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

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

PLAINTIFFS' POST-HEARING BRIEF*

* Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard (the "*Galmon* Plaintiffs"), Plaintiffs Press Robinson, Edgar Cage, Dorothy Nairne, Edwin René Soulé, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, NAACP Louisiana State Conference, and Power Coalition for Equity and Justice (the "*Robinson* Plaintiffs"), and Intervenor-Plaintiff Louisiana Legislative Black Caucus (together with the *Galmon* Plaintiffs and the *Robinson* Plaintiffs, "Plaintiffs") submit this amended joint post-hearing brief, which has been updated with the finalized transcript for the proceedings on May 10, 2022. Plaintiffs' brief is otherwise the same as their previous filing.

TABLE OF CONTENTS

INTRODUCTION

Louisiana's new congressional plan violates the rights of Black voters under Section 2 of the Voting Rights Act of 1965. Through their preliminary injunction briefing, evidentiary submissions, and expert and fact witness testimony presented at last week's hearing, Plaintiffs have readily demonstrated that the three *Gingles* preconditions are satisfied and that the totality of circumstances confirms that the new map dilutes the voting strength of Black Louisianians and deprives them of an equal opportunity to elect their candidates of choice to Congress. Rather than squarely address this evidence, Defendants have offered only obfuscation and misdirection: distortions of the governing legal standards, irrelevant digressions, and red herrings. Under the operative law and based on the facts in the record, Plaintiffs have more than just satisfied their burden of demonstrating a strong likelihood of success on the merits of their Section 2 claims—they have *proved* their claims. The evidence also shows that a remedial map can be feasibly implemented in the coming weeks. Accordingly, a preliminary injunction should be issued, and a lawful congressional map adopted ahead of this year's midterm elections.

ARGUMENT

Plaintiffs' concurrently filed proposed findings of fact and conclusions of law chronicle the evidence and testimony that prove their case, while their previously filed preliminary injunction briefing provides an overview of the relevant legal issues and how they apply to the facts in the record. *See* Rec. Doc. Nos. 41–42, 120, 123. Rather than duplicating those efforts here, Plaintiffs provide an overview of the proceedings, and will briefly recount the critical evidence they presented, explore the shortcomings of Defendants' case, and clarify the essential legal issues that the Court must navigate.

I. Plaintiffs have established a likelihood of success on their Section 2 claims.

In presenting their case-in-chief, Plaintiffs provided voluminous evidence—almost entirely unrebutted—to satisfy each of the requirements of a Section 2 claim. Taken together, their documentary evidence, expert reports, and fact witness testimony compel the conclusion that the state's new congressional map as drawn by House Bill 1 ("HB 1") "dilute[s] the voting strength of politically cohesive minority group members" in violation of the Voting Rights Act. *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

A. The *Gingles* preconditions are satisfied, and the Senate Factors uniformly support a finding of unlawful vote dilution.

Section 2 requires Plaintiffs to show that (1) Black Louisianians are "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) Black Louisianians are "politically cohesive"; and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat [Black Louisianians'] preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). The Court must also examine "the totality of circumstances"—the Senate Factors in particular—to determine whether "the political processes . . . are not equally open to participation" by Louisiana's Black voters. 52 U.S.C. § 10301(b); *see also Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991).

Plaintiffs have established each of these elements.

***Gingles* One.** The first *Gingles* precondition requires Plaintiffs to demonstrate that it is possible to "creat[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (plurality opinion) (quoting *De Grandy*, 512 U.S. at 1008). Bill Cooper and Anthony Fairfax submitted a total of six plans that satisfy this precondition. Their illustrative maps each contain two majority-Black congressional districts in which Black voters would have an

opportunity to elect their candidates of choice to the U.S. House of Representatives. *See* GX-1 ¶¶ 10, 58–71, 83; GX-29 ¶¶ 12–13; PR-15 ¶¶ 1–7; PR-86 ¶¶ 1–9; PR-90 ¶¶ 1–5. Their maps comply with traditional redistricting principles, including population equality, contiguity, maintaining political subdivision boundaries, and preserving communities of interest, *see* GX-1 ¶¶ 49–56, 72–82; GX-29 ¶¶ 14–22; PR-15 ¶¶ 2–4, 21–24, 38–39, 45–46; PR-86 ¶¶ 8–9, 32–54 — all of which were criteria adopted by the Legislature during this past redistricting cycle, *see* GX-20. And Plaintiffs' fact witnesses testified that Mr. Cooper's and Mr. Fairfax's illustrative Fifth Congressional Districts unite the Baton Rouge area with St. Landry Parish to the west and the Delta Parishes to the north—communities that share common historical, economic, educational, and ancestral links. *See* May 9 Tr. 239:14–248:2 (Charles Cravins); *id.* at 281:10–285:9 (Christopher Tyson).

***Gingles* Two.** The second *Gingles* precondition requires Plaintiffs to demonstrate political cohesion among Louisiana's Black voters, which they have done by showing bloc voting. *See* 478 U.S. at 68. Drs. Max Palmer and Lisa Handley testified that, in general, Black Louisianians cohesively support the same candidates. *See* GX-2 ¶¶ 16–22; PR-12 at 7–8; PR-87, Revised Appendix B. This conclusion went unrebutted—and Defendants' expert Dr. John Alford confirmed it. *See* LAG_1 at 9; May 12 Tr. 158:15–18.

***Gingles* Three.** The third *Gingles* precondition requires Plaintiffs to demonstrate that "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidates." 478 U.S. at 51. Drs. Palmer and Handley demonstrated that white voters in the area contained within the illustrative Fifth Congressional Districts usually vote as a bloc to defeat Black-preferred candidates. *See* GX-2 ¶¶ 23–24; PR-87, Appendix B; PR-92, Corrected

Appendices C–G. This conclusion also went unrebutted—and Dr. Alford also confirmed it. *See* LAG_1 at 9; May 12 Tr. 159:2–15.

Senate Factors. Once Plaintiffs have established the three *Gingles* preconditions, the Court must consider the totality of circumstances to determine "whether 'as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.'" *Westwego Citizens*, 946 F.2d at 1120 (quoting *Gingles*, 478 U.S. at 44). This determination "'depends upon a searching practical evaluation of the past and present reality' and on a 'functional view of the political process.'" *Id.* (quoting *Gingles*, 478 U.S. at 45).

The thorough and detailed testimonies of Drs. Allan Lichtman, Traci Burch, and Blake Gilpin confirmed that Black Louisianians have been denied equal access to the political process—a tragic history of marginalization and disenfranchisement that endures today:

- The State of Louisiana has historically and persistently discriminated against its Black citizens, in both voting and other areas inextricably tied to political opportunity. *See* GX-3 at 7–27; PR-14 at 3–4; PR-13 at 4.

- Voting in Louisiana is highly polarized along racial lines, with Black voters supporting their preferred candidates at rates as high as 98% and white voters overwhelmingly supporting opposing candidates. *See* GX-3 at 27–33; GX-31 at 3–7; PR-89 at 5.

- The State employs practices like the majority-vote requirement that enhance discriminatory effects. *See* GX-3 at 33–35; GX-31 at 7–8.

- Black Louisianians experience significant socioeconomic disparities across key areas of livelihood and well-being that inhibit their ability to participate equally in the political process. *See* GX-1 ¶¶ 11, 84; GX-3 at 36–39; GX-31 at 8–9; PR-14 at 9–12.

- Louisiana's political campaigns continue to be marked by both overt and subtle racial appeals. *See* GX-3 at 39–46; PR-14 at 22–25.
- Black Louisianians have been and continue to be underrepresented in elected office at both the statewide and local levels. *See* GX-3 at 46–49; PR-14 at 25–26.
- The State has not been responsive to the needs of its Black communities across key metrics of well-being, from health to environmental justice. *See* GX-3 at 50–60; PR-14 at 26–29.
- As discussed further in Part IV below, the proffered justifications for HB 1 are tenuous and unpersuasive. *See* GX-3 at 60–64; GX-31 at 10–13; PR-14 at 29–48.
- Black Louisianians are underrepresented in HB 1 relative to their share of the statewide population, while white Louisianians are overrepresented. *See* GX-3 at 47.

Defendants have offered little to rebut Plaintiffs' Senate Factors evidence. They mount a feeble response to the undisputed evidence of polarization between Black and white voters with Dr. Alford's assertion that this might be the product of party and not race. But the reasons behind racial polarization are not Plaintiffs' burden to establish in the first instance. *See Teague v. Attala County*, 92 F.3d 283, 290 (5th Cir. 1996). At any rate, Dr. Alford conducted no independent analysis, instead basing his conclusion only on a competing inference drawn from Dr. Palmer's and Dr. Handley's data. *See* May 12 Tr. 162:15–164:12. Moreover, Dr. Alford failed to address or even read Dr. Lichtman's report, which found that race drives party affiliation in the South, *see id.* at 157:2–9, and he conceded that party affiliation might be motivated by race, among other factors, *see id.* at 165:5–12.

Defendants also attempted to capitalize on Governor John Bel Edwards's unprecedented responsiveness to the state's Black residents by grilling Matthew Block, his executive counsel, on the administration's efforts. *See* May 11 Tr. 29:23–31:20, 32:15–38:14. But weaponizing

Governor Edwards's responsiveness to Louisiana's Black communities is particularly galling given that the Legislature not only refused to heed his calls to draw a second Black-opportunity congressional district, but *overrode* his veto of the new map without the support of a single Black lawmaker. Black voters' overwhelming support for a governor who is responsive to their needs only underscores the deep and pervading inequities that have long plagued the state's Black communities and went previously unredressed—and demonstrates just how essential it is for Black voters to have the opportunity to elect their candidates of choice. *See id.* at 46:3–9 (Mr. Block's testimony that Legislature and congressional delegation play roles in responding to needs of Louisianians).

In short, Plaintiffs have readily satisfied the *Gingles* preconditions and the Senate Factors—and have thus proved their Voting Rights Act claims.

B. Plaintiffs' fact witnesses testified to the ongoing marginalization experienced by Louisiana's Black communities—and the need for change.

As the U.S. Supreme Court has noted, Section 2 cannot be "applied mechanically." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993). Nor should the human impact of marginalization and disenfranchisement—or the tremendous gains for Black citizens that result when they are afforded equal access to the political process—be ignored. To that end, Plaintiffs offered the testimonies of Black Louisianians who have been either packed or cracked in such a way as to deny them equal opportunities to elect their preferred candidates to Congress. These witnesses echoed the voices heard across the state at each stage of the redistricting process, from the first roadshow session in Monroe to the final vote in Baton Rouge. And they demonstrated that, despite a history of broken promises, Black Louisianians continue to have hope that justice will prevail.

Ashley Shelton, the president of the Power Coalition for Equity and Justice, described the message delivered to elected leaders by thousands of Louisianians who testified during the

redistricting process: Black Louisianians wanted a fair and equitable redistricting process, and they wanted a second majority-minority district to ensure that leaders who understood their needs and shared experiences would represent them in Congress. *See* May 10 Tr. 239:18–240:7, 259:7–259:20. But that message went unheeded. **Michael McClanahan**, the president of the Louisiana NAACP State Conference, testified that if legislative leaders were listening to Black Louisianians during the roadshows, then "they must have been listening with deaf ears." May 9 Tr. 29:1–5. Although numerous bills were introduced during the legislative process that would have created a second majority-Black congressional district, *see* LEG_31–48, not *one* of those bills made it out of committee for open, transparent debate. Instead of responding to the needs of Black voters and drawing a map that reflected Louisiana's human geography, the Legislature—as Defendants' experts themselves testified—prioritized a "least-change" approach that merely ratified and entrenched the old map's discriminatory effects.

Indeed, the disenfranchisement and marginalization borne by the state's Black communities is nothing new. **Dr. Dorothy Nairne**, **Charles Cravins**, and **Christopher Tyson** described the centuries of discrimination experienced by their families in Louisiana—including instances of racial injustice and inequity that continue to this day. *See* May 10 Tr. 78:19–24, 80:5–81:7 (Dr. Nairne); May 9 Tr. 249:2–250:10 (Mr. Cravins); *id.* 279:14–281:5 (Mr. Tyson). Mr. McClanahan testified about the environmental pollution that impacts Black Louisianians in Cancer Alley and across the state. *See* May 9 Tr. 34:20-36:1. Jim Crow, the one-drop rule, political terror, underrepresentation at all levels of government, and now the disproportionate effects of the COVID-19 pandemic and the closures of polling places in Black areas—this is the legacy of discrimination that undergirds and exacerbates the vote dilution caused by Louisiana's new congressional map.

Redistricting is a fundamentally human endeavor—it affects real people, and affects them profoundly. Behind the statistics and the lines on a map are Black Louisianians who aspire to equal representation and a fair political process. Dr. Nairne described the sense of hope she heard from her neighbors during the latest round of redistricting: that this time, things would be different; that this time, as she put it, "change is coming for us." May 10 Tr. 90:24–91:23. Justice was deferred: although Governor Edwards vetoed the new map because it violates the Voting Rights Act and denies fair representation to Black voters, the Legislature overrode the veto—cheering as they did so, a reaction that Mr. McClanahan described as a "slap in the face" to every Black Louisianian in attendance at the Capitol. May 9 Tr. 33:9–22. The Legislature chose not to vindicate the fundamental rights of Black voters. This Court must now do so.

II. Defendants have distorted relevant legal issues.

In response to Plaintiffs' evidence, Defendants' primary strategy has been to muddy the legal waters. They repeatedly conflated and distorted governing standards, while their experts engaged in a series of irrelevant inquiries that distracted from the straightforward application of the law to the undisputed facts in this case.

A. Defendants conflate illustrative maps and remedial maps, which serve different functions under Section 2.

There is a crucial distinction between an *illustrative* plan—which Plaintiffs have used to satisfy the first *Gingles* precondition, as discussed in Part I.A above—and a *remedial* plan that might be implemented to remedy a Section 2 violation. Under *Gingles*, Plaintiffs must prove that an additional *majority-Black* congressional district can be drawn consistent with traditional districting principles. *See Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality opinion) ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50

percent of the voting-age population in the relevant geographic area?"). Plaintiffs did this, several times over, through the illustrative plans prepared by Messrs. Cooper and Fairfax.

A remedial map, by contrast, serves to cure a Section 2 violation by providing minority voters with a meaningful opportunity to elect their candidates of choice—and is *not* limited by *Bartlett*'s strict 50% Black voting-age population ("BVAP") requirement. *See, e.g.*, *Baltimore Cnty. Branch of NAACP v. Baltimore County*, No. 21-cv-03232-LKG, 2022 WL 888419, at *4 (D. Md. Mar. 25, 2022) (approving remedial plan with reconfigured district where Black voters would not constitute numerical majority but would still "have an opportunity to elect a representative of their choice"). Defendants' repeated digressions regarding the level of BVAP needed to elect Black-preferred candidates thus has no role in the *Gingles* inquiry; right now, the only question before the Court is whether Plaintiffs have established liability under Section 2 by drawing illustrative districts in which Black voters comprise a numerical majority of the voting-age population. Defendants' attempts to skip ahead to what the remedial map could or should look like fails to address that question.

B. Defendants misunderstand the significance of crossover voting.

Defendants have focused heavily on the extent to which white crossover voters are necessary to provide Black voters an opportunity to elect their preferred candidates. *See, e.g.*, Rec. Doc. No. 109 at 15. But that also has no bearing on the *Gingles* inquiry. Instead, the second and third *Gingles* preconditions ask whether Black voters cohesively support the same candidates and white voters engage in bloc voting at levels sufficient to regularly defeat Black-preferred candidates in the area where the new illustrative district would be drawn. *See* 478 U.S. at 51. As discussed in Part I.A above, Drs. Palmer and Handley proved that these preconditions are satisfied here, and no one demonstrated otherwise. (Indeed, Dr. Alford confirmed their conclusions.) They

further demonstrated that voting in Louisiana is strikingly polarized along racial lines—notwithstanding the existence of some white crossover voters.

Defendants incorrectly rely on *Cooper v. Harris*, 137 S. Ct. 1455 (2017), for the proposition that Plaintiffs must establish that their illustrative districts would succeed as opportunity districts without any reliance on white crossover voting. *Cooper* said nothing of the sort. There, the plaintiffs challenged majority-Black districts as unconstitutional racial gerrymanders where map-drawers had unnecessarily increased the BVAP of districts that were *already* performing for minority-preferred candidates. *Id.* at 1468–69. The U.S. Supreme Court found that Section 2 did not require those BVAP adjustments—and thus could not justify the racially predominant line-drawing meant to effectuate them—because white voters in those districts were not otherwise voting as a bloc to defeat Black-preferred candidates as required by the third *Gingles* precondition. *Id.* at 1469–72. Here, by contrast, Black-preferred candidates cannot prevail in the area encompassed by Plaintiffs' illustrative Fifth Congressional Districts due to white bloc voting. Plaintiffs have therefore satisfied *Gingles*, and Defendants muster no authority for the proposition that anything less than total racial polarization nullifies a Section 2 claim. *Cf. United States v. Blaine County*, 363 F.3d 897, 911 (9th Cir. 2004) (explaining that "*Gingles* rejected a blanket numerical threshold for white bloc voting").[1]

Nor, for that matter, have Plaintiffs challenged HB 1 as a racial gerrymander (try as Defendants might to read that into their claims). Rather, Plaintiffs allege—and have proved—that the packing of Black voters into the enacted Second Congressional District has precluded the

[1] Indeed, Defendants' position would render the *Gingles* inquiry internally inconsistent. Senate Factor Two assesses—as a consideration *after* the *Gingles* preconditions have been satisfied—"the extent to which voting in the elections of the state or political subdivision is racially polarized." 478 U.S. at 55 (cleaned up). There would be no need for this if the *Gingles* preconditions already required total racial polarization.

creation of a second Black-opportunity district anchored in Baton Rouge. And because Plaintiffs have shown that the *Gingles* preconditions are satisfied using illustrative plans that include "more than the existing number" of majority-Black districts, *LULAC*, 548 U.S. at 430 (quoting *De Grandy*, 512 U.S. at 1008)—and because the Senate Factors uniformly compel a finding of vote dilution—federal law requires that a second Black-opportunity district be drawn. Crossover voting is simply another of Defendants' distracting sideshows, irrelevant to the actual inquiry this Court must undertake to adjudicate Plaintiffs' Section 2 claims.

C. Racial consideration is not racial predominance.

Finally, Defendants and their experts have repeatedly suggested that *any* consideration of race as part of the *Gingles* illustrative map-drawing process raises constitutional concerns and dooms the entire Section 2 enterprise. But Defendants do not and cannot cite a single case that stands for the illogical proposition that an illustrative plan designed to demonstrate racial vote dilution must be drawn without any consideration of race; indeed, courts—including the Fifth Circuit—have squarely rejected that argument. *See, e.g.*, *Clark v. Calhoun County*, 88 F.3d 1393, 1406–08 (5th Cir. 1996). Moreover, some consideration of race does not automatically equate to racial predominance. As the U.S. Supreme Court has observed,

> redistricting differs from other kinds of state decisionmaking in that the legislature always is *aware* of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination.

Shaw v. Reno, 509 U.S. 630, 646 (1993). Ultimately, Defendants would require that racial vote dilution be evaluated and remedied without even the slightest consideration of race—a proposition with no firmer foundation in common sense than in precedent.

III. Defendants' expert evidence is not responsive to the Section 2 inquiry.

The evidence Defendants offered at the hearing not only fails to rebut Plaintiffs' case-in-chief—it is strikingly unresponsive to the issues actually before the Court.

At the outset, Plaintiffs note the evidence that Defendants did *not* offer at the hearing. The Legislative Intervenors indicated that they would explore "the policy considerations underpinning" HB 1, Rec. Doc. No. 10 at 11, but other than a few conclusory references to those considerations in their opposition brief, the justifications for the enacted map went largely ignored at the hearing. Moreover, their intervention was premised on the fact that they "were directly involved in the redistricting and know the analyses that informed choices relevant to this case," *id.* at 15, but neither they nor any other Republican legislators took the stand to defend the new map, let alone open themselves to scrutiny and cross-examination. Nor did Defendants offer *any* evidence regarding communities of interest—what Joint Rule No. 21 ranked as a paramount districting criterion, *see* GX-20—having conspicuously abandoned the expert reports of Dr. Jeffrey Sadow and Michael Hefner despite relying heavily on them in their pre-hearing briefing.

Instead, the Court heard from seven experts, none of whom squarely addressed or disputed the showings of Plaintiffs' experts as to the *Gingles* preconditions or the Senate Factors. Each of Defendants' experts addressed only an artificially narrow slice of the Section 2 inquiry, none of which pieced together into cogent, complete, or relevant analysis. What is most notable about these experts' testimonies is what they said they did *not* do. This both calls into question their credibility and reliability—certainly their expertise on Section 2 issues—and underscores the inescapable conclusion that Defendants do not have an evidentiary leg to stand on.

Thomas Bryan. Mr. Bryan offered a range of metrics to calculate BVAP, *see* May 11 Tr. 62:1–64:12, but disclaimed any opinion about which particular metric was appropriate in this case, *see id.* at 110:2–7. At any rate, use of the any-part Black metric in this context has already been

definitively resolved by binding U.S. Supreme Court precedent, *see Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003), so Mr. Bryan's extensive analysis of this question is of no consequence.[2] Mr. Bryan's so-called misallocation analysis, meanwhile, said nothing about whether the line-drawing decisions in Plaintiffs' illustrative maps were simply the natural results of population distribution, socioeconomic factors, geographic features, or other race-neutral considerations. *See* May 11 Tr. 125:17–25, 128:16–22. His analysis admittedly ignored virtually all of the traditional districting criteria that informed how Messrs. Cooper and Fairfax drew their maps, making his conclusions both unfounded and unhelpful. *See Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 265001, at *58 (N.D. Ala. Jan. 24, 2022) (per curiam) (three-judge court) (expressing "concern[] about numerous . . . instances in which Mr. Bryan offered an opinion without a sufficient basis," such as opining on racial predominance without "examin[ing] all of the traditional redistricting principles set forth in the Legislature's guidelines").

Dr. Tumulesh Solanky. All Dr. Solanky told the Court was that Black-preferred candidates can win a majority of votes in a single parish that is included (in part) in Mr. Cooper's and Mr. Fairfax's illustrative Fifth Congressional Districts. *See* May 11 Tr. 206:7–22. But the Supreme Court has made clear that the Section 2 inquiry looks at the *entire* proposed district, not just one isolated part. *See Abbott v. Perez*, 138 S. Ct. 2305, 2331–32 (2018). Dr. Solanky's analysis considers the wrong geographic area and is therefore irrelevant.

Dr. Christopher Blunt. As he conceded on cross-examination, Dr. Blunt is not a simulations expert. *See* May 12 Tr. 53:21–56:1, 60:5–13 (admitting that he has published no works

[2] In rejecting Mr. Bryan's last attempt to discount use of the any-part Black metric, a three-judge court observed that "[t]he irony would be great if being considered only 'part Black' subjected a person to an extensive pattern of historical discrimination but now prevented one from stating a claim under a statute designed in substantial part to remedy that discrimination." *Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 265001, at *56 (N.D. Ala. Jan. 24, 2022) (per curiam) (three-judge court).

on simulations analysis or redistricting and that "this is the first simulation that [he had] produced"). This concession was hardly needed given the substance of his testimony. Dr. Blunt simply borrowed online code, read an instruction manual,[3] and then ran simulations—for the first time in his career—with settings so far divorced from reality (and from the Legislature's adopted guidelines) that the resulting analysis could not possibly tell the Court whether race predominated in Plaintiffs' illustrative maps. *See id.* at 22:25–23:3, 67:1–7. Dr. Blunt's simulations—which he conceded took no account of most traditional redistricting principles, *see id.* at 68:2–11, and which he conceded did not resemble any congressional map ever actually enacted, *see id.* at 97:25–100:17—have no bearing on the issues presented in this case.

Dr. John Alford. Dr. Alford hypothesized that Louisiana's significantly polarized voting might be caused by party and not race. *See id.* at 160:6–16. But even if that were Plaintiffs' burden to disprove in the first instance—and it is not, *see Teague*, 92 F.3d at 290—Dr. Alford offered no independent analysis to bolster his conclusion or otherwise explore the reasons Black voters generally support Democratic candidates and white voters generally support Republican candidates. *See* May 12 Tr. 161:13–162:14. Instead, by his own concession, he essentially agreed with *all* of Dr. Palmer's and Dr. Handley's statistical estimates, *see id.* at 158:15–18, 159:2–15—and simply drew different inferences. And neither he nor anyone else refuted (or even addressed) the assessments by Drs. Lichtman, Burch, and Handley that race and party are inextricably intertwined in Louisiana. *See id.* at 157:2–9. Dr. Alford's competing inference is thus fatally unsupported by any substantive analysis. *See Alpha Phi Alpha Fraternity Inc. v. Raffensperger*,

[3] Dr. Blunt's reliance on "the documentation for the software" was apparent during his testimony, as he repeatedly cited it as the basis for his knowledge. May 12 Tr. 94:19–23; *see also, e.g.*, *id.* at 88:3–10. This alone belies any claims of expertise; after all, one does not become an expert in electrical engineering just by reading the instruction manual for a toaster.

Nos. 1:21-CV-5337-SCJ, 1:21-CV-5339-SCJ, 1:22-CV-122-SCJ, 2022 WL 633312, at *57 (N.D. Ga. Feb. 28, 2022) (declining to credit Dr. Alford's testimony where there was no "evidence—aside from Dr. Alford's speculation—that partisanship is the cause of the racial polarization" and "Dr. Alford himself acknowledged that polarization can reflect both race and partisanship, and that 'it's possible for political affiliation to be motivated by race'").

Dr. Jeffrey Lewis. Dr. Lewis opined that Black-preferred candidates in Plaintiffs' illustrative districts would typically lose hypothetical elections with no white crossover voting—a scenario he conceded he had never seen in any actual election. *See* May 12 Tr. 196:17–197:13. Dr. Lewis offered no explanation as to how this analysis is relevant to the *Gingles* inquiry, and given that his hypothetical is completely unrealistic, his analysis and conclusion are not reliable. *See* GX-31 ¶¶ 6–7. Similarly, his opinion that the illustrative districts could have been drawn with lower BVAPs while still electing Black-preferred candidates conflates the requirements of an illustrative plan with the analysis of a remedial plan (as discussed in Part II.A above) and is likewise irrelevant. And even if his report were directed at the actual questions posed by *Gingles*, Dr. Lewis analyzed only one election—despite agreeing that a single election does not give a complete picture of voting patterns. *See* May 12 Tr. 192:13–193:3.

Dr. M.V. Hood. All Dr. Hood offered was the unremarkable proposition that drawing a brand-new district changes the shapes of old districts. *See* May 12 Tr. 213:7–17, 216:6–14. Setting aside the fact that core retention was notably absent from Joint Rule No. 21's requirements for congressional maps, *see* GX-20, it is tautological that changing district boundaries *changes district boundaries*. Dr. Hood's analysis attempted to transform an inevitable consequence of a Section 2 remedy into a disqualifying shortcoming. This gambit should be rejected.

Dr. Alan Murray. Finally, Dr. Murray acknowledged on the stand that he engaged in no analysis relevant to the *Gingles* preconditions, the Senate Factors inquiry, HB 1, Plaintiffs' illustrative maps, or anything actually having to do with Section 2. *See* May 13 Tr. 24:11–25:6. Nor did he dispute or even review the reports or testimonies of any of Plaintiffs' experts. Instead, he employed his geographical expertise to demonstrate that Black and white Louisianians live in different places. *See id*. 28:10–15. But neither the parties nor the Court needed expert testimony to confirm what Plaintiffs' fact witnesses have known their entire lives and testified to at the hearing, and what Plaintiffs' Senate Factors experts clearly proved—that racially segregated residential patterns persist across the state.

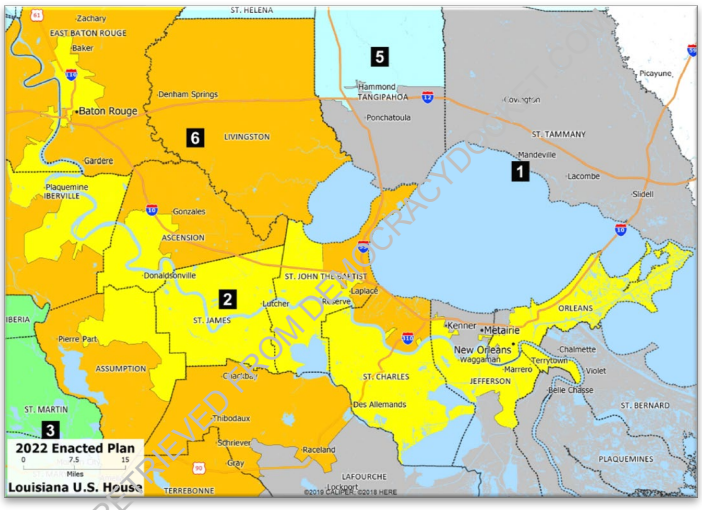
Confronted with Plaintiffs' voluminous evidence that squarely addressed *Gingles*, the Senate Factors, and the other considerations relevant to Section 2 claims, Defendants and their experts responded with inexplicable digressions and irrelevant findings. This evidence does nothing to undermine Plaintiffs' case-in-chief.

IV. Defendants' proffered justifications for the enacted congressional map are tenuous and unpersuasive.

In their pre-hearing briefs, Defendants advanced several justifications for the Legislature's decision to enact a congressional plan with only one Black-opportunity district. The testimony confirmed that none of these proffered justifications holds up under scrutiny.

The Legislative Intervenors have argued that Black voting strength is sufficiently protected by the enacted Second Congressional District, suggesting that shoring up that district's BVAP is how the Legislature chose to best serve the interests of the state's Black voters. *See* Rec. Doc. No. 109 at 18–20. But as Dr. Lichtman explained, the BVAP of the Second Congressional District is "way beyond what is necessary for [Black voters] to elect candidates of choice." May 10 Tr. 189:8–13. And as a consequence of the packing of Black voters into that district, it fails to adhere to

traditional districting principles. In addition to linking New Orleans and Baton Rouge—which Plaintiffs' witnesses testified do not share significant common interests, *see* May 9 Tr. 63:3–16 (Mr. McClanahan)—the Second Congressional District is strikingly noncompact. As Dr. Lichtman found, "to achieve this packing, the state created an elongated, distorted district . . . . The 2011 CD 2 has a large and irregular finger that extends from New Orleans to East Baton Rouge Parish to pick up pockets of black population. It wraps CD 6 around CD 2 to capture white population." GX-3 at 63. The enacted Second Congressional District, which mirrors its predecessor, retains this bizarre shape:



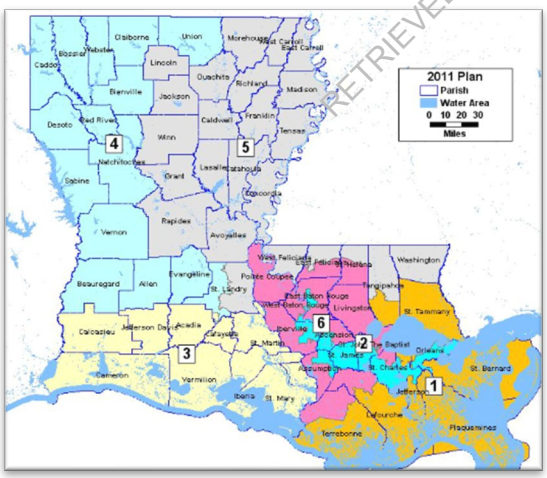
GX-1a at 54.

Moreover, the Legislative Intervenors disingenuously claimed that "it is unclear, at best, whether the Black community is better served with one congressional majority-minority district of a healthy BVAP of about 58%, as the enacted plan provides, or two districts with somewhat smaller Black populations that barely qualify (and may not qualify) as majority-minority districts." Rec. Doc. No. 109 at 18. This characterization is squarely inconsistent with their own assertion *in the very same brief* that, due to white crossover voting, "a 50% BVAP district is unnecessary to ensure an equal opportunity for the Black community." *Id.* at 15. And Drs. Palmer and Handley

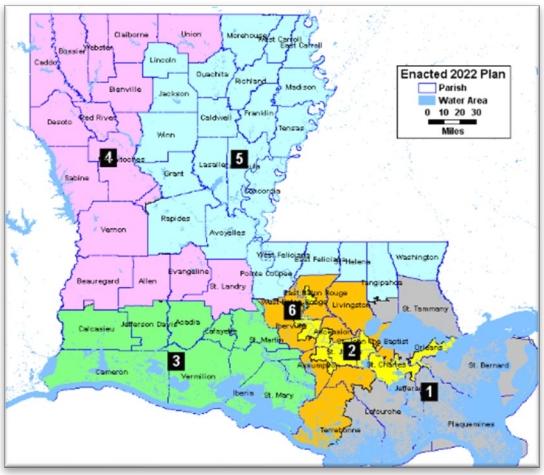
demonstrated that Black voters would generally be able to elect their preferred candidates in both the Second *and* Fifth Congressional Districts under Plaintiffs' illustrative plans. *See* GX-2 ¶¶ 25–26; PR-12 at 13, PR-87 at 6; PR-91 at 3. The true choice, then, is between *one* packed, noncompact district where Black voters can elect their candidates of choice—with the state's remaining Black voters cracked among the five other congressional districts in such low numbers as to be unable to elect their preferred candidates, *see* GX-3 at 61–62—or *two* districts, drawn consistent with traditional districting principles and better reflective of the state's population and communities of interest, where Black voters can elect their preferred representatives to Congress. Even setting aside the imperatives of Section 2, the better option for Black Louisianians is readily apparent.

Defendants have also trumpeted core retention and "continuity of representation" as a justification for HB 1. Rec. Doc. No. 101 at 17–18. This emphasis on core retention is not surprising; Mr. Cooper noted that the new congressional map is "basically a carbon copy" of the prior map enacted in 2011, May 9 Tr. 121:25–122:7, as a visual comparison confirms:

2011 Map



2022 Map



GX-1 Figures 7, 11. But core retention is a decidedly tenuous justification for HB 1. Notably, this criterion was *not* included in Joint Rule No. 21's prescribed guidelines for the state's new

congressional map, even though "consideration [for] traditional district alignments" *was* an enumerated criterion "for the [Louisiana] House of Representatives, Senate, Public Service Commission, and Board of Elementary and Secondary Education." GX-20. Moreover, a map that mechanically replicates the contours of districts drawn 10 years ago will not reflect the demographic changes that occurred in Louisiana over the past decade—in particular, the increasing growth of the state's minority populations and the sustained decline of its white population. *See* GX-1 ¶¶ 21–22, Figure 4. Finally—and perhaps most importantly—core retention serves only to perpetuate rather than remedy discriminatory effects. As Dr. Lichtman explained, core retention in Louisiana merely entrenches the inequities of the previous plan,

> freez[ing] in the existing packing and cracking . . . . In fact, if core retention was the fundamental talisman for redistricting as opposed to other requirements, then there never would have been a remedy for a discriminatory redistricting plan. You would just be replicating that plan over and over and over again like you are doing here.

May 10 Tr. 186:2–187:10. Dr. Lichtman's analysis strikes at the heart of the problem: In a state like Louisiana where Black citizens have historically suffered from discrimination and disenfranchisement—including through the configurations of congressional districts—core retention calcifies that marginalization and sustains it without end. Defendants should not be allowed to use core retention as a means to foster an endless cycle of self-perpetuating discrimination, especially where the congressional plan at issue otherwise violates Section 2.

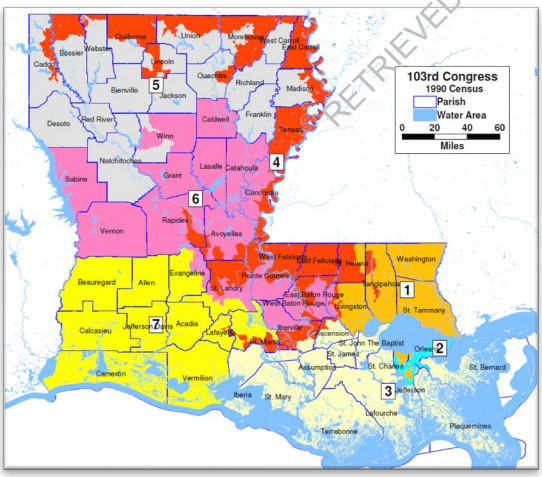
V. Defendants are not actually litigating Plaintiffs' case.

Defendants' narrow-minded focus on Louisiana's redistricting history manifested itself in yet another argument: that Plaintiffs' illustrative maps simply replicate the state's second majority-Black congressional districts that were challenged and invalidated during the 1990s. *See* Rec. Doc. No. 101 at 6–7, 9–10; Rec. Doc. No. 109 at 2–4, 7, 13; *see also, e.g.*, *Hays v. Louisiana*, 936 F. Supp. 360, 362–67 (W.D. La. 1996) (per curiam) (three-judge court) (describing extensive 1990s

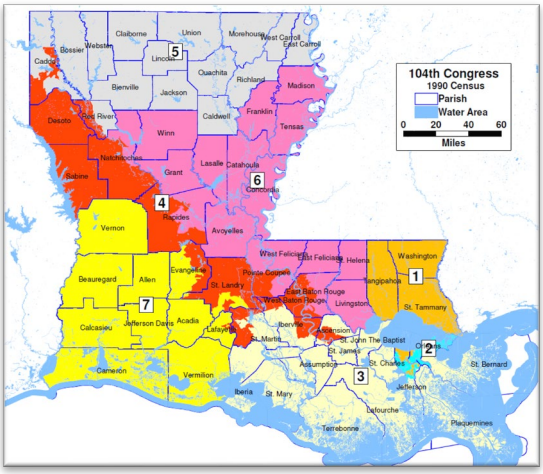
litigation and joking that "[a]t this juncture the procedural posture of the suit has become almost as convoluted as the shapes of some of the districts drawn by the Legislature"). But the illustrative majority-Black Fifth Congressional Districts drawn by Messrs. Cooper and Fairfax are fundamentally different from the majority-minority districts that were challenged as racial gerrymanders following *Shaw*. Defendants' repeated comparisons between these districts should not be credited.

A simple visual inspection confirms the stark contrasts between these various maps. The iteration of the Fourth Congressional District initially challenged in *Hays*, "like the fictional swordsman Zorro, when making his signature mark, slashed a giant but somewhat shaky 'Z' across the state." *Id.* at 363 (cleaned up). The subsequent Fourth Congressional District—enacted by the Legislature during the pendency of the *Hays* litigation and eventually invalidated by the three-judge court—"resemble[d] an inkblot which has spread indiscriminately across the Louisiana map." *Id.* at 364, 371:

1992 Map

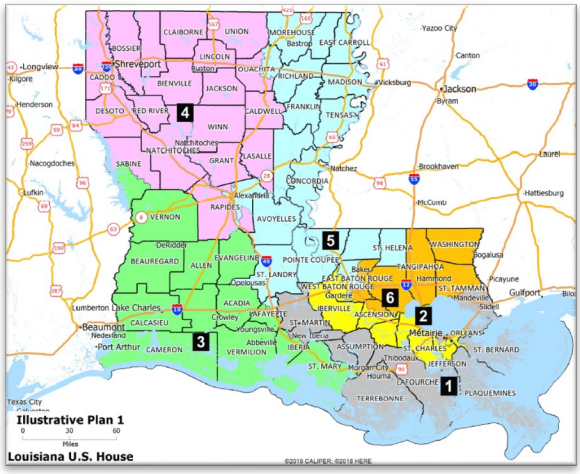


1994 Map

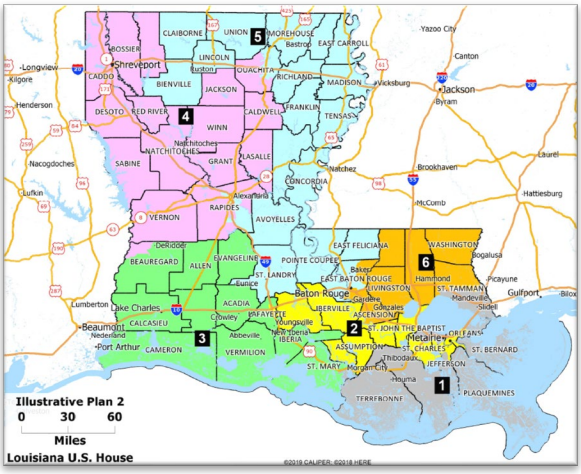


GX-1a at 38, 40. By contrast, none of the illustrative Fifth Congressional Districts drawn by Messrs. Cooper and Fairfax resembles either of these meandering, eccentric districts:

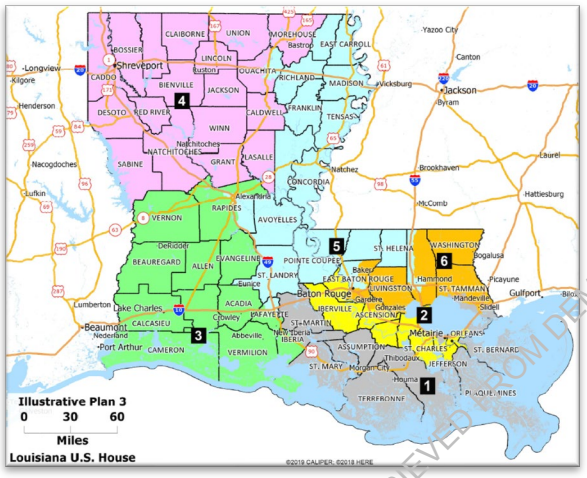
***Galmon* Illustrative Plan 1**



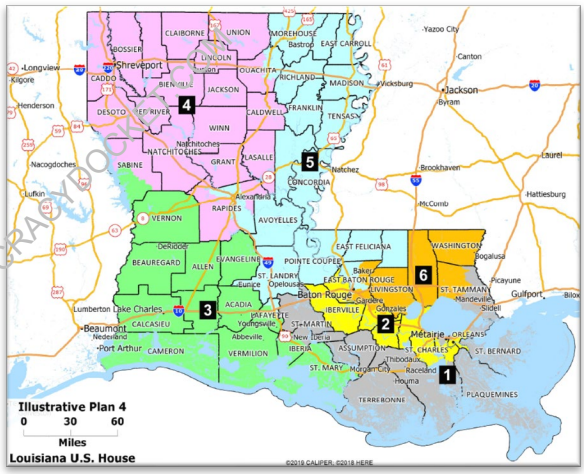
***Galmon* Illustrative Plan 2**



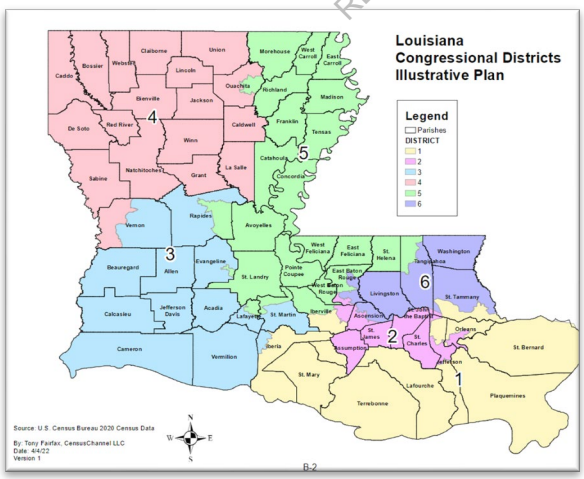
***Galmon* Illustrative Plan 3**



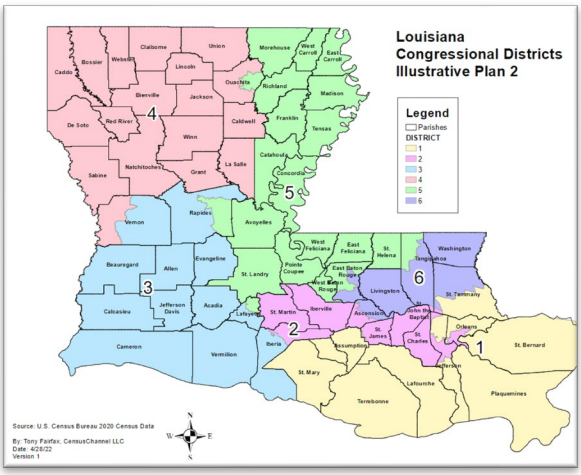
***Galmon* Illustrative Plan 4**



***Robinson* Illustrative Plan 1**



***Robinson* Illustrative Plan 2[4]**



[4] The *Robinson* Plaintiffs also submitted an Illustrative Plan 2A that retains all of the criteria measurements of Illustrative Plan 2 but does not pair incumbents. *See* PR-90 at 4–5.

GX-1b at 13, 40; GX-1c at 7; GX-29 at 45; PR-15 at 47; PR-86 at 27. Notably, Plaintiffs' illustrative plans in many instances are *more* compact and split *fewer* political subdivisions than the enacted plan. *See* GX-1 Figure 20; GX-29 Figure 3; PR-14 at 21; PR-90 at 5, Table 1.

Ultimately, neither Mr. Cooper nor Mr. Fairfax drew illustrative districts that resembled the challenged districts from *Hays*; indeed, both testified that they would never have done so. *See* May 9 Tr. 162:7–19, 222:12–19. Intervening demographic changes in the state, advances in redistricting technology, and dutiful compliance with neutral districting principles have ensured that Plaintiffs' illustrative plans satisfy not only *Gingles*, but any conceivable legal challenge.

VI. A new congressional map can be feasibly implemented in advance of this year's midterm elections.

Having failed to rebut or even meaningfully engage with Plaintiffs' expert and lay evidence, Defendants' last resort is to wave the banner of *Purcell* and try to convince the Court that it is somehow too late to remedy a violation of federal law—even though Louisiana's primary election is still nearly six months away. *See* GX-24.[5] But just weeks ago, Defendants' counsel offered a very different representation to Judge Donald R. Johnson of the Nineteenth Judicial District Court, claiming that (1) a new congressional map could be adopted *after* the legislative session ends next month or even later; (2) the deadlines that actually matter to voters will not occur until *October*, with the preceding candidate qualification deadlines amenable to rescheduling as needed; and (3) "there remains *several months* on Louisiana's election calendar to complete the [redistricting] process." GX-32 at 7–8 (emphasis added); *see also* GX-26 at 3; GX-27 at 4; GX-28 at 3. Given this inconsistency, Defendants are simply not credible on this issue.

[5] Plaintiffs note that just recently, on March 23, 2022, the U.S. Supreme Court summarily reversed a judgment of the Wisconsin Supreme Court approving maps for that state's 2022 legislative elections. *See Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (per curiam). The Court concluded that its ruling "g[ave] the court sufficient time to adopt maps consistent with the timetable for Wisconsin's August 9th primary election," *id.*—approximately four-and-a-half months later.

The testimony presented at last week's hearing confirmed that there is ample time and opportunity to implement a lawful congressional map for this year's congressional elections. Mr. Block, Governor Edwards's executive counsel, explained that Louisiana has a responsive elections apparatus that is not only capable of implementing last-minute adjustments to election dates and deadlines, but has done so several times in just the past decade. *See* May 11 Tr. 17:21–22:21, 24:4–7. In those instances, the Secretary's office was able to administer the elections, Louisianians were able to cast ballots, and electoral chaos did not result. *See id.* at 22:22–24:3. What Plaintiffs seek here is far from a last-minute change, and so there is no reason to believe that a new map could not be feasibly implemented. Moreover, Mr. Block observed that a remedial map could be adopted by the Legislature *right now*, since it is in session until June 6. *See id.* at 24:14–23.

Nothing in the testimony of the state's commissioner of elections, Sherri Hadskey, suggests that implementation of a new map is not feasible. Ms. Hadskey did not dispute the ability of the state's election supervisors to hold an election if the drawing of congressional district lines were delayed. May 13 Tr. 56:11–57:2. Although she expressed vague, generalized concerns about competing obligations, *see* SOS_01, she failed to provide a *single* concrete reason why a new map cannot be put in place in the coming weeks. To the contrary, her testimony confirmed that the election calendar could accommodate such a change:

- Multiple rounds of voter information cards will be distributed in the near future, and information about voters' congressional district assignments is easily available through the GeauxVote mobile app and the Secretary's website. *See* May 13 Tr. 52:20–53:3, 53:22–24.

- The most pressing deadline—which is still more than a month away—is a candidate petition deadline that *no congressional candidates* have utilized in the past decade, and the alternative $600 filing fee remains available for candidates. *See id*. at 57:13–20, 58:8–59:2.

- Other than election day, the only deadline identified by Ms. Hadskey that cannot be moved is the mailing of overseas absentee ballots—which is not until September 24, four months from now. *See id.* at 45:1–10.

- The nationwide election-paper shortage has nothing to do with a new congressional map, since ballots will not be printed for many months and changed districts do not impact the number of ballot envelopes and other materials that must be produced. *See id*. at 48:16–50:13.

Louisiana is unique. Its elections are unique. Its election *calendar* is unique. And it is therefore uniquely situated to allow for the feasible implementation of a new congressional map this year. Defendants' *Purcell* argument is little more than sound and fury. A new congressional map can be adopted either by the Legislature or this Court and implemented without significant difficulty for the State—and *nothing* in the record suggests otherwise.

CONCLUSION

Throughout this case, Defendants have tried to move the goalposts. As Mr. McClanahan testified at the beginning of the hearing, the State of Louisiana used to disenfranchise its Black citizens by artificially expanding the definition of Black, *see* May 9 Tr. 26:21–27:3—and now it is artificially contracting that definition to limit the reach of the Voting Rights Act. But the law governing Section 2 claims is what the U.S. Supreme Court and the Fifth Circuit have said it is, not what Defendants might wish it were. And Plaintiffs have offered evidence more than sufficient to prove their entitlement to relief. Defendants' last-ditch reliance on *Purcell* simply has no resonance in a state with such a delayed election calendar. And certainly administrative inconveniences cannot justify diluting the voting strength of hundreds of thousands of Black Louisianians.

Defendants have made much of the fact that the particular boundaries of Plaintiffs' illustrative Fifth Congressional Districts have never before existed in a Louisiana congressional map. This is notable, but not for the reason Defendants imply. Black voters have been historically and persistently denied equal access to the political process, so it is little wonder that this district has never been drawn. The novelty of the district reflects the fact that it is a *remedy* for vote dilution that will serve to undo past discrimination and vindicate the fundamental rights of some of the state's most vulnerable and marginalized residents—with just one result being, as Dr. Nairne testified, that Black voters "would have hope again in Louisiana." May 10 Tr. 91:22–23.

For these reasons and those described in their proposed findings of fact and conclusions of law, Plaintiffs respectfully request that the Court grant their motions for preliminary injunction.

Dated: May 20, 2022

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CERTIFICATE OF SERVICE

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

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

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