YOU INDICATED -- OR PUBLIC MADE IN COMMENT ON THE BILLS IS SOMETHING THAT YOU AND YOUR COLLEAGUE

PRESIDENT CORTEZ FIND MEANINGFUL AND, IN FACT, IT'S REQUIRED AS PART OF THE PROCESS?

THE WITNESS: YES, MA'AM.

THE COURT: WHAT HAVE YOU DONE TO ENSURE OR TO ENABLE THE PUBLIC TO MAKE COMMENTS SINCE CONVENING THE HOUSE OF REPRESENTATIVES YESTERDAY?

THE WITNESS: SO WHAT WE HAVE DONE NOW ALL OF THE LITIGATION IS UPLOADED ON TO OUR WEBSITE. THE PUBLIC CAN OBTAIN THOSE COPIES AND THOSE MAPS AND GO THROUGH THEM AND THEN BE PREPARED TO COME TO COMMITTEE TOMORROW TO BE ABLE TO DISCUSS THEM.

THE COURT: YOU AM I CORRECT THAT YOU ALL WERE IN SESSION YESTERDAY THE HOUSE WAS IN SESSION YESTERDAY ABOUT 90 MINUTES.

THE WITNESS: ROUGHLY I WOULD GUESS, YES, MA'AM.

THE COURT: SO YOU ADJOURNED AROUND I DON'T KNOW ONE OR TWO O'CLOCK.

THE WITNESS: YES, MA'AM.

THE COURT: EARLY AFTERNOON YESTERDAY WAS THERE ANY MEANS MADE AVAILABLE TO THE PUBLIC AFTER ONE O'CLOCK YESTERDAY TO MAKE PUBLIC COMMENT ON THE BILL THAT YOU ADVANCED TO COMMITTEE?

THE WITNESS: ANY MEETINGS?

THE COURT: WAS THERE ANY MEETINGS ADVANCED?

THE WITNESS: NO, MA'AM.

THE COURT: WAS THERE ANY PROCESS PUT IN PLACE TO ALLOW THE PUBLIC TO ENGAGE AS YOU INDICATED THAT YOU WISHED FOR THEM TO ENGAGE?

THE WITNESS: SO PUTTING THEM UP ON THE WEBSITE AND HAVING THEM THERE WOULD BE OUR NORMAL PROCEDURE AT THAT TIME FOR PUBLIC TO LOOK AT THEM AND BE PREPARED TO COME TO COMMITTEE. SO.

THE COURT: YOU COULD HAVE REFERRED THOSE OUT TO COMMITTEE AND THE COMMITTEE COULD HAVE MET YESTERDAY. CORRECT?

THE WITNESS: YES, MA'AM.

THE COURT: THE COMMITTEE COULD HAVE MET ANYTIME TODAY. IN FACT, ALL DAY TODAY?

THE WITNESS: YES, MA'AM.

THE COURT: AND WHAT YOU CALLED FOR IS FOR THE COMMITTEE TO CONVENE TOMORROW I THINK AT 11?

THE WITNESS: YES, MA'AM.

THE COURT: AND SO WHAT ARE YOU DOING TO ENABLE THE PUBLIC TO BECOME ENGAGED FROM TWO O'CLOCK YESTERDAY UNTIL 11 TOMORROW?

THE WITNESS: SO ALLOWING THEM TO ACCESS THE COMPUTER WEBSITE -- THE WEBSITE THAT WE HAVE, TO ACCESS THE MAPS AND TO DISSECT THEM, I GUESS YOU WOULD SAY. THAT WOULD GET THEM PREPARED TO BE ABLE

TO COME AND GIVE TESTIMONY ON -- BASICALLY I THINK THERE WAS FOUR MAPS FILED ON THE HOUSE SIDE. THREE OF THEM ARE TOTALLY DIFFERENT MAPS THAN ANYTHING THAT WE DURING REGULAR SESSION. THE ONLY ONE THAT'S THE SAME WOULD BE MINE. SO THEY WOULD NEED TO HAVE TIME TO LOOK AT THESE MAPS AND ANALYZE THEM.

THE COURT: AND THAT BRINGS ME TO YOUR MAP. AND THAT'S HOUSE BILL 2 THAT YOU ADVANCED. IS THAT CORRECT?

THE WITNESS: YES, MA'AM.

THE COURT: THAT'S NOW IN EVIDENCE AS ROBINSON EXHIBIT 1. MS. MCKNIGHT ASKED YOU IF YOU DISAGREE WITH ANYTHING IN PRESIDENT CORTEZ'S DECLARATION THAT WAS FILED IN SUPPORT OF THE MOTION FOR EXTENSION, AND YOU SAID YOU DID NOT.

THE WITNESS: I DO NOT.

THE COURT: ONE OF THE THINGS THAT PRESIDENT CORTEZ -- AND I ASKED HIM ABOUT AND YOU WERE HERE. HE STATED IN HIS DECLARATION HIS UNDERSTANDING OF THE COURT'S RULING, AND HIS UNDERSTANDING WAS AND I QUOTE I UNDERSTAND THE COURT HAS ORDERED THE LEGISLATURE TO DRAW A NEW CONGRESSIONAL PLAN WITH TWO MAJORITY BLACK DISTRICTS, CLOSE QUOTES. IS THAT YOUR UNDERSTANDING AS WELL OF THE COURT'S ORDER?

THE WITNESS: YES, MA'AM.

THE COURT: AND YOU'VE HAD THAT UNDERSTANDING OF THE COURT'S ORDER ALL ALONG THAT THAT'S WHAT THE COURT ORDERED THE LEGISLATURE TO DO?

THE WITNESS: YES, MA'AM.

THE COURT: HOUSE BILL 2, THE MAP THAT YOU OFFERED YESTERDAY, DOES IT CONTAIN TWO MAJORITY BLACK DISTRICTS?

THE WITNESS: IT DOES NOT. BUT I WOULD LIKE TO RESPOND TO --

THE COURT: NO. HOW MANY MAJORITY BLACK DISTRICTS DOES THE MAP THAT YOU OFFERED HAVE?

THE WITNESS: IT HAS ONE.

THE COURT: I'M GOING TO -- I WANT TO GIVE YOU -- WELL, LET ME SAY THIS. SECTION 401 OF THE UNITED STATES CODE -- TITLE 18 OF THE UNITED STATES CODE PROVIDES THAT A COURT OF THE UNITED STATES SHALL HAVE THE POWER TO PUNISH BY FINE OR IMPRISONMENT OR BOTH ANY PERSON WHO IS IN CONTEMPT OF COURT BY DISOBEDIENCE OR LAWFUL RESISTANCE -- OR UNLAWFUL RESISTANCE TO A LAW THE COURT ORDER. WHY SIR ARE YOU NOT IN DISOBEDIENCE OR IN RESISTANCE TO A LAWFUL ORDER OF THIS COURT?

THE WITNESS: WHY AM I NOT?

THE COURT: YES, SIR.

THE WITNESS: SO HAVING DISCUSSIONS

YESTERDAY WITH LEADERSHIP AND THE LEADERSHIP OF THE DEMOCRATIC CAUCUS, I EXPLAINED TO THEM THAT IN THE PROCESS THAT WE NORMALLY HAVE, WE ALSO FILE BILLS THAT ARE PLACE HOLDER BILLS. THIS BILL WAS FILED AS A PLACE HOLDER BILL. IN CASE SOMETHING WERE TO HAPPEN WITH ANY OF THE OTHER BILLS THAT WE HAVE OUT THERE, WE COULD GO IN AND WE COULD AMEND THIS TO HAVE TWO BLACK MAJORITY DISTRICTS, ONLY TO HAVE IT SITTING THERE AS A PLACE HOLDER. THAT WAY IT'S ALREADY MOVING THROUGH THE PROCESS, IT'S SITTING THERE IN COMMITTEE AND WE CAN GO IN AND ADD AN AMENDMENT TO IT AND WORK ON IT. THEY DID AGREE TO THAT.

THE COURT: DOES ANYBODY HAVE ANY FURTHER QUESTIONS FOR HOUSE SPEAKER SCHEXNAYDER?

MS. MCKNIGHT: THANK YOU, YOUR HONOR. I HAVE BRIEF REDIRECT.

THE COURT: YOU MAY.

REDIRECT EXAMINATION

BY MS. MCKNIGHT:

Q MR. SPEAKER, I HEARD PLAINTIFF'S COUNSEL ASK YOU A SERIES OF QUESTIONS ABOUT WHAT AND WHETHER YOU HAVE CONSIDERED COMPLIANCE WITH THE LAW WHEN PREPARING THE TWO BILLS BEFORE YOU. DO YOU RECALL THAT LINE OF QUESTIONING?

A I DO.

Q OKAY. MR. SPEAKER, ARE YOU A LAWYER?

A NO, MA'AM.

Q HAVE YOU RELIED ON LEGAL COUNSEL TO ANALYZE COMPLIANCE WITH THE VOTING RIGHTS ACT AND THE CONSTITUTION AS FAR AS THOSE TWO BILLS ARE CONSIDERED?

A I HAVE.

Q IS IT YOUR POSITION THAT YOU HAVE NOT CONSIDERED COMPLIANCE WITH THE VOTING RIGHTS ACT OR THE CONSTITUTION AT ALL WITH REGARDS TO THOSE TWO BILLS?

A NO, MA'AM.

Q I HEARD SOME QUESTIONS ABOUT PUBLIC PARTICIPATION FROM YOUR HONOR. WHAT IS THE PURPOSE OF POSTING A BILL ONLINE AND ALLOWING IT TO LIE OVER?

A THE REASON WE POST BILLS ONLINE AND GIVE COMMITTEE NOTICES OF COMMITTEE MEETINGS IS TO ALLOW THE PUBLIC TO BE ABLE TO OBTAIN THAT INFORMATION AND TO BE ABLE TO BE PREPARED TO BE ABLE TO COME TO COMMITTEE AND TESTIFY ON THE SUBSTANCE OF THE BILL.

Q AND HAVE YOU HAD EXPERIENCE WITH PUBLIC COMING AND TESTIFYING IN COMMITTEE AFTER A BILL IS POSTED ONLINE?

A YES.

Q AND DO YOU EXPECT THAT TO HAPPEN HERE IN

THIS SESSION?

A YES, MA'AM.

Q AND ASIDE FROM JUST COMING -- YOU KNOW THE MEMBERS OF THE PUBLIC COMING TO THE CAPITOL, CAN MEMBERS OF THE PUBLIC ALSO EMAIL THEIR REPRESENTATIVES?

A ABSOLUTELY. YES, MA'AM.

Q CAN THEY ALSO CALL THEIR REPRESENTATIVES?

A YES, MA'AM.

MS. MCKNIGHT: THANK YOU, YOUR HONOR. I HAVE NO FURTHER QUESTIONS.

MR. ADCOCK: YOUR HONOR, MAY I?

THE COURT: YOU MAY.

MR. ADCOCK, AS A MATTER OF HOUSEKEEPING, EXHIBITS 1 AND 2 ARE NOT IN EVIDENCE.

MR. ADCOCK: OKAY. MAY I OFFER AND FILE THEM INTO EVIDENCE?

THE COURT: IS THERE ANY OBJECTION?

MS. MCKNIGHT: NO YOUR HONOR.

THE COURT: ADMITTED.

MR. ADCOCK: THANK YOU, JUDGE.

RECROSS-EXAMINATION

BY MR. ADCOCK:

Q MR. SPEAKER, YOU REFERENCED THE BILLS THAT YOU ENTERED INTO THIS LEGISLATIVE SESSION PLACE

HOLDER BILL. CORRECT?

A YES.

Q THEY COULD BE AMENDED TO CHANGE THE MAP TO ELECT HAVE TO MAJORITY-MINORITY DISTRICTS. CORRECT?

A YES, SIR.

Q THAT COULD BE DONE IN COMMITTEE. CORRECT?

A YES, SIR.

Q THAT'S NOT HAPPENING TODAY CORRECT?

A YES, SIR.

Q SO YOU SAY THAT YOU'RE IN COMPLIANCE WITH THIS COURT'S ORDER BECAUSE THAT COULD BE AMENDED. CORRECT?

A YES, SIR.

Q OKAY. AND SO THAT'S YOUR POSITION IN FRONT OF THIS COURT?

A IT IS.

Q THAT'S WHAT YOU'RE TELLING THIS COURT? YOUR INTENTION IS TO PASS A BILL WITH TWO MAJORITY-MINORITY DISTRICTS?

A MY INTENTION IS TO HAVE A BILL THERE, THAT IF WE NEED IT TO BE A ABLE TO HAVE TWO MAJOR DISTRICTS IN IT, THAT I HAVE A MECHANISM, A VESSEL TO BE ABLE TO MOVE FORWARD WITH THAT.

Q WE JUST HAD A DISCUSSION ABOUT THE RIPPLE EFFECTS OF AMENDING BILLS AND MESSING UP MAPS.

RIGHT? AND SO ISN'T IT TRUE THAT THERE IS ALREADY A MAP WITH TWO MAJORITY-MINORITY DISTRICTS FROM SENATOR FIELDS IN THE LEGISLATURE?

A THERE ARE.

Q SENATOR DUPLESSIS -- EXCUSE ME. REPRESENTATIVE DUPLESSIS?

A THERE ARE.

Q AND MR. IVY. CORRECT?

A THERE ARE.

Q SO YOU WOULDN'T NEED TO AMEND YOUR BILL. YOU COULD JUST PASS THOSE. CORRECT?

A OR THOSE BILLS COULD -- DEPENDING ON THE COMMITTEE AND WHAT HAPPENS IN COMMITTEE, THOSE BILLS COULD DIE IN COMMITTEE. THEY COULD BE VOTED DOWN AND WE WOULD NEED ANOTHER BILL TO AMEND TO BE ABLE TO MOVE. THAT'S WHY THIS BILL IS THERE.

Q OR YOU COULD TRY TO PASS A BILL THAT WAS PREVIOUSLY STRUCK DOWN BY THIS COURT, COULDN'T YOU?

MS. MCKNIGHT: OBJECTION, YOUR HONOR, TO THE EXTENT HE'S EXTRACTING TESTIMONY OF OTHER LEGISLATORS. WE'VE ALREADY NOTED THE LEGISLATIVE PRIVILEGE. OBJECTION.

MR. ADCOCK: I'VE MOVED ON FROM THAT.

THE COURT: OVERRULED.

Q OR YOU COULD DO THAT. RIGHT? YOU COULD

ALSO TRY TO PASS A BILL THAT'S BEEN PREVIOUSLY STRUCK DOWN BY THIS COURT. RIGHT?

A COULD WE MOVE A BILL, THIS BILL?

Q YES.

A YOU'RE TALKING ABOUT THIS ONE?

Q YES. YOU COULD TO TRY TO DO THAT?

A COULD WE MOVE IT? ABSOLUTELY WE COULD MOVE IT. BUT -- BUT THAT BILL WAS NOT PUT THERE TO BE MOVED. IT WAS PUT THERE TO BE A PLACE HOLDER TO BE ABLE TO HAVE IT AS A VESSEL IN CASE WE NEEDED IT. THAT'S WHAT THAT BILL WAS FOR. WE DO THAT IN REGULAR SESSION AND IN ANY OTHER SESSION TO BE ABLE TO HAVE A VESSEL THAT IS ALREADY MOVING THROUGH THE PROCESS SITTING THERE. THIS BILL WAS SITTING IN COMMITTEE. AND IF WE DON'T NEED IT, IT DOESN'T MOVE.

Q AND SO LET ME ASK YOU THIS. ON THE HOUSE FLOOR YESTERDAY DID YOU SAY -- AND I QUOTE -- AS I'VE SAID THIS SPECIAL SESSION IS UNNECESSARY AND PREMATURE UNTIL THE LEGAL PROCESS IS PLAYED OUT IN THE COURT SYSTEMS?

A YES.

Q YOU DID SAY THAT?

A I DID.

Q YOU'RE FINE SAYING THAT TO THIS COURT?

A I THINK -- I THINK WE HAVE THREE BRANCHES OF

GOVERNMENT FOR A REASON AND I THINK THE COURT HAS ITS PLACE TO BE ABLE TO DO WHAT IT NEEDS TO DO.

Q AND YOU'RE ASKING THIS COURT FOR MORE TIME TO PASS A VOTING RIGHTS ACT COMPLIANT MAP. CORRECT?

A I AM.

Q AND YOU ALSO SAID MEMBERS ON THE HOUSE FLOOR MEMBERS, THE MAPS WE PASSED AFTER ALL THE HARD WORK ARE FAIR AND CONSTITUTIONAL. IT CONCERNS ME WE ARE NOW BEING ASKED TO REDO THESE MAPS IN FIVE DAYS. IS THAT WHAT YOU SAID?

A I DID.

Q SOMETHING THAT WAS PASSED OVERWHELMINGLY BY TWO-THIRDS OF BOTH BODIES AFTER A LONG YEARS OF WORK. DID YOU SAY THAT?

A I DID.

MR. ADCOCK: NO MORE QUESTIONS, JUDGE.

THE COURT: OKAY. IF THERE IS NOTHING FURTHER --

MS. MCKNIGHT: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. OKAY THE COURT IS GOING TO RULE FROM THE BENCH. I'LL ENTERTAIN BRIEF ORAL ARGUMENTS IF YOU ALL WISH TO DO THAT. THEY CAN BE BRIEF. I'VE HEARD A LOT, AND SO MS. MCKNIGHT DO YOU WANT TO PRESENT ARGUMENT IN SUPPORT OF YOUR MOTION? YOU DON'T HAVE TO, BUT YOU

MAY.

MS. MCKNIGHT: YOUR HONOR, I -- I DON'T VIEW IT AS NECESSARY AT THIS TIME. WE'VE SUBMITTED A BRIEF, A DECLARATION, AND THE LEADERS SUBMITTED THEIR TESTIMONY TODAY.

THE ONLY POINT I WOULD MAKE IS tHAT -- AND wE UNDERSTAND -- sHOULD I COME TO THE --

THE ONLY POINT I WOULD MAKE, BECAUSE IT'S SOMETHING THAT PLAINTIFFS ASKED A NUMBER OF QUESTIONS ABOUT, WAS SOME SUGGESTION ABOUT THE GOOD FAITH OF THE LEGISLATURE. WE BELIEVE IN WORKING THROUGH THIS PROCESS.

THE LEGISLATURE, AS YOU KNOW, YOUR HONOR, IS ENTITLED BY RIGHT TO TRY TO PASS A REMEDIAL PLAN. THEY WERE HERE TODAY TESTIFYING ABOUT THAT THEY ARE TRYING TO DO JUST THAT. THAT IS NOT INCONSISTENT WITH THE LEGAL POSITION THAT THEY ARE TAKING IN THIS CASE, AS WELL THAT THEY'VE TAKEN SINCE THE DAY YOUR HONOR ISSUED YOUR ORDER ON JUNE 6; THAT THAT ORDER SHOULD BE STAYED UNDER THE *PURCELL* PRINCIPLE AND WE STAND BY THAT AND WE DON'T BELIEVE ANYTHING THEY'VE TESTIFIED TO HERE TODAY WOULD WAIVE THAT RIGHT TO MAINTAIN THAT LEGAL ARGUMENT. THANK YOU YOUR HONOR.

THE COURT: THANK YOU. COUNSEL FOR THE

PLAINTIFF?

MR. PAPILLION: YOUR HONOR, THANK YOU. DARREL PAPILLION ON BEHALF OF THE GALMON PLAINTIFFS. AND I'LL TRY TO BE VERY BRIEF.

THIS COURT OF COURSE CONDUCTED A MULTI DAY HEARING AND HEARD A LOT OF EVIDENCE AND TESTIMONY AND IT ISSUED A RULING. THE COURT HAS BEEN VERY GENEROUS IN ENTERTAINING TESTIMONY FROM THE LEGISLATIVE LEADERSHIP OF OUR STATE.

OF PARAMOUNT CONCERN TO MY CLIENTS IS SIMPLY THAT THERE ARE CONSTITUTIONALLY VALID DISTRICTS IN TIME FOR THIS FALL'S ELECTION. WE DID NOT OPPOSE THE MOTION. WE RESPONDED TO IT. IN FACT, WE WENT INTO THE ECMF AND CORRECTED A NOTICE THAT IT WAS IN OPPOSITION AND MADE ABSOLUTELY CLEAR THAT IT WAS A RESPONSE.

SO I TRUST THAT THE COURT IS GOING TO DO WHAT THE COURT BELIEVES IS THE BEST THING TO DO. BUT THE GALMON PLAINTIFFS AND -- I SUSPECT I SPEAK FOR THE ROBINSON PLAINTIFFS AS WELL. WE WOULD KINDLY ASK THAT THE LEGISLATIVE PROCESS, WHICH IS TO BE GIVEN RESPECT, THAT THE COURT NOT STOP ITS OWN PROCESS IN THE EVENT THIS LEGISLATURE FAILS TO COME UP WITH AND PASS CONSTITUTIONALLY VALID DISTRICTS.

AND SO YOUR HONOR WE WOULD ASK THAT ANY

REQUEST FOR AN ATTENTION OF TIME, WHETHER THE COURT GRANTS IT OR NOT, IT SHOULD NOT BE USED AS A BASIS FOR A *PURCELL* ARGUMENT IN THE FUTURE AND THAT YOUR PROCESS SHOULD PROCEED CONCURRENTLY WITH ANY EXTENSION OF TIME. BECAUSE WHILE WE CAN ONLY ASSUME THEY ARE IN GOOD FAITH AND THAT EVERYTHING THEY HAVE SAID IS TRUE, A LOT OF IT APPEARS SUSPICIOUS AND QUESTIONABLE. AND THEY HAVE HAD A LOT OF TIME TO PASS CONSTITUTIONALLY VALID DISTRICTS. THEY HAVE BEEN PUT ON NOTICE BY GUBERNATORIAL VETO AND OTHERWISE, AND THEY HAVE NOT DONE SO. AND SO YOUR HONOR, WE LOOK TO YOU, SO THANK YOU.

THE COURT: THANK YOU.

MR. ADCOCK, DO YOU WISH TO ADD ANYTHING?

MR. ADCOCK: NONE JUDGE.

THE COURT: THE COURT IS PREPARED TO RULE. THE COURT HAS HEARD TESTIMONY THIS MORNING BOTH FROM PRESIDENT PAGE CORTEZ -- OR SENATE PRESIDENT PAGE CORTEZ AND HOUSE LEADER MR. SCHEXNAYDER AND HAS LIKEWISE CONSIDERED BOTH THE BRIEFS, THE DECLARATION AND THE RESPONSE BRIEFS BY BOTH THE GALMON AND THE ROBINSON PLAINTIFFS AS WELL AS THE ARGUMENTS OF COUNSEL HERE TODAY.

THE COURT CONSIDERS THE TESTIMONY OF

PRESIDENT -- SENATE PRESIDENT CORTEZ. IMPORTANTLY HE WAS VERY CANDID IN HIS TESTIMONY THAT THERE IS TIME TO ENACT REMEDIAL MAPS THAT ARE COMPLIANT WITH THE VOTING RIGHTS ACT, PROVIDED THAT THERE IS A SUSPENSION OF RULES, WHICH HAS THUS FAR TAKEN PLACE. AND THE COURT HAS -- AT LEAST SENATOR -- SENATE PRESIDENT CORTEZ'S COMMITMENT THAT HE WILL DO WHAT HE CAN TO FURTHER SUSPEND RULES TO ALLOW THIS PROCESS TO MOVE EXPEDITIOUSLY.

THE OTHER CAVEAT TO HAVING SIGNIFICANT TIME, AS PRESIDENT CORTEZ CANDIDLY TESTIFIED, WAS TO ENSURE TRANSPARENCY. THE COURT IS -- THE COURT TAKES NOTICE OF PRESIDENT CORTEZ'S, AGAIN, CANDID STATEMENT TO THE COURT IN HIS TESTIMONY THAT IT -- WHILE HE DIDN'T SAY IT HAPPENS OFTEN, HE SAID IT DOES HAPPEN WHERE COMMITTEES REFER TO PRIOR TESTIMONY AND EVIDENCE FROM PRIOR SESSIONS, EVEN IN HIS WORDS, DECADES BEFORE. WE HAVE THE PRIVILEGE OF HAVING A VERY AMPLE RECORD -- LEGISLATIVE RECORD THAT THIS COURT CONSIDERED IN ITS PRELIMINARY INJUNCTION DECISION AND THAT IS CERTAINLY AVAILABLE TO BOTH HOUSES, THE SENATE AND THE HOUSE OF REPRESENTATIVES, THAT INCLUDES A GREAT DEAL OF PUBLIC COMMENT ON THESE MAPS.

THE MAPS THAT HAVE BEEN ADVANCED ARE

NOT DIFFERENT FROM MAPS THAT HAVE BEEN PREVIOUSLY CONSIDERED. THE IVY MAPS WERE PUT FORWARD IN THE EARLIER REDISTRICTING SESSION AS WELL AS THE BLACK LEGISLATIVE CAUCUS MAP AND SENATOR FIELDS' MAPS. ALL THOSE MAPS HAVE BEEN DEBATED. SO THE COURT -- WHILE THE COURT APPRECIATES THE NEED FOR TIME FOR PUBLIC COMMENT AND OPINION, GIVEN THE TESTIMONY THAT IT IS NOT UNUSUAL TO REVIEW PRIOR DEBATE, THE COURT FINDS THAT THAT PARTICULAR CONSIDERATION IS NOT AN OVERRIDING CONSIDERATION IN THIS MOTION FOR EXTENSION CONTEXT.

ADDITIONALLY, THE COURT IS NOT PERSUADED AND FINDS DISINGENUOUS THE ACTIVITY THAT'S HAPPENED ON THE HOUSE SIDE UNDER THE LEADERSHIP OF HOUSE SPEAKER SCHEXNAYDER. WITH FIVE DAYS TO WORK WITH, THEY MET FOR 90 MINUTES. HAVING SUSPENDED THE RULES AND -- WHICH WOULD HAVE PERMITTED AN IMMEDIATE REFERRAL TO COMMITTEE, WHICH WOULD HAVE ENABLED THE PUBLIC TO MAKE COMMENT AND TO TESTIFY IN COMMITTEE IF THEY WERE SO RECOGNIZED, INSTEAD WAITED 48 HOURS -- OR NOT QUITE 48 HOURS -- BUT ALMOST 48 HOURS TO REFER IT TO THE COMMITTEE.

AND THE ONLY PROCESS THAT HAS BEEN MADE AVAILABLE TO THE PUBLIC TO COMMENT SINCE GAVELING IN THE LEGISLATURE YESTERDAY MORNING AND FRIDAY, 48

HOURS LATER WHEN THE SENATE COMMITTEE IS GOING TO -- OR I'M SORRY -- WHEN THE HOUSE COMMITTEE IS GOING TO CONVENE IS THAT THE PUBLIC CAN PULL IT UP ON THE INTERNET. THERE HAS BEEN UTTERLY NO PROCESS PROVIDED FOR THE PUBLIC TO MAKE COMMENTS.

THE COURT FINDS THAT AT LEAST ON THE HOUSE SIDE IT'S DISINGENUOUS AND INSINCERE AND UNPERSUASIVE TO SUGGEST TO THIS COURT THAT ADDITIONAL TIME IS NEEDED TO ENABLE THIS TRANSPARENCY OF THE PROCESS.

THE COURT TAKES JUDICIAL NOTICE THAT IN 1994 THERE WAS REDISTRICTING IN SIX DAYS. THE COURT TAKES JUDICIAL NOTICE THAT IN 2017 AT A SPECIAL SESSION THE LOUISIANA LEGISLATURE PASSED A BUDGET IN FOUR DAYS. THERE ARE NO COMMITTEE MEETINGS SCHEDULED FOR TODAY ON THE HOUSE SIDE.

THE COURT FINDS THAT THE MOTION FOR EXTENSION IS DENIED FOR THOSE REASONS.

IS THERE ANYTHING FURTHER?

THE COURT WILL HEAR ARGUMENT OF COUNSEL WITH RESPECT TO THE REMEDIAL PROCESS. IF YOU'D LIKE TO REMAIN AND WE CAN ADDRESS AND MAYBE HAMMER OUT A REMEDIAL PROCESS -- JUDICIAL PROCESS FOR REMEDIAL MAPS IN THE EVENT THAT THE LEGISLATURE IS UNABLE TO TAKE ADVANTAGE OF THE OPPORTUNITY THAT HAS BEEN

PROVIDED TO IT.

LET'S HEAR FROM YOU ALL. THE COURT IS -- WANTS TO HAVE -- WILL HAVE A HEARING ON THE REMEDIAL MAPS IN THE EVENT THAT THERE IS A NEED TO HAVE A HEARING ON REMEDIAL MAPS. WHAT THE COURT PROPOSES IS THAT EACH SIDE, PLAINTIFFS COMBINED CONSOLIDATED, AND THE RESPONDENT LEGISLATORS AND ALL THE INTERVENORS PRESENT A SINGLE MAP TO THE COURT FOR CONSIDERATION SIMULTANEOUSLY, A MAP THAT IS A REMEDIAL MAP IN CONFORMANCE WITH THIS COURT'S PRELIMINARY INJUNCTION ORDER. THEN THE PARTIES WILL BE GIVEN SOME REQUISITE NUMBER OF DAYS -- I'M OPEN TO SUGGESTIONS FROM COUNSEL -- TO RESPOND OR OPPOSE THE OTHER PARTY'S MAP AND THEN WE'LL HAVE A HEARING.

IS THERE ANY REASON WHY THAT PROCESS CANNOT WILL NOT PRODUCE A MEANINGFUL DEBATE IN THE COURT WITH RESPECT TO A REMEDIAL MAP?

MS. MCKNIGHT?

MS. MCKNIGHT: THANK YOU, YOUR HONOR. OF COURSE.

THE COURT: FOR PURPOSES OF THE RECORD, THIS AMPLIFIES AND IT'S ALSO RECORDED SO THAT THE COURT REPORTER CAN MAKE SURE SHE'S GOT IT.

MS. MCKNIGHT: I UNDERSTAND. THANK YOU, YOUR HONOR. THERE IS AT LEAST ONE ISSUE WITH THAT

SUGGESTION; AND THAT IS THERE IS CASE LAW ON POINT THAT NOTES THAT DURING THIS REMEDIAL PHASE A DISTRICT COURT MUST ALLOW SUFFICIENT TIME FOR THE PARTIES TO ENGAGE IN SOME LEVEL OF DISCOVERY.

AND, YOUR HONOR, SO I CAN GIVE YOU A SENSE OF WHAT THOSE CASES SAY, SOME OF THAT GOES TO: WELL, WHAT WAS IN THE MIND OF THE MAP DRAWER? WHY DID THEY DRAW IT THIS WAY? WHY WERE THINGS DRAWN IN THESE CERTAIN WAYS? THERE ARE OTHER ASPECTS TO IT. BUT I WANTED TO MAKE SURE THAT YOU WERE -- WE SAW PLAINTIFFS REQUEST IN THEIR RESPONSE LAST NIGHT, AND WE WANTED TO MAKE SURE THAT THIS COURT WAS AWARE THAT THERE IS GOVERNING CASE LAW ABOUT WHAT THIS REMEDIAL PROCESS NEEDS TO LOOK LIKE.

THE COURT: HOW MUCH DISCOVERY?

MS. MCKNIGHT: I THINK WE'D NEED -- AND I DEFER TO THEM. BUT IN PAST CASES FOR ME IT HAS INVOLVED DISCOVERY AS TO A MAP DRAWER AND THERE IS A POTENTIAL FOR AN EXPERT WITNESS TO COME IN AND SAY *THIS IS WHAT THE MAP DOES.*

THE COURT: SO YOU NEED TO TAKE -- IF YOU SIMULTANEOUSLY EXCHANGE MAPS, THEN YOU EACH GET TO TAKE THE MAP DRAWER'S DEPOSITION?

MS. MCKNIGHT: A MAP DRAWER'S DEPOSITION. AND IF THERE IS ANY EXPERT REPORT THAT'S PROVIDED

WITH THE MAP THAT SAYS THIS IS WHY THE MAP COMPLIES, THIS IS WHAT IT DOES, THESE ARE HOW THE NUMBERS WORK, IT WOULD BE A DEPOSITION OF THAT EXPERT AS WELL.

THE COURT: OKAY. TWO DEPOSITIONS. ALL RIGHT. THANK YOU. COUNSEL FOR THE PLAINTIFFS?

MR. PAPILLION: YOUR HONOR --

MR. ADCOCK: MR. PAPILLION, BEFORE SO JUST SO I UNDERSTAND, JUDGE, I THINK YOU'RE SAYING BASICALLY ONE MAP FROM EACH SIDE. RIGHT?

THE COURT: THAT'S WHAT I'M SAYING.

MR. ADCOCK: THAT'S WHAT I THOUGHT YOU WERE SAYING.

MR. PAPILLION: YOUR HONOR, WE'VE OUTLINED SOME DATES IN THE MEMORANDA THAT WE FILED LAST NIGHT. I BELIEVE THAT THOSE DATES COULD BE ADJUSTED TO ALLOW FOR THE DISCOVERY THAT THE INTERVENOR'S ASKING FOR AND THIS CAN ALL BE ACCOMPLISHED VERY QUICKLY. I DON'T THINK THERE WILL BE ANY SURPRISES AS TO WHO HAS DRAWN THE MAPS IN LIGHT OF THE HEARING THAT WE HAD VERY RECENTLY. THIS CAN BE DONE VERY QUICKLY.

THE COURT: MS. MCKNIGHT, HOW QUICK CAN YOU HAVE A MAP?

MS. MCKNIGHT: YOUR HONOR, I BEG YOU PARDON BUT I WILL NEED TO DISCUSS THAT WITH CO-COUNSEL. WE UNDERSTAND YOU WANT ONE.

THE COURT: ONE MAP.

MS. MCKNIGHT: WE UNDERSTAND THAT YOU WOULD LIKE ONE MAP. AND I NEED TO DISCUSS WITH THEM HOW QUICKLY WE THINK WE CAN GET IT DONE.

THE COURT: JUST SO THAT I MAKE -- JUST SO THAT I UNDERSTAND, YOU'VE BEEN -- I DON'T WANT YOUR LEGAL -- I DON'T WANT TO KNOW WHAT YOU TOLD YOUR CLIENTS OR I'M NOT CALLING FOR ATTORNEY-CLIENT PRIVILEGE. YOU HAVE BEEN ENGAGED AS GIVING COUNSEL IN THIS REDISTRICTING PROCESS DURING THE ENTIRE -- ENTIRETY OF THIS PROCESS. IS THAT CORRECT?

MS. MCKNIGHT: WE HAVE BEEN ENGAGED.

THE COURT: OKAY. ALL RIGHT. I JUST WANT TO MAKE SURE THAT I'M NOT ASKING YOU TO MOVE A MOUNTAIN THAT YOU CAN'T MOVE. THAT'S THE PURPOSE OF THE QUESTION. THESE MAPS ARE CLEARLY NOT NEW. OKAY. THAT'S WHAT I WANTED TO KNOW.

WELL, CONFER AND TELL ME HOW QUICKLY YOU CAN GET ME A MAP. I DON'T WANT TO GIVE YOU A DEADLINE THAT YOU CAN'T COMPLY WITH.

MS. MCKNIGHT: DO YOU WANT ME TO DO IT RIGHT NOW OR DOES IT MAKE SENSE FOR US TO FILE SOMETHING THIS AFTERNOON AFTER YOUR HEARING?

THE COURT: NO. I WANT TO BE ABLE TO GIVE YOU A MINUTE ENTRY TODAY ABOUT WHAT THE PLAN IS GOING

TO BE. HOW FAST CAN YOU ALL HAVE A MAP? YOU GO CONFER. HOW FAST CAN YOU HAVE A MAP?

MR. ADCOCK: THIS IS MY PROBLEM, NOT YOURS. I'M CONFERRING WITH CO-COUNSEL OVER TEXT MESSAGE. I'M NOT AWARE OF THESE CASES THAT SAYS THEY REQUIRE DISCOVERY. I'D LIKE TO SEE THEM. HOWEVER, IN THE EVENT OF TIME, IF THEY CAN AGREE TO A LIMITED DEPOSITION JUST LIMITED TO THIS MAP, NOT SOME SEVEN HOUR THING BUT MAYBE LIKE A FOUR HOUR THING OR A THREE HOUR THING, WE'D PROPOSE THAT TO THE COURT IN THE INTEREST OF MOVING THIS FORWARD.

AND THEY HAD A CHANCE TO DEPOSE OUR EXPERTS AND THEY CHOSE NOT TO. BECAUSE REMEMBER WE PUT OFF THE PRELIMINARY INJUNCTION HEARING BY A FEW WEEKS AND THERE WAS TIME TO DEPOSE PEOPLE. THERE WAS DISCUSSION ABOUT DEPOSING EXPERTS AND THEY CHOSE NOT TO DO IT. I JUST WANT TO ADD THAT IN FOR THE RECORD.

AND.

THE COURTROOM DEPUTY: MR. ADCOCK, IF YOU WOULD, PLEASE COME TO THE PODIUM.

MS. MCKNIGHT: YOUR HONOR, I WOULD JUST BRIEFLY NOTE, MR. ADCOCK IS MAKING REPRESENTATIONS TO THE COURT WHILE WE ARE TRYING TO CONFER AND PROVIDE THE COURT DATES AS SOON AS POSSIBLE. WE CANNOT DO BOTH, BOTH DEFEND AGAINST REPRESENTATIONS THAT WE

FIND INACCURATE AND ALSO CONFER TO GET YOU A DATE AS EARLY AS POSSIBLE.

THE COURT: WELL, STAND DOWN AND LISTEN TO MR. ADCOCK. I'M GOING TO GIVE YOU A MINUTE ORDER. JUST -- ALL RIGHT. GO AHEAD.

MR. ADCOCK: THAT WAS NOT MY INTENTION, JUDGE. I THOUGHT THE COURT RECOGNIZED ME AND I WAS DOING IT, BUT I APOLOGIZE. I'LL SAY THIS AGAIN.

SO BASICALLY WE THINK THAT THE DEFENDANTS HAVE HAD AN OPPORTUNITY TO DEPOSE ANY OF OUR WITNESSES OR EXPERTS THEY WANTED TO BEFORE THE PRELIMINARY INJUNCTION HEARING. I'LL NOTE THAT THE COURT SCHEDULED A PRELIMINARY INJUNCTION HEARING POST HASTE AND THEN WE PUT IT OFF FOR ANOTHER TWO OR THREE WEEKS TO GIVE THEM MORE TIME TO PREPARE. THERE WAS DISCUSSION ABOUT DOING DEPOSITIONS THEN. WE CHOSE NOT TO. WE'RE NOT COMPLAINING ABOUT IT NOW. NOW THEY WANT TO DO DEPOSITIONS AFTER THE FACT. SO IF BUT IF THE COURT IS INCLINED TO DO THAT WE WOULD JUST PROPOSE THAT IT BE A LIMITED DEPOSITION OF NO MORE THAN THREE HOURS JUST DEVOTED TO THE MAPS IN QUESTION AND NOTHING ELSE. OF COURSE BEFORE FINAL JUDGMENT WE'LL HAVE A FULL DISCOVERY PERIOD AND WE CAN DO THAT. THEY CAN DEPOSE WHOEVER THEY HAVE WANT.

THE COURT: THERE IS STILL A WHOLE MERITS --

wHOLE MERITS HEARING THAT'S THAT WE HAVEN'T EVEN GOTTEN TO YET. THANK YOU.

MR. ADCOCK: IF THEY COULD PUT THEIR PROPOSAL FOR WHAT THEY WANT TO DO DISCOVERY ON IN WRITING WITH THESE CASES THEY'RE TALKING ABOUT, WE'D APPRECIATE THAT. WE'RE FINE WITH THE DATES WE PROPOSE IN OUR BRIEFING AND REPRESENTATIONS THAT MR. PAPILLION MADE IN FRONT OF THE COURT JUST NOW.

THE COURT: WELL THEN LET'S JUST DO THIS. THERE IS NOT BEEN -- THERE IS NO CONSENSUS ON THE DISCOVERY AND THE COURT HAS NOT LOOKED AT THE CASES THAT MS. MCKNIGHT CONTENDS WOULD REQUIRE DISCOVERY FOR THE REMEDIAL PHASE. SO BY CLOSE OF BUSINESS TODAY, LET ME HAVE YOUR PROPOSALS WITH RESPECT TO HOW YOU WANT TO MOVE FORWARD ON REMEDIAL -- IN THE ENACTMENT OF REMEDIAL MAPS IN ANY EVENT THE LEGISLATURE IS UNABLE TO DRAW A MAP THAT'S COMPLIANT WITH THE VOTING RIGHTS ACT AND THAT IS COMPLIANT WITH THIS COURT'S ORDER.

SO BY FIVE O'CLOCK TODAY LET ME HAVE YOUR BRIEFS AND -- OR YOUR POSITIONS ON THAT AND YOUR CITATIONS TO WHATEVER LAW THAT YOU'VE GOT THAT REQUIRE -- THAT WOULD REQUIRE DISCOVERY AND THE COURT WILL GET A MINUTE ENTRY IN THE RECORD TOMORROW. IS THERE ANYTHING FURTHER? COURT'S IN RECESS.

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