

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

JAMILA JOHNSON; NORRIS HENDERSON;  
RENARD THOMAS; TRAMELLE HOWARD;  
ALLAN ROGERS; MILDRED ARMSTRONG;  
KRISTEN SMITH; CIARA HART; DADRIUS  
LANUS; PATRICIA CHANEY; EDWARD  
GALMON, SR.,

Plaintiffs,

v.

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

Defendant.

Case No. 3:18-cv-00625-SDD-EWD

**AMENDED COMPLAINT**

1. Plaintiffs—African-American voters in Louisiana—bring this action to challenge Louisiana Revised Statute § 18:1276.1 (hereinafter “2011 Congressional Plan”), which dilutes African-American voting strength and denies African-American voters in Louisiana the equal opportunity to elect candidates of their choice for the U.S. House of Representatives in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Plaintiffs seek to enjoin Defendant from enforcing the 2011 Congressional Plan and from administering any elections under the illegal map.

2. Between the 2000 and 2010 census, Louisiana’s population grew by 1.4 percent from 4,468,976 to 4,533,372. Due in large part to displacement caused by Hurricane Katrina, this growth rate was far below the national growth rate of 9.7 percent over the same period. As a result, following the 2010 census, Louisiana lost one congressional district, reducing its delegation in the U.S. House of Representatives from seven members to six. Despite the reduction in seats, Louisiana’s African-American population remained steady; as of 2010 nearly 32.6 percent of Louisiana’s population

was African American, making Louisiana the state with the second highest percentage of African-American population in the country.

3. Even though Louisiana had maintained a substantial African-American population, the Louisiana State Legislature (“the Legislature”) chose to limit minority voting strength and political influence by “packing” African-American voters into one majority-minority district and “cracking” them among other districts in the 2011 Congressional Plan, instead of unifying them to form an additional majority-minority district in keeping with Section 2 of the Voting Rights Act.

4. Specifically, African-American voters were packed into the Second Congressional District (“CD 2”), the sole majority-minority congressional district included in the 2011 Congressional Plan. CD 2 was first established as a majority-minority district in 1983, as a direct result of *Major v. Treen*, 574 F. Supp. 325, 339-40 (E.D. La. 1983), a Section 2 challenge to Louisiana’s 1981 congressional reapportionment scheme which found that racially polarized voting as well as “Louisiana’s history of racial discrimination, both *de jure* and *de facto*, continu[ed] to have an adverse effect on the ability of its black residents to participate fully in the electoral process.” In 1990, for the first time in the 113 years that had passed since Reconstruction, African-American voters in Louisiana were able to elect an African-American to Congress—William Jefferson. Today, CD 2 is represented by Representative Cedric Richmond, an African American who was first elected in 2010.

5. The packing of African-American voters is most pronounced along the Mississippi River from Orleans Parish to East Baton Rouge Parish, where CD 2 captures African-American voters on the southern shore of Lake Pontchartrain along the Mississippi to cut Kenner, St. Rose, and New Sarpy out of CDs 1 and 6 on the north shore. It then continues, moving up through the River Parishes, and into Assumption, Ascension, and Iberville, including the cities of Gonzales,

White Castle, and Port Allen, and on into parts of eastern and northern Baton Rouge.

6. In contrast, African-American voters in other contiguous parishes such as East and West Feliciana, St. Helena, Pointe Coupee, West Baton Rouge, and Avoyelles are dispersed between CDs 5 and 6. In particular, CD 5—which is so vast that it spans nearly the length of the State and encompasses pieces of almost every traditional community of interest in Louisiana, e.g., North and Central Louisiana, Acadiana, and the Florida Parishes—stops short of uniting the northern African-American population centers of Tensas, Madison, and East Carroll with the more southern African-American population centers by carving out parts of East Feliciana, West Feliciana, and St. Helena from its district, and splitting these parishes between CDs 5 and 6.

7. CD 6—which wraps almost entirely around CD 2—encompasses the remaining portions of the River Parishes that CD 2 left behind, while also including the African Americans that were excluded from CD 5.

8. As a result, based on the 2010 census, CD 2 has a Black Voting Age Population (“BVAP”) of 59.7%. CDs 5 and 6, meanwhile, have BVAPs of 33.7% and 21.5%, respectively.

9. African Americans in Louisiana are sufficiently numerous and geographically compact to form a majority of eligible voters—meaning, a majority of the voting age population<sup>1</sup>—in a second congressional district, including but not limited to districts that are more

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<sup>1</sup> The phrases “majority of eligible voters” and “majority of the voting age population” have been used by courts interchangeably when discussing the threshold requirements of a vote-dilution claim under Section 2 of the Voting Rights Act. *See, e.g., Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) (“[T]he first *Gingles* precondition . . . requires only a simple **majority of eligible voters** in a single-member district.” (emphasis added) (internal quotation marks omitted)); *Terrebonne Parish Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 428 (M.D. La. 2017) (“At the *Gingles* One stage, the Supreme Court requires only a simple **majority of eligible voters** in the single-member district.” (emphasis added) (internal quotation marks omitted)). Hereinafter, the phrase “majority of eligible voters” when used in this Complaint shall also refer to the “majority of the voting age population,” i.e., “citizens of voting age.”

compact than the current districts by both quantitative and qualitative measures, and which track the current trajectory of CD 5, as well as districts respecting traditional North, Central, and South Louisiana divisions, which include the areas where Plaintiffs reside.

10. As evidenced by an array of factors, such as the history of racial discrimination in voting, the perpetuation of racial appeals in Louisiana elections, and the socio-economic effects of decades of discrimination against African Americans that hinder their ability to participate effectively in the political process, Louisiana's failure to create a second majority-minority congressional district in its 2011 Congressional Plan has resulted in the dilution of African-American voting strength in violation of Section 2 of the Voting Rights Act.

11. Accordingly, Plaintiffs seek an order (i) declaring that Louisiana's 2011 Congressional Plan violates Section 2 of the Voting Rights Act; (ii) enjoining Defendant from conducting future elections under the 2011 Congressional Plan; (iii) ordering a congressional redistricting plan that includes two majority-minority congressional districts; and (iv) providing any such additional relief as is appropriate.

### **JURISDICTION AND VENUE**

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

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

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

### **PARTIES**

15. Plaintiff Jamila Johnson is an African-American citizen of the United States and of the State of Louisiana. Ms. Johnson moved to New Orleans, Louisiana in April 2017, and as a

result, is a new resident of Orleans Parish. Ms. Johnson is registered to vote in Orleans Parish in CD 2 and will vote for a candidate for the U.S. House of Representatives in CD 2 for the first time in the November 2018 general election. Because she is packed in CD 2, where her vote is of lesser value because African-American voters are concentrated there, Ms. Johnson will be denied an equal opportunity to vote for candidates for the U.S. House of Representatives in the upcoming election.

16. Plaintiff Norris Henderson is an African-American citizen of the United States and of the State of Louisiana. Mr. Henderson is a life-long resident of Orleans Parish and is registered to vote in CD 2. Mr. Henderson has been a registered voter in Orleans since 2005, when he had his voting rights restored. Mr. Henderson is denied an equal opportunity to vote for candidates for the U.S. House of Representatives because he is packed in CD 2, where his vote is of lesser value because African-American voters are concentrated there.

17. Plaintiff Renard Thomas is an African-American citizen of the United States and of the State of Louisiana. Mr. Thomas is a life-long resident of Orleans Parish and is registered to vote in CD 2. Mr. Thomas has been a registered voter in Orleans since his voting rights were restored in 2004. Mr. Thomas is denied an equal opportunity to vote for candidates for the U.S. House of Representatives because he is packed in CD 2, where his vote is of lesser value because African-American voters are concentrated there.

18. Plaintiff Tramelle Howard is an African-American citizen of the United States and of the State of Louisiana. Mr. Howard is a life-long resident of East Baton Rouge Parish and is registered to vote in CD 2. Mr. Howard has been a registered voter in East Baton Rouge since he turned eighteen. Mr. Howard is denied an equal opportunity to vote for candidates for the U.S. House of Representatives because he is packed in CD 2, where his vote is of lesser value because

African-American voters are concentrated there.

19. Plaintiff Allan Rogers is an African-American citizen of the United States and of the State of Louisiana. He is a resident of East Feliciana Parish and is a registered voter in CD 5. Mr. Rogers has resided in East Feliciana since June 2014 and has been a registered voter in CD 5 since October 2016. In the 2016 election Mr. Rogers, who votes Democratic, was given no opportunity to elect his candidate of choice because both CD 5 candidates were Republican. Mr. Rogers is denied the equal opportunity to vote for a candidate of his choice to the U.S. House of Representatives because African-American voters in East Feliciana are cracked among multiple congressional districts. An additional majority-minority district could be drawn incorporating East Feliciana Parish, in its entirety, providing a remedy for the existing Section 2 violation in the area where Mr. Rogers resides.

20. Plaintiff Mildred Armstrong is an African-American citizen of the United States and of the State of Louisiana. She is a lifelong resident of West Feliciana Parish and is a registered voter in CD 5. Ms. Armstrong has been registered to vote in West Feliciana since she was of legal age to register. Ms. Armstrong has been unable to elect the candidates of her choice to the U.S. House of Representatives despite strong electoral support for those candidates from other African-American voters in her community. In the 2016 election, Ms. Armstrong, who votes Democratic, was given no opportunity to elect her candidate of choice because both CD 5 candidates were Republican. An additional majority-minority district could be drawn incorporating West Feliciana, in its entirety, providing a remedy for the existing Section 2 violation in the area where Ms. Armstrong resides.

21. Plaintiff Kristen Smith is an African-American citizen of the United States and of the State of Louisiana. She is a resident of East Baton Rouge Parish and a registered voter in CD

6. Ms. Smith has resided in CD 6 since July 2014, and has been a registered voter in CD 6 since October 2015. In election after election, Ms. Smith has been unable to elect the candidates of her choice to the U.S. House of Representatives despite strong electoral support for those candidates from other African-American voters in her community. An additional majority-minority district could be drawn incorporating East Baton Rouge Parish, including the area where Ms. Smith resides, to provide a remedy for the existing Section 2 violation.

22. Plaintiff Ciara Hart is an African-American citizen of the United States and of the State of Louisiana. She is a resident of East Baton Rouge Parish and a registered voter in CD 6. Ms. Hart has resided in CD 6 since June 2017, and has been a registered voter in CD 6 since October 2017. Ms. Hart will vote for a candidate for the U.S. House of Representatives in CD 6 for the first time in the November 2018 general election; however, because African-American voters are cracked in CD 6, she likely will be unable to elect the candidate of her choice to the U.S. House of Representatives despite strong electoral support for those candidates from other African-American voters in her community. An additional majority-minority district could be drawn incorporating East Baton Rouge Parish, including the area where Ms. Smith resides, to provide a remedy for the existing Section 2 violation.

23. Plaintiff Dadrius Lanus is an African-American citizen of the United States and of the State of Louisiana. He is a life-long resident of East Baton Rouge Parish and a registered voter in CD 6. Mr. Lanus has been registered to vote in East Baton Rouge Parish since he was eighteen. In election after election, Mr. Lanus has been unable to elect the candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other African-American voters in his community. An additional majority-minority district could be drawn incorporating East Baton Rouge Parish, including the area where Mr. Lanus resides, to

provide a remedy for the existing Section 2 violation.

24. Plaintiff Patricia Chaney is an African-American citizen of the United States and of the State of Louisiana. She has been a resident of St. Helena Parish for thirty-two years and is a registered voter in CD 5. Ms. Chaney has been unable to elect the candidates of her choice to the U.S. House of Representatives despite strong electoral support for those candidates from other African-American voters in her community. In the 2016 election, Ms. Chaney, who votes Democratic, was given no opportunity to elect her candidate of choice because both CD 5 candidates were Republican. An additional majority-minority district could be drawn incorporating St. Helena, in its entirety, providing a remedy for the existing Section 2 violation in the area where Ms. Chaney resides.

25. Plaintiff Edward Galmon, Sr. is an African-American citizen of the United States and of the State of Louisiana. He is a resident of St. Helena Parish and a registered voter in CD 6. Mr. Galmon has resided in CD 6 since 1994, and has been a registered voter in St. Helena since then. In election after election, Mr. Galmon has been unable to elect the candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other African-American voters in his community. An additional majority-minority district could be drawn incorporating St. Helena, in its entirety, to provide a remedy for the existing Section 2 violation in the area where Mr. Galmon resides.

26. Defendant Kyle Ardoin is the Acting Secretary of State of Louisiana and is sued in his official capacity. The Secretary of State is the State's chief election officer. LA Const. art. 4, § 7. In that capacity, he is responsible for preparing and certifying the ballots for all elections, including elections for the U.S. House of Representatives, promulgating all election returns, and administering the election laws. *Id.* As part of his duties, the Secretary of State also qualifies



candidates for U.S. House of Representatives. La. R.S. §§ 18:452, 18:462.

### **LEGAL BACKGROUND**

27. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a), prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]” Thus, in addition to prohibiting practices that deny the exercise of the right to vote, Section 2 prohibits vote dilution. A violation of Section 2 is established if “it is shown that the political processes leading to nomination or election” in the jurisdiction “are not equally open to participation by members of a [minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

28. The dilution of African-American voting strength “may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

29. The United States Supreme Court, in *Thornburg v. Gingles*, identified three necessary preconditions for a claim of vote dilution under Section 2 of the Voting Rights Act: (1) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group must be “politically cohesive”; and (3) the majority must vote “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 50-51.

30. Once all three preconditions are established, the statute directs courts to consider whether, under the totality of the circumstances, members of a racial group have less opportunity than other members of the electorate to participate in the political process and to elect

representatives of their choice. 52 U.S.C. § 10301(b). The Senate Report on the 1982 amendments to the Voting Rights Act identifies several non-exclusive factors that courts should consider when determining if, under the totality of the circumstances in a jurisdiction, the operation of the electoral device being challenged results in a violation of Section 2.

31. These Senate Factors include: (1) the history of official voting-related discrimination in the state or political subdivision; (2) the extent to which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet-voting; (4) the exclusion of members of the minority group from candidate slating processes; (5) the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; and (7) the extent to which members of the minority group have been elected to public office in the jurisdiction.

32. The Senate Report itself and the cases interpreting it have made clear that “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *United States v. Marengo Cty. Comm’n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); *see id.* at 1566 (“The statute explicitly calls for a ‘totality-of-the circumstances’ approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.”).

### **FACTUAL BACKGROUND**

33. On April 13, 2011, the Legislature established Louisiana’s six Congressional districts with the passage of Act 2, the 2011 Congressional Plan. The Louisiana State Senate voted 25 to 13

to approve the 2011 Congressional Plan, and the House voted in favor of it 63 to 56. The vast majority of African-American legislators voted against the Plan. The 2011 Congressional Plan was signed into law as La. Rev. Stat. § 18:1276.1 by then-Governor Bobby Jindal on April 14, 2011.

34. Prior to the 2011 Congressional Plan's passage, multiple maps were proposed, including maps containing an additional African-American opportunity district. Specifically, African-American Senator Lydia Jackson proposed SB 3, a congressional map which contained two horizontal districts for North Louisiana, one of which—proposed CD 4—contained approximately 36% African-American voting age population. It was anticipated that this district would be one in which African-American voters would have the ability to exert greater influence over congressional elections and demand greater responsiveness to minority interests from congressional representatives. While this plan initially passed through the Senate, it was eventually killed in the House Committee when then-Governor Jindal publicly threatened to veto it if it made it to his desk. A similar minority-opportunity district was proposed in the House by Representative Rick Gallot. Representative Gallot's proposed plan gained even less traction, dying in committee and never reaching the House floor.

35. African-American Senate President Pro Tempore Sharon Weston Broome and Representative Michael Jackson each introduced amendments to the 2011 Congressional Plan which would have created two majority-minority districts, one in CD 2 and one in CD 5. The amended CD 5 would have included, among other parishes, East Feliciana, West Feliciana, and St. Helena parishes, in their entirety, as well as the bulk of East Baton Rouge Parish's African-American voting age population. The respective BVAPs for these proposed districts was 55.276%

(CD2) and 51.445% (CD 5).<sup>2</sup> Both amendments were rejected, by votes of 23 to 14 (Broome) and 71 to 20 (Jackson), respectively. All African-American members of the Senate voted in favor of the amendments as did the overwhelming majority of African-American members of the House.

36. In the end, the only majority-minority district to remain intact under the 2011 Congressional Plan was CD 2, which has a total African-American population of 62.9% and a BVAP of 59.7%; 61.6% of the District's registered voters are African-American. The next highest BVAP in the 2011 Congressional Plan are CDs 4 and 5, at 32.7% and 33.7%, respectively.

37. As described above, CD 2 includes parts of New Orleans, excluding the western suburbs, and weaves around to Baton Rouge, capturing its western and northern neighborhoods. The shape of CD 2, as redrawn in 2011, is significantly more contorted than it had been under the prior congressional districting plan, adopted in 2001 ("Benchmark CD 2"). Benchmark CD 2 was relatively more compact and did not stretch west of Kenner or Jefferson Parish. Instead, it represented primarily one community: New Orleans.

38. Benchmark CD 2 had a total African-American population of 64.8% and a BVAP of 60.3%. At that time, 60.7% of registered voters were African-American.

39. The 2011 Congressional Plan as a whole violates Section 2 of the Voting Rights Act by cracking African-American voters among CDs 5 and 6 and packing them in CD 2, rather than including an additional majority-minority district. Indeed, at the time of the 2011 Congressional Plan's passage, the Legislative Black Caucus "raised serious questions about the intentions of the authors and the results of the various maps presented." After the plan was signed,

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<sup>2</sup> The population distribution of Louisiana would also permit for the creation of majority-minority districts even more compact by both qualitative and quantitative measures than those proposed in Senator Broome and Representative Jackson's proposed amendments to the 2011 Congressional Plan.

the Legislative Black Caucus announced that the plan did not adequately protect the voting strength of non-white voters, who as of 2010, accounted for 32.6% percent of Louisiana's registered voters, stating that: "We have worked hard to ensure that the state's citizens' voting power was not diluted . . . . Despite our efforts, we believe the process was conducted in a manner that diminished minority voters' ability to select a candidate of their choice."

### **Racial Polarization**

40. Louisiana has a long history of racially polarized voting that has been well-recognized by federal courts and continues today. *See, e.g., Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 436-37 (M.D. La. 2017) (recognizing racially polarized voting in Terrebonne Parish); *St. Bernard Citizens For Better Gov't v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at \*9 (E.D. La. Aug. 26, 2002) (recognizing racially polarized voting in St. Bernard Parish); *Clark v. Edwards*, 725 F. Supp. 285, 298 (M.D. La. 1988) (finding racially polarized voting "across Louisiana" in family court, district court, and appeals court districts), *modified sub nom., Clark v. Roemer*, 777 F. Supp. 445 (M.D. La. 1990), *vacated*, 750 F. Supp. 200 (M.D. La. 1990), *cert. granted before judgment, order vacated*, 501 U.S. 1246 (1991), *supplemented*, 777 F. Supp. 471 (M.D. La. 1991); *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1124 (E.D. La. 1986) (recognizing racially polarized voting in Gretna), *aff'd*, 834 F.2d 496 (5th Cir. 1987); *Major v. Treen*, 574 F. Supp. 325, 337 (E.D. La. 1983) (recognizing racial polarization in Orleans Parish).

41. African-American voters in Louisiana are politically cohesive and overwhelmingly support Democratic candidates.

42. The white majority, which overwhelmingly supports Republican candidates, votes as a bloc usually to defeat African-American voters' candidates of choice.

43. For example, in the 2016 presidential election, the vast majority of African Americans in Louisiana voted for the Democratic candidate, but fewer than 35% of white voters voted for the Democratic candidate. African-American voters' candidate of choice lost the statewide vote by a margin of 20 percentage points.

#### **History of Official Voting-Related Discrimination**

44. Louisiana has a long, deep rooted history of voting-related discrimination—one so deeply ingrained that “it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana’s political process.” *Citizens for a Better Gretna*, 636 F. Supp. at 1116. This history directly resulted in Louisiana becoming a covered jurisdiction subject to federal preclearance for any change to its voting laws under Section 5 of the Voting Rights Act—and has continued through the present day.

45. From its inception until the State was forced to allow African Americans to vote during Reconstruction, Louisiana’s state constitution limited the right to vote to white males, wholly excluding African Americans from the franchise. In 1898, as African-American voter registration began to increase, Louisiana called a constitutional convention with the purpose of, in the words of the Chairman of the Judiciary Committee of the Convention, “establish[ing] the supremacy of the white race.” To that end, the delegates enacted several constitutional provisions that specifically targeted African-American voters.

46. For example, Louisiana expanded its felon disenfranchisement policy to include all individuals convicted of “any crime punishable by imprisonment, and not afterwards pardoned with express restoration of the franchise” as well as all individuals “actually confined in any public prison.” This was a drastic expansion from the policy in place in Louisiana when only white men

could vote, which had limited disenfranchisement only to four crimes (bribery, forgery, perjury, high crimes and misdemeanors), and it was directly aimed at disenfranchising African Americans.

47. Further, Louisiana became one of the first states to implement the “Grandfather Clause,” a constitutional provision requiring that registrants whose fathers or grandfathers had not been registered to vote before 1867 comply with additional property and education requirements to register. As the president of the state constitutional convention explained, the Clause was implemented specifically to “let the white man vote” and “stop the negro from voting.”

48. After the Convention, then-Governor Murphy J. Foster stated of all of the new provisions that “[t]he white supremacy for which we have so long struggled at the cost of so much precious blood and treasure, is now crystallized into the Constitution as a fundamental part and parcel of that organic instrument.” Indeed, the effect of the 1898 constitutional changes was profound. African-American voter registration was reduced from approximately 45% to a mere 4% by 1900. The Clause remained in place until it was struck down by the United States Supreme Court in 1915. *See Guinn v. United States*, 238 U.S. 347 (1915). As discussed *infra*, versions of Louisiana’s felon disenfranchisement policy, which disproportionately disenfranchises African Americans, have remained a part of Louisiana’s laws governing access to the franchise. The most recent iteration of this policy is currently the subject of on-going litigation before the Louisiana Supreme Court.

49. After the 1898 Convention, Louisiana continued to develop alternative ways to ensure that its African-American citizens could not participate in the political process. For example, it implemented an “understanding” clause requiring citizens to “give a reasonable interpretation of any section of the federal or state constitution in order to vote.” *Bossier Par. Sch. Bd. v. Reno*, 907 F. Supp. 434, 455 (D.D.C. 1995) (Kessler, J., concurring in part and dissenting

in part) (internal quotation marks and citation omitted), *vacated on other grounds*, 520 U.S. 471 (1997). This law was enforced until 1965, when it was invalidated by the Supreme Court. *See Louisiana v. United States*, 380 U.S. 145 (1965).

50. Moreover, during this time white mobs employed lynchings and massacres of African Americans to intimidate and prevent them from exercising their rights under the newly ratified 15th Amendment. This systemic violence took place with either the tacit or explicit collusion of state actors, and was almost never punished by state law enforcement. In 1868, for example, in St. Landry Parish, white Democrats, “angered by growing black support for white Republican candidates,” murdered over 100 African Americans over a two-week period. In 1873, in what is known as the “Colfax Massacre,” a white mob massacred approximately 150 African Americans in Colfax, Louisiana, after a close gubernatorial race. No one was ever prosecuted for these murders. Ultimately, Louisiana parishes comprised four out of five local jurisdictions in the United States that had the most lynchings between Reconstruction and the 1950s, including 540 documented lynchings in that time period.

51. In the early 1900s Louisiana also levied poll taxes, which prohibited African Americans from voting as they often could not pay the tax, and purged African-American voters from registration rolls. In 1923, the state authorized an all-white Democratic Primary, which “functioned to deny [African Americans] access to the determinative elections, inasmuch as Republican opposition to the Democratic [P]arty in the general elections was nonexistent.” *Major*, 574 F. Supp. at 340. The all-white primaries remained in place until 1944, when they were also invalidated by the Supreme Court. *See Smith v. Allwright*, 321 U.S. 649 (1944).

52. In the 1950s Louisiana continued its discriminatory voting tactics by implementing a citizenship test and prohibiting single shot voting provisions. The elimination of the latter was



particularly detrimental to African-American participation, as single shot voting had given members of minority communities the ability to aggregate their votes behind one candidate in multi-member elections. In 1959, the Legislature established a majority-vote requirement to be elected to party committees, and “from 1940 to 1964, the States Rights Party spearheaded a strong movement against black enfranchisement and judicially-directed desegregation.” *Major*, 574 F. Supp. at 340.

53. In 1965, Congress passed the Voting Rights Act, and Louisiana was immediately declared a “covered” jurisdiction under Section 4(b) of the Voting Rights Act due to its maintenance of a literacy test, as well as its low-level of minority voter registration (below 50%). *See South Carolina v. Katzenbach*, 383 U.S. 301, 312-13 (1966). As a covered jurisdiction, Louisiana was required to have any changes to its election practices or procedures “precleared” by either the U.S. Department of Justice or a federal court.

54. Even after coming under federal oversight, however, Louisiana persisted in its efforts to limit African-American voting power, with Section 5 of the Voting Rights Act often serving as the lone backstop preventing Louisiana from further excluding African Americans from the franchise. Indeed, between 1965 and 2013, when the Voting Rights Act’s coverage formula was invalidated by *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), the Department of Justice effectively blocked or altered nearly 150 voting related changes in Louisiana pursuant to Section 5 of the Voting Rights Act, with many of the Department of Justice’s objections aimed at attempts to dilute minority voting strength in the state as a whole or in local jurisdictions. *See* U.S. Dep’t of Justice, Civil Rights Division, Voting Section, Louisiana Voting Determination Letters, <https://www.justice.gov/crt/voting-determination-letters-louisiana>.

55. For example, in 1968, in an effort to minimize and dilute African-American voting

strength, the Legislature passed Acts 561 and 445, which allowed parish school boards and police juries, respectively, to switch to at-large election systems. Only objections from the Department of Justice prevented the laws from being implemented. And indeed, between 1971 and 1972, at least fourteen Louisiana Parishes—St. Helena, Jefferson Davis, Tangipahoa, Franklin, St. Charles, Assumption, Ascension, Bossier, De Soto, East Feliciana, Natchitoches, Caddo, St. James, and St. Mary—attempted to switch to at-large election systems under the nullified laws.

56. Undeterred, in 1973, the Legislature passed Act 106, which provided for the use of divisions or numbered posts for multi-member bodies in all districts, parishes, municipalities, and wards in Louisiana. This would have significantly reduced the potential for minority candidates to win elections to multi-member offices in localities with a pattern of racial bloc voting. Again, the act was blocked by a Department of Justice objection.

57. In 1975, the Legislature again attempted to prevent single shot voting in school board elections with the passage of Act 432. Again, the act was blocked by a Department of Justice objection.

58. Since 1981, much of Louisiana's voting-related discrimination has been perpetrated via discriminatory redistricting schemes which pack African Americans into one voting district, or crack them among many districts, limiting their influence overall. These discriminatory redistrictings have been carried out at the state and local level.

59. Notably, in 1981, the Legislature and then-Governor attempted to limit African-American influence in Congress by implementing a congressional redistricting plan—Act 20—that “cracked” the African-American majority in Orleans Parish between two congressional districts. At the time of the redistricting, African Americans represented 55% of the total population in Orleans, and the African-American population was highly concentrated. Despite

having multiple plans available that produced a majority African-American district, the Governor threatened to veto them stating that plans with majority African-American districts “smacked of racism.” *Major*, 574 F. Supp. at 331. The result was a plan with only majority-white districts that fractured the African-American population in Orleans while leaving white concentrations intact. African-American state legislators, moreover, were excluded from the process of developing the plan. The plan was challenged under Section 2 of the Voting Rights Act in *Major v. Treen*, with plaintiffs asserting that it diluted African-American voting strength. The Eastern District of Louisiana agreed, enjoining implementation of the plan and requiring that a new map be drawn. The resulting map gave rise to CD 2.

60. In 1981 the Legislature also attempted to limit African American influence at the state level via the Louisiana House of Representatives apportionment plan, Act 1. Specifically, the Legislature approved a plan which reduced the number of majority-minority State House of Representatives districts throughout the state, including Orleans Parish and East Baton Rouge Parish. The Department of Justice objected to the plan, citing unsatisfactory explanations for the configuration of districts in Orleans, East Baton Rouge, East Feliciana, St. Helena, West Feliciana, and Rapides Parishes, and noting that, overall, Act 1 “impact[ed] adversely upon black voting strength.”

61. A similar practice was observed in the next two redistricting cycles—1991 and 2001—when the Legislature again enacted discriminatory State House redistricting plans. In 1991, the Department of Justice objected to the State House redistricting plan, noting that in at least seven areas the proposed plan minimized African-American voting strength. The Department of Justice explained that “the state has not consistently applied its own [redistricting] criteria, but it does appear that the decision to deviate from the criteria in each instance tended to result in the

plan's not providing black voters with a district in which they can elect a candidate of their choice.”

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

63. In addition to the State's efforts to minimize minority representation through congressional and legislative redistricting, the Legislature and local jurisdictions have also taken a number of other actions to discriminate against Louisiana's African-American citizens. In 1994, Louisiana attempted to impose a photo ID requirement for first-time voters who voted by mail. The Department of Justice found that this law would adversely impact the state's African-American population. Moreover, throughout the 1980s and '90s Louisiana continued its attempts to expand and reinforce at-large voting for judges, school boards, and boards of alderman, despite repeated warnings of the detrimental impact of these at-large systems on African-American voters.

64. Indeed, in 1969, 1989, 1990, 1991, 1992, and 1994, Louisiana attempted to add at-large or multimember judicial seats, blatantly ignoring the objections and requests for more information posed by the Department of Justice in response to these acts. Louisiana's actions were so egregious, that in 1990, a court in this district reprimanded Louisiana in *Clark v. Roemer*, 751 F. Supp. 586, 589 n.10 (M.D. La 1990), *reversed on other grounds*, 500 U.S. 646 (1991), stating that Louisiana had “absolutely no excuse for its failure” to obtain preclearance.

65. In 1998, the Legislature attempted to facilitate local governments' resistance to drawing additional majority-minority districts when it passed a law freezing local voting precinct

lines through 2003, which included the three years following the 2000 census. The Department of Justice objected, preventing the law from being implemented. Nevertheless, in 2009, the Legislature again tried to freeze precinct lines with the passage of Act 136. The Department of Justice again objected. Additionally, in 2001, the Legislature adopted a plan which allowed electors in St. Bernard Parish to reduce the size of the school board from eleven single-member districts to five single member districts and two at-large seats, eliminating the sole majority-minority voting district in the parish. A federal court later found that this new plan violated Section 2 of the VRA. *St. Bernard Citizens For Better Gov't v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at \*10 (E.D. La. Aug. 26, 2002).

66. In addition to these actions at the state level, Louisiana localities have also repeatedly discriminated against African Americans through changes to their voting rules. At least forty-four of Louisiana's sixty-five parishes—over 67%—received objections from the Department of Justice during the time that Louisiana was a covered jurisdiction, including, among others, Ascension, Assumption, Avoyelles, East Baton Rouge, East Feliciana, East Carroll, Iberia, Iberville, Madison, Orleans, Pointe Coupee, St. Mary, St. Landry, St. Charles, St. James, St. Helena, St. Martin, Tensas, West Feliciana, and West Baton Rouge. The majority of these objections have been for redistricting changes.

67. Louisiana's history of voter discrimination is far from ancient history. Louisiana continues to implement voting practices that have hindered the ability of African Americans to participate equally in the political process.

68. For example, as recently as 2012, controversy ensued as the Louisiana Supreme Court refused to seat Justice Bernette Johnson, Louisiana's only African-American Supreme Court Justice, as chief justice. Justice Johnson had joined the Louisiana Supreme Court in 1991 as part

of a consent decree entered in a Section 2 case challenging the Louisiana Supreme Court's use of at-large districts. Justice Victory and some members of the Louisiana Supreme Court argued that the nature of Justice Johnson's original appointment to the bench meant that she did not have the requisite seniority to serve as chief justice under the Louisiana Constitution. Only after a federal court found that Justice Johnson should be seated did the Louisiana Supreme Court agree to seat Justice Johnson as chief justice.

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

70. As recently as 2017, a court in this district found that the Legislature had intentionally discriminated against African Americans in Terrebonne Parish by maintaining—despite persistent opposition by the African-American community—at-large electoral schemes for the 32<sup>nd</sup> judicial district. *See Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 454.

71. Moreover, as discussed *supra*, Louisiana law continues to disenfranchise felons. Although voters approved a 1974 constitutional provision that makes a suspension of voting rights permissive for people “under order of imprisonment for conviction of a felony,” the legislature decided in 1976-77 to make this suspension mandatory, and define the phrase to include all people in prison, on probation, and on parole. The result being that as of 2016, Louisiana had over 108,000 disenfranchised individuals as a result of this policy, 63% of whom are African-American. While the recent change in Louisiana law—the passage of Act 636—will carve out approximately 43,000 people from the disenfranchised population if implemented correctly, over 65,000 individuals will remain disenfranchised under Louisiana's felon disenfranchisement policy, with African Americans remaining the majority of individuals disenfranchised by this policy.

### Use of Racial Appeals in Political Campaigns

72. In addition to Louisiana's history of voting-related discrimination against African Americans, Louisiana political campaigns have also been the subject of both overt and subtle racial appeals.

73. In 1989, Louisiana made national headlines when David Duke—former grand wizard of the Ku Klux Klan—was elected to the Louisiana State House of Representatives. Duke, who claimed to be the spokesman for the “white majority,” went on to run for U.S. Senate in 1990, Louisiana governor in 1991, and U.S. Senate again in 2016. During his primary campaign for governor, Duke urged voters to vote for him, stating that his opponent, then-incumbent Governor Roemer, was “an NAACP member who supports reverse discrimination. . . .” Duke beat Governor Roemer in the primary with 32% of the vote.

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

75. In 2016, Duke again ran for U.S. Senate. In explaining why Duke joined the race, his campaign manager stated, “He became very concerned in regards to the Obama administration and the unhealthy way the mainstream media was affecting the racial climate in this country, with this bias toward African Americans against the police officers.”

76. Even moderate Republican candidates in Louisiana have made subtle racial appeals. In particular, former-Governor Mike Foster, in his 1995 race against African-American U.S. Representative Cleo Fields—the first African-American candidate for governor in Louisiana in over 100 years—ran on a platform of repealing affirmative action, support for a judicial challenge to a second majority-minority congressional district in Louisiana, and opposition to the National Voter Registration Act, which was widely viewed as a way to increase African-American voter registration.

77. Indeed, during his race Governor Foster did not repudiate an endorsement he received from a white nationalist group associated with Duke, and at one point stated that Jefferson Parish was “right next to the jungle in New Orleans and has a very low crime rate.” Governor Foster won with 64% of the vote as compared to 36% for Cleo Fields, with reports indicating that only 4% of African Americans voted for Foster, while all but 2% of Fields’ votes were from African Americans.

78. As another example of race-based appeals in Louisiana campaigns, in 2014, it was revealed that current U.S. Representative Steve Scalise (CD 1) spoke to a white supremacist gathering while serving as a Louisiana State Representative in 2002.

#### **Ongoing Effects of Louisiana’s History of Discrimination**

79. In the late Nineteenth Century, in a direct repudiation of political gains made by African Americans during Reconstruction, Louisiana began enacting “Black Codes” and Jim Crow laws that enforced official segregation—and restricted the liberty of African Americans—in nearly every sphere of life including transportation, housing, education, business ownership, contracting, criminal justice, and public accommodations. Louisiana’s African-American citizens bear the effects of the State’s official history of discrimination in a number of these spheres. These socio-



economic disadvantages born of discrimination hinder African Americans' ability to participate effectively in the political process.

80. “*De facto* racial segregation remains in education in Louisiana. About 74% of all black elementary and secondary students attend majority-minority schools. Only thirteen states have higher percentages of black students in these majority-minority schools.” *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 442-43. African Americans in Louisiana are ten percent less likely to graduate high school than whites and at least twelve percent less likely to hold a bachelor’s degree.

81. In addition to a lower level of educational attainment, continued racial segregation in Louisiana contributes to lower employment rates for African Americans and correspondingly high levels of poverty. According to the U.S. Census Bureau’s 2012-2016 American Community Survey 5-Year Estimates, African Americans in Louisiana were unemployed at a rate of 12.2%, compared to just 5.6% for whites. Likewise, African American poverty rates in Louisiana exceeded the white poverty rate for that same time period. Indeed, in 2016, 33.1% of African Americans were below the poverty level, compared to just 12.7% of whites.

82. As of the 2010 census, Whites were also more than three times more likely than African Americans to own a home in Louisiana.

83. The effects of Louisiana’s long history of discrimination are also evident in persistent health disparities. According to the Louisiana Department of Health and Hospitals, “[f]rom 2000–2005, Black or African American Louisiana residents had the highest death rate from all causes, approximately 1-2 times higher than White residents.” Similarly, during that same time period the infant mortality rate—a key indicator of overall health status—was 13.9% for African Americans, compared to 7.6% for whites. Unsurprisingly, African Americans were 2.7

times more likely than white residents of Louisiana to be uninsured.

84. As of 2015, not only did Louisiana rank number one in its statewide imprisonment rate, but African Americans were also overrepresented in Louisiana jails while whites are underrepresented. Indeed, as of 2014, African Americans were four times as likely to be imprisoned than whites.

**Extent to Which African Americans Have Been Elected to Public Office**

85. African Americans are still underrepresented in Louisiana public offices. None of the current statewide elected officials are African American. Louisiana has not had an African-American Governor since Reconstruction—though African Americans ran for the office in 1995 and 1999—and Louisiana has never had an African-American Senator.

86. African-American candidates have experienced some success in localized races; however, this is predominantly in areas where the district's voting-age population is majority African-American. For example, Louisiana only has one African-American State Supreme Court Justice, who was elected in a majority-minority district created initially as a result of a consent decree issued from a Section 2 challenge to Louisiana's at-large judicial electoral scheme. Likewise, Louisiana has only twenty-five African-American State Representatives (of 105 total seats, approximately 23%) and only eight African-American State Senators (of thirty-nine total seats, 20.5%), all of whom were elected from majority-minority districts. These numbers are hardly representative of the total African-American population in Louisiana.

87. "Statewide, [African Americans] have also been underrepresented in the trial and appellate courts. While the black population comprises about 30.5% of the voting age population in Louisiana, black people only account for about 17.5% of the judges in Louisiana." *Terrebonne Par. Branch NAACP*, 274 F. Supp. 3d at 445.

88. As noted, the only African-American U.S. Representative is from CD 2, a majority-minority district created as a result of a Section 2 challenge to Louisiana's congressional scheme.

89. Severe racial bloc voting continues to cement these ongoing disparities.

### **CAUSE OF ACTION**

#### **The 2011 Congressional Plan violates Section 2 of the Voting Rights Act**

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

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

92. The current district boundaries of CDs 2, 5 and 6 combine to "crack" and "pack" African Americans, resulting in the dilution of the electoral strength of African-American residents of Louisiana, in violation of Section 2 of the Voting Rights Act.

93. African Americans in Louisiana, including African Americans in the areas where Plaintiffs reside, are sufficiently numerous and geographically compact to constitute a majority of eligible voters in two congressional districts.

94. Under Section 2 of the Voting Rights Act, the Legislature was required to create a second majority-minority district in which African Americans have the opportunity to elect their candidates of choice.

95. African-American voters in Louisiana are politically cohesive, and elections in this area reveal a clear pattern of racially polarized voting that allows the bloc of White voters usually to defeat African Americans' preferred candidates.

96. The totality of the circumstances establishes that the current congressional map has the effect of denying African-American voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

A. Declare that the 2011 Congressional Plan violates Section 2 of the Voting Rights Act.

B. Issue a permanent injunction enjoining Defendant, along with his agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in the 2011 Congressional Plan, including an injunction barring Defendant from conducting any further congressional elections under the current map.

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid congressional redistricting plan for Louisiana that includes two majority-minority districts.

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

Dated: August 21, 2018

Respectfully submitted,

By attorneys:

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 21, 2018, the Amended Complaint was filed electronically with the Clerk of Court using the CM/ECF system.

*s/ Jennifer Wise Moroux*  
\_\_\_\_\_  
Jennifer Wise Moroux

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