

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

PRESS ROBINSON, EDGAR CAGE,
DOROTHY NAIRNE, EDWIN RENÉ SOULÉ,
ALICE WASHINGTON, CLEE EARNEST
LOWE, DAVANTE LEWIS, MARTHA DAVIS,
AMBROSE SIMS, NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE (“NAACP”) LOUISIANA STATE
CONFERENCE, and POWER COALITION FOR
EQUITY AND JUSTICE,

Plaintiffs,

v.

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

Defendant.

Case No. 3:22-cv-00211-SDD-SDJ c/w

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

Plaintiffs,

v.

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

Defendant.

Case No. 3:22-cv-00214-SDD-SDJ

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

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

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CITATION GLOSSARY

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

TRANSCRIPT INDEX

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

INTRODUCTION

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

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

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

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

PROPOSED FINDINGS OF FACT

I. Plaintiffs

A. The *Robinson* Plaintiffs

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

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

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

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

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

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

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

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

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

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

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

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

B. The *Galmon* Plaintiffs

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

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

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

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

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

C. Intervenor-Plaintiff

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

II. Defendants

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

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

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

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

III. Background

A. 2020 Census and Demographic Developments

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

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

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

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

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

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

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

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

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

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

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

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

B. 2022 Enacted Congressional Plan

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

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

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

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

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

Figure 10

2022 Plan – 2020 Census

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

GX-1 at 17, Figure 10.

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

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

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

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

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

IV. Likelihood of Success on the Merits

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

A. First *Gingles* Precondition: Numerosity and Compactness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Numerosity

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

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

a. Robinson Illustrative Plans

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

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

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

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

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

b. *Galmon* Illustrative Plans

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

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

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

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

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

c. Use of the AP Black Metric

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Geographic Compactness

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

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

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

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

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

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

a. Contiguity

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

90. This fact is not disputed.

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

b. Single-Member Districts

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

93. This fact is not disputed.

c. Population Equality

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

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

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

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

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

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

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

d. Maintenance of VTDs

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

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

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

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

e. Respect for Communities of Interest

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. Respect for Political Subdivisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Compactness

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

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

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

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

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

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

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

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

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

Table 1 - Illustrative Plan and HB 1 Mean Compactness Measurements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Fracking

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

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

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

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

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

i. Core Retention

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

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

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

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

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

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

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

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

184. In any event, even if core retention were a relevant redistricting principle in this context, all but one of the districts in Mr. Cooper's illustrative plans maintain at least 50% of the 2020 population that resided in the district under the 2010 congressional plan. GX-29 ¶¶ 34-35.

j. Incumbent Pairing

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

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

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

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

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

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

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

k. Racial Considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Thomas Bryan

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

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

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

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

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

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

ii. Dr. Christopher Blunt

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

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

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

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

serve as an appropriate comparison, right? It would be sort of like comparing apples to oranges?

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

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

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

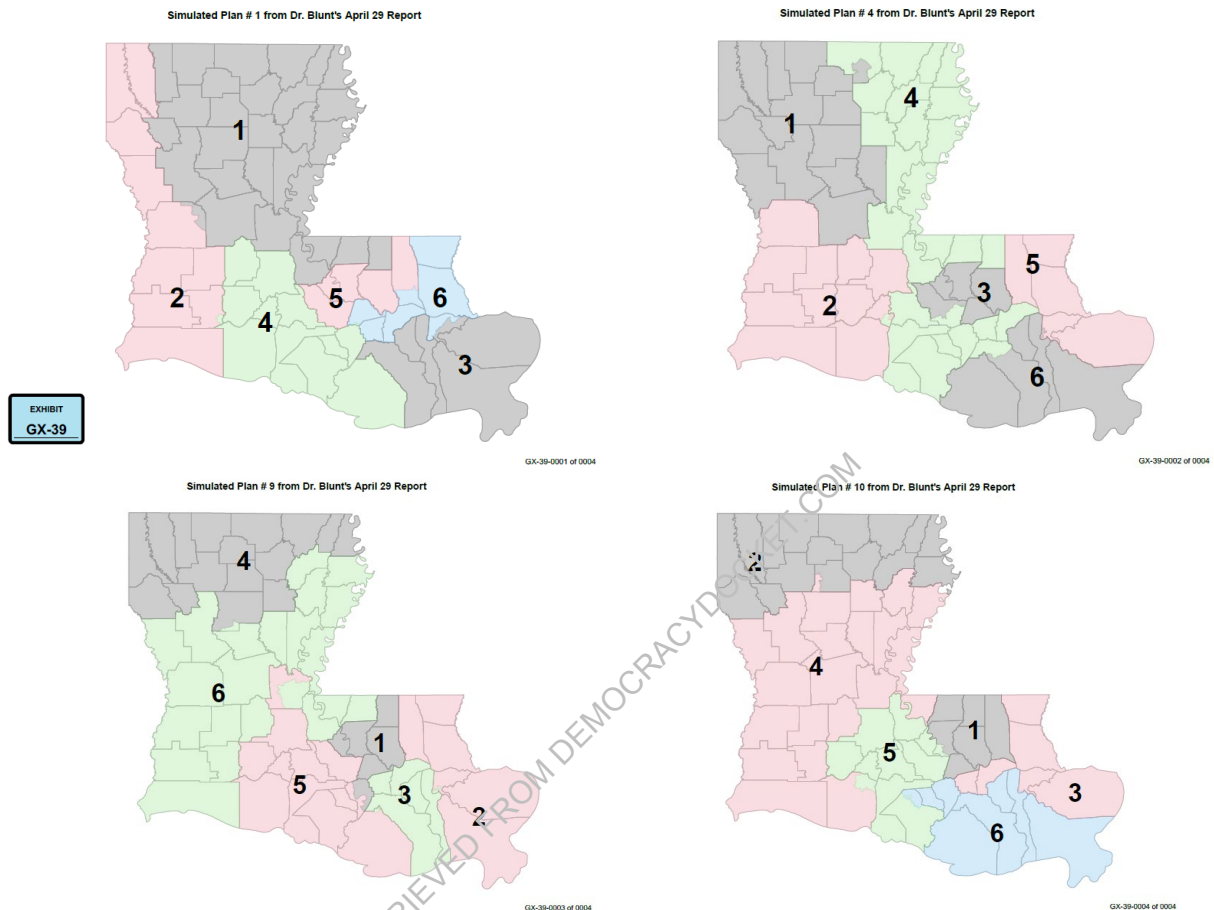
219. Dr. Blunt's simulations did not take into account incumbency protection, even though he acknowledged that this "is often a consideration" in redistricting, May 12 Tr. 69:18-70:18, or fracking, *id.* at 72:24-73:21.

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

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

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

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



GX-39.

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

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

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

B. Racially Polarized Voting

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Second *Gingles* Precondition: Political Cohesion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Third *Gingles* Precondition: Bloc Voting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Dr. Tumulesh Solanky

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

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

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

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

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

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

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

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

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

ii. Dr. Jeffrey Lewis

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

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

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

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

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

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

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

C. Totality of Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Targeted Efforts Against Black Voters in Reconstruction Louisiana

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

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

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

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

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

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

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

c. Official Discrimination after the Voting Rights Act

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

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

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

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

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

d. Redistricting-Related Discrimination

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

299. The post-1990 round of redistricting was also tainted by Voting Rights Act violations. PR-13 at 44. The Department of Justice objected to the State's legislative redistricting plan and stated that it had "examined the 1991 House redistricting choices in light of a pattern of racially polarized voting that appears to characterize elections at all levels in the state." PR-84 at 2. The Justice Department found that "[i]n seven areas . . . the proposed configuration of district boundary lines appears to minimize black voting strength, given the particular demography of those areas." *Id.* Just two years later, in the *Chisom v. Roemer* cases, five Black voters in Orleans Parish filed a class action suit on behalf of all Black voters registered in the parish alleging that electing two at-large supreme court justices from Orleans, St. Bernard, Plaquemines, and Jefferson Parishes violated the Voting Rights Act. PR-13 at 43. The state eventually settled the litigation in

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

300. Local jurisdictions in the state have repeatedly been the subject of Section 5 objections and findings of liability under Section 2 of the Voting Rights Act. PR-13 at 43-45.

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

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

e. Discrimination in Areas Related to Voting

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

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

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

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

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

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

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

2. Senate Factor 2: Racially Polarized Voting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

328.

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

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

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

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

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

4. Senate Factor Four: Candidate Slating

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

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

5. Senate Factor Five: Contemporary Socioeconomic Disparities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Senate Factor Six: Racial Appeals in Louisiana Campaigns

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Senate Factor Eight: State Nonresponsiveness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Proportionality

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

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

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

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

V. Irreparable Harm

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

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

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

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

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

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

VI. Balance of Harms and Public Interest

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

A. Implementation of New Congressional Map

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

424. Moreover, the Legislative Intervenors previously represented that

the candidate qualification period could be moved back, if necessary, as other states have done this cycle, without impacting voters. . . .

The election deadlines that actually impact voters do not occur until October 2022, like the deadlines for voter registration (October 11, 2022, for in-person, DMV, or by mail, and October 18, 2022 for online registration) and the early voting period (October 25 to November 1, 2022). . . .

Therefore, there remains several months on Louisiana’s election calendar to complete the [redistricting] process.

GX-32 at 8.

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

B. Harm to Voters and Candidates and Public Interest

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

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

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

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

429. As the Legislative Intervenors stated in the state court litigation that preceded this action: “*The election deadlines that actually impact voters do not occur until October 2022*, like the deadlines for voter registration (October 11, 2022, for in-person, DMV, or by mail, and October 18, 2022 for online registration) and the early voting period (October 25 to November 1, 2022).” GX-32 at 8 (emphasis added).

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

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

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

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

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

PROPOSED CONCLUSIONS OF LAW

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

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

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

3. Section 2 of the Voting Rights Act renders unlawful any state “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

14. To satisfy the first *Gingles* precondition, Plaintiffs must show that the Black population in Louisiana is “sufficiently large and geographically compact to constitute a majority in a single-member district.” *LULAC*, 548 U.S. at 425 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994)).

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

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

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

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

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

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

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

21. When a voting rights “case involves an examination of only one minority group’s effective exercise of the electoral franchise[,] . . . it is proper to look at all individuals who identify themselves as black” when determining a district’s BVAP. *Georgia v. Ashcroft*, 539 U.S. 461, 474 n.1 (2003); *see also, e.g., Ga. State Conf. of NAACP v. Fayette Cnty Bd. of Comm’rs*, 118 F. Supp. 3d 1338, 1343 n.8 (N.D. Ga. 2015) (“[T]he Court is not willing to exclude Black voters who also identify with another race when there is no evidence that these voters do not form part of the politically cohesive group of Black voters in Fayette County.”). Indeed, “[t]he irony would be great if being considered only ‘part Black’ subjected a person to an extensive pattern of historical discrimination but now prevented one from stating a claim under a statute designed in substantial part to remedy that discrimination.” *Singleton v. Merrill*, Nos. 2:21-cv-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 265001, at *56 (N.D. Ala. Jan. 24, 2022) (per curiam) (three-judge court).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

75. Defendants are wrong to suggest that Plaintiffs must affirmatively prove the subjective motivations of voters as part of this inquiry. "It is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, . . . under the 'results test' of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters." *Gingles*, 478 U.S. at 63.

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

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

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

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

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

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

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

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

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

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

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

84. This factor thus weighs in Plaintiffs’ favor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

97. This factor thus weighs in Plaintiffs' favor.

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

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

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

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

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

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

102. This factor thus weighs in Plaintiffs’ favor.

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

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

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

105. This factor thus weighs in Plaintiffs' favor.

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

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

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

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

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

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

111. This factor thus weighs in Plaintiffs' favor.

22. Proportionality further supports a finding of vote dilution.

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

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

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

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

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

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

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

* * *

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

E. Defendants’ additional legal arguments lack merit.

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

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

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

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

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

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

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

24. Section 2 confers a private right of action.

124. In *Morse v. Republican Party of Virginia*, a majority of the U.S. Supreme Court agreed that “the existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965.” 517 U.S. 186, 232 (1996) (Stevens, J.) (plurality opinion on behalf of two justices) (quoting S. Rep. No. 97-417, at 30); *accord id.* at 240 (Breyer, J., concurring) (expressly agreeing with Justice Stevens on this point on behalf of three justices); *see also, e.g., Ga. State Conf. of NAACP v. Georgia*, 269 F. Supp. 3d 1266, 1275 (N.D. Ga. 2017) (three-judge court) (citing *Morse* and concluding that “Section 2 contains an implied private right of action”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPOSED ORDER GRANTING INJUNCTIVE RELIEF

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

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

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

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

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

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

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

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

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

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

Dated: May 20, 2022

By /s/ Darrel J. Papillion

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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

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EXHIBIT 2

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF LOUISIANA
3

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

7 KYLE ARDOIN, in his
8 official capacity as c/w
9 Secretary of State for
10 Louisiana,
11 Defendant.

12
13 EDWARD GALMON, SR., et
14 al, CASE NO.
15 Plaintiffs, 3:22-cv-00214-SDD-SDJ
16 v

17 R. KYLE ARDOIN, in his
18 official capacity as
19 Louisiana Secretary of
20 State,
21 Defendant.

22 PROCEEDINGS
23 INJUNCTION HEARING
24 Held on Tuesday, May 10, 2022
25 Before The
HONORABLE SHELLY DICK
Judge Presiding
Baton Rouge, Louisiana

26
27 REPORTED BY:CHERIE' E. WHITE
28 CCR (LA), CSR (TX), CSR (MS), RPR
29 CERTIFIED COURT REPORTER

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1 P R O C E E D I N G S

2 THE COURT:

3 Good morning. Be seated. Welcome
4 back to day two. Hopefully, we won't have
5 a situation of fire and ice like we had
6 yesterday, and I'm referring to the
7 temperature in the courtroom.

8 Okay. Do we know what the clock --
9 how the clock remains? Do you-all want to
10 put that on the record so we are on the
11 same page?

12 Ms. Khanna?

13 MS. KHANNA:

14 Yes, Your Honor. Plaintiffs have
15 taken up 190 minutes and the defendants
16 have taken up 140 minutes.

17 THE COURT:

18 Plaintiffs, 190 and defendants, 140?

19 MS. KHANNA:

20 Yes, Your Honor.

21 THE COURT:

22 Okay. All right. Next witness?

23 MS. BRANNON:

24 I have to because I haven't entered
25 an appearance yet. Sarah Brannon,

1 B-R-A-N-N-O-N. And plaintiffs call

2 Dr. Lisa Handley.

3 DR. LISA HANDLEY,

4 after having first been duly sworn by the

5 above-mentioned court reporter, did testify as

6 follows:

7 MS. BRANNON:

8 We have agreed to stipulate to the

9 expertise of the witnesses, so I would

10 like to ask for a stipulation that

11 Dr. Handley is an expert in -- an expert

12 witness in district -- in redistricting

13 with an emphasis on racially polarized

14 voting. Is there an agreement?

15 THE COURT:

16 Is there a stipulation?

17 MR. FARR:

18 Good morning, Your Honor. Tom Farr

19 from the law firm of Nelson Mullins. I'm

20 here representing the Secretary of State,

21 and we have no objection to that

22 stipulation, Your Honor.

23 THE COURT:

24 Thank you, sir.

25 MS. BRANNON:

1 Your Honor, may I approach the
2 witness?

3 THE COURT:

4 Yes. And the court will accept
5 Dr. Handley and allow opinion testimony in
6 the area of expert witness experience in
7 racially polarized voting.

8 You may approach.

9 MS. BRANNON:

10 Your Honor, I just somehow have
11 realized that I cut my foot.

12 THE COURT:

13 Are you bleeding all over?

14 MS. BRANNON:

15 I am. Can we take a five-minute
16 recess?

17 THE COURT:

18 We can take a recess while you call

19 EMS. Okay. We will take five minutes.

20 (A short recess was taken at 9:37 a.m.)

21 THE COURT:

22 Okay. Be seated.

23 MS. BRANNON:

24 I'm recovered.

25 THE COURT:

1 Good. And if you feel lightheaded
2 from the loss of blood, we will take
3 another recess. Maybe somebody brought
4 cookies.

5 MS. BRANNON:

6 Okay. So we are going to return.
7 For the record, I have given Dr. Handley a
8 binder with a copy of her expert materials
9 in this case, and we are going to walk
10 through all of those and introduce them as
11 we discuss them.

12 THE COURT:

13 Okay. Proceed.

14 DIRECT EXAMINATION BY MS. BRANNON:

15 Q. Dr. Handley, did you prepare a
16 report in this case?

17 A. Several, yes.

18 Q. Can you turn to the first page of
19 your binder?

20 A. (Witness complied.)

21 Q. Is that a copy of the preliminary
22 report you prepared?

23 A. It is.

24 MS. BRANNON:

25 For the record, Dr. Handley's

1 preliminary report is Exhibit PR-12.

2 THE COURT:

3 Record Document 41, dash, 3, right?

4 MS. BRANNON:

5 Yes.

6 BY MS. BRANNON:

7 Q. Dr. Handley, is your CV attached to
8 your preliminary report?

9 A. It is.

10 Q. Is this a complete and accurate
11 summary of your background and professional
12 experience?

13 A. It is.

14 Q. Dr. Handley, what do you do for a
15 living?

16 A. I am a consultant.

17 THE COURT:

18 Ma'am, I think you might need to
19 adjust your mic. Yeah, right there. Your
20 mic, just adjust it.

21 THE WITNESS:

22 Just put it closer to my pad?

23 THE COURT:

24 Okay. Now we can hear better.

25 BY MS. BRANNON:

1 Q. I'll re-ask. Dr. Handley, what did
2 you do for a living?

3 A. I am a consultant here in the
4 United States and overseas. I also am a
5 part-time academic in the U.K.

6 Q. Can you provide us some examples of
7 some of your clients for your consulting
8 business?

9 A. I have worked, as I mentioned, the
10 UM. I worked for scores of states and local
11 jurisdictions. I worked for the redistricting
12 for the Department of Justice for several civil
13 rights organizations, including the ACLU.

14 Q. Can you briefly describe some of
15 your academic work you have done on the topic of
16 redistricting and minority vote dilution?

17 A. Almost all of the articles that
18 you'll see listed in my CV, that includes books,
19 articles, peer-review journals, law review
20 articles, chapters in books deal with minority
21 representation, voting redistricting with the
22 subjects of this case.

23 Q. All right. And have you testified
24 before as an expert witness?

25 A. I have.

1 Q. Approximately how many times have
2 you performed a racial block voting analysis as
3 an expert witness?

4 A. As an expert witness, scores of
5 times.

6 Q. Okay. And have you been -- have you
7 been accepted as an expert witness before to
8 testify about redistricting and racially
9 polarized voting?

10 A. I have.

11 Q. Approximately how many times?

12 A. Scores.

13 Q. Dr. Handley, what were you asked to
14 do in this case?

15 A. I was asked to conduct an analysis
16 of the voting patterns by race in Louisiana and
17 to evaluate proposed districts; that is, the
18 enacted plan and several illustrative plans to
19 ascertain the opportunity for black voters to
20 elect the candidates of their choice.

21 Q. And were you asked to analyze voting
22 patterns in the State of Louisiana specifically?

23 A. Yes. I analyzed voting patterns
24 statewide, I analyzed voting patterns in 16
25 congressional districts and in the enacted

1 congressional districts.

2 Q. And can you provide us a general
3 summary of the opinions that you reached with
4 respect to your analysis as to whether there's
5 racially polarized voting in Louisiana?

6 A. Yes, there is racially polarized
7 voting in Louisiana. There is quite stark
8 racially polarized voting in Louisiana.

9 Q. What is your definition of racially
10 polarized voting?

11 A. Thornburg versus Gingles tells us
12 that voting is polarized in black voters and
13 white voters vote differently. In other words,
14 if black voters voting alone elected different
15 candidates than white voters, then the contest is
16 racially polarized.

17 Q. What statistical techniques did you
18 use to analyze whether voting in Louisiana is
19 racially polarized?

20 A. I used three standard techniques:
21 Homogeneous precinct analysis, ecological
22 regression, and ecological inference.
23 Technically I used four because there are two
24 variants of ecological inference.

25 Q. We heard details yesterday about

1 ecological inference, but can you provide a brief
2 summary of homogeneous precinct analysis and
3 ecological regression.

4 A. Homogeneous precinct analysis simply
5 compares the voting patterns of precincts that
6 are overwhelmingly one race compared to precincts
7 that are overwhelmingly in another race.

8 So in this case, you are comparing
9 precincts that are overwhelming white to
10 precincts that are overwhelming black. It's not
11 actually a statistical technique. It's simply
12 comparing these two precincts. We call it an
13 estimate because, of course, not all voters live
14 in homogeneous precincts and might vote
15 differently than the voters who live in more
16 diverse precincts.

17 Q. Why do you use all three methods?

18 A. Two of the methods have been around
19 for a very long time. When Thornburg v Gingles
20 was decided, homogeneous precinct analysis and
21 ecological regression was used by the plaintiffs'
22 experts and the court approved those methods.
23 Since then, ecological inference was developed by
24 a professor at Harvard by the name of Gary King
25 and courts have accepted that.

1 Now, this is three different
2 techniques to arrive at estimates. If you -- if
3 the estimates are more or less the same, despite
4 using three different techniques, we are certain
5 that we have grasped what the voting patterns
6 are.

7 Q. Have courts accepted your expert
8 testimony using these different statistical
9 methodologies in voting cases before?

10 A. Yes. Now, again, ecological
11 inference is more common. I've only been using
12 that for maybe 20 years, but the others for
13 40 years, a long time.

14 Q. Okay. Let's look at your analysis a
15 little bit more in detail.

16 MS. BRANNON:

17 Can we see demonstrative

18 Exhibit 1.2?

19 TRIAL TECH:

20 (Complied.)

21 BY MS. BRANNON:

22 Q. Did you analyze statewide elections?

23 A. I did analyze statewide elections.

24 Q. How many statewide elections did you
25 analyze?

1 A. Fifteen statewide elections.

2 Q. Are you familiar with this table
3 that is demonstrative Exhibit 1.2?

4 A. Yes. These are the 15 contests that
5 I analyzed.

6 Q. Why did you choose these elections?

7 A. These are all recent elections from
8 2015 on. They all include black candidates.

9 Q. Let's walk through your analysis of
10 a statewide election.

11 MS. BRANNON:

12 Can we see demonstrative

13 Exhibit 1.3?

14 TRIAL TECH:

15 (Complied.)

16 BY MS. BRANNON:

17 Q. Dr. Handley, do you recognize this
18 spreadsheet?

19 A. I do.

20 Q. Is this spreadsheet part of your
21 preliminary report as appendix A?

22 A. It is.

23 Q. Can you explain what this
24 spreadsheet shows by walking us through the
25 portion that has been highlighted?

1 A. Yes. So this is a particular
2 contest. In this case, it's the attorney general
3 in 2019, October 2019. You can see the two
4 candidates, Jackson and Jeff Landry. You can see
5 their party, you can see their race, and the next
6 column is the actual votes they received.

7 Below that is the black turnout and
8 the white turnout figures. And then the next set
9 of four columns are the estimates derived by the
10 four different techniques of the percentage of
11 black voters who voted for each of these
12 candidates.

13 So, for example, C 90.6 is the EIR
14 times C estimate, 91.2 is the EI 2 times 2,
15 94 percent is the ER, and 87.7 is the homogeneous
16 precinct estimate of percentage of the black
17 voters who supported Ike Jackson. And then you
18 see the same information for the white voters.
19 So like EIR times 29.4 percent of the white
20 voters that supported Ike Jackson by EI 2.2, it's
21 10.1 by ER, it's 9.2; and by HB, it's 12.2. So
22 all of them are quite comparable.

23 For example, the estimate that the
24 percentage of black voters who voted for Jackson
25 was similar between 87.7 percent and 94 percent.

1 THE COURT:

2 Dr. Handley, one second. Will you
3 help her with her mic? See if maybe we
4 can adjust it.

5 THE WITNESS:

6 The problem is I'm leaning forward.

7 THE COURT:

8 Right. What we will do is she
9 will -- she will just see if we -- Mr. IT
10 is here too, so we are well. We are over
11 prepared.

12 THE WITNESS:

13 This is going to be too far away.

14 You can still hear?

15 THE COURT:

16 No. That's better and you can
17 certainly adjust it. I'll stop. We may
18 be give you some assistance, okay? Please
19 carry on. I'm sorry I interrupted you.

20 BY MS. BRANNON:

21 Q. Dr. Handley, what are confidence
22 intervals?

23 A. So the EIR times C estimates, the
24 column next to that, we have confidence
25 intervals. You can think of those as sort of the

1 margins of error that you see in a survey that
2 we're 95 percent certain that the true estimate,
3 the estimate being 90.6, that the true estimate
4 is somewhere between 90.3 and 90.9.

5 Q. And why do you include confidence
6 intervals only for your EIR times C calculation?

7 A. Those are the only confidence
8 intervals that are generally accepted by experts
9 in my area for -- for these kinds of estimates.

10 Q. Does the -- this appendix A also
11 provide information about voter turnout?

12 A. It does. The italicized lines in
13 the attorney general race, it says black turnout,
14 slash, black VAP. That's the percentage of black
15 voting age population that actually turned out
16 for that particular office; and the same for
17 white turnout of white VAP. So 35.2 percent of
18 black voting age, of the eligible black voting
19 age population turned out to vote and 45.2
20 percent of the whites.

21 Q. Would you characterize this 2019
22 attorney general election as a polarized contest?

23 A. I would.

24 Q. Why?

25 A. The vast majority of black voters

1 voted Jackson. If they had voted alone, Jackson
2 would have one overwhelmingly. The vast majority
3 of white voters supported Landry, and if they
4 alone would have voted, he would have one
5 overwhelmingly. In fact, he did win.

6 Q. Does the race of the candidates need
7 to be different to determine if there's racially
8 polarized voting?

9 A. No. The point is that black and
10 white voters are for different candidates. No.
11 It so happens in the contest that I looked at
12 with at least one or two exceptions, the black
13 candidate was the black preferred candidate; that
14 is, the candidate preferred by black voters, but
15 there are exceptions to that in the elections
16 that I looked at.

17 Q. Does appendix A show the same type
18 of data for the rest of the 14 statewide
19 elections that you analyzed?

20 A. Yes. So all 15 are in this and I
21 just described one. They are all read the same.

22 Q. What, if any, conclusions did you
23 reach about racially polarized voting in
24 Louisiana in statewide elections based on your
25 analysis with these 15 elections?

1 A. All 15 contests were polarized. In
2 every instance, black voters and white voters
3 would have elected different candidates had they
4 voted separately.

5 Q. You already explained how you looked
6 at voting patterns in congressional elections.
7 Why?

8 A. Of course, it indicated that
9 endogenous elections; that is, elections for the
10 office at issue, are more probative than
11 exogenous elections.

12 Now, in this case, you are looking
13 at proposed plans. There were no elections under
14 it, but congressional elections in general would
15 still be more probative and would be particularly
16 so in Louisiana where the districts didn't change
17 that much from the enacted plan from the current
18 plan.

19 MS. BRANNON:

20 Can we see demonstrative

21 Exhibit 1.4?

22 TRIAL TECH:

23 (Complied.)

24 BY MS. BRANNON:

25 Q. Do you recognize this table?

1 A. This -- yes. This is a list of the
2 congressional election contests that I looked at.

3 Again, this is from 2016 to the most recent
4 contest, and it was the contest that included
5 black candidates. There were no contests in
6 District 1 that included black candidates.

7 Q. And is the analysis of these
8 congressional districts described in your
9 reports?

10 A. Yes.

11 MS. BRANNON:

12 Can we see demonstrative

13 Exhibit 1.5?

14 TRIAL TECH:

15 (Complied.)

16 BY MS. BRANNON:

17 Q. Dr. Handley, do you recognize this
18 table?

19 A. Yes.

20 Q. Was there a version of appendix B
21 attached to your preliminary report?

22 A. Yes.

23 Q. Did you make any corrections?

24 A. I updated it by adding three
25 elections that occurred in 2021. There were two

1 congressional elections in District 2 to replace
2 Cedric Richmond and there was an election in
3 District 5, and so this has been updated to
4 include those elections. I also changed the date
5 of the elections from October to the correct
6 date, which is November, and I had to correct one
7 of the confidence intervals because of a typo.

8 Q. Was revised Appendix B included with
9 your rebuttal report?

10 A. Yes.

11 MS. BRANNON:

12 For the record, Dr. Handley's
13 rebuttal report is Exhibit PR-87.

14 BY MS. BRANNON:

15 Q. Did any of these changes impact any
16 of your opinions in this case?

17 A. No.

18 Q. Is the data as reflected in revised
19 Appendix B that's on the screen similar to the
20 data that is reflected in Appendix A we were just
21 discussing?

22 A. If by "data" you mean precinct
23 information, that is both the demographic
24 information and the election returns. It's the
25 same. If you mean reading the charts, it's read

1 the same as well.

2 Q. Yeah. Reading the charts?

3 A. Reading the charts.

4 Q. Reading the chart is the same. This

5 chart would be read the same as Appendix A that

6 we have walked through?

7 A. That's correct.

8 Q. Okay. What, if any, conclusions did

9 you reach about voting patterns and congressional

10 elections in Louisiana based on your analysis?

11 A. The elections in Districts 3, 4, 5

12 and 6 were all white polarized. The elections in

13 District 2 less so. In fact, most of them were

14 not polarized in District 2.

15 Q. All right.

16 MS. BRANNON:

17 Can we see demonstrative

18 Exhibit 1.6?

19 TRIAL TECH:

20 (Complied.)

21 BY MS. BRANNON:

22 Q. Dr. Handley, did you conduct any

23 analysis of the voting patterns in the newly

24 enacted congressional map related to HB-1?

25 A. I did. Of course, no election has

1 occurred. So this reflects recompiled results
2 using the precincts that the old elections
3 occurred in and sort of re-running the elections
4 as they would have occurred -- they would have
5 occurred in the enacted congressional districts.

6 Q. Do you recognize the tables on this
7 demonstrative?

8 A. Yes.

9 Q. Is there a version of Appendix C
10 attached to your preliminary report?

11 A. Yes.

12 Q. Did you make any changes?

13 A. Yes. So it turns out that we had an
14 old version of what's called a block two district
15 equivalency file for the enacted plan, and when
16 we discovered that it was old and we needed to
17 fix it, I then, in a burst of caution, re-ran all
18 of the analyses for the enacted districts using
19 the new block to district equivalency.

20 Q. Does this demonstrative demonstrate
21 your original Appendix C and your updated
22 Appendix C?

23 A. That's correct.

24 Q. Did your new analysis of
25 congressional districts in the enacted plan of

1 congressional district -- this is Congressional

2 District 2, correct?

3 A. Yes.

4 Q. Did any of your opinions change?

5 A. No. The -- the block equivalency

6 file was only off by about 2 percent of the

7 population. So we moved the 2 percentage into

8 the correct districts and it changed the

9 estimates barely, maybe by a percentage point, if

10 it changed them at all. As you can see, voting

11 is still quite polarized.

12 MS. BRANNON:

13 And, for the record, the updated

14 Appendix Cs are provided with plaintiffs'

15 Exhibit PR-92.

16 Can we see PX-1.7?

17 TRIAL TECH:

18 (Complied)

19 BY MS. BRANNON:

20 Q. Did you do an analysis of the

21 enacted plan for congressional districts other

22 than Congressional District 2?

23 A. Yes. I did look at voting patterns

24 in all of the enacted districts that overlaid

25 Illustrative District 5; that is, the additional

1 black opportunity district offered by the
2 illustrative plan. And as you can see, it
3 overlaps Districts 2, 3, 4, 5 and 6.

4 Q. So --

5 A. So those were the -- those were the
6 congressional districts that I looked at. It
7 does not overlap 1, so I did not look at 1.

8 Q. And you recognize this map?

9 A. Yes.

10 Q. And it shows the overlay you were
11 just describing?

12 A. That's correct.

13 Q. All right. Did you make any further
14 changes to your analysis for the other
15 congressional districts besides CD2?

16 A. Do you mean because of the block
17 equivalent, I did it?

18 Q. Yes.

19 A. Yes. I re-ran all of the analyses.

20 Q. And those are all included in the
21 corrected materials report that we filed in this
22 case?

23 A. That's correct.

24 MS. BRANNON:

25 Which, for the record, is PR --

1 Exhibit PR-92.

2 BY MS. BRANNON:

3 Q. Did any of your opinions change as a
4 result of redoing this analysis for all five of
5 the congressional districts you looked at?

6 A. No. As I said, the changes were
7 mostly less than a percentage point and voting
8 still very polarized in these congressional
9 districts.

10 MS. BRANNON:

11 We can take this one down.

12 TRIAL TECH:

13 (Complied.)

14 BY MS. BRANNON:

15 Q. What -- when conducting your
16 analysis of these congressional districts in the
17 enacted plan, what conclusions did you reach?

18 A. If voting was polarized in all of
19 the districts that I looked at, there was some
20 variation in that there was more white crossover
21 vote in enacted District 2 than there was in 3,
22 4, 5 and 6, which were quite starkly polarized.

23 Q. What do you mean when you say "white
24 crossover voting"?

25 A. I'm talking about white voters who

1 are voting for the black preferred candidate.

2 Q. Let's turn now to your analysis of
3 black voters opportunities to elect candidates of
4 their choice in the illustrative maps and the
5 enacted congressional map.

6 Did you evaluate the opportunity of
7 black voters to elect their candidate of choice
8 in the enacted map?

9 A. I did.

10 Q. And what methodology did you use?

11 A. Of course, no elections have
12 actually occurred in either the illustrative or
13 the enacted plan, so I used -- I relied on what I
14 called recompiled election results looking at how
15 previous elections would have faired, how the
16 candidates of choice in previous elections would
17 have faired under the proposed districts.

18 Q. Have you used this method of
19 recompiling election results when providing other
20 expert opinions that have been accepted by courts
21 before?

22 A. Yes.

23 Q. Why do you think it is useful to
24 form this evaluation?

25 A. The only way to know if a proposed

1 plan will provide black voters with an
2 opportunity to elect their candidates of choice
3 since no elections have occurred is to do
4 something like this, to look at recompiled
5 election results, determine if the black
6 preferred candidates would win, and how many
7 elections they would win.

8 Q. Did you also perform this recompiled
9 election results analysis on Illustrative Map 2A
10 that was drawn by plaintiffs' expert
11 Tony Fairfax?

12 A. I did.

13 MS. BRANNON:

14 Can we see demonstrative
15 Exhibit 1.8?

16 TRIAL TECH:

17 (Complied.)

18 BY MS. BRANNON:

19 Q. Do you recognize these tables?

20 A. Yes.

21 Q. Can you explain the information
22 provided on these tables starting with the
23 enacted plan on the right side of the screen?

24 A. Yes. Now, when you are trying to
25 figure out if a district is going to provide

1 black voters with an opportunity to elect, the
2 elections that you want to look at are elections
3 in which black voters and white voters agreed on
4 who they would elect. And that happens to be the
5 case in all 15 elections that I looked at.

6 So here what I did was was I
7 determined how many of those 15 elections with a
8 black preferred candidate either win the majority
9 vote or win enough votes to go on to the runoff,
10 so that's my effectiveness score one. It's just
11 the percentage times the black preferred
12 candidate would win or lose if there were a
13 runoff.

14 The second column, the effectiveness
15 score two is what would happen if they made it to
16 the runoff and there were now just two
17 candidates, would they win the runoff, and this
18 is the percentage of times they would win the
19 runoff.

20 So, for example, in District 2, the
21 black preferred candidate in all 15 contests
22 would have either won or proceeded to the runoff;
23 and in the two -- two candidate contest if they
24 had gone to the runoff, they would have won
25 100 percent of the time.

1 Now, in the other districts in the
2 enacted plan, although the black preferred
3 candidates in some of these districts would have
4 proceeded to the runoff in about 25 percent of
5 these elections, none of them would have actually
6 won the runoff. So in the other districts, the
7 black preferred candidate would have not
8 ultimately prevailed in any of the elections.

9 Q. So can you just please explain how
10 that works in Louisiana's voting system?

11 A. All right. So this is a little
12 different than how I usually do this because you
13 have a system that is -- well, it used to be
14 unique. I think maybe some other states are
15 adopting it, but you have a primary system and it
16 includes both Democrats and Republicans; and the
17 election might actually end there without a
18 general election, while in most states you have
19 the -- you go on and you have a general election
20 with two candidates, a Democrat and Republican.
21 Sometimes here you go on and you have an election
22 with two Republicans, so that makes it a little
23 bit different, and that's why I -- that's why you
24 see these two columns.

25 Q. Would you characterize any of the

1 congressional districts an enacted plan other
2 than Congressional District 2 as an opportunity
3 district?

4 A. I would not.

5 Q. And then can you just briefly
6 explain the analysis that is reflected in Table 2
7 on the left side of the map about Illustrative
8 District -- Illustrative Map 2A?

9 A. So, again, I used exactly the same
10 methodology, did exactly the same thing, but this
11 time you can see that District 2 is also
12 100 percent of the time the black preferred
13 candidate wins.

14 In District 5, 86.7 percent of the
15 contest produced the black preferred candidate as
16 winning or proceeding to the runoff, and in
17 77.8 percent of the runoffs, also two candidate
18 contests, the black preferred candidate prevails
19 in District 5.

20 Q. Would you characterize any of the
21 congressional districts in Illustrative Map 2A as
22 opportunity districts?

23 A. Yes. Districts 2 and District --
24 and District 5 both provide black voters with an
25 opportunity to elect their candidates of choice.

1 The other districts, 1, 3, 4 and 6 do not.

2 Q. Is the information in Table 2
3 reflected in your reports in this case?

4 A. Yes.

5 Q. What conclusions, if any, did you
6 draw about the ability of black voters to elect
7 their candidates of choice in this illustrative
8 plan versus the enacted plan?

9 A. There is one black opportunity
10 district in the enacted plan and there are two in
11 the illustrative plan marked map 2A.

12 Q. Bringing together your racial
13 polarization analysis and your effectiveness
14 analysis of the enacted plan and the illustrative
15 maps, how does the racially black voting in
16 Louisiana effect voters' opportunities to elect
17 their candidates of choice?

18 A. Because voting is racially
19 polarized, black voters can only elect their
20 candidate of choice if the district is drawn that
21 gives them this opportunity.

22 MS. BRANNON:

23 I also move for admission of all of
24 Dr. Handley's materials that have been in
25 this case, but for the record, it's PR-12,

1 PR-87, PR-91 and PR-92.

2 THE COURT:

3 Any objection?

4 MR. FARR:

5 No objection, Your Honor.

6 THE COURT:

7 So admitted.

8 BY MS. BRANNON:

9 Q. Dr. Handley, did you also look at
10 the expert report of defendant's expert,
11 Dr. Solanky? I think I'm saying that correctly,
12 Solanky.

13 MR. FARR:

14 That's correct.

15 THE WITNESS:

16 I did.

17 BY MS. BRANNON:

18 Q. Do you think it was appropriate for
19 Dr. Solanky to offer voting opinions about the
20 voting patterns in East Baton Rouge from the
21 analysis of just one election?

22 A. Certainly, you would look at a
23 pattern of voting over more than one election.
24 You would look at as many as you could.

25 MS. BRANNON:

1 Can we see demonstrative 1.10?

2 TRIAL TECH:

3 (Complied.)

4 BY MS. BRANNON:

5 Q. And Dr. Solanky did an evaluation of
6 East Baton Rouge Parish, correct?

7 A. Yes.

8 Q. Do you recognize this map?

9 A. Yes.

10 Q. Do you think it was appropriate that
11 Dr. Solanky looked just at East Baton Rouge
12 Parish?

13 A. No, for two reasons: No. 1, East
14 Baton Rouge Parish is not large enough to be its
15 own congressional district, that the population
16 is too small. You would have to add neighboring
17 parishes to it, thus he pointed out the voting
18 patterns in neighboring parishes is different.

19 And, No. 2, you can see from this
20 map that, in any case, East Baton Rouge is not
21 wholly contained within any congressional
22 districts, either in the enacted or the
23 illustrative maps. It is divided between two
24 districts.

25 Q. Would it be possible to draw a

1 congressional district just with East Baton Rouge

2 Parish?

3 A. No. The population is too small.

4 Q. So even if Dr. Solanky's conclusion

5 was correct that the voting patterns in East

6 Baton Rouge -- about the voting patterns in East

7 Baton Rouge, do you think that that analysis is

8 relevant to questions about performance in an

9 Illustrative District 5?

10 A. No. Again, you have to add

11 population. As he himself points out the

12 population, the voting patterns in the parishes

13 neighboring East Baton Rouge Parish is different.

14 Q. Did you also look at the report of

15 Dr. Alford?

16 A. I did.

17 Q. Did Dr. Alford offer any criticism

18 of the methodology in your report?

19 A. No.

20 Q. Dr. Alford's report -- Dr. Alford in

21 his report in addressing the cause of voting

22 patterns in Louisiana does an evaluation as to

23 whether there is racial --

24 MS. BRANNON:

25 Excuse me, Your Honor. Can I start

1 again?

2 BY MS. BRANNON:

3 Q. Does any evaluation of whether there
4 is actual racially polarized voting involve an
5 evaluation of the causes of the voting patterns
6 that have been analyzed?

7 A. No. The Voting Rights Act, I
8 believe the Voting Rights Act was specifically
9 amended to focus the inquiry on the electoral
10 consequences of different voting patterns and to
11 not -- the reason for those. Intent was
12 specifically taken out of the equation, the
13 intent of the legislators as well as the intent
14 of the voters.

15 Q. Do you agree with Dr. Alford's
16 suggestion in his report that the fact that black
17 voters support Democrats and white voters support
18 Republicans in Louisiana means that voting is not
19 racially polarized?

20 A. When you determine voting is
21 racially polarized, you do it the way that I have
22 done it. This is the way that experts have done
23 it for over 50 years. You look at the voting
24 patterns of blacks and whites and you compare to
25 see if they are voting the same candidates or

1 different candidates. This is how it is done.

2 This is how you determine if voting is racially

3 polarized.

4 MS. BRANNON:

5 Nothing further, Your Honor.

6 THE COURT:

7 Cross?

8 MR. FARR:

9 Thank you, Your Honor. Can everyone

10 hear me?

11 THE COURT:

12 Yes, sir. Did you need to -- did

13 you need to remain seated? I can't

14 remember --

15 MR. FARR:

16 I just want to tell Dr. Handley nice

17 to meet you. And through the graciousness

18 of Your Honor, I've got a back condition,

19 so she's agreed that I can examine you

20 from counsel's table, and I'm grateful to

21 her for doing that. Please let me know if

22 you can't hear my questions and I'll try

23 to rephrase them.

24 THE WITNESS:

25 Okay.

1 THE COURT:

2 Let me ask this. Would it be
3 helpful -- you may be seated, sir.

4 Would it be helpful to be able to
5 make eye contact? I mean, is there
6 somebody that I can move, either counsel
7 table move out of the way or does it
8 matter?

9 MR. FARR:

10 I can see Dr. Handley, if she can
11 see me.

12 THE COURT:

13 Can you see her -- him?

14 THE WITNESS:

15 I can see, yes. I don't have my
16 glasses on, but other than that --

17 THE COURT:

18 All right. Well, then that's fine.
19 We just want to make sure that you-all
20 communicate well.

21 THE WITNESS:

22 Okay.

23 THE COURT:

24 Go ahead, sir.

25 CROSS-EXAMINATION BY MR. FARR:

1 Q. Dr. Handley, we haven't met before,
2 but I've reviewed some of your prior testimony in
3 some cases that involved our firm; and it's an
4 honor to meet you here today.

5 THE COURT:

6 And state your name for the
7 reporter. You may have already done that,
8 but I just need it.

9 MR. FARR:

10 Yes, ma'am. I'm Tom Farr, and I'm
11 from the law firm of Nelson Mullins and
12 I'm here representing the Secretary of
13 State.

14 BY MR. FARR:

15 Q. So, Dr. Handley, when were you first
16 contacted about Louisiana redistricting in this
17 cycle?

18 A. It's difficult to say. I was
19 working with the ACLU in another couple of states
20 before we started talking about Louisiana.

21 Q. It's not a memory test, Dr. Handley.

22 A. Okay. I'm sorry. I don't remember
23 exactly when. Certainly, less than a year ago.

24 Q. Okay. Well, let's see if we can
25 clarify that a little bit with some questions

1 I'll ask.

2 Do you remember who called you about
3 working on Louisiana redistricting?

4 A. No.

5 Q. When were you actually engaged to
6 work on Louisiana redistricting?

7 A. Oh, that's also a tough question
8 because I am not even sure that I have a contract
9 with the ACLU with Louisiana, so I can't actually
10 answer that question.

11 Q. And do you know who engaged you?

12 A. No.

13 Q. Okay. You don't know the person
14 that engaged you?

15 A. Well, I suppose ultimately it would
16 have been Dale Hope, and I had conversations with
17 him earlier; and this is the head of the voting
18 rank division -- the voting section of the ACLU.

19 Q. Yes, ma'am. I know Mr. Dale Hope.
20 I think very highly of him, so thank you for that
21 answer.

22 Did you do any work on Louisiana
23 prior to the Louisiana legislative process?

24 MS. BRANNON:

25 Your Honor, I'm just going to -- she

1 can answer that question, but I want to
2 put an objection on the record to the
3 extent it's seeking what we would consider
4 being work product leading up to
5 litigation, but anything that relates to
6 not leading up to litigation, you can
7 answer.

8 THE COURT:

9 Your objection is noted. It may be
10 a little premature, but you-all know that
11 she thinks you are going in the wrong
12 direction, so there you go.

13 MR. FARR:

14 Your Honor, I'm not going to ask her
15 about work product. I just want to know
16 when she started working on this, and if
17 it's -- we are all interested in other
18 issues in the case, so --

19 THE COURT:

20 Okay. There's no objection to your
21 current question, so if you want to
22 restate it?

23 MR. FARR:

24 Yes, ma'am.

25 THE COURT:

1 Go ahead.

2 MR. FARR:

3 Thank you, Your Honor.

4 BY MR. FARR:

5 Q. Ms. Handley, do you remember when
6 you started working on matters related to
7 Louisiana congressional redistricting in this
8 cycle? Let me try -- let me try it off a little
9 bit.

10 A. I'm sorry. I -- I can't remember.

11 Q. That's all right. I understand. Do
12 you think you began working before the
13 legislative process started?

14 A. I have no idea. I don't know when
15 the legislative process started.

16 Q. Okay. I heard you mention
17 something. Could it have been that you were
18 working on Louisiana redistricting sometime
19 within the last year?

20 A. Yes.

21 Q. Okay. And you just didn't start
22 when the plan was enacted?

23 A. That's correct.

24 Q. Did you give any input on your
25 theories and calculations to the legislature

1 during the legislative process?

2 A. Did I? The legislature never
3 contacted me or asked me to do any work, no.

4 Q. But you didn't voluntarily give any
5 of your research to the Louisiana legislature
6 while they were considering congressional plans?

7 A. I personally?

8 Q. Yes.

9 A. No.

10 Q. Did you talk to anybody who gave
11 information about your plans or any advice that
12 you may have transmitted? Did you talk to anyone
13 who may have provided that information to the
14 Louisiana legislature?

15 A. Possibly.

16 Q. Do you know who that would have
17 been?

18 A. No.

19 Q. And did you perform your
20 polarization studies that we talked about today
21 before the plan was enacted?

22 A. It depends on what you mean by
23 "enacted."

24 Q. Why don't you --

25 A. So my understanding was it passed,

1 but then it was vetoed and then the veto was
2 overridden. I analyzed the plan after it was
3 passed by the legislature.

4 Q. Okay. And your report's got
5 analysis of statewide polarization rates?

6 A. I'm sorry. Could you repeat that?

7 Q. Yes, ma'am. In reading your report,
8 it appears that you have -- you've done
9 polarization studies on statewide elections?

10 A. That's correct.

11 Q. Did you do those before the
12 congressional plan was enacted?

13 A. I don't remember in time. I'm not
14 exactly sure what you mean by "enacted." I did
15 it most likely before the veto was overridden.

16 Q. Okay. So before the initial plan
17 was ever written, you think sometime before then
18 you did your statewide polarization studies?

19 A. I probably had started them.

20 Q. Okay. All right. Thanks.

21 Now, I want to ask you some
22 questions about what you mean by "polarization,"
23 and we can go to your report if that will help
24 you, but when I read your report on page 1 --

25 MR. FARR:

1 Well, let me pull up PR-12 on the
2 screen.

3 TRIAL TECH:

4 (Complied.)

5 BY MR. FARR:

6 Q. Are you there?

7 A. Yes.

8 Q. So during your testimony, you said
9 several times that voting in Louisiana is
10 racially polarized. Is that a fair recitation?

11 A. Yes.

12 Q. And then on page 1 of your report,
13 you make a statement that voting in the State of
14 Louisiana is racially polarized. You see that?

15 A. Yes.

16 Q. Now, turn to page 8. It looks like
17 it's the second full paragraph where it says
18 "congressional elections." Do you see that? You
19 see that paragraph?

20 A. Yes, I do.

21 Q. Okay. And is it fair to say that
22 your report that elections in the 2011 version of
23 Congressional District 2 were probably not
24 racially polarized?

25 A. Although the statewide elections

1 were polarized, the congressional elections, I
2 think it was most of them, not all of them, were
3 not polarized.

4 Q. Okay. So that's -- that's where I
5 want to ask you some questions, Dr. Handley.

6 You've been doing this for a long
7 time and you know way more than I do. Is there a
8 difference between legally significant racially
9 polarized voting and just simple polarized
10 voting?

11 A. Now, I've written on this, but I'm
12 not a lawyer, so I don't really know that you
13 want me to answer this.

14 Q. Well, I'd like you to because I
15 think you've explained it before. Is there a
16 difference between significant racially polarized
17 voting and substantial racially polarized voting?

18 MS. BRANNON:

19 I'm just going to object. I'm going
20 to object to the extent that calls for a
21 legal conclusion.

22 MR. FARR:

23 Your Honor, I'm just asking her for
24 her opinion as an expert in the area of
25 racial polarization. She understands the

1 two different types of racial

2 polarization.

3 THE COURT:

4 Well, the question on the floor
5 right now, is there a difference between
6 significant racial polarization and
7 substantial racial polarization, you did
8 rephrase your question. You removed the
9 words "legally sufficient," so I'm going
10 to overrule the objection.

11 So the question is, is there a
12 difference between significant racial
13 polarization and substantial racial
14 polarization, if you have an opinion on
15 that.

16 THE WITNESS:

17 Between significant and substantial?

18 THE COURT:

19 Is -- that's -- isn't that your
20 question, sir?

21 MR. FARR:

22 Yes, it is.

23 THE COURT:

24 Okay.

25 THE WITNESS:

1 I can't think of one.

2 MR. FARR:

3 Okay. Let me pull up a deposition
4 that Dr. Handley gave in the Ohio Randolph
5 Institute case on December 12th, 2018.

6 TRIAL TECH:

7 (Complied.)

8 BY MR. FARR:

9 Q. Can you see that on your screen,
10 Dr. Handley?

11 A. I can.

12 Q. And were you an expert witness in
13 that case?

14 THE COURT:

15 You need to know the case again?

16 THE WITNESS:

17 I need to know which case this is.

18 BY MR. FARR:

19 Q. Well, it says it's your deposition
20 on the front page, correct?

21 A. Yes. I believe this is my
22 deposition and I believe I know what case it is.

23 Q. Yes. And you remember being
24 cross-examined by my law partner, Phil Strach, in
25 that case?

1 A. I do not.

2 Q. Okay. Well, let's turn to page 104
3 of that exhibit. And I'll represent to you,
4 Dr. Handley, this is a series of questions that
5 my partner, Phil Strach, asked you in this
6 deposition. I'm going to read the question and
7 I'd like for you to read the answer. Would that
8 be all right?

9 THE COURT:

10 Give us a line reference.

11 BY MR. FARR:

12 Q. I'm going to start with line 21.
13 Are you ready?

14 A. Yes.

15 Q. So the question is "All right.
16 Thank you. Are you aware of the difference
17 between statistically significant racially
18 polarized voting and legally significant racially
19 polarized voting," and your answer is --

20 MS. BRANNON:

21 Your Honor, I'd like to object. I
22 think this is improper impeachment. I
23 don't think he's laid the foundation.

24 THE COURT:

25 Sir, you want to respond? Did you

1 hear her objection?

2 MR. FARR:

3 I think I did and I don't know
4 really what the substance of the objection
5 is. I'm impeaching the witness on a
6 previous deposition that she gave to
7 significant racial polarization versus
8 substantial racial polarization.

9 THE COURT:

10 She's correct. It's improper
11 foundation. It is not -- it's improper
12 impeachment. It is not a prior consistent
13 statement. The questions are different
14 and you made them different. Objection
15 sustained.

16 MR. FARR:

17 Your Honor, may I try again?

18 THE COURT:

19 You may, but take the deposition
20 down.

21 TRIAL TECH:

22 (Complied.)

23 BY MR. FARR:

24 Q. Dr. Handley, do you agree that
25 substantively significant racial polarization

1 means that the minority and the whites are voting
2 for different candidates?

3 A. Yes. Yes.

4 Q. Do you agree that it would rise to
5 the level of legal significance if the minority
6 preferred candidate usually lost?

7 MS. BRANNON:

8 Again, Your Honor, I'm going to
9 object. That calls for a legal
10 conclusion.

11 MR. FARR:

12 I'm not asking for a legal
13 conclusion. I'm asking for her -- the way
14 she understands racial polarization.

15 THE COURT:

16 The question is legally significant.
17 That is a legal question. That is a
18 question of a legal opinion. The
19 objection's sustained.

20 MR. FARR:

21 Well, may I ask the question again,
22 Your Honor? I'll take the word "legal"
23 out.

24 THE COURT:

25 And you did that and you are going

1 to receive the same result. You are going
2 to have improper impeachment. You can try
3 again, but if the word legally is in the
4 prior question, it's -- you're not -- it's
5 not a prior inconsistent statement.

6 MR. FARR:

7 I'm sorry, Your Honor. I apologize.

8 THE COURT:

9 Okay. No worries. Go ahead.

10 BY MR. FARR:

11 Q. So my question is would polarization
12 rise to the level of significant polarization if
13 the minority for a candidate usually lost?

14 A. Polarization is -- let's see. Let's
15 see how -- I suppose you could say that one
16 contest being polarized is less significant than
17 more contests being polarized.

18 Q. Which if the -- if the white
19 candidates did not vote in sufficient numbers to
20 defeat the black candidate, preferred candidate
21 of choice, would you consider that to be
22 significant racial polarization?

23 A. I think it would depend on the
24 circumstances. So if you had a district that --
25 I can't really answer that as a hypothetical.

1 Could you give me --

2 Q. Let me try again. Explain why you
3 concluded that voting in the State of Louisiana
4 was racially polarized while also saying that the
5 voting in Congressional District 2 was not
6 racially polarized?

7 A. So in the 15 contests that I looked
8 at statewide, in every case the black and white
9 voters would have elected different candidates.

10 In Congressional District 2, in many
11 cases the white voters supported the incumbent
12 black candidate, Cedric Richmond.

13 Q. So the white voters in Congressional
14 District 2 did not vote as a block and defeat the
15 black voter, the preferred candidate?

16 A. In Congressional District 2 when
17 Cedric Richmond was the candidate, that's
18 correct.

19 Q. Okay. And whites are the majority
20 in Congressional District 2?

21 A. I beg your pardon?

22 Q. Are whites the majority in
23 Congressional District 2?

24 A. They are not.

25 Q. Okay. Are there areas in Louisiana

1 where the level of polarization is higher and
2 lower?

3 A. That the what -- I'm sorry. Repeat
4 the question.

5 Q. Yes, ma'am. You reported on
6 statewide polarization rates for statewide
7 elections; is that correct?

8 A. Yes.

9 Q. Are there some areas of the state
10 where the polarization rate is higher than in
11 other areas of the state?

12 A. It depends on what you mean by
13 "polarization rates." You mean the number of
14 contests that --

15 Q. No.

16 A. -- are polarized; is that what you
17 mean?

18 Q. I mean the difference between the
19 number of whites and blacks who vote for the
20 black preferred candidate of choice.

21 A. It is the case that there is more
22 white crossover vote in Congressional District 2
23 than anywhere else that I looked in the state.

24 Q. Okay. And could there be other
25 areas of the state where the crossover vote is

1 higher than the -- than the average?

2 A. Not at the congressional level or
3 statewide. There may be pockets.

4 Q. Okay. When you did your study on
5 racial polarization, you did not do a
6 parish-by-parish study on polarization rates?

7 A. That's correct.

8 Q. Okay. I'll move on to another
9 subject now, Dr. Handley.

10 When you talk in your report about
11 voting age population for African-Americans, are
12 you referring to any part black voting age?

13 A. It depends. I report of any part
14 black and the DOJ definition of voting age
15 population in my rebuttal report and in the
16 supplemental report.

17 Q. Okay. So let's turn to PR-12.

18 A. I'm sorry. To what?

19 Q. I'm sorry, ma'am. Your initial
20 report, which I think is labeled PR-12?

21 A. Oh, okay.

22 Q. And -- and can you turn to Table 3,
23 which is on page 10?

24 A. (Complied.)

25 Q. Are you there?

1 A. I am.

2 Q. And you see on footnote 14 you say,
3 "Black voting age population has been calculated
4 by counting all persons who checked black or
5 African-American on their census form"; is that
6 correct?

7 A. Yes.

8 Q. And in making that footnote, were
9 you referring to any part black?

10 A. Yes.

11 Q. Okay. Thank you. And using the
12 census category part black, did that result in a
13 higher black percentage in the districts you are
14 looking at than if you used a single race black?

15 A. Yes.

16 Q. Now, I want to move to some
17 questions about your appendices. And I think
18 this is kind of a refresh or review of Appendix A
19 which is your study of statewide elections; is
20 that correct?

21 A. Yes.

22 Q. Appendix B was your study of
23 percentage of black and white voters for each
24 candidate in congressional elections from 2016 to
25 2020?

1 A. Ultimately, 2021.

2 Q. Okay. That was in your report you
3 just gave us; is that correct?

4 A. Yeah.

5 Q. All right. Fair enough. And that
6 was under the plan that was enacted in 2011?

7 A. The congressional elections were,
8 yes.

9 Q. Okay. And then in Appendix C
10 through G, you do a polarization study on all of
11 the districts in the plan that was enacted in
12 2022; is that correct?

13 A. Almost. I didn't look at
14 District 1.

15 Q. Oh, you didn't look at Congressional
16 District 1?

17 A. That's correct.

18 Q. I was going to ask you just out of
19 curiosity, why didn't you look at that?

20 A. Because it doesn't overlap. It
21 supplies no voters to Illustrative District 5.

22 Q. Okay. And you didn't report a
23 similar analysis for Mr. Fairfax's
24 illustrative -- illustrative plans, did you?

25 A. I'm sorry. Repeat that.

1 Q. Did you do a similar report for the
2 illustrative plans that Mr. Fairfax has proposed
3 in this case?

4 A. A similar report? I'm sorry.

5 Q. Yeah. As to what you did for the
6 2011 congressional districts, did you do
7 something like that for the districts in
8 Mr. Fairfax's illustrative plans?

9 A. No.

10 Q. You didn't report that. Did you
11 ever do that and not report it?

12 A. No.

13 Q. Okay. Now, I want to go through
14 some terms to get the question I want to ask you,
15 Dr. Handley.

16 Is it fair to say a majority black
17 district, as the U.S. Supreme Court has defined
18 it, means a district where the black voting age
19 population is an actual majority?

20 MS. BRANNON:

21 Objection. Again, Your Honor, isn't
22 that a legal conclusion?

23 THE COURT:

24 Sir?

25 MR. FARR:

1 May I rephrase it?

2 THE COURT:

3 You may.

4 BY MR. FARR:

5 Q. Dr. Handley, have you read the
6 Supreme Court's decision?

7 A. Many years ago.

8 Q. Do you recall how the court defined
9 the majority black district in that case?

10 A. I believe so.

11 Q. And how did they define it?

12 A. A majority black district would be a
13 black district in which the voting age population
14 was majority black at least 50 percent plus
15 1 percent.

16 Q. Okay. And a crossover district is
17 a -- is what?

18 A. A crossover district, you'll have to
19 tell me.

20 Q. Okay. Is it fair to say a crossover
21 district is a district where the black population
22 is not in the majority, but they can elect their
23 preferred candidate with the help of white
24 crossover voters?

25 A. I don't use that term. I think it

1 might have come out of some recent case. If you
2 want to define it that way, you can.

3 Q. Okay. Well, are there districts
4 where black voters are able to elect their
5 candidate of choice, even if they are not a
6 majority?

7 A. Yes.

8 Q. And in those instances, do they --
9 is the candidate of choice selected because there
10 are white voters crossing over to help elect the
11 black candidates preferred -- the black minority
12 group preferred candidate?

13 A. Yes.

14 Q. All right. Now, have you -- have
15 you written about something called an effective
16 district?

17 THE COURT:

18 I'm sorry I missed that. The what
19 district?

20 MR. FARR:

21 I'm sorry, Your Honor.

22 BY MR. FARR:

23 Q. Have you written or described some
24 districts as being effective districts?

25 A. Yes.

1 Q. And can an effective district be a
2 district that has less than 50 percent black
3 voting age population?

4 A. Yes.

5 Q. And an effective district means that
6 the -- that the district provides the black
7 community an opportunity to elect their candidate
8 of choice; is that correct?

9 A. Yes.

10 Q. And that said, even when they are
11 not a majority of the district, it could be?

12 A. It could be the case, yes.

13 Q. Now, in other cases, Dr. Handley,
14 have you ever done something called a functional
15 analysis to determine whether a district could
16 provide African-Americans with the opportunity to
17 elect their candidate of choice with a black
18 percent that's under 50 percent?

19 A. Yes.

20 Q. And did you do such a study in this
21 case?

22 A. I did not.

23 Q. All right. I want to turn now to
24 some questions about your rebuttal report.
25 Please feel free, ma'am, to pull that up in front

1 of you if it will be helpful. I don't know that
2 I'll be quoting any pages, but feel free to
3 respond to that if that helps your testimony, all
4 right?

5 A. Yes.

6 Q. Now, you are familiar with the
7 report Dr. Lewis submitted for the defendants
8 analyzing crossover voting in the illustrative
9 plans?

10 A. I read Dr. Lewis's report.

11 MR. FARR:

12 Okay. And, just for the record, I
13 believe that's Exhibit LEG 2 is the report
14 I'm referring to.

15 BY MR. FARR:

16 Q. So you had an opportunity to review
17 Dr. Lewis's report?

18 A. I read Dr. Lewis's report, yes.

19 Q. And in your rebuttal reports,
20 correct me if I'm wrong, the only experts you
21 provided rebuttal testimony to are Dr. Solanky
22 and Dr. Alford; is that correct?

23 A. Yes.

24 Q. And more specifically, you did not
25 submit a reply to Dr. Lewis's report?

1 A. Correct.

2 Q. So if someone in this case asserted
3 that districts with the black voting age
4 population below 50 percent was -- will give the
5 black community an equal opportunity to elect
6 their preferred candidates of choice, you have no
7 basis to disagree with that statement, do you?

8 A. If you mean Dr. Lewis convinced me
9 of that, I would have to disagree with you. No,
10 he did not convince me that a district with less
11 than 50 percent was equal.

12 Q. But you yourself have not done a
13 study to see if a district which was less than
14 50 percent would provide an equal opportunity to
15 elect a black for a candidate; is that right?

16 A. In this case, that's correct.

17 Q. So you've testified about
18 Mr. Fairfax's illustrative plans; is that right?

19 A. Yes.

20 Q. Have you studied the plans drawn by
21 Mr. Cooper?

22 A. No.

23 Q. Okay. I'll -- let's turn. I just
24 have a few more questions, Dr. Handley, and I'll
25 be done.

1 Could you turn back to your original
2 report, which is PR-12, and I'd like you to look
3 at Table 1 on page 6.

4 A. (Complied.)

5 Q. Are you there?

6 A. Yes.

7 Q. And you selected the statewide races
8 that you would study in your report and there's
9 15 races that are listed there; is that correct?

10 A. The 15 races listed there are the
11 contests that I analyzed, that's correct.

12 Q. Okay. And you didn't include
13 Governor Edwards' election in 2015 or 2019; is
14 that a fair statement?

15 A. That's correct. There were no black
16 candidates in those contests.

17 Q. But -- but do you think that
18 Governor Edwards was the preferred black
19 candidate of choice for the black community?

20 A. Yes. I saw Dr. Alford's report that
21 produced Dr. Palmer's numbers, so yes.

22 Q. Okay. And then also, you didn't
23 include in one of the races you studied the 2016
24 presidential election involving Secretary Clinton
25 and Senator Cain; is that correct?

1 A. That's correct.

2 Q. Please bear with me, Dr. Handley.

3 I'm trying to find one of your charts. I think

4 we can look at Table 4 on page 11. Are you

5 there?

6 A. Yes.

7 Q. You say, Dr. Handley, in order to

8 determine the effectiveness of congressional

9 districts in the enacted plan -- and then I think

10 moving over, you did the same thing on page 13

11 for the illustrative plan; is that a fair

12 statement?

13 A. Yes.

14 Q. And so all your report is who won or

15 lost the election?

16 A. No, not exactly. The percentage of

17 cases that -- the percentage of elections are in

18 the first column in which the black preferred

19 candidate either outright or would have proceeded

20 to a runoff.

21 Q. Okay. And then what was the second

22 column?

23 A. The percentage of two candidate

24 contests in which the black preferred candidate

25 won obviously with more than 50 percent of the

1 vote.

2 Q. And you didn't report the vote
3 totals or the margins of victory in any of those
4 elections; is that a fair statement?

5 A. No. It's not -- it's not listed in
6 these tables, but it's certainly listed in my
7 appendix.

8 Q. Okay. I'm sorry. I missed that. I
9 apologize.

10 Did you report the relative
11 fundraising by the candidates in the elections
12 that you selected?

13 A. Did you say fundraising?

14 Q. Yes.

15 A. No.

16 Q. All right. Have you ever talked
17 more about it's better to use a more highly
18 visible race to calculate racially polarized
19 voting than one that's not visible?

20 A. I probably have. I agree with that
21 statement.

22 Q. Okay. So what would be more visible
23 to judge racially polarized voting, the
24 governor's elections or the Secretary of State
25 election?

1 A. I would use both.

2 Q. Excuse me?

3 A. I would use both. If they had a
4 black candidate, why would I have to choose one
5 or the other?

6 Q. Would you have an opinion on which
7 is more visible to the voters of Louisiana?

8 A. I would not, not if one, for
9 example, included a black candidate and the other
10 did not.

11 MR. FARR:

12 Okay. That's all, Your Honor.

13 Thank you.

14 THE COURT:

15 Any redirect?

16 MS. BRANNON:

17 Yeah, just some brief redirect,

18 Your Honor.

19 REDIRECT EXAMINATION BY MS. BRANNON:

20 Q. First, can we call up demonstrative
21 Exhibit 1.11? Dr. Handley, are you familiar with
22 this table?

23 A. Yes.

24 Q. Does this show the voting age
25 population for all parts black and then also the

1 voting age population under the DOJ definition in
2 Illustrative District 2?

3 A. Yes.

4 Q. Was your analysis any different
5 about the effectiveness of Illustrative District
6 2, depending on the definition used for the black
7 population?

8 A. No.

9 Q. Was your analysis any different
10 about the effectiveness of the congressional
11 districts enacted -- the enacted map, depending
12 on what definition of black is used?

13 A. No.

14 Q. Okay. And counsel asked you about
15 performing a functional analysis.

16 Why didn't you perform a functional
17 analysis at this time in this case for your
18 report?

19 A. I did perform a functional analysis.
20 A functional analysis is simply looking at how
21 black preferred candidates would -- whether they
22 would have an opportunity -- whether black voters
23 would have an opportunity to elect candidates of
24 choice, depending on the voting patterns of
25 blacks and whites, as opposed to just the voting

1 age population. That's what this is. Not this

2 chart, what the effectiveness tables were.

3 Q. You can take that down.

4 A. I'm sorry.

5 Q. And did you do that for an analysis
6 of the illustrative plans?

7 A. I did a functional analysis of
8 several illustrative plans as well as the enacted
9 plan.

10 Q. Correct. And we have already
11 discussed that that information is in your
12 chart -- in your report, correct?

13 A. Yes.

14 Q. And as part of the -- your analysis
15 of the enacted plan, do any of the populations in
16 the enacted plan have a voting age population of
17 over 50 percent besides Congressional District 2?

18 A. In the enacted plan?

19 Q. Yes, in the enacted plan.

20 A. No.

21 THE COURT:

22 Under either definition or which
23 definition?

24 MS. BRANNON:

25 Under either definition.

1 THE WITNESS:

2 No.

3 BY MS. BRANNON:

4 Q. Do any of the congressional
5 districts in the enacted plan conform to allow
6 black voters to elect their candidate of choice
7 besides Congressional District 2?

8 A. No.

9 Q. Can we turn back to the Appendix C?
10 Not Appendix C, revised Appendix C.

11 MS. BRANNON:

12 Just bear with me a minute,
13 Your Honor. It is Illustrative District
14 1. -- Exhibit 1.6. And actually, can you
15 turn to revised Appendix C in your report,
16 which is in your binder? We can take this
17 down.

18 TRIAL TECH:

19 (Complied.)

20 MS. BRANNON:

21 And, for the record, that's exhibit
22 PR-92.

23 BY MS. BRANNON:

24 Q. In looking at Appendix C that's in
25 the report, can you just refresh your

1 recollection as to exactly what is contained in
2 that document?

3 A. You mean corrected Appendix C?

4 Q. Yes.

5 A. So this is statewide elections
6 recompiled, reconfigured to conform with the
7 enacted district boundaries and racial black
8 voting analysis of the five districts that would
9 contribute voters to the Illustrative District 2,
10 illustrative -- additional opportunity district
11 in Illustrative Plan 2 or Plan 2A?

12 Q. Is it an evaluation of the enacted
13 plan?

14 A. Yes.

15 Q. Okay. Can you go through that, the
16 review of that document?

17 MS. BRANNON:

18 And maybe we can pull it up on the
19 screen, Appendix C from Exhibit R-92,
20 PR-92. Keep going, and then keep going.

21 TRIAL TECH:

22 (Complied.)

23 MS. BRANNON:

24 Okay. Yeah, Appendix C. There.

25 TRIAL TECH:

1 (Complied.)

2 MS. BRANNON:

3 That's the right thing.

4 BY MS. BRANNON:

5 Q. This is from your report, correct?

6 A. Yes.

7 Q. Okay. Can you explain whether all
8 of these elections are polarized or not in your
9 analysis of the enacted plan?

10 A. They are all polarized for all of
11 the districts, I believe, including District 2.
12 If you could turn that, they are all polarized
13 for all enacted districts, including District 2.

14 Q. And would a BVAP of less than
15 50 percent allow black voters to elect their
16 candidate of choice in Congressional District 2
17 in the enacted plan, or not the enacted plan, or
18 just based on your analysis, would --

19 MS. BRANNON:

20 Let me rephrase the question,

21 Your Honor.

22 BY MS. BRANNON:

23 Q. Would a BVAP of less than 50 percent
24 allow black voters to elect their candidate of
25 choice in Congressional District 2?

1 A. I don't know. The -- the district
2 was 58 percent. Oh, in Enacted District 2, it's
3 still 58 percent, so I can't answer that for
4 that, but in the illustrative plan, it's
5 50 percent and it still allows the black voters
6 to elect their candidate of choice.

7 Q. Do you think a BVAP of less than
8 50 percent in Congressional District 2 would
9 allow black voters to elect their candidate of
10 choice?

11 A. It's possible.

12 Q. Okay. And in looking at this
13 analysis --

14 MS. BRANNON:

15 Maybe can we go back to Appendix B,
16 revised Appendix B, which is in 92 -- 91?
17 I'm sorry, Your Honor. No. Can we go to
18 Exhibit PR-87, and then could we go to
19 revised Appendix B at the end of this
20 document?

21 TRIAL TECH:

22 (Complied.)

23 MS. BRANNON:

24 Maybe we don't have it. This is
25 just -- and can we go down to look at the

1 next page?

2 TRIAL TECH:

3 (Complied.)

4 BY MS. BRANNON:

5 Q. And just looking at -- for example,
6 at Congressional District 3, can you just briefly
7 describe the white crossover voting that you
8 found in -- when looking at Congressional
9 District 3?

10 A. So the black preferred candidate in
11 2020 was Ryland Harris. He received somewhere
12 between 64 and 69 percent of the black vote and
13 he received somewhere in the neighborhood of 1.7
14 to 6 percent of the white vote.

15 Q. So that's a low amount of white
16 crossover vote?

17 A. That's a very low amount of white
18 crossover vote, yes.

19 MS. BRANNON:

20 Your Honor, I have no further
21 questions.

22 THE COURT:

23 Okay, Dr. Handley. Thank you,
24 ma'am.

25 Okay. We are going to stay on the

1 record until 11:30. The court has a
2 pretrial conference at 11:30, so let's
3 plow through. If somebody needs to use
4 the restroom, you can certainly -- you are
5 not going to bother me.

6 MS. OSAKI:

7 Good morning, Your Honor. I'd like
8 to also enter an appearance. My name is
9 Samantha Osaki, that's O-S-A-K-I, for the
10 American Civil Liberties Union for the
11 Robinson plaintiffs.

12 The Robinson plaintiffs will now
13 call Dr. Dorothy Nairne.

14 DOROTHY NAIRNE, Ph.D,
15 after having first been duly sworn by the
16 above-mentioned Court Reporter did testify as
17 follows:

18 THE COURT:

19 Good morning, ma'am. You'll need to
20 adjust the mic.

21 THE WITNESS:

22 Good morning. Good morning, can you
23 hear me?

24 THE COURT:

25 Yes, ma'am.

1 EXAMINATION BY MS. OSAKI:

2 Q. Good morning, Dr. Nairne.

3 A. Good morning.

4 Q. To start, could you please state
5 your name for the court?

6 A. My name is Dorothy Nairne.

7 Q. And how do you identify racially,
8 Dr. Nairne?

9 A. I am black. I am African-American.

10 Q. What town and parish do you live in,
11 Dr. Nairne?

12 A. I live in Napoleonville, Assumption
13 Parish.

14 Q. And how long have you lived at your
15 current address?

16 A. It's a family home that I've visited
17 all my life and I've been there full-time since
18 2017.

19 Q. And before 2017, how long have --
20 have you and your family traced your roots in
21 Louisiana?

22 A. For generations. My mother's,
23 mother's, mother's mothers and fathers were
24 enslaved here in Louisiana in Assumption Parish.

25 Q. Could you please tell us briefly

1 about your education and career history,

2 Dr. Nairne?

3 A. I had the benefit of going to the
4 University of Wisconsin -- go Badgers -- and then
5 I went to -- I studied journalism and
6 African-American studies, then I lived in Atlanta
7 and went to Clark Atlanta University where I got
8 a master's in African-American studies and a PhD
9 in economic affairs and development.

10 Q. And could you please describe what
11 you currently do for a living?

12 A. I have a start-up business here in
13 Louisiana that is focusing on glass recycling and
14 taking the glass, turning it into sand and doing
15 stormwater management and Mardi Gras beads so
16 that we can create jobs for people coming out of
17 prison.

18 Q. Thank you, Dr. Nairne. Do you
19 belong to any civic, nonprofit or political
20 groups?

21 A. I'm very active with the NAACP, with
22 the Urban League, with Climate -- Weather For
23 Climate and also with other start-up
24 organizations like Fund 17 and there's one called
25 Flight and together Louisiana and together

1 New Orleans.

2 Q. So do you consider yourself to be
3 active in your community?

4 A. I am very active.

5 Q. Dr. Nairne, could you please
6 describe the role that race has played in your
7 family since your family has lived in Louisiana?

8 A. So first, my grandparents were on --
9 they were sharecroppers on different plantations
10 in Assumption Parish, and so my grandfather could
11 read, so he used to read to all of the other
12 sharecroppers who couldn't read and also help
13 them with their money.

14 So my grandmother used to tell
15 stories about how on the plantations they were
16 paid with jitney, so they would try to pay people
17 different money so you could never get off the
18 plantation.

19 So I've got that long background
20 where my grandmother always wanted to get off the
21 plantation and my mother did. My family, her
22 family poured into her where she was able to go
23 to school beyond the 6th grade all the way in
24 New Orleans because there was no school in
25 Assumption Parish for black children. So they

1 had to walk from grades one until six probably
2 five miles each way. And the white children who
3 were in school had the bus, all of these public
4 schools. So my mother would tell gross stories
5 of being spit on from the school bus and then
6 having to go all the way to New Orleans to go to
7 school beyond the 6th grade.

8 Q. Are you a registered voter,
9 Dr. Nairne?

10 A. I am a registered voter.

11 Q. Are you registered to vote at your
12 current address?

13 A. Yes, I am.

14 Q. Do you regularly vote in
15 congressional elections?

16 A. I vote, yes.

17 Q. Do you plan on voting in future
18 congressional elections?

19 A. Yes, I do.

20 Q. Thank you. I'd next like to discuss
21 your involvement with this case. What motivated
22 you to be a plaintiff and a witness today?

23 A. I grew up with the notion that where
24 much is given, more is expected. I have been
25 completely privileged in having an education and

1 knowing people in Assumption Parish, in
2 Napoleonville who haven't had those
3 opportunities. So for me, it's a moral
4 imperative to give as much as I can for the
5 people who live around me who want justice, who
6 want racial equality and who want opportunities.

7 Q. Thank you, Dr. Nairne.

8 Let's talk a little bit about your
9 current congressional district. Do you know what
10 your current Congressional District is?

11 A. I am in District 6.

12 Q. And who is your current
13 representative?

14 A. Graves, Garrett Graves.

15 Q. What is your understanding of your
16 Congressman Graves?

17 A. He is a white man.

18 Q. In general, do you follow your
19 congressman's actions?

20 A. I follow him and I have contacted
21 his office on several occasions.

22 Q. In your affidavit, you note that you
23 believe that your congressmen does not advocate
24 for your community's needs. What did you mean by
25 that?

1 A. I'm very active, as I stated, in my
2 community and also participating widely on Zoom
3 or for policy conferences; and I haven't seen him
4 at any events, whether for King day, Juneteenth
5 day or just to discuss the plight of the black
6 community.

7 Q. Have you seen him campaigning in
8 your community?

9 A. No. No. No. I have not seen him
10 campaigning during the several elections that
11 I've been around for.

12 Q. Thank you, Dr. Nairne. I'd now like
13 to discuss the Enacted Maps.

14 MS. OSAKI:

15 May we please pull up the enacted --
16 the enacted map under HC-1, which has been
17 moved as Plaintiffs Exhibit PR-15 on
18 page 48.

19 TRIAL TECH:

20 (Complied.)

21 BY MS. OSAKI:

22 Q. Dr. Nairne, are you familiar with
23 this map?

24 A. Yes, I am.

25 Q. Do you know which district you

1 reside in under this map?

2 A. It's still unclear, so there's one
3 election where I went from school to school to
4 school looking for, you know, am I voting, can I
5 vote, where am I voting and they turned me away,
6 so I learned that I was in District 6 and I'm
7 right there on the cusp; so some of my neighbors
8 vote in District 2 and some in District 6, so
9 it's confusing, it's chaotic, and it doesn't help
10 us to organize or plan.

11 Q. What do you mean by "on the cusp"?

12 A. So my house is like literally where
13 my neighbors across the street are in District 2,
14 so they were able to vote, but I wasn't.

15 MS. OSAKI:

16 May we please zoom in on that area?

17 It's Assumption Parish in Congressional

18 District 6.

19 TRIAL TECH:

20 (Complied.)

21 MS. OSAKI:

22 Thank you.

23 BY MS. OSAKI:

24 Q. Dr. Nairne, based on your living

25 experiences looking at this map, what is your

1 impression of your district, Congressional

2 District 6?

3 A. So as small as Assumption Parish is,
4 it's a big land mass but small community. We are
5 not able to organize or able to mobilize or able
6 to voice our -- and organize our voice in
7 Assumption Parish.

8 Q. And could you describe
9 geographically what areas your community in
10 Assumption Parish convenes with in Congressional
11 District 6 of this enacted map?

12 A. Sure. So a lot of the work that I
13 do is with people of the river parishes:
14 St. John, St. James, St. Charles and Jefferson
15 and Orleans Parish. And so when it comes time to
16 discuss candidates and voting, I'm -- I'm silent,
17 I have nothing to say because they are in one
18 district and I'm in another.

19 Q. So under Congressional District 6,
20 you're the -- can you describe some of the
21 parishes that you would be linked with here?

22 A. So St. Mary's, Iberville. I -- I
23 have absolutely no alliance there, no community
24 members there in those parishes.

25 Q. I'd like to talk a little bit more

1 about that. Based on your living experiences,
2 how would you describe some of those communities
3 that are -- that are included on circling here?

4 A. So a lot of the communities' work
5 that I do is with the river parishes where we do
6 a lot of work around environmental justice and
7 racial justice and looking at cancer alley and
8 looking at just what's happening with people's
9 living experiences as well as with HIV, with
10 crime and with how we improve each other's lives.

11 So I don't work with people within
12 Terrebonne or the other parishes, so I'm kind of
13 a sore thumb standing out there because we work
14 together, but then we don't vote together.

15 Q. I see. So it sounds like you are
16 saying you are not as familiar with these that
17 you are included with?

18 A. Yes.

19 Q. Okay. Now, under this enacted plan
20 and based on your living experiences as a
21 resident of Congressional District 6, do you
22 believe your interests would be fairly
23 represented?

24 A. I do not believe that my interests
25 are represented.

1 Q. And why is that?

2 A. I feel like I'm alienated, that I
3 don't have associations and groups that I would
4 work with. I would have to start over really to
5 see who's where and doing what given this map
6 that I'm looking at right now.

7 Q. Thank you, Dr. Nairne. I'd now like
8 to discuss one of plaintiffs' illustrative maps.

9 MS. OSAKI:

10 Could we please pull up one of
11 plaintiffs' illustrative maps which has
12 been moved into evidence as PR-15 on
13 page 47?

14 TRIAL TECH:

15 (Complied.)

16 BY MS. OSAKI:

17 Q. Dr. Nairne, are you familiar with
18 this map?

19 A. Yes, I am.

20 Q. Under this Illustrative map, are you
21 aware of what district you live in?

22 A. I would know -- I know where I live,
23 but I would know what district that I am in.
24 Sure enough, me and all my neighbors would be in
25 District 2 according to this map.

1 MS. OSAKI:

2 May we please zoom in to
3 Congressional District 2 on this
4 illustrative map?

5 TRIAL TECH:

6 (Complied.)

7 MS. OSAKI:

8 Thank you.

9 BY MS. OSAKI:

10 Q. Dr. Nairne, geographically, what
11 areas would -- would you be linked with in this
12 Congressional District 2 of this illustrative
13 map?

14 A. In this map, I would be with the
15 people that I'm working with currently along with
16 the river parishes all the way into Orleans and
17 Jefferson Parishes. This map makes sense to me.

18 Q. Do you have any personal connections
19 with any of those other parishes?

20 A. I have personal connections, family,
21 friends, colleagues in all of this -- this entire
22 area.

23 Q. How would you describe communities
24 in these areas, these river parish areas based on
25 your personal knowledge?

1 A. We have a shared history, we have a
2 shared cultural heritage, and we work together to
3 make improvements along this area with community
4 development where we are doing work around
5 creating jobs for people, opportunities for young
6 people, and trying to improve our health.

7 Q. What did you mean by that, "trying
8 to improve your health"?

9 A. This area is known as cancer alley,
10 and just so I work somewhat with the cancer index
11 and looking at just neighbors across the street,
12 next to me, even my own mother who had a tumor
13 the size of a soccer ball in her belly; and so,
14 you know, just cancer is everywhere and, you
15 know, if it's in my own house, then is it in me
16 too, so it really requires us to do quite a bit
17 of work together.

18 Q. Can you describe some of the health
19 -- health inequities that are similar along the
20 river parishes? What about industries, are there
21 industries that are similar along these
22 communities?

23 A. Well, the sugar cane industry
24 defined this area, this region, but now the sugar
25 cane is mechanized so people don't have those

1 jobs anymore, so there's a lot of not much to do
2 going on in Assumption, St. James, St. John and
3 St. Charles.

4 Q. Now, under this new -- under this
5 illustrative plan and based on your living
6 experiences, do you believe that your community's
7 interest would be fairly represented?

8 A. Under this map, yes.

9 Q. Why is that?

10 A. It would give us a base so that we
11 can mobilize and so that we can organize and so
12 that we have one collective voice so that we
13 would have action together so we can move forward
14 and improve, but not our communities, our
15 households, our entire state.

16 Q. Based on your living experiences in
17 Louisiana, does it make sense culturally,
18 socioeconomically, historically or otherwise, for
19 your community to settle under this illustrative
20 map Congressional District 2 alongside these
21 other river parish communities?

22 A. To me, it makes complete sense that
23 we are in this district.

24 Q. Thank you. Finally, Dr. Nairne, how
25 would you feel if a map like this illustrative

1 plan that is a map that enacts a second majority
2 black congressional district were to be enacted
3 into law?

4 A. I know exactly the households that
5 I'm going to knock on their doors should this
6 happen. There were a number of people -- so
7 during the census and leading up to the elections
8 for 2020, I was a block captain for Together
9 Louisiana. So there were a couple of households
10 that I knocked on their doors and they were like
11 oh, good, you mean change is coming for us. So
12 then when they see that changes are not real,
13 their hopes are dashed. They are feeling like
14 yet again you lied, some bad sense; no, I didn't
15 lie to you. This process just takes a while.

16 So I know I would go to his home.
17 This is somebody I've known all my life and just
18 to see -- he's weathered and worn out and just to
19 have him have a little bit of hope, wow, that
20 would make my year, my day, my hour. So that's
21 where I would go and say look, change is coming
22 here to Assumption Parish, so we have some happy
23 people who would have hope again in Louisiana.

24 MS. OSAKI:

25 Thank you, Dr. Nairne. No further

1 questions, Your Honor.

2 THE COURT:

3 Cross?

4 CROSS-EXAMINATION BY MR. WALE:

5 Q. Hi -- excuse me. Hi, Dr. Nairne.

6 Jeff Wales. I'm an attorney for the state, and

7 I'll be asking you a few questions today.

8 Dr. Nairne, you said you moved to

9 Louisiana in 2017; is that correct?

10 A. Yes, it is.

11 Q. So where did you live before that?

12 A. Well, I lived in South Africa.

13 Q. And -- and so where did you grow up?

14 Is that where you grew up, in South Africa?

15 A. No. I grew up between Milwaukee and

16 also between Louisiana where I would come in the

17 summer.

18 Q. So you would visit in Louisiana, but

19 you wouldn't come here full-time?

20 A. Correct.

21 Q. So when did you register to vote?

22 A. I registered to vote I think in

23 2017.

24 Q. And you are a registered Democrat,

25 correct?

1 A. Yes.

2 Q. And earlier you said something about
3 being confused about where to vote. Did you find
4 out where to go vote?

5 A. I did.

6 Q. So you are aware that the Geaux Vote
7 App is where the Secretary of State lets people
8 know where to vote?

9 A. Yes, I am.

10 Q. All right. And you live in
11 Congressional District 6 currently, correct?

12 A. That's correct.

13 Q. And that your current congressman is
14 Garrett Graves?

15 A. Yes.

16 Q. And he is a Republican, correct?

17 A. Yes.

18 Q. And you testified earlier in your
19 declaration that you are highly engaged, so you
20 attend redistricting workshops around the state?

21 A. Yes, I do.

22 Q. And you've written letters to your
23 congressmen, to Congressman Graves; is that
24 correct?

25 A. I went to him regarding the

1 environment, so yes.

2 Q. And you've spoken about your
3 advocacy and your work in the community.

4 Irrespective of the results of this
5 litigation, will you continue to be engaged with
6 the elected representatives who represent you?

7 A. Yes, I will.

8 Q. And regardless of what the map looks
9 like now or will look like, you'll continue to
10 advocate for things you care deeply about,
11 correct?

12 A. Yes.

13 Q. In paragraph 11 of your declaration,
14 you've stated that you have donated to
15 congressional candidates. Can you tell me which
16 candidates you donated to?

17 A. I donated to several candidates \$5
18 here and \$10 there.

19 Q. All right. And what is the
20 affiliation of those candidates, the political
21 affiliation?

22 A. Some are independent, a couple of
23 green party, and a few Democratic candidates.

24 Q. Do you recall have you ever donated
25 to the Democratic Congressional Campaign campaign

1 committee?

2 A. I'm not sure. Help me understand.

3 Q. Sure, sure. If I may, I'm going to
4 use this system.

5 THE COURT:

6 You can use the document camera.

7 Mr. Wells, tell us what you are going to
8 put up there before you just throw it up
9 there.

10 MR. WALE:

11 Okay. Yes, ma'am. I'm going to
12 show a document from the official
13 government website from the Baton Rouge
14 Federal Actions Commission, if I can get
15 the -- did you turn it on?

16 BY MR. WALE:

17 Q. All right. Let me try again.

18 Dr. Nairne, do you remember donating to a group
19 called Act Blue?

20 A. I think I did donate to them, yes.

21 Q. Okay. So you would believe me if I
22 said you had donated to Act Blue and that
23 contained an earmark for the DCC, also known as
24 the Democratic Congressional Campaign Committee?

25 A. Okay.

1 Q. Going back to your voting
2 registration, you said that you are a regular
3 voter, correct?

4 A. Yes.

5 Q. Did you ever miss an election?

6 A. There are so many, but I try to
7 vote, especially locally.

8 Q. So it's possible that you have
9 missed a few elections?

10 A. I'm pretty good at voting.

11 Q. Okay. And so, again, we still don't
12 have a --

13 THE DEPUTY:

14 I'm texting them now.

15 BY MR. WALE:

16 Q. Okay. And I'm going to ask you,
17 Dr. Nairne -- Dr. Nairne, if you remember voting
18 in the December 2018 election that was for the
19 Louisiana Secretary of State. It was an election
20 between Secretary of State Kyle Ardoin and Gwen
21 Collins-Greenup?

22 A. I don't remember, honestly.

23 Q. You don't -- you don't recall voting
24 in that election?

25 A. No. I don't recall not voting

1 because that was a statewide election, correct?

2 Q. Correct.

3 A. Yeah. So I would not have been
4 turned away from voting during that election.

5 THE COURT:

6 Just give us a second, Mr. Wale.

7 She's contacted IT so they can
8 troubleshoot it for us. Do you have any
9 other questions you can go to?

10 MR. WELLS:

11 No. No, Your Honor.

12 BY MR. WALE:

13 Q. All right. It looks like there is
14 light. Excuse me. Dr. Nairne, I'm going to show
15 you a document from the Louisiana Secretary of
16 State's office and I'm going to see if -- all
17 right.

18 MR. WALE:

19 Well, zoom.

20 TRIAL TECH:

21 (Complied.)

22 THE COURT:

23 If you quit your day job --

24 BY MR. WALE:

25 Q. Thank you. So Dr. Nairne, I realize

1 the -- the first line over here is a little bit

2 difficult to read. It's in script, but can --

3 can you read that for us, please?

4 A. Sure. As Secretary of State of the

5 State of Louisiana, I do hereby certify that the

6 annex hereto is true and correct voter

7 registration information for the state of Dorothy

8 Evelyn Nairne, and that's me.

9 Q. Thank you so much.

10 A. Uh-huh (affirmatively).

11 Q. And so I'm going to show you another

12 page in here. And can you tell me what the top

13 two lines say?

14 A. Did not vote 2021.

15 Q. Oh, I'm sorry. At the very top of

16 the page?

17 A. Oh, okay. Assumption Parish.

18 Q. And even prior to that?

19 A. Louisiana Secretary of State voter

20 election history report for Parish of Assumption.

21 Q. Okay. And you see about -- about

22 eight election dates there?

23 A. Uh-huh (affirmatively).

24 Q. And do you see how many where it

25 says you did not vote?

1 A. I see.

2 Q. All right. And how many elections
3 did you not vote in?

4 A. So I voted in one, two, three, four,
5 five, I did not vote in November 2021, July 2020,
6 so I did not vote in three elections.

7 Q. Okay. And then the election I was
8 asking you about in -- I'm sorry, in December of
9 2018, that was the election that was discussed
10 earlier -- earlier by the expert. It was for
11 Secretary of State between Kyle Ardoin and Gwen
12 Greenup; you did not vote in that election,
13 correct?

14 A. Well, I see now.

15 Q. Yes. And Kyle Ardoin, who won that
16 election, is the defendant in this suit, correct?

17 A. Yes.

18 Q. So you did not participate in the
19 election in which the defendant of this suit was
20 elected?

21 A. Okay.

22 MR. WALE:

23 All right. That's all the questions
24 I have. Thank you very much.

25 THE COURT:

1 Any redirect?

2 MS. OSAKI:

3 No redirect, Your Honor. Thank you.

4 THE COURT:

5 Okay. You may step down. Thank you
6 for your help today, ma'am. Okay. We are
7 going to be in recess until 1:30.

8 THE DEPUTY:

9 The court is now in recess.

10 (A short recess was taken at 11:23 a.m.)

11 THE COURT:

12 Okay. Please be seated. Good
13 afternoon everyone.

14 Why don't we say who we are calling
15 as our next witness because it needs to be
16 put on the record.

17 Go ahead. Put it on the record who
18 your next witness is and who you are, sir.

19 MR. CHAKRABORTY:

20 Good afternoon, Your Honor. Our
21 next witness is Traci Burch, and I'm
22 making my first appearance today.

23 I am Amitav Chakraborty on behalf of
24 the plaintiffs.

25 THE COURT:

1 Okay. And we are waiting on the

2 Zoom. Dr. Burch, can you hear us?

3 THE WITNESS:

4 Not yet.

5 THE COURT:

6 Can you hear me now?

7 THE WITNESS:

8 Yes.

9 THE COURT:

10 Your witness, sir.

11 MR. CHAKRABORTY:

12 Thank you.

13 THE COURT:

14 Wait. We need to swear her in.

15 Sorry.

16 TRACI BURCH,

17 after having first been duly sworn by the

18 above-mentioned Court Reporter did testify as

19 follows:

20 THE COURT:

21 Now, your witness.

22 DIRECT EXAMINATION BY MR. CHAKRABORTY:

23 Q. Thank you. Good afternoon. Can you

24 please state --

25 A. Good afternoon.

1 Q. Can you please state your full name
2 for the record?

3 A. Dr. Traci Burch.

4 Q. And what is your educational
5 background, Dr. Burch?

6 A. I am -- I first completed by
7 undergraduate work at Princeton where I majored
8 in politics and got a certificate in
9 African-American studies, and I finished my PhD
10 at Harvard in the Ph.D degree program in
11 government policy.

12 Q. And what is your current occupation?

13 A. Currently, I am an associate
14 professor of political science at Northwestern as
15 well as a regents professor at the American Bar
16 Foundation.

17 Q. And how long have you been a
18 professor, Dr. Burch?

19 A. Since 2007.

20 Q. What are your principle areas of
21 research?

22 A. Sorry. My principle areas of
23 research include political behavior, political
24 participation, barriers to voting and race ethnic
25 politics, and I also focus on the ways that

1 interaction with the government can effect all
2 those things such as participation, and I
3 specifically have focused on how the federal
4 justice system can effect various things.

5 Q. Thank you. And have you been
6 published on any or all of these subjects?

7 A. Yes, I have been.

8 Q. Have you previously served as an
9 expert witness?

10 A. Yes. I have testified at -- at
11 trial in four cases and in -- at a deposition in
12 an additional -- additional case.

13 Q. Did any of those cases in which you
14 testified involve claims brought under the Voting
15 Rights Act?

16 A. Yes.

17 Q. And was your testimony credited or
18 accepted by the court in each of those cases in
19 which you testified?

20 A. Yes.

21 MR. CHAKRABORTY:

22 Your Honor, pursuant to the Federal
23 Rule 702 and the state Secretary of State
24 parties, the Robinson plaintiffs would
25 like to proffer Dr. Burch as an expert in

1 political behavior, political
2 participation and barriers to voting.

3 THE COURT:

4 Is there any objections?

5 MS. KHANNA:

6 No objections, Your Honor.

7 THE COURT:

8 Okay. Dr. Burch will be accepted
9 and be able to give testimony in the areas
10 of political behavior, political
11 participation and barriers to voting,
12 correct?

13 MR. CHAKRABORTY:

14 Yes, Your Honor.

15 THE COURT:

16 You may proceed.

17 BY MR. CHAKRABORTY:

18 Q. Mr. Burch, did you submit an expert
19 report as part of your work in this case?

20 A. I did. And could you excuse me for
21 a few minutes? I just need to close my door.

22 Sorry. Thank you. Yes, I did.

23 MR. CHAKRABORTY:

24 No worries at all. I'd like to
25 bring up on the screen, and just let us

1 know if you are not able to see it, what
2 has been premarked as PR-14.

3 THE COURT:

4 I don't know that you can screen
5 share.

6 THE DEPUTY:

7 We are supposed to be able to.

8 THE COURT:

9 Okay. I'm going to let you
10 disregard my technical input.

11 BY MR. CHAKRABORTY:

12 Q. Sorry, Dr. Burch. Just give us one
13 second.

14 Dr. Burch, are you able to see any
15 report on your screen?

16 A. Not yet.

17 THE DEPUTY:

18 Okay. Wait. Let's see.

19 THE COURT:

20 IT is coming. Is there any way you
21 can do a little bit with Dr. Burch until
22 IT gets here?

23 MR. CHAKRABORTY:

24 I can do a couple of questions.

25 THE COURT:

1 Okay. Great.

2 BY MR. CHAKRABORTY:

3 Q. Dr. Burch, just jumping into it a
4 brief bit before we tackle the technical
5 difficulties, did you submit a report for your
6 work in this case?

7 A. I did.

8 Q. I'll show you briefly what has been
9 premarked as PR-14, and it will be your expert
10 report.

11 What did you set out to evaluate in
12 your expert report?

13 A. So in my expert report, I was asked
14 to evaluate the set factors of -- relevant to
15 this case in Louisiana, particularly Senate
16 factors five, six, seven, eight and nine.

17 Q. Thank you. And what materials did
18 you rely on to reach your conclusions about those
19 factors?

20 A. A wide variety of materials
21 including my own analysis of the census data such
22 as the data from the plaintiff census and the
23 American Civil Liberties communities, various
24 agencies of the court, demography literature, the
25 legislative record including hearings, videos,

1 hearing of testimonies and road shows, other
2 documents such as amendments and bills that were
3 submitted, various news reports and -- and other
4 public speeches by public officials.

5 Q. Thank you, Dr. Burch. I'd just like
6 to pause there until we fix the issues.

7 THE COURT:

8 Do you think she's got a copy of her
9 report that she could look at while you
10 examine her? Because I have her report
11 here. I can follow along.

12 MR. CHAKRABORTY:

13 We do, and I believe Dr. Burch does,
14 but we were going to bring up a
15 demonstrative.

16 THE COURT:

17 Oh. Help is on the way, Dr. Burch.

18 Give us a minute.

19 MS. MCKNIGHT:

20 I'm sorry, Your Honor. We are going
21 to try to log into the Zoom. We are going
22 to try to log into Zoom at the same time
23 to avoid a delay later on. Thank you.

24 THE WITNESS:

25 All right. I've got it.

1 BY MR. CHAKRABORTY:

2 Q. Thank you for your patience,
3 Dr. Burch. So I'd like to jump back and -- and I
4 know you were just talking a minute ago about the
5 Senate factors that you examined. Are those
6 factors displayed for you on the screen?

7 A. Yes, they are.

8 Q. And just as a reminder to the court
9 and everybody here, which factors were those?

10 A. So I reviewed Senate Factor 5, the
11 extent to which members of the minority group are
12 suffering from the effect of different
13 discrimination in areas such as employment,
14 education and health that effect participation;
15 Senate Factor 6, which revealed political
16 campaigns; Factor 7, which is minority group
17 representation in public office; Factor 8, which
18 is about whether there's lack of responsiveness
19 of the elected officials to the procedural needs
20 of the group; and Factor 9, which is whether the
21 state of the policy or practice is to take the
22 position in that and is that the same.

23 Q. Thank you, Dr. Burch. I'd like to
24 start with Senate Factor 5. Which specific areas
25 of disparity did you evaluate as part of this

1 factor?

2 A. I examined education and other
3 aspects of socioeconomic status such as
4 employment and income. I looked at health, I
5 looked at residents in housing, and I also
6 examined the criminal justice system.

7 Q. Thank you, Dr. Burch. I'd like to
8 begin by talking about education.

9 MR. CHAKRABORTY:

10 Matthew, can you please turn to the
11 next slide?

12 TRIAL TECH:

13 (Complied.)

14 BY MR. CHAKRABORTY:

15 Q. Dr. Burch, what does this slide
16 display?

17 A. So this -- this slide displays a --
18 a couple of the charts from my report in which I
19 am documenting contemporary disparities in
20 education. And on the left, this slide shows the
21 difference in scores on standardized tests for
22 Louisianians who are in 8th grade over time.

23 And for each map, for each graph,
24 I'm sorry, the top one is for mathematics and the
25 bottom is for English, and the white students are

1 at the top and the red dots and the blue dots --
2 blue crosses are black students. And, as you can
3 see, there's a persistent gap over time and that
4 determines the students' scores on these
5 achievement tests, and that gap is pretty
6 persistent and consistent over time.

7 Q. And what's displayed on the right
8 here?

9 A. And so on the right, as you can see
10 here, I -- this is just part of one of the charts
11 that I have that shows educational attainment by
12 race scores 25 and older, and white Louisianians
13 are much more likely to have earned a bachelor's
14 degree or higher than black Louisianians

15 Q. Thank you, Dr. Burch. Based on
16 these selected examples and other citings in your
17 report, what were your conclusions about the
18 existence and extent of educational disparities
19 that exist in Louisiana between black and white
20 populations?

21 A. Yes. So I concluded that there were
22 still great disparities in education and
23 educational attainment between black and white
24 Louisianians, not only related to these factors
25 that I state here, but also with respect to

1 persistent segregation in education as well; and
2 those factors, those disparities are given by
3 both historical and contemporary discrimination
4 in the education realm.

5 Q. Thank you.

6 MR. CHAKRABORTY:

7 Next slide please, Matthew.

8 TRIAL TECH:

9 (Complied.)

10 BY MR. CHAKRABORTY:

11 Q. Dr. Burch, what does this slide
12 show?

13 A. So this slide shows more evidence of
14 disparity with respect to socioeconomic status
15 between black and white men. And consistent with
16 the prior set of graphs, white Louisianians are
17 shown here in the print and black Louisianians
18 are shown here in the teal.

19 And as you can see on all of these
20 factors, black Louisianians are worse off than
21 white Louisianians. Unemployment rates, the
22 unemployment rate is nearly double from black
23 Louisianians. Family poverty is nearly three
24 times as high for black Louisianians than for
25 white Louisianians. White house -- Louisiana

1 households on average, median household income is
2 tens of thousands of dollars higher than that of
3 black Louisianians' households, and there's
4 definitely disparity in terms as to ethnicity,
5 vehicles, there is -- black households are more
6 than four times or three times as likely, sorry,
7 almost four times as likely in black households
8 than white households.

9 Q. And based on these conclusions in
10 your report, what was your conclusions about
11 socioeconomic disparity between white and black
12 Louisianians?

13 A. Again, I concluded that there are
14 socioeconomic disparities that exist today and
15 that those disparities relate to both
16 contemporary and historical disparities between
17 black and white Louisianians.

18 MR. CHAKRABORTY:

19 Next slide, please.

20 TRIAL TECH:

21 (Complied.)

22 BY MR. CHAKRABORTY:

23 Q. Dr. Burch, what information is
24 displayed on this slide?

25 A. So this slide shows some of the

1 information that I wrote about with respect to
2 disparity in housing.

3 Q. And what types of examples or
4 disparity did you examine in your analysis of
5 this factor or this -- this issue?

6 A. So in particular, I looked at
7 disparity in -- in residents and where people
8 live because it's so important to policies and --
9 and political participants.

10 And so here, you can see in the map
11 on the left, I had a historical map that was used
12 by the Homeowners Loan Corporation dated since
13 the 1930s and 1940s. And several cities of
14 Louisiana that -- and this map was used to
15 determine lending and the risk of lending. Red
16 areas typically are those that were high risk and
17 -- and not suitable for lending and happen to be
18 neighborhoods where black people lived.

19 And so looking at these maps and --
20 and these areas of segregation and -- and these
21 historical maps as continues to present day, as
22 you see on the left where it shows that there is
23 still metro areas and cities in Louisiana that
24 are highly -- marked by high segregated by race;
25 and that includes New Orleans, the New Orleans,

1 Metairie metro area, Baton Rouge, the
2 Shreveport/Bossier cities and Lake Charles, and
3 those cities are -- are highly segregated by race
4 as well.

5 Q. Thank you, Dr. Burch. Can policies
6 effect -- I know you -- I just wanted to know,
7 can government policies effect the -- the level
8 and placement of segregation between black and
9 white Louisianians in housing?

10 A. Yes. Even present contemporary
11 policies or just voting decisions on where and
12 how to build, especially as I give an example in
13 my report about decisions about how to rebuild
14 after Katrina. That coupled with other issues
15 such as seeing the pace at which disaster relief
16 was given effect the ability of black people to
17 rebuild in areas that have been hurt by natural
18 disasters, for example. So these areas -- so
19 housing is effected in several areas.

20 Q. Thank you.

21 MR. CHAKRABORTY:

22 Please turn to the next slide,

23 Matthew.

24 TRIAL TECH:

25 (Complied.)

1 BY MR. CHAKRABORTY:

2 Q. Dr. Burch, what's on this slide?

3 A. So these -- this slide discusses
4 several of the disparities in health that I
5 talked about in my report. And, in particular,
6 we can see here in the left report -- chart that
7 mortality for black Louisianians from diseases
8 such as cancer, cardiovascular disease and
9 diabetes is higher than that of those mortality
10 rates for white Louisianians. Overall, as in the
11 second slide, the disparities in health translate
12 into a disparity in life expectancy.

13 So on average, white Louisianians --
14 white Louisiana men are about -- expected to live
15 about seven years longer than black Louisiana
16 men; and with respect to women, there's a large
17 gap as well. White Louisiana women are expected
18 to live about five years longer than black
19 Louisiana women. Infant and child mortality for
20 blacks versus white Louisiana children is higher
21 as well.

22 Q. And can environmental factors
23 contribute to racial health disparities such as
24 these?

25 A. Yes. So in my report, I talk a lot

1 about both the fact that natural disasters can
2 have differential effects and have had
3 differential effects in terms of mortality on
4 black versus white Louisianians, and I also talk
5 about disparity related to exposure to pollution
6 particularly in the area of Louisiana known as
7 cancer alley which is between Baton Rouge and
8 New Orleans.

9 And research has shown that for
10 black residents in those areas that higher
11 exposure to environmental pollution and the like
12 is related to higher rates of COVID-19, asthma
13 and -- and cancer.

14 Q. Thank you. So on this topic, would
15 you say that black Louisianians have worse
16 outcomes overall than white Louisianians?

17 A. Yes.

18 MR. CHAKRABORTY:

19 Next slide.

20 TRIAL TECH:

21 (Complied.)

22 BY MR. CHAKRABORTY:

23 Q. Dr. Burch, what does this slide
24 display information regarding?

25 A. So this slide discusses disparities

1 with respect to the criminal justice system in
2 Louisiana. And as you can see from this graph on
3 the left, black Louisianians are about -- about a
4 third of Louisiana's overall population but are
5 over represented among prison, probation and
6 parole populations. In fact, black
7 representation in Louisiana's prison and parole
8 population is double their representation in the
9 overall population.

10 Q. And so what are your conclusions
11 about the kinds of disparities that exist between
12 black and white Louisianians in the realm of
13 criminal justice?

14 A. That there are dramatic disparities
15 in the involvement with the criminal justice
16 system between black and white Louisianians with
17 black Louisianians being much worse off, and
18 these factors, these -- these disparities can't
19 be explained by just crime rates alone and, in
20 fact, are related to those that they are both
21 historical and contemporary discrimination in the
22 criminal justice system.

23 Q. And just to confirm. I know you
24 just mentioned for criminal justice there, but
25 would you say that all of the disparities that

1 you talked about today, you know, education,
2 health, socioeconomic status and -- and criminal
3 justice, all are tied to historical trends but
4 also are exhibited currently and are existing
5 disparities?

6 A. Yes. So -- so for all of the
7 disparities that I mentioned, the research shows
8 that both historical discrimination as well as
9 contemporary discrimination by the state and
10 other factors feeds and contributes to those
11 areas.

12 Q. And finally, last question on this
13 topic, Dr. Burch. All of these disparities, how
14 do they effect political participation in black
15 Louisianians in the state?

16 A. So, and I've done it for each factor
17 that was in my report, but overall if you think
18 about the fact that political science -- think
19 about the decision to participate in politics to
20 effect a rationale choice, we think that voters
21 weigh cost and benefits of these disparities, the
22 disparities of these factors tend to make voting
23 much more costly. So it would effect the
24 education, for instance, it's much more difficult
25 for someone to -- having to navigate

1 bureaucracies and the like if they have lower
2 educational attainment. It's difficult for
3 people to get to a polling place if they don't
4 have access to a vehicle or a -- or a household
5 that has access.

6 The criminal justice system effects
7 political participation because of loans and
8 franchise laws. People aren't allowed to vote if
9 they are serving a sentence in prison, for
10 instance, and so all of these factors are
11 interrelated, but also definitely have an effect
12 on political participation and the literature
13 shows that quite clearly.

14 Q. Thank you, Dr. Burch.

15 MR. CHAKRABORTY:

16 I'd like to move on to the next
17 slide, Matthew.

18 TRIAL TECH:

19 (Complied.)

20 BY MR. CHAKRABORTY:

21 Q. I'd like to move on to -- ask you
22 about your analysis of racial appeals and
23 political campaigns. And before we get to this
24 slide, what is a racial appeal?

25 A. So a -- a racial appeal in a

1 political campaign is an aspect of either a
2 speech or a -- a campaign ad, for instance, that
3 would prime voters to think about racial concerns
4 when making decisions about candidates in policy.
5 And those can be either implicit, which means
6 that race isn't mentioned, but you could see code
7 words or black exemplars, for example, that would
8 prime or still prime words to think about race to
9 make political decisions or they can be explicit,
10 which means they refer for specifics for the
11 race.

12 Q. And based on your experience and
13 review of the relevant literature, are appeals
14 effective or do they effect voting behavior?

15 A. Yes. Racial appeals are both
16 explicit and implicit and have been shown to
17 heighten the way voters pay attention to or think
18 about race and -- and it also effects how voters
19 think about candidates when they think about this
20 issue.

21 Q. Did you examine the racial appeals
22 in Louisiana?

23 A. Yes. I looked at a recent statewide
24 campaign, which is the 2019 gubernatorial
25 election.

1 Q. And what did you conclude about this
2 race?

3 A. I found evidence of several of --
4 sorry. I'm getting feedback. I -- I found
5 evidence of several campaign ads and statements
6 that could be characterized as a racial appeal.

7 Q. Can you give us some of those
8 examples?

9 A. Yes. So a prominent one has still
10 -- and here is from a campaign ad that was run by
11 the Eddie Rispone running for governor campaign.
12 And in it there's several aspects that calls for
13 (inaudible) they characterize racial appeal.

14 So, for instance, you have there in
15 the middle a picture of a mugshot, a black that
16 infers, activates on your particular serial type
17 such as black commonality. You have an image of
18 a candidate with all white constituents, and also
19 you have the use of language such as sanctuary
20 city and crimes that have been shown in
21 particular to crime racial ads, among others.

22 Q. Thank you, Dr. Burch. What were
23 your conclusions about the existence of racial
24 appeals as it exists in Louisiana?

25 A. Based on the several examples that I

1 found from that political campaign, that racial
2 appeals -- that there are still racial appeals
3 that characterize these things in a political
4 campaign.

5 Q. Thank you.

6 MR. CHAKRABORTY:

7 Next slide, Matthew.

8 TRIAL TECH:

9 (Complied.)

10 BY MR. CHAKRABORTY:

11 Q. I'd like to ask you about your
12 examination of Senate Factor 7, which is the
13 extent to which black Louisianians have been
14 elected to public office.

15 Which elected offices did you
16 evaluate in reaching your conclusions?

17 A. I evaluated several -- several
18 offices as well as offices at the state and local
19 levels as well.

20 Q. Let's start at the federal level.
21 What did you find with respect to federal
22 positions and black representation in those?

23 A. As shown up here, I -- I found that
24 there's been associated destruction; no black
25 senators and only four black Louisianians elected

1 to Congress at the -- at the federal level.

2 Q. And what about state and municipal
3 positions?

4 A. Similarly, there have been no black
5 governors or lieutenant governors in Louisiana,
6 and as with respect to the state legislature,
7 currently about a quarter of state legislative
8 seats are held by black members. Louisiana mayor
9 is less than a -- a quarter of all black -- black
10 mayors are less than a quarter of all Louisiana
11 mayors. State court judges are about
12 20.1 percent of all state court judges and a
13 quarter of the elected court members are black as
14 well.

15 Q. Thank you. What were your
16 conclusions from the analysis of this factor of
17 the intended representation of black Louisianians
18 in office?

19 A. Given the fact that they're about a
20 third of the population and it seems to be there
21 is no -- none of the offices that I examined has
22 there been a black representation of
23 Louisianians. It's measured a third of that body
24 or that group.

25 Q. Thank you.

1 MR. CHAKRABORTY:

2 Next slide, please.

3 TRIAL TECH:

4 (Complied.)

5 BY MR. CHAKRABORTY:

6 Q. Dr. Burch, did you look at the
7 responsiveness of elected officials to the needs
8 of black Louisianians?

9 A. I did.

10 Q. And which sources of evidence did
11 you look to as part of that analysis?

12 A. I looked at my examination of -- of
13 -- that I conducted for Senate Factor 5 as well
14 as really the voices of black Louisianians
15 themselves as represented in the road shows.

16 Q. I know we already covered your --
17 your Senate Factor 5 evidence. What have you
18 learned from the latter that you reviewed the
19 testimony of these road shows?

20 A. Consistently across different areas
21 of the state, black Louisianians stood up at
22 these road shows and discussed their concerns
23 about race representation in their state and
24 talked about how they felt like things haven't
25 been improving. I have some examples here that

1 have been pulled from my -- my report that comes
2 from the road shows where -- where people stood
3 up and talked about how they felt as though they
4 weren't -- they were overlooked, they weren't
5 represented fairly and they were concerned about
6 the lack of representation and concern for, in
7 effect, the government policies that would help
8 them throughout the state.

9 Q. Thank you. And so what were your
10 conclusions based on these sources that you
11 reviewed in response to the elected officials to
12 the needs of the black Louisianians?

13 A. Based on the policies and the
14 persistent gaps that I found with respect to
15 Senate Factor 5 as well as based on voices of
16 black Louisianians themselves, that -- that black
17 Louisianians (inaudible) publicly elected
18 officials were not responsive.

19 Q. Thank you, Dr. Burch.

20 MR. CHAKRABORTY:

21 Next slide, Matthew.

22 TRIAL TECH:

23 (Complied.)

24 BY MR. CHAKRABORTY:

25 Q. Dr. Burch, did you look at Senate

1 Factor 9?

2 A. I did.

3 Q. And what is Senate Factor 9?

4 A. Senate Factor 9 examines whether the
5 legislature had proper justification listed for
6 HB-1 and SB-5.

7 Q. And what source of evidence that you
8 knew then did you examine to draw conclusions on
9 this factor?

10 A. I looked at the legislative record,
11 the hearings, the (inaudible) dates, the road
12 shows, the bills, the amendments, amendments
13 themselves, and I also examined some other public
14 statements by legislators.

15 Q. And have you conducted an analysis
16 for state records, either in your academic work
17 or in other cases?

18 A. Yes, both.

19 Q. So based on your review of
20 legislature statements, what are your conclusions
21 about the -- this factor?

22 A. So I concluded that there were
23 several factors that I laid out in my report that
24 were advanced in various points that were
25 important for justification that the legislature

1 was considering when discussing HB-1 and SB-5.

2 Those would be the -- the minimizing the

3 population deviation across districts, such as

4 keeping parishes -- parishes and precincts

5 together and getting no -- no -- not splitting

6 previews when splitting a parish's compactness.

7 They did say at first that they were

8 interested in these traditional legislative

9 principals; however, when they were presented as

10 maps, that performed better on the traditional

11 legislative principles, that did not have -- that

12 contained few majority-minority districts. They

13 either, for the record, backed off from some of

14 those traditional legislative principles or said

15 that they were left.

16 Q. Thank you. I think you briefly

17 touched on it. Can you provide just one example

18 of such a shifting justification perhaps on the

19 slide?

20 A. Yes. So, for instance, with respect

21 to the population deviation, to hear Chairman

22 Sklefani do one of several examples that write

23 about making the population down to as close to

24 the nearest person as possible to the possible

25 district when -- later in the process, when

1 presented, I believe by -- in Amendment 88 as
2 well as in Amendment 91 with maps that were
3 actually lower population deviations but contain
4 two majority-minority districts, for instance,
5 made the statements backing away from those a
6 commitment, saying that well, it's not -- you
7 know, yes, this map is lower in terms of
8 population, but that's not -- that's not as
9 important as -- that's not the thing that matters
10 like just difference is as important.

11 Q. Thank you.

12 MR. CHAKRABORTY:

13 You can take the demonstrative down
14 and put up what has been premarked as
15 PR-89.

16 TRIAL TECH:

17 (Complied.)

18 BY MR. CHAKRABORTY:

19 Q. Dr. Burch, I'd like to close by
20 asking you a couple of questions about your
21 supplemental report. Do you recognize this
22 document?

23 A. Yes.

24 Q. And what is it?

25 A. It is the supplemental report that I

1 submitted.

2 Q. What does your supplemental report
3 examine?

4 A. I was asked to examine the
5 relationship between race partisanship.

6 Q. And what did you review in order to
7 reach your conclusions on this topic?

8 A. The scholars, the scholars and
9 literature as well as some -- as -- as well as an
10 examination of registration of patterns,
11 registration by race.

12 Q. And based on your review, did you
13 reach any conclusions about the historical length
14 between race and party and/or the contemporary
15 relationship between the two?

16 A. Yes. So the literature itself tends
17 to locate the link that there is -- that there is
18 a link between race, racial attitudes and
19 partisanship, and then the contemporary or the
20 current, the substantiation of that starts with
21 the assignment, real lineup of parties beginning
22 in The New Deal and solidifying in the 1960s and
23 resulting bill of rights. And over time, that
24 realignment, particularly the realignment of
25 white southerns away from the Democratic party

1 into the Republican party is a hallmark of
2 politics, obviously the civil rights throughout.

3 Moreover, I conclude that there's
4 growing strong evidence in the literature that
5 that relationship between partisanship and race
6 and racial attitudes is getting stronger and has
7 been getting stronger since 2008. Any phenomena
8 or the data show as well as the road shows that
9 trends are happening in Louisiana as well.

10 Q. Thank you, Dr. Burch.

11 MR. CHAKRABORTY:

12 Your Honor, at this time, I'd like
13 to introduce PR-14 and PR-89 into
14 evidence. They are Dr. Burch's main and
15 supplemental expert reports.

16 THE COURT:

17 Any objection?

18 MS. MCKNIGHT:

19 No objection.

20 MR. CHAKRABORTY:

21 And no further questions,

22 Your Honor.

23 THE COURT:

24 Cross-examination?

25 MR. CHAKRABORTY:

1 Thank you, Dr. Burch.

2 CROSS-EXAMINATION BY MS. MCKNIGHT:

3 Q. Good afternoon, Dr. Burch. I'm not
4 sure if you can see me.

5 A. Yes, I can see you.

6 Q. I'm sorry. This is a bit awkward.
7 It's an honor to meet you. I'll have a few
8 questions for you this afternoon. I'm sorry, I
9 can't look you in your face.

10 A. Okay. And I'm just grateful you
11 guys were able to accommodate me.

12 Q. Absolutely. So Dr. Burch, I'd like
13 to start with something you've written in the
14 past which is that voters in a given racial or
15 ethnic group cannot be assumed to share policy
16 preferences. You wrote that, didn't you?

17 A. You'll have to show it to me.

18 MS. MCKNIGHT:

19 Okay. Let's bring up. This would
20 be Burch 1, Mr. Williamson.

21 TRIAL TECH:

22 (Complied.)

23 BY MS. MCKNIGHT:

24 Q. Do you recall writing a book
25 entitled Creating a New Racial Order?

1 A. Yes. I -- that was my co-authors
2 book.

3 Q. Okay. And that -- I think I'll wait
4 for him to bring up the cover of the book for
5 you, Dr. Burch.

6 A. Uh-huh (affirmatively).

7 Q. I think Mr. Williamson just needs to
8 share his screen.

9 THE COURT:

10 Can you give me the quote again?

11 It's voters?

12 MS. MCKNIGHT:

13 Sure. Voters in a given racial or
14 ethnic group cannot be assumed to share
15 policy preferences.

16 THE COURT:

17 Thank you.

18 MS. MCKNIGHT:

19 Burch 1. Hold on one moment,
20 Your Honor.

21 THE COURT:

22 That's okay. We are going to be
23 patient today.

24 MS. MCKNIGHT:

25 Thank you, Your Honor.

1 BY MS. MCKNIGHT:

2 Q. Dr. Burch, we have before you an
3 electronic version of your book entitled Creating
4 a New Racial Order. Do you see that?

5 A. I do.

6 Q. And if we can flip to the next page,
7 here's a copyright page for that book. Does this
8 look right to you, Dr. Burch, copyright 2012 by
9 Princeton University Press?

10 A. Yes.

11 Q. Okay. Now, Dr. Burch, this is an
12 electronic version so you can see at the bottom
13 there are a number of pages because it's
14 electronic, but if we turn to the next page, find
15 the quote, page with your quote on it. I'm not --
16 I've highlighted the section for you to see. Are
17 you able to read that Dr. Burch?

18 A. Yes.

19 Q. Okay. So Dr. Burch, thank you for
20 your patience. In the highlighted section, it's
21 three lines down. Voters in a given racial or
22 ethnic group cannot be assumed to share policy
23 preferences. Do you see that?

24 A. Oh, wait. I'm sorry. You were --
25 I'm sorry. You put something over the whole

1 quote that -- if you could, just remove that

2 bottom line so I can see it.

3 Q. Sure.

4 A. Okay. That is -- that is definitely

5 not a (inaudible).

6 Q. You can take that down. Does that

7 refresh your recollection that you thought in the

8 past voters in a racial or ethnic group cannot be

9 assumed to share policy preferences?

10 A. Yes, I agree with that.

11 Q. Okay. And now, your report in this

12 case, does not examine whether a plaque voter in

13 rural Louisiana will vote the same way as a black

14 voter in urban Baton Rouge, for example, correct?

15 A. No. I examined research that looked

16 at voting patterns by race.

17 Q. Okay. And your report does not

18 examine white crossover voting that is white

19 voters who vote for the candidates of choice of

20 black voters, correct?

21 A. No. I'm looking at both party

22 registration as well as the other people readers

23 as to those kind of questions.

24 MS. MCKNIGHT:

25 Okay. Now, turning to your report,

1 this is PR-14 at page 25 through 28.

2 Mr. Williamson, we can just go to page 25,
3 the header of the section.

4 Pardon me. I think you need to go
5 PR-14, page 25, but unfortunately the
6 numbers -- there you go.

7 TRIAL TECH:

8 (Complied.)

9 BY MS. MCKNIGHT:

10 Q. So, Dr. Burch, I heard you testify
11 on direct that you believe there are still racial
12 appeals that characterize elections in Louisiana.
13 Did I hear you right?

14 A. Yes.

15 Q. Okay. So in reviewing the section
16 Senate Factor 6, racial appeals and campaigns,
17 over the past 30 years you identified only one
18 candidate who made a racial appeal in an
19 election, correct? And that candidate --

20 A. No. Could you switch to -- could
21 you go to the next page, please?

22 Q. Sure.

23 A. So I have both during this
24 gubernatorial campaign in the middle. I'm
25 talking about Eddie Rispone here, but also, if

1 you go to the next page, I also have here, racial
2 appeals that targeted -- that were run by the
3 Louisiana Republican party and for -- for
4 instance, the quotation at the bottom of that
5 page that's from the -- the party not from Eddie
6 Risponse and the next page is another racial
7 appeal that was made by a different candidate.

8 Q. Okay. Let's turn to the next page
9 so I can understand what you meant by that third
10 example?

11 A. Uh-huh (affirmatively).

12 Q. And so the third example was which
13 other candidate, Dr. Burch?

14 A. So here you have Conrad Apple was
15 talking about -- that making the appeal that
16 African-Americans should support Republicans
17 better than Democrats because of issues regarding
18 racial -- concerns about racial.

19 Q. Okay. And going back a page, those
20 racials appeals had to do with a candidate for
21 Eddie Risponse; is that right?

22 A. I think that the one for -- the
23 second one was probably more general, but it
24 probably referred in general to support of black
25 people for (inaudible) Democratic parties.

1 Q. So I just want to make sure I
2 understand, that the second one here, I'm seeing
3 reference to candidate Rispone here and then 2019
4 gubernatorial race, are you referring to
5 something else?

6 A. No. What I'm saying here is that in
7 the RNC, the -- the Republican -- the Louisiana
8 GOP coalition is with respect to
9 John Bel Edwards. But the quote on the next page
10 is more general.

11 Q. I see. And so are you aware whether
12 candidate Rispone won or lost his election?

13 A. I believe he lost.

14 Q. And do you know whether the last two
15 elections for governor, whether the candidate of
16 choice for black voters won?

17 A. Yes. John Bel Edwards did win.

18 Q. Now, let's turn to another Senate
19 Factor, Senate Factor 9. Now, I understand that
20 Senate Factor 9, you studied whether the
21 legislatures rationale for drawing its
22 congressional plan was supported by the evidence
23 or if it was quote, unquote, tenuous; is that
24 right?

25 A. Is that an exact quotation from

1 somewhere?

2 Q. Well, the word tenuous is a quote
3 from Senate Factor 9; is that right?

4 A. Yes.

5 Q. Okay. And so in doing your work on
6 this report for Senate Factor 9, you developed an
7 opinion that the legislature's rationale for
8 drawing its congressional plan was tenuous,
9 correct?

10 A. I don't know if I used those exact
11 words. Can you show me where I said that
12 exactly?

13 Q. Well -- well, let me step back. Is
14 it your position that their rationale was not
15 tenuous?

16 A. My position is that the rational was
17 not supported by evidence or they would back off
18 certain rationals, but I don't believe I ever
19 said that whether it was tenuous or not.

20 Q. Okay. Okay. Well, I think -- I
21 think it may make sense to just get to Factor 9,
22 so you can understand my questions, you've
23 written a very thorough report. I just want to
24 make sure we are understanding each other.

25 So if we would turn to PR-14,

1 page 32. And so here, you begin your section on
2 Senate Factor 9, tenuousness. Do you see that?

3 A. I do.

4 Q. Okay. In here, you write that the
5 sponsors and advocates of two bills provided
6 several justifications and you go onto show that
7 you believe that they are proper justifications
8 lack support; is that right?

9 A. Empirical support, yes.

10 Q. Okay. And now, in preparing your
11 report you studied the legislative record related
12 to redistricting this year in order to develop
13 your conclusions, right?

14 A. I did.

15 Q. In fact, studying legislative
16 history is part of your research practice.
17 You've identified it in another part of your
18 report in your background, correct?

19 A. Yes.

20 Q. Okay. And let me step back. When
21 studying a legislative record to understand
22 legislative intent, you don't want to cherry pick
23 certain pieces of the record and ignore
24 legislative priorities that have been repeatedly
25 stated because you want to get a full picture of

1 the record; would you agree with that?

2 A. Yes.

3 Q. And your report quotes from the
4 legislative record, correct?

5 A. Yes.

6 Q. You reviewed the state government
7 affairs committee hearings, correct?

8 A. Yes.

9 Q. And you reviewed the Florida Bates,
10 correct?

11 A. I did.

12 Q. And during the committee hearings
13 and Florida Bates, the legislature repeatedly
14 described the plan as a continuity of
15 representation plan; isn't that right?

16 A. Not repeatedly. That actually
17 started to enter the record at the end, and I
18 believe I do have quotations to that effect in
19 the report.

20 Q. Okay. Let's start with where you
21 have quotations that effect in the report and
22 then we will get to repeatedly so can you
23 identify in your report where you have those
24 quotations?

25 A. So I'm going to refer. I have my --

1 I have my report here so I'm going to flip
2 through it and look.

3 Q. Take your time.

4 A. So on page 39, I have some
5 information to that effect.

6 MS. MCKNIGHT:

7 Mr. Williamson, would you mind
8 turning to page 39 so we can all follow
9 along.

10 BY MS. MCKNIGHT:

11 Q. Is this the page 39 you are
12 referring to or is it the exhibit number below?

13 A. It's the page yes, this is 39.

14 Q. Okay. Great.

15 A. So I write here, during the -- I
16 believe it's the Florida debate which might be
17 the one -- which I think might be the final
18 transcript or close to it or represented that he
19 was presenting the bill that day. He said that
20 the primary criterion for drawing the
21 congressional districts have become, quote, they
22 honor traditions as best as possible, and this
23 did create massive disapproval and so he -- and
24 then later on in that moment he said that 1, HB-1
25 was designed to, quote, maintain traditional

1 boundaries. So yes, I do talk about the fact
2 that has become a part of the (inaudible).

3 Q. Okay. So you quote -- you quote
4 Representative Mickey, but where do you talk
5 about that as becoming a priority?

6 A. So on page 39 I said, by the end of
7 the process, a quarter of HB-1 in particular had
8 shifted their legislative priorities. Instead of
9 compactness or other measures, Representative
10 Mickey stated a primary criteria for drawing
11 congressional districts to come was to honor
12 (inaudible) as best as possible to create this
13 message was equal with the people.
14 Representatives (inaudible) records of PB-1
15 prioritized the traditional ballots after looking
16 at all the other criterias.

17 Q. Okay. And do you know when the
18 legislative redistricting session began in
19 Louisiana?

20 A. You mean with the road shows and
21 everything else?

22 Q. The legislative redistricting
23 session?

24 A. So they started holding road shows
25 and hearings back in 2021, but did you mean such

1 as when the (inaudible) started?

2 Q. Correct.

3 A. That was in February.

4 Q. Would -- would you have any reason

5 to disagree with me if I told you it was

6 February 2nd?

7 A. I accept that. That's fine.

8 Q. Okay. So just to tie this up. Is

9 this the only place where you reference

10 traditional boundaries on page 39 of your report?

11 A. Let me see. There may be some other

12 areas in which I talk about reference to

13 traditional boundaries, but that's the one that

14 comes to mind.

15 Q. Okay. None others come to your mind

16 at this moment?

17 A. In the report --

18 Q. Yes.

19 A. -- as far as that -- that being a

20 priority? No. Again, they had in each place

21 they started out with a list of priorities up

22 until the end, No. 1, was always the engagement

23 of communities of interest and other kinds of --

24 and the other traditional redistricting format.

25 Q. Okay.

1 A. Again, the priorities (inaudible)
2 and here the priorities by the end of this
3 legislative -- legislative session shifted to
4 when they were then emphasizing the appearance to
5 the primary -- the primary criteria was now
6 honoring traditional boundaries so yes, that's
7 priority.

8 Q. I see. So since you -- you were
9 concerned about the end of the process. Let's go
10 to the beginning of the legislative session on
11 redistricting and bring up PR -- well, before I
12 do that, let me share with you. The parties have
13 stipulated to transcripts of certain hearings,
14 committee hearings and floor sessions, and so
15 what I'm about to bring up for you is an exhibit
16 that is a transcript that has been prepared by
17 plaintiffs of the special session SGA committee
18 transcript dated February 2, 2022. We are going
19 to pull up PR-52 at page 7. And now, Dr. Burch,
20 I'm looking at lines 9 through 16.

21 A. Uh-huh (affirmatively).

22 Q. And I'll offer for you that the
23 speaker during this hearing is president of the
24 Senate Page Cortez. In here he states, the third
25 tenant or principle was as best possible to

1 maintain the continuity of representation. What
2 do I mean by that, it means that if your district
3 elected you and you've done a good job they also
4 have a right to re-elect you. Conversely, you
5 don't get to choose who your population is they
6 choose you. If you didn't do a good job. They
7 have the right to un-elect you. Do you see that?

8 A. I do.

9 Q. And does that refresh your
10 recollection about whether the legislature
11 identified continuity on representation on the
12 first day of legislation?

13 A. Yes. I said I could recall that,
14 but again, if you see here in the -- the
15 quotation he cited it's not the top priority it's
16 third so as I said before, those priorities
17 shifted.

18 Q. I see. Well, let's go down to lines
19 23 through 25 on this same page. So this reads
20 by President Cortez, so the next principle that I
21 tried to adhere to was with something you-all
22 heard on the road show many times called
23 compactness. So does this refresh your
24 recollection about whether President Cortez and
25 the legislature discussed continuity of

1 representation before they even addressed
2 compactness on the first day of the legislative
3 session on redistricting?

4 A. Yes. They did.

5 Q. Okay. Thank you. I'm going pull up
6 another exhibit for you. This exhibit is a
7 transcript stipulated by both parties to the
8 special session SGA committee transcript dated
9 February 3rd, 2022. It's Exhibit PR-54 at
10 page 4. And here, I'm starting at line 13 and
11 going down into the next page, the Line 1.

12 Dr. Burch, we will highlight it for
13 you and then let us know if you need us to zoom
14 in at all. I'm going to read the first line and
15 then paraphrase the rest. I -- I will stop so
16 you can have a chance to review it, but here,
17 I'll represent to you that the speaker is
18 chairwoman of the Senate redistricting first
19 Senator Hewitt and she said on the floor or in
20 this committee at that time, we talked about
21 continuity representation a lot in these hearings
22 and we heard again at the road show one of the
23 kind of talking points was elected officials
24 should not choose their voters, voters should
25 choose their elected officials and to that again,

1 I would respond by saying I respect the voters in
2 this state and know that they are in the best
3 position to vote an elected official in or out of
4 office based on their performance. Dr. Burch,
5 does this refresh your recollection about whether
6 the legislature considered notion of continuity
7 of representation early in the legislative
8 session?

9 A. I never said they that didn't
10 consider it early, I said it wasn't the top
11 priority so if you look at it again you didn't
12 show me what -- like before, you didn't show me
13 what came before that and what order it talked
14 about continuity in the legislative session so I
15 don't really know -- so I can't really -- so I
16 don't really know if I could agree like I said,
17 before that, they prioritized what they had done
18 and then they shifted priority.

19 Q. I see. And so, let me do one more
20 example, Dr. Burch, and then we can -- we can
21 start moving on. If we could bring up PR-71.
22 Dr. Burch, this is a special session Senate
23 full-floor debate dated February 8, 2022. And
24 again, this is a Senate full-floor debate and I'm
25 looking at line 16 through the next page on -- on

1 line 4, but we can just start on page -- sorry.
2 On page 88, at line 16. And so here, I'll just
3 read the first few lines. The next principle
4 preserve the core of the prior districts to
5 ensure continuity of representation. You know,
6 we heard many times on the road show and the
7 president spoke to this a little bit earlier on
8 the bill and then it goes on to reiterate points
9 about voters being able to vote in or out their
10 elected officials. Do you see that, Dr. Burch?

11 A. I do.

12 Q. Okay. And would it surprise you to
13 know that the phrase continuity appears more than
14 35 times in 13 days of transcripts in this case?

15 A. No.

16 Q. Okay. So in reviewing these hearing
17 transcripts that are dated February 2nd,
18 February 3rd, February 8th, and that you are not
19 surprised that continuity was references more
20 than 35 times in 13 days of legislative
21 transcripts, does that refresh your recollection
22 about the fact that the legislature repeatedly
23 described the plan as a continuity of
24 representation plan?

25 A. Again, it's not -- I never said that

1 I didn't recall that they talked about continuity
2 representation, what I said is that that priority
3 shifted across time. Even the last quote --
4 quotation you showed me. It began with the next
5 as if that wasn't the first thing they talked
6 about. And as I said, hereby the time we get to
7 the end, that traditional redistricting principle
8 aspect was -- what they arrived on as the -- as
9 the top priority, but that was only after all the
10 other ones such as compactness and even the
11 example that I gave that are correct. There was
12 the absolutely deviation was again, supplanted by
13 or plans that had two majority, minority
14 districts actually performed better on the
15 metric, so I stand by what I wrote in my report
16 that again, that -- those priorities shifted and
17 by the end, that had to come and those quotations
18 you showed me those were early on they were
19 talking about other principles before they
20 actually got continuity of representation.

21 Q. I see. And -- and even if it was a
22 third principle on the very first day of the
23 redistricting session, you did not examine
24 continuity of representation and whether or not
25 the legislature fulfilled their goal of

1 continuity representation, correct?

2 A. I looked at both the plan that was
3 there as well as the -- the full plan and of
4 course, the boundaries had to change a little
5 bit, but as far as whether or not they got as
6 close as possible to the old boundaries no, I
7 didn't look at that. And I don't believe there
8 was any discussion as far as whether that was the
9 plan that brings change -- these changed the
10 boundaries of all the plans that were available.
11 So it wasn't -- so it's not in my report is a
12 recollection of is an issue it's that they didn't
13 really compare bills based on you know, whether
14 that was a -- that was a statement that in terms
15 of like how closely that -- that plan came than
16 say, a different bill the computer might have
17 observed.

18 Q. I see. So I'll represent to you
19 that we have experts in this case who have
20 submitted reports that the core retention score
21 in this plan has been calculated to be
22 96 percent. I'll also represent to you that that
23 is a higher score than any of plaintiff's
24 illustrative plans. My question to you relates
25 to the Senate factor of tenuousness. I

1 understand from your earlier testimony that you
2 were trying to understand the legislature's
3 priority in drawing it its plan and trying to
4 study whether those priorities played out in the
5 ultimate plan in the at past. I understand from
6 your testimony just now, that you did no
7 examination of continuity of the representation
8 in your report, correct?

9 A. Right. That's not those figures
10 aren't in the record.

11 Q. Okay. And you did not conclude in
12 your report that the legislature's rational to
13 draw a continuity of representation plan was
14 quote, unquote, anyway, right?

15 A. No. I said that those plans lack
16 empirical support and that the references you
17 just made are in the record.

18 Q. Okay. But you would agree with me
19 that the references I just made to the
20 legislature describing continuity of
21 representation as a goal those are in the
22 records, correct?

23 A. Yes. In the way that I described.

24 Q. And I'm going to share a fact with
25 you. Tell me if you agree or disagree or have

1 knowledge about it priority plan drawn in 2011
2 was pre-cleared by president's Obama's Department
3 of Justice, correct?

4 A. That was in the record.

5 Q. So you would agree with me that
6 that's a fact?

7 A. Yes.

8 Q. Now, in this case, you did not study
9 whether the so-called tenuous was due to
10 political as opposed to racial choices, correct?

11 A. The only references that I have in
12 this section with respect to race are I do have a
13 discussion about the extent to which there was a
14 new census redrawing of two majority, minority
15 districts also I reference race when I talk about
16 dispersions that the Senators and members of the
17 house made with respect to what they thought
18 about minority voting on different parts of
19 minority positions.

20 Q. Okay. So I -- I think you answered
21 a different question and so pardon me for
22 repeating. I believe it is just a yes or no
23 question. You did not study whether the
24 so-called tenuous that you found was due to
25 political as opposed to racial choices, correct?

1 A. Yes. I believe I talked about ways
2 in which they were discussing race.

3 Q. Okay. We will move on. Dr. Burch,
4 you believe that the legislature should have
5 drawn maps identifying black voters as a
6 community of interest, correct?

7 A. I believe what I wrote is that black
8 voters and other people themselves said that they
9 constituted a community of interest.

10 Q. Okay. Is it your position that the
11 legislature could use race as a proxy for a
12 traditional districting criterion?

13 A. It's my understanding that based on
14 the need to ensure representation that the
15 legislature had to consider race.

16 Q. Okay. But you don't have an
17 understanding about whether race can be used as a
18 proxy for traditional districting criterion?

19 A. I never made that point. The only
20 point that I'm making is that on the record, that
21 was brought up on the record and actually, I
22 believe I had some point to which the legislators
23 agreed, so my -- my point really was to just put
24 on the record that that was discussed.

25 MS. MCKNIGHT:

1 Okay. Thank you very much,
2 Dr. Burch. I have no further questions.

3 THE COURT:

4 Any redirect?

5 MR. CHAKRABORTY:

6 Yes, Your Honor.

7 REDIRECT EXAMINATION BY MR. CHAKRABORTY:

8 Q. Dr. Burch, just a couple of brief
9 questions.

10 MR. CHAKRABORTY:

11 Can we pull up PR-52, Matthew? And
12 can we please turn to page 7?

13 TRIAL TECH:

14 (Complied.)

15 BY MR. CHAKRABORTY:

16 Q. Dr. Burch, that middle area there,
17 the third tender principle, do you recognize that
18 as the portion that Ms. McKnight was representing
19 earlier with you?

20 A. Yes.

21 Q. Great. Thank you. Can we please
22 turn to page 5? And do you see, Dr. Burch, at
23 the very top of this page where it reads let's
24 start with Senate bill offered by
25 President Cortez?

1 A. I do.

2 Q. And then you see President Cortez,
3 the Senate president start his remarks that
4 ultimately lead onto the portions that
5 Ms. McKnight read out to you?

6 A. Yes, I do.

7 Q. And do you have any reason to doubt
8 that Senate Bill 1, actually deals with state
9 legislative redistricting?

10 A. I -- well, yes. That's S HB-5.

11 Q. Right. It doesn't deal with
12 congressional redistricting such as SB-5 or HB-1?

13 A. That's right.

14 Q. Did any of those change your basic
15 conclusion on Senate Factor 9, that the
16 justifications afforded by legislators were
17 tenuous?

18 A. No. Nothing that I put forward here
19 changes what I wrote.

20 MR. CHAKRABORTY:

21 Thank you. No more questions.

22 THE COURT:

23 Okay. Thank you, Dr. Burch, let's
24 take a 15-minute recess.

25 (A short recess was taken.)

1 THE COURT:

2 Okay. Be seated. Next witness.

3 MR. HAWLEY:

4 Good afternoon, Your Honor. Making

5 my first appearance, I'm Jonathan Hawley.

6 H-A-W-L-E-Y. I represent the Galmon

7 plaintiffs, and the plaintiffs next call,

8 Dr. Allan Lichtman will be joining us via

9 Zoom. Good afternoon, Dr. Lichtman.

10 THE WITNESS:

11 Good afternoon.

12 DR. ALLAN LICHTMAN,

13 after having first been duly sworn by the

14 above-mentioned Court Reporter did testify as

15 follows:

16 DIRECT EXAMINATION BY MR. HAWLEY:

17 Q. Can you hear me okay, Dr. Lichtman?

18 A. I hear you fine. I'm a little deaf,

19 so I speak slowly and clearly.

20 Q. I will do that.

21 MR. HAWLEY:

22 Your Honor, the Glamon plaintiffs

23 wish to tender Dr. Lichtman as an expert

24 in American politics, American political

25 history, voting rights and qualitative and

1 quantitative social science analysis.

2 THE COURT:

3 Any objection?

4 MR. BRADEN:

5 My name is Mark Braden, defendant
6 intervenors for the legislature, and we
7 have no objections.

8 THE COURT:

9 Okay. Dr. Lichtman will be accepted
10 by the court in the fields of American
11 politics, American political history,
12 voting rights and qualitative and
13 quantitative social sciences and
14 Dr. Lichtman may provide opinion testimony
15 in those fields.

16 BY MR. HAWLEY:

17 Q. Thank you, Your Honor.

18 Dr. Lichtman, will you please state your full
19 name for the record?

20 A. Allan J. Lichtman. That's

21 A-L-L-A-N, J, period, L-I-C-H-T-M-A-N. I'm
22 getting an echo.

23 Q. We are okay on our end,

24 Dr. Lichtman. Can you hear me?

25 THE COURT:

1 Mr. Hawley, would you like to turn
2 the podium.

3 BY MR. HAWLEY:

4 Q. No. Can you -- can you still hear
5 me okay, Dr. Lichtman?

6 A. I hear you fine. I'm still getting
7 an echo. Maybe if I turn my --

8 THE COURT:

9 Turn your speaker down.

10 THE WITNESS:

11 -- my computer volume down a little,
12 that might help. Let me try it. All
13 right. Let's try it now.

14 BY MR. HAWLEY:

15 Q. Okay. Dr. Lichtman, how about now?

16 A. Much better.

17 Q. Okay. Thank you. Dr. Lichtman,
18 you've been retained as an expert for the Glamon
19 plaintiffs; is that correct?

20 A. Yes. Yes.

21 Q. And you prepared -- thank you. And
22 you prepared a report in this case?

23 A. Yes.

24 MR. HAWLEY:

25 For the record, that is Exhibit

1 GX-03, which is Record Docket No. 48.

2 BY MR. HAWLEY:

3 Q. Dr. Lichtman, do you have a copy of
4 your initial report in front of you now?

5 A. I do.

6 Q. And you also prepared a rebuttal
7 report in this case, correct?

8 A. Correct.

9 MR. HAWLEY:

10 And, for the record, that is Exhibit
11 GX-31, Record Document 120-4.

12 BY MR. HAWLEY:

13 Q. Dr. Lichtman, do you have a copy of
14 your rebuttal report with you as well?

15 A. Yes.

16 Q. And Dr. Lichtman, is your CV
17 included in your report?

18 A. Yes.

19 MR. HAWLEY:

20 And I'll say for the record that is
21 at page 99, of GX-3, Record Document 48.

22 BY MR. HAWLEY:

23 Q. And, Dr. Lichtman, is your CV a
24 complete and accurate summary of your background
25 and professional experience?

1 A. Yes.

2 Q. I'd like to ask you a few brief
3 question about that. Can you please summarize
4 your professional background?

5 A. I graduated in 1967 with a BA from
6 Brandeis University in history, but I've been a
7 science major for three years before turning to
8 history my senior year which may explain my
9 interest in social science and qualitative
10 methodology. I then got my PhD from Harvard
11 University in 1973 with a specialty in American
12 political history and quantitative methods.

13 Q. Where are you currently employed?

14 A. I am employed at American University
15 in Washington, D.C. and I'm not sure if I'm
16 pleased or embarrassed to say next year will be
17 my 50th year of science.

18 Q. And I assume that means you are
19 tenured?

20 A. I have been tenured since about
21 1980. In 2011, I was appointed distinguished
22 professor so I made office of university rank.
23 It's a rank above full professor there are only a
24 handful of us out of many hundreds of faculty
25 members at the university.

1 Q. And what are your principles areas
2 of research?

3 A. I would say American politics,
4 American political history, voting rights,
5 quantitative methods, qualitative methods,
6 political prediction.

7 Q. Have you previously served as an
8 expert witness in voting rights cases?

9 A. Probably close to a hundred and if
10 you count civil rights cases in general north of
11 110.

12 Q. And do those include redistricting
13 cases?

14 A. Yes.

15 Q. Have you served as an expert in
16 redistricting cases in Louisiana?

17 A. Yes.

18 Q. And does that include the Terrebonne
19 Parish litigation?

20 A. Yes.

21 Q. In that case, did you undertake a
22 Senate factor's analysis?

23 A. I did.

24 Q. And did the court in that case
25 credit your Senate factors analysis?

1 A. It did.

2 Q. And did other courts previously
3 credited and relied on your analysis?

4 A. Not every time, of course, there
5 have been over a 110, but most of the time
6 including the United States Supreme Court in its
7 landmark 2006 decision in the Texas Congressional
8 Redistricting Case, Lulac versus Perry, the court
9 relied on my work, my analysis and doing
10 something quite unusual and that is it
11 invalidated a district, a congressional district
12 in southwest Texas, based on my work on the
13 grounds that it polluted the votes of Hispanics.

14 Q. Dr. Lichtman, what were you asked to
15 do in this case?

16 A. I was asked to examine the 9 Senate
17 factors that relate to totality of circumstances
18 in the State of Louisiana facing the
19 opportunities for African-American voters who
20 participate fully in the political process and to
21 elect candidates of their choice and I was also
22 asked to respond to any material presented by
23 defendants.

24 Q. And what methodology did you employ
25 as part of that analysis?

1 A. I employed standard methodologies in
2 my fields of research over these many decades. I
3 analyze sources like surveys, scholarly articles,
4 books, journalistic articles, governmental
5 reports, demographic information, election
6 returns and similar data to reach my conclusions,
7 and I applied quantitative methods in this case
8 mostly fairly simple quantitative methods, for
9 example, just looking at percentage differences
10 to gauge racially polarized voting in Louisiana
11 or just looking at percentage and differences to
12 engage socioeconomic disparities between
13 African-Americans and whites in Louisiana and
14 then, of course, like any historian, I analyzed
15 documentary materials, I've written a book on
16 historical methodologies.

17 Q. And what are your overall
18 conclusions?

19 A. My overall conclusions are that
20 essentially all of the 9 Senate factors apply in
21 the State of Louisiana contemporarily to impede
22 the opportunities for African-American voters to
23 participate fully in the political process and to
24 elect the candidates of their choice, and I also
25 find that these are not isolated factors

1 separated into watertight compartments, but that
2 one factor synergistically influences the other
3 to expand the impediments that I discuss.

4 Q. Did you read the expert report
5 submitted by the defendants in these consolidated
6 cases?

7 A. I did.

8 Q. And did anything in those reports
9 change your conclusions about the Senate factors
10 in Louisiana?

11 A. Not only did nothing in those
12 reports change my conclusions, they strengthened
13 my conclusions. None of the reports directly
14 address the Senate factors or even mention my
15 report by name. None of the information
16 presented in my report was refuted by any of the
17 expert reports submitted on behalf of defendants.
18 Two of the expert reports, one by Dr. Alford and
19 one by Mr. Hefner and -- and one by Mr. -- I hope
20 I get his name right, Solanky, indirectly address
21 some of my two Senate factors, 2 and 9, and to
22 the extent there was information in those
23 reports, he falls to that.

24 Q. Dr. Lichtman, I'd like to cover the
25 history of your two reports and some key points

1 and cover the key areas of your analysis and
2 conclusions, and we will start with Senate Factor
3 1.

4 Does the State of Louisiana have a
5 history of voting discrimination against its
6 black citizens?

7 A. It not only has a history, it has an
8 ongoing history; and that history relates not
9 just to direct voter discrimination, for example,
10 the use of at-large elections with the
11 availability of polling places for
12 African-Americans, but it also relates right up
13 to the present of discrimination in three areas
14 that significantly effected the impact of voting;
15 that is, law enforcement, discrimination in law
16 enforcement, significantly impacted voting for a
17 couple of reasons. No. 1, Louisiana has some
18 pretty strict felony disenfranchise laws. You
19 can't vote while you were incarcerated, you can't
20 vote while you were on parole or probation and
21 there's no automatic restoration of your voting
22 rights after five years. You have to go through
23 a process.

24 Secondly, as I point out in my
25 report, once you've been incarcerated your

1 integration into a fully functioning member of
2 society including a voting member in political
3 participation becoming all that much more
4 difficult, second area would be the area of
5 education. And all this scholarly research
6 indicates that education is a prime determinant
7 of political participation and of course, levels
8 and proficiency in education effect almost
9 everything in the course of the lifestyle of
10 proficient education, in proficiency. In
11 addition, in education, it contributes to other
12 socioeconomic factors which have an impact on
13 voting.

14 Finally, there is racial segregation
15 and the literature I cite in my report indicates
16 that segregation perpetuates circle of the
17 poverty. It expands it multiplies socioeconomic
18 disparities that have a direct impact on the
19 ability of African-Americans in Louisiana to
20 participate in the political process and to elect
21 candidates of their choice.

22 Q. On the topic of discriminatory
23 voting practices, in particular you mentioned
24 just now at-large judicial elections and closing
25 of polling places. Are those examples of efforts

1 that have continued into the present day?

2 A. That's correct. Those are examples
3 that continue into the 20th century, and we can
4 also talk about as actually good in the context
5 of another factor, what I believe to be the
6 discriminatory redistricting plan in the post
7 2011.

8 Q. Let's move on to Senate Factor 2.
9 Dr. Lichtman, does Louisiana have racially
10 polarized voting?

11 A. Louisiana, as I point out in my
12 report, has extreme racially polarized voting;
13 that is, African-Americans vote almost
14 unanimously for Democratic candidates and
15 Republican candidates choice of African-American
16 voters, and this racial divide between blacks and
17 whites voting Democratic and Republican is
18 inextricably tied to race. Party labels by
19 themselves are meaningless. They are just
20 labels. What matters is what those labels
21 represent.

22 We know for the 19th century and
23 well into the 20th century blacks in the south
24 are voting Republican, the party of Lincoln, and
25 whites were voting Democratic, the party of

1 redemption. That changed particularly after the
2 Voting Rights Act of 1965. It wasn't an
3 immediate process, but over time and certainly up
4 to our own time the party images and
5 representations shifted. Democrats came to
6 represent the party of civil rights and black
7 interests and Republicans, the opposite. I
8 document this change in many ways in my report.

9 First of all, I cite scholarly
10 literature on what they call the co-joining of
11 race and party in recent years. Secondly, I look
12 at political leadership and I look at two
13 advocacies; NAACP, the oldest advocacy group in
14 the country and the ladder conference on civil
15 and human rights. And they have legislative
16 score cards to what extent the legislators
17 represent black and minority interests; and they
18 both show the same thing: That there is extreme
19 polarization between the positions taken by
20 Republican leaders, legislators in the Congress
21 and the position taken by Democrats.

22 It's extreme polarization, as I
23 document in my report, that matches the extreme
24 polarization of the voting -- voting of blacks
25 and whites.

1 Second -- a third area I look at is
2 the rank and file; that is, what are the
3 attitudes with respect to race of Louisianians
4 who are Republicans and Democrats. Again, I find
5 extreme polarization on issues squarely related
6 to race and I document this in two respected
7 studies, the cooperative congressional election
8 study, a standard source. And here in Louisiana,
9 the Riley Center study, they ask different
10 questions, but they come to the same answer
11 again. It's the polarization reflecting the
12 polarization in the vote.

13 Finally, and this is important, I
14 look at the actual results of elections.
15 Republicans are quite dominant in Louisiana
16 winning almost all statewide elections. Winning
17 essentially all legislative elections in white
18 districts, and what is consistent in my findings
19 is that Republicans in all of these areas have
20 not sponsored any winning black Republican
21 candidates.

22 All of the statewide executive
23 offices are owned by whites, both U. S. Senate
24 Offices that are voted statewide are held by
25 whites. Whites win in the white majority

1 districts in the state, House of Representatives
2 and in the state Senate. I even drilled down for
3 more fine grain level, the level that mayoral
4 elections; that is, I looked at mayoral elections
5 in municipalities that were in Louisiana and no
6 blacks are elected in any majority white
7 municipality. Only blacks are elected in
8 majority black municipalities and there are no
9 black Republicans. So I document this at the
10 level of scholarship, at the leadership level, at
11 the rank and file level, at the level of the
12 actual results of elections.

13 Q. Ultimately, Dr. Lichtman, as between
14 race and party, which do you consider to be the
15 driving causal mechanism of Louisiana's polarized
16 voting?

17 A. The driving mechanism is clearly
18 race, as I explained. Party by itself doesn't
19 explain anything. As I said at one time, if
20 racially voting patterns were reversed, it is
21 because of what the parties represent that I
22 document in so many ways that's driving voting.
23 In other words, blacks are voting Democrat in
24 Louisiana, whites are voting Republican and this
25 is not related to Louisiana, by the way, not in

1 spite of race but because of race. Race is at
2 the center of all of this.

3 I also cite scholarship by
4 Dr. Bromage claiming how race is at the center of
5 Republican political strategy. That comes down
6 to the reading of this.

7 Q. You mentioned that you've read the
8 reports written by Dr. Alford in this case,
9 correct?

10 A. Correct.

11 Q. Did anything in Dr. Alford's report
12 change your conclusions about racially polarized
13 voting in Louisiana?

14 A. No. It strengthens it. Let me
15 explain. All of the analyses that Dr. Alford
16 performed show the same thing my report showed.
17 Extreme polarization of between African-Americans
18 and whites in terms of blacks voting Democratic,
19 whites voting Republican in very large
20 majorities.

21 Now, Dr. Alford states or at least
22 implies that the driving force is party not race,
23 but he stops cold there. He never explains or
24 attempts to justify that conclusion. He doesn't
25 look at my analysis history, doesn't look at my

1 analysis of leaders, doesn't look at my analysis
2 of rank and file, doesn't look at my analysis or
3 any analysis in these areas of the actual results
4 of elections.

5 In fact, what's interesting and
6 telling is Dr. Alford looks at, I believe,
7 something like 28 Republican candidacies in his
8 analysis and not one of those Republican
9 candidacies involved a black candidate.

10 Dr. Alford also ignores that part of
11 my initial report that looks at whether or not
12 race can influence voting when the poll party is
13 not an issue. I looked at the 2008 primary,
14 Democratic primary where overwhelmingly blacks
15 participate; and that involved Barack Obama, the
16 African-American, and Mrs. Clinton, the white
17 candidate, and a few other white candidates; and
18 what I found is that African-Americans voted 86
19 percent for Obama and only 30 percent of whites
20 voted for Obama, so within the same party, it was
21 a sharp difference there.

22 I also looked at the subsequent 2008
23 general elections and found that black Democrats
24 voted 98 percent for Obama, but white Democrats
25 only voted 38 percent for Obama, so there isn't

1 critically and inextricably a poll party you can
2 see voters responding on race. Again, Dr. Alford
3 does not consider those results or present any
4 comparable results of his own.

5 Q. Moving to Senate Factor 3,
6 Dr. Lichtman, does Louisiana employ any voting
7 practices that enhance the opportunity for
8 discrimination?

9 A. It does. It employs one of them
10 that's explicitly listed under Senate Factor 3,
11 and that is the use of the majority vote
12 requirement and subsequent runoff elections.

13 Q. What effect does the majority voter
14 requirement have on black and black preferred
15 candidates?

16 A. Well, it means even if a black
17 candidate gets a plurality in the first round as
18 a result of a split among more than one ambitious
19 white candidate, that does not elect that black
20 candidate, but rather that black candidate has to
21 face off one -- one-on-one against a white
22 candidate. And clearly statewide in Louisiana,
23 the white voters dominate in that kind of
24 contest. The African-American candidate has
25 little chance of winning, and I gave three

1 examples of that in my report.

2 Q. You -- what are those three recent
3 examples?

4 A. Yeah. We have the 2015 election for
5 lieutenant governor. The black candidate won the
6 first round by three percentage points, so it was
7 close, but not eyelash, and the candidate lost
8 55-45 in the runoff.

9 We had a 2017 election for
10 treasurer. Black candidate won the first round
11 even more decisively by seven points and was
12 defeated even more decisively in the runoff 56 to
13 44.

14 And, finally, we have the 2017
15 election, the Secretary of State. The black
16 candidate didn't win the first round, but came
17 really close, came within 10,000 votes or so, but
18 got shrouds in the runoff, 59 percent.

19 Q. When was the majority vote adopted
20 in Louisiana?

21 A. It was first adopted in 1975. And
22 the most famous runoff, of course, was in 1991
23 between the Ku Klux Klan candidate David Duke,
24 and I think it was Edwin Edwards who was against
25 him.

1 Q. So was the majority vote requirement
2 adopted in response to the U.S. Supreme Court's
3 Foster decision?

4 A. No. It was adopted more than two
5 decades before; and, as I said, kind of a
6 highlight runoff election that got major national
7 attention occurred several years before that in
8 1991.

9 Q. Moving to Senate Factor 4,
10 Dr. Lichtman, what are your findings on candidate
11 slating in Louisiana's congressional elections?

12 A. Well, I found something rather
13 interesting, that the way Louisiana set up its
14 congressional redistricting plan, it kind of made
15 slating irrelevant and unavailing for black
16 candidates; that is, in District 2, which is
17 overwhelmingly packed with blacks and Democrats
18 slating is irrelevant. It's going to elect a
19 black Democrat; whereas in the five other
20 districts that are overwhelmingly white and have
21 a Republican, slighting is equally irrelevant
22 because a black candidate has no chance
23 essentially to win in districts that are -- R
24 plus 20 or more according to standard political
25 analysis type. That's the partisan voting index

1 that measures the partisan strength of the
2 district, and it's in my report.

3 Q. Next is Senate Factor 5.

4 Dr. Lichtman, what effect does the history of
5 discrimination you described before have on black
6 Louisianians today?

7 A. It has profound effects on black
8 Louisianians today. I document in my report that
9 there are major today socioeconomic disparities
10 between African-Americans and whites in
11 Louisiana, and that extends to almost every area
12 of significance of peoples' lives and political
13 participation and voting. It extends to income,
14 to unemployment, to poverty, to dependence upon
15 welfare, to homeownership, to the availability of
16 vehicles, the availability for broadband
17 internet. It extends to educational attainment
18 and educational proficiency, all these between
19 African-Americans and whites in Louisiana in the
20 present day, and it extends to various measures
21 of health as well.

22 Q. And do these inequities impact black
23 political participation?

24 A. Yes. As I explain in my report,
25 first of all, they -- this isn't the only one,

1 but, first of all, and the most obvious is that
2 they impact the participation rates of blacks
3 versus whites in terms of turnout, and I present
4 data in my report showing differentials between
5 black and white turnout in recent elections in
6 Louisiana that can extend into the double digits
7 and that hadn't really ameliorated itself in
8 recent elections. Other information presented by
9 one of the experts for defendants bolsters that.

10 Q. Are you referring to the report
11 Dr. Solanky and his voter turnout statistics?

12 A. I am. Dr. Solanky presents two
13 tables on voter turnout. I think they are
14 Tables 2 and 4 in his report. One of the tables
15 looks at statewide turnout and finds substantial
16 disparities I did between blacks and whites in
17 their turnout rates. Similarly, he wrote that
18 every congressional district, all six of them,
19 and found that invariably in every one of those
20 six congressional districts, black turnout lagged
21 white turnout sometimes up into the double
22 digits.

23 Q. Is reduced political participation
24 demonstrated in other ways?

25 A. Yes. As I explain in my reports, a

1 lack of sources, lack of educational proficiency,
2 attainment impedes participation in other ways.
3 I give two examples: One is lobbying of public
4 officials, very important for participating in
5 the political process and influencing the
6 outcomes, which, as we see, you know, quite
7 different whites and blacks in Louisiana; and I
8 present survey data showing that whites are
9 substantially more likely in Louisiana to contact
10 public officials. Again, a reflection of all of
11 these many socioeconomic differences.

12 The second area is political
13 contributions. Not surprisingly, the disparity
14 in resources evident between blacks and whites in
15 Louisiana manifests itself; and, again, I present
16 survey data, recent survey data on this, that
17 whites are far more likely than blacks to make
18 political contributions. And, of course, I
19 didn't actually present tables on this, but it
20 certainly makes sense that groups that have lower
21 levels of education, fewer resources makes it
22 more difficult to find candidates to run and to
23 run political campaigns. So while turnout is the
24 most obvious, there are other very important ways
25 in which these disparities reflected

1 discrimination impact, the ability of
2 African-Americans in Louisiana to participate
3 fully in the political process and elect
4 candidates of their choice.

5 MR. HAWLEY:

6 Mr. Martinson, will you please pull
7 up page 85 of GX-3?

8 TRIAL TECH:

9 (Complied.)

10 THE WITNESS:

11 Wow, I actually see it.

12 BY MR. HAWLEY:

13 Q. Excellent. Dr. Lichtman, does this
14 table look familiar to you?

15 A. It does. It's right from the
16 appendix of my report.

17 Q. And what does it show?

18 A. It shows that in critical areas,
19 according to the U.S. news state rankings, these
20 are not outlines, but in other rankings, you have
21 similar answers; and critical areas are very
22 important to a group that's vulnerable like
23 African-Americans and has the burden of very
24 significant socioeconomic disparities. Not only
25 are they facing these present day disparities,

1 but they are dealing with a state that ranks at
2 or near the bottom in critical areas, 45th in
3 health care, 48th in education, 49th in economy,
4 50th in opportunity, 48th in infrastructure, 50th
5 in crime and corrections, 43rd in fiscal
6 stability, 50 in quality of life, 50 overall.

7 This shows the impediments faced by
8 African-Americans in Louisiana and it also
9 documents the present day ramifications of
10 historical and ongoing discrimination in
11 Louisiana.

12 MR. HAWLEY:

13 Thank you, Mr. Martinson. We can
14 pull down GX-3.

15 BY MR. HAWLEY:

16 Q. Moving to Senate Factor 6,
17 Dr. Lichtman, have Louisiana's campaigns been
18 marked been racial appeals?

19 A. Yes. They have been marked by both
20 subtle and overt racial appeal, and almost all my
21 examples except for maybe one are 21st century
22 examples. I'm not going back to the old year of
23 Jim Crow, the old ones from the 1990s. And these
24 examples go all the way up to 2022, and they
25 don't just involve French candidates. You

1 talking about some of the leading Republican
2 politicians in the State of Louisiana:
3 David Vitter, Mike Foster, Steve Scalise, one of
4 the members of the Republican leadership, U.S.
5 representative Mike Johnson, U.S. Senator John
6 Kennedy as well as important Republican
7 affiliated organizations in the State of
8 Louisiana.

9 Q. Is it safe to say then racial
10 appeals have been employed by winning campaigns
11 in Louisiana?

12 A. Absolutely. David Vitter employed
13 this in 2010, and he certainly had a lengthy
14 campaign. Steve Scalise has consistently been
15 winning in Louisiana. Mike Johnson is a sitting
16 U.S. Representative, John Kennedy is a sitting
17 U.S. Senator.

18 Q. Moving down to Senate Factor 7.
19 Have black Louisianians historically been elected
20 to public office?

21 A. Not historically and --

22 Q. Dr. Lichtman?

23 A. I'm sorry. I lost your question
24 there. You -- somehow the technology failed and
25 you blacked out.

1 Q. Perhaps, it was me and not the
2 technology, so I'll go ahead and ask it again.

3 Have black Louisianians historically
4 been elected to public office?

5 A. Not historically, really since
6 reconstruction, and not at present.

7 Q. Is there a disparity between the
8 black share of Louisiana's population and their
9 representation in Congress and the state
10 legislature?

11 A. Yes. When you look at the -- the
12 voting representation of blacks in Louisiana,
13 it's a little bit north of 31 percent, and
14 there's a wide disparity in terms of black
15 representation.

16 Now, I want to be clear. I'm not
17 making a legal conclusion here. In fact,
18 throughout my testimony in the report, I'm never
19 making legal conclusions to the extent I look at
20 things like briefs or court decisions, so
21 substantive, not to draw a conclusion.

22 So I'm not legally saying at all
23 that any group, including African-Americans, must
24 have proportional representation. I am simply
25 responding to the impact of this query which is

1 to consider the extent to which black
2 representatives have been elected to public
3 office in Louisiana.

4 And there is a vast discrepancy
5 between black voting age population and black
6 representation. No black is elected to any
7 statewide executive office in the State of
8 Louisiana. That's a zero percentage. No black
9 is elected statewide to a U. S. Senate position.
10 That is a zero percentage.

11 When you look at the state
12 legislature, blacks are underrepresented by
13 something like four to nine in Senate and house
14 seats are only being elected in majority black
15 districts, which really shut them off and limits
16 their ability to expand their representation.

17 And in terms of the supreme court
18 and other judicial positions in Louisiana, blacks
19 are also substantially underrepresented. And as
20 I mentioned and same thing in -- as I mentioned
21 previously, these are not black Republican.
22 Despite the political strength of Republicans,
23 they are not electing a black Republican.

24 Q. Dr. Lichtman, have any black
25 candidates been elected to office since

1 reconstruction?

2 A. Not that I'm aware of.

3 Q. Moving down --

4 A. I think there were five during
5 reconstruction and none since.

6 Q. Thank you. Moving to Senate Factor
7 8. Based on your analysis, has the State of
8 Louisiana been responsive to the needs of its
9 black citizens?

10 A. Well, I looked at responsiveness in
11 five areas that are fundamental and especially
12 important to a group like African-Americans that
13 already bears the burden of socioeconomic
14 disparities, things like income, poverty,
15 education, homeownership. So I looked at
16 education, healthcare, I looked at economic
17 opportunity, and I looked at environmental
18 pollution and found that in all of those five
19 areas, the state has not been responsive to the
20 particular rights and needs of its
21 African-American residents.

22 Q. And are these inequities in some
23 cases caused by official government policy?

24 A. Absolutely. As I point out in many
25 of these areas, all of these disparities, all of

1 these issues are part and parcel of government
2 policies and government policy with regard to
3 polluting industries in heavily black areas or
4 the long delay in adopting Medicaid expansion,
5 something critical to the health of
6 African-Americans, and so many failures in
7 criminal justice.

8 Q. Dr. Lichtman, would you consider
9 these findings to be either limited or
10 subjective?

11 A. It's certainly not limited. These
12 are areas of fundamental importance to a
13 vulnerable group like African-Americans and they
14 are the kinds of things social scientists would
15 look at. The well-being and life chances of
16 African-Americans are fundamentally effected by
17 criminal justice, healthcare, education, economic
18 opportunity, and all the problems I document for
19 health with environmental pollution, and they are
20 not subjective; that is, for each of these five
21 areas, I provide specific information. I just
22 don't throw out opinion; and it is relevant, I
23 think, that as with the rest of my report. No
24 expert for defendants challenge any of the
25 information that I provided under Factor 8 in my

1 initial report.

2 Q. Lastly, Dr. Lichtman, Senate Factor
3 9. Can the absence of a second black opportunity
4 congressional district be justified by core
5 retention?

6 A. Core retention is a criteria,
7 criteria of choice. It's not legally required.
8 It's not like one person, one vote conformity
9 with the voting rights.

10 As a general matter, states
11 certainly could adopt that as one of their
12 redistricting criteria, but here's the problem:
13 Here in Louisiana, by adopting that the district
14 is heard as fundamental criterion redistricting,
15 that freezes in the existing packing and cracking
16 under the previous plan. That is the previous
17 plan, as I explained at length in my report,
18 packs African-Americans into Congressional
19 District 2 far beyond what is necessary for
20 African-Americans to elect Congress persons of
21 their choice and then cracks African-Americans
22 into overwhelmingly white Republican districts
23 where they have no chance whatsoever, no matter
24 how unhappy they might be with their white
25 Republican representatives, they have no chance

1 to vote them out of office. They are freezing in
2 the inequities that you had previously
3 established.

4 In fact, if core retention was the
5 fundamental talisman for redistricting as opposed
6 to other requirements, then there never would
7 have been a remedy for a discriminatory
8 redistricting plan. You would just be
9 replicating that plan over and over and over
10 again like you are doing here.

11 Q. Dr. Lichtman, are you aware that the
12 previous 2011 congressional plan was pre-cleared
13 by the U.S. Department of Justice?

14 A. Absolutely. But all that means is
15 that the plan was not retro-aggressive. That
16 means that it did not go to zero African-American
17 opportunity districts. As objection letters in
18 this department make it crystal clear or letters
19 not interposing an objection, a preclearance does
20 not mean that a plan is free of violating the
21 Voting Rights Act. It simply means that the plan
22 was not retro-aggressive with respect to the
23 previous plan.

24 Q. Can the current congressional plan
25 be justified by an interest in compactness?

1 A. Absolutely not. As I point out in
2 my original report, by freezing in essentially
3 the same district that you had in the post 2010
4 redistricting plan, you are freezing in place a
5 district that cannot be justified on the
6 traditional ground of compactness. In fact, the
7 district is highly non-compact, as I explain in
8 my report. It reaches out a long finger. It is
9 -- has areas of intrusions that are not smooth or
10 symmetrical. And, in fact, it closely represents
11 from way back when the Elbridge Gerry Salamander
12 that brought on the term gerrymandering in the
13 first place.

14 It was nothing about this district
15 that's frozen in place that could be justified by
16 creating a compact district. That's not
17 surprising when you are packing African-Americans
18 into a district and then cracking them elsewhere.
19 It's not surprising that the district does not
20 conform to compactness. Conceivably in other
21 states and other circumstances you can have a
22 compact district that would pack that, but not
23 here. That's not what was done and the plan
24 cannot be justified on that basis.

25 Q. And just to clarify, the district

1 you are referring to there is the Second
2 Congressional District, the mass majority black
3 congressional district?

4 A. That's correct. It's overwhelmingly
5 black, overwhelmingly Democratic. It's the
6 packed district and all the other districts are
7 the crackers.

8 Q. Is the current black voting age
9 population of that district needed for black
10 voters there to elect their preferred candidate?

11 A. Absolutely not. It's way beyond
12 what is necessary for blacks to elect candidates
13 of choice. I think the analysis that I present
14 in my report represents the fourth highest black
15 population in the country. African-Americans are
16 winning that district by an average of 80 percent
17 or more. No chance that an African-American
18 candidate of choice would not win that district.
19 As I said, the Cook political reforms in terms of
20 their partisan voter index that measures partisan
21 strength, that's that district, about the D plus
22 25. That means it's 25 percent more, 25
23 percentage points more than the average
24 Democratic vote in the last two presidential
25 elections, both of which were majority Democrat.

1 And so -- and if you look also
2 nationwide, as I point out in my report, black
3 candidates of choice almost invariably win even
4 in districts below 50 percent, 40 percent to
5 50 percent. And it's very simple that in the
6 40 percent range, blacks dominate the Democratic
7 primary, get to nominate a candidate of their
8 choice, they then vote overwhelmingly for that
9 candidate. In a general election, you don't need
10 much in the way of white crossover for that
11 candidate to win in a district that's within the
12 40 percent range.

13 Q. Dr. Lichtman, did you review the
14 report prepared by Mr. Hefner in this case?

15 A. I did.

16 Q. And how does Mr. Hefner attempt to
17 analyses communities of interest?

18 A. Yeah. Mr. Hefner indicates in his
19 report that he can't give us a hard and fast
20 objective, specific definition of what
21 constitutes a community of interest. In fact, he
22 says to a great extent up to the perceptions of
23 the people that we are looking at in a given
24 area. He just ticks off some general boxes like
25 politics, economy, culture, residence,

1 occupation. Then in order to analyze communities
2 of interest in the existing plan, I presume,
3 though, he doesn't address my report to say that
4 it wasn't tenuous because of the respective he
5 looks at five broad regions. These regions are
6 much too broad to analyze what's going on within
7 a congressional district, which, of course, cuts
8 across these regions.

9 In addition, it's not good enough to
10 look at regions as compared to one another
11 because they are so big, five of them to the
12 whole state. You've got to look within. This is
13 the standard social science within differences as
14 compared to between differences.

15 So I took, for example, one of his
16 regions anchored in the City of New Orleans and I
17 looked at the extent to which blacks and whites
18 in the City of New Orleans, according to his
19 criteria, basically comes to a community of
20 interest. And, of course, they don't share a
21 common history of discrimination, they don't
22 share a common ancestor, they don't share common
23 politics or political values, they don't -- let
24 me see. They don't have the same occupations.
25 And I drilled further, I looked at do they share

1 the same residence and do they go to the same
2 schools beyond all of these other factors. In
3 other words, to what extent are they really
4 integrated within the City of New Orleans as a
5 community, and I looked at the measures of
6 segregation and found that the measures of
7 segregation were quite extreme in New Orleans.
8 More than 60 percent of blacks would have to
9 relocate during integration, and that there was
10 also similar lack of integration for the schools.

11 So we look at the City of New
12 Orleans as an anchor of one of the five regions.
13 We see blacks and whites have very little in
14 common to constitute within that region a
15 community of interest.

16 Q. And did Mr. Hefner show that black
17 and white Louisianians in the five majority white
18 districts in the congressional map share
19 commonalities?

20 A. No. His analysis couldn't possibly
21 show that because, again, it's based upon these
22 broad regional -- these regional areas which
23 congressional districts cut across and what he
24 doesn't analyze within as opposed to between.

25 So I looked at the commonality

1 between whites and blacks across the regions;
2 and, again, they don't have common ancestry, they
3 don't have common politics, they don't have
4 common experience in the history discrimination,
5 they don't have commonality in terms of the
6 failure of states to meet their particularized
7 needs. I also looked at residential and school
8 segregation across Louisiana and found that
9 blacks and whites don't live together. They
10 don't go to the same schools.

11 I also looked at a variety of other
12 indicators highlighted by Mr. Hefner. I found
13 that across Louisiana blacks and whites don't
14 have the same family structure, they don't have
15 the same levels of income or poverty or
16 dependence upon welfare programs or unemployment.
17 They don't live in the same kinds of homes with
18 African-Americans far more likely to be renters
19 than homeowners. There aren't the same access to
20 vehicles or broadband internet. They don't have
21 the same educational attainment and they don't
22 have the same educational proficiency and they
23 don't work in the same jobs and occupations, so
24 there is no basis for -- Dr. Alford doesn't
25 analyze it and look any deeper. There is no

1 basis for claiming that in these five white
2 Republican dominated districts that the
3 African-Americans in those districts share a
4 community of interest with whites.

5 Q. At the end of the day, Dr. Lichtman,
6 how many of the Senate factors support a finding
7 of vote dilution in the Louisiana?

8 A. Essentially all of them, when I look
9 at the slating factor; and it's important to
10 understand the thing I alluded to earlier in my
11 testimony, that these factors do not operate in
12 isolation. They are suited just -- they combine
13 to impede the opportunities for African-Americans
14 to participate in the process and elect
15 candidates of their choice. So this horrible and
16 ongoing discrimination leads to socioeconomic
17 disparities which in turn lead to impediments for
18 African-Americans to participate in the voting
19 process and elect candidates of their choice,
20 some to the majority vote runoff. Requirement
21 contributes to that and in turn that contributes
22 to a lack of representation in a government
23 dominated by whites at every level in Louisiana
24 which in turn leads to the failure of the states
25 to meet the particularized needs of

1 African-Americans and in turn leads to the
2 adoption of a redistricting plan that freezes in
3 place a plan that packs African-Americans into a
4 non-compact district and then cracks
5 African-Americans into other districts where they
6 have no chance to elect candidates of their
7 choice, standard vote dilution packing and
8 cracking. So you can't just look at these
9 factors in isolation you have to see how that one
10 impacts another.

11 Q. Thank you, Dr. Lichtman.

12 MR. HAWLEY:

13 Your Honor, I'd like to move
14 exhibits GX-3 and GX-31 into evidence.
15 Those are Dr. Lichtman's initial report
16 and his rebuttal expert report.

17 THE COURT:

18 Is there any objection?

19 MR. FARR:

20 No objections, Your Honor.

21 MR. HAWLEY:

22 I have no other questions at this
23 time, Your Honor.

24 THE COURT:

25 Cross-examination?

1 MR. BRADEN:

2 My name is Mark Braden.

3 THE WITNESS:

4 I lost you.

5 THE COURT:

6 We still have you.

7 THE WITNESS:

8 I don't see you for some reason.

9 Our camera may be -- just give us a

10 second.

11 THE COURT:

12 Is that better?

13 THE WITNESS:

14 Much better. Thank you.

15 THE COURT:

16 Spell your last name counsel.

17 MR. BRADEN:

18 Mark Braden, B-R-A-D-E-N, and I

19 represent the defendant intervenor

20 legislature groups.

21 CROSS-EXAMINATION BY MR. BRADEN:

22 Q. Dr. Lichtman, good to see you again.

23 A. Good to see you again. Always a

24 pleasure.

25 Q. Thank you. I'm sorry that you were

1 not able to attend in person. We certainly would
2 have enjoyed your testimony in person here rather
3 than remote. I try not to take up --

4 A. Thank you.

5 Q. -- too much of the rest of your
6 afternoon, but I do have some specific questions.

7 MR. BRADEN:

8 If we could go to your report, in
9 page 28 of your report, if we could bring
10 that up. That's GX-3 or GX-3 or 003, and
11 if we could go to page 28.

12 TRIAL TECH:

13 (Complied.)

14 THE WITNESS:

15 Okay.

16 BY MR. BRADEN:

17 Q. So, and I believe you just testified
18 to this, but let me just simply confirm. It's --
19 you testified as to white crossover voting
20 earlier I believe?

21 A. I testified both to black cohesion
22 and white crossover voting, that's correct.

23 Q. So on your report here, you're
24 projecting in some races white crossover in
25 excess of 25 percent, more than a quarter?

1 A. I'm not projecting. These are exit
2 poll results subsequent to the election. They
3 are not a projection on these elections.

4 Q. Okay. That's correct. And you have
5 a chart showing this too, I believe, this would
6 be chart one?

7 A. Sure. You want to go to that?

8 Q. You should absolutely go to that.
9 If we could bring that up.

10 A. What page?

11 Q. I believe that is 0068, chart one.

12 So --

13 A. Got it.

14 Q. So it's your -- it's your view that
15 the record shows white crossover voting ranging
16 from 20 percent to 26 percent in the three
17 elections on the chart?

18 A. That's correct.

19 Q. Okay. So, and you also believe --
20 if you go to page 62 of your report, and I also
21 believe you just testified to this, but let me
22 just confirm it, that the black candidate of
23 choice can win in a district as low as 40 percent
24 minority population?

25 A. In the 40 percent range. You know,

1 maybe not quite at 40, but certainly in -- below
2 50 percent, in a 40 percent range, absolutely;
3 and the crossover and cohesion numbers bear that
4 out, so you would have 45 percent
5 African-American voters in a district. I could
6 do the math for you --

7 Q. Uh-huh (affirmatively).

8 A. -- as soon as I get on my --

9 Q. Please do.

10 A. Yeah. Okay. So we got 45 percent
11 times 95, that's 42.75, then we can round that
12 off to 43 to make it easy, okay. And then we
13 have 55 percent non-black. And, by the way, the
14 non-black would include not just blacks. You got
15 to understand that it would also include
16 Hispanics and others, but let's just assume it's
17 just blacks and it's 25 percent. So that's 13.75
18 and round it off to make it simple, an even 13.
19 That's 56 percent for the black candidate of
20 choice.

21 Q. Okay. So if I understand those
22 numbers right, there would be no compelling need
23 for the State of Louisiana to create districts of
24 more than 50 percent to elect a black candidate
25 of choice in congressional analysis?

1 A. Well, you would have to do the
2 district specific analysis. This is just
3 generic, but if you could -- in my view, and this
4 is generic, I haven't done the detail
5 district-specific analysis, but, for example, in
6 my North Carolina testimony in the Covington case
7 where the court accepted it, I pointed out indeed
8 African-American candidates could win in the
9 40 percent range, and that was particularized
10 analysis of each district.

11 But I certainly wouldn't rule out if
12 the state could create two districts about
13 45 percent in African-American in their voting
14 age population given that there's going to be
15 Hispanics and others in that district who do tend
16 to vote Democratic. But, again, depending on the
17 district-specific analysis, that could give
18 African-Americans an opportunity to elect
19 candidates of choice again. I'm speaking in
20 narrative.

21 Q. Thank you. Doctor, when were you
22 first contacted about working on Louisiana
23 congressional redistricting this cycle?

24 A. I really don't remember. I've been
25 involved in maybe ten cases in this post 2020 or

1 so, several months ago at least.

2 Q. Okay. Do you know if you were
3 working on this prior to the legislative session
4 that resulted in the passage of the first plan
5 and second plans, the veto-override plan, do you
6 know?

7 A. Refresh me. Is this February 2022?

8 Q. Yeah, February. Were you working in
9 February on it?

10 A. I'm sure I was working in February.

11 Q. Okay. And do you know who contacted
12 you in regards to that?

13 A. The alliance attorneys.

14 Q. Okay. And did you play any role or
15 provide any information to the legislature during
16 the process?

17 A. No.

18 Q. So is this a little like déjà vu
19 with you? Weren't you the expert witness in 1990
20 on the Louisiana congressional redistricting?

21 A. I don't remember it very well, but
22 that was one of those short cases when working
23 for the United States Department of Justice, and
24 I think it was a very different -- and I
25 think...it was very different. I don't remember

1 that specific case, but I'm pretty sure I working
2 for Justice and I don't think it was 30 years
3 ago, but I don't remember.

4 THE COURT:

5 Just a minute. Okay. We -- she
6 wasn't able to take any of that testimony.
7 Dr. Lichtman, is there a possibility that
8 you are interfering maybe with your
9 microphone or something? Because we --
10 the court reporter, none of us could make
11 out any of that, any of your last answer.

12 THE WITNESS:

13 Oh. I didn't hear anything. I can
14 turn it down more if you want.

15 THE COURT:

16 No, I don't think it's --

17 THE WITNESS:

18 I'm 75 and technologically
19 challenged. Is it better, Your Honor?

20 THE COURT:

21 Yes, it seems better.

22 THE WITNESS:

23 I'll try it again. Let me know if
24 it works. I'll try to replicate it.

25 THE COURT:

1 If you have --

2 THE WITNESS:

3 So, as I said, I don't remember -- I
4 don't remember it well, but I do remember
5 I was hired I believe by the United States
6 Department of Justice to defend their
7 policies, and I don't believe that we were
8 plaintiffs in that case. We might have
9 been defendants and, you know, like that
10 whole round of those short cases --

11 BY MR. BRADEN:

12 Q. You don't --

13 A. Defendants had very little chance.

14 Q. Might you have been hired by the
15 Democratic leadership of the state, let's say the
16 governor, the legislature, the defendants in the
17 case?

18 A. Anything is possible. I know for
19 some of those cases I was hired by justice. I
20 don't remember, because it was 30 years ago, who
21 I was hired by in this case. I kind of assumed
22 it was justice, but I don't recall.

23 Q. I would represent to you and to the
24 court, my understanding is that you were an
25 expert for the defendants, which was the State of

1 Louisiana, at least that's the way --

2 A. I know I represented the defendants.

3 I don't know if I was hired by the State of

4 Louisiana or by justice. I won't argue with you

5 because I don't have a recollection.

6 Q. Yeah.

7 A. So whatever you say, I'm not going

8 to disagree.

9 Q. Do you remember that you were

10 arguing on behalf of a plan, a 1990s plan that

11 had seven districts of which two were black and

12 five white?

13 A. I don't remember. I don't remember

14 that detail; but, again, if you want to represent

15 that --

16 Q. Okay.

17 A. -- I'm not going to argue, but I

18 don't recall the specific composition. When you

19 say two are black, would that be majority

20 black --

21 Q. Yes, two.

22 A. -- or 40 percent black? I don't

23 remember.

24 Q. Yes. Two black majority. There

25 were more congressional districts, one more in

1 that cycle, so at that time, my understanding of
2 reading the record and -- is that you were
3 working as an expert for the defendants trying to
4 defend the two black districts in the
5 7th District plan and that the court held that
6 the plan was an institutional gerrymander. Does
7 that ring any bells with you?

8 A. Not all of this, but definitely I
9 treated that case like all the other cases.

10 Q. And now you are in the court here
11 with the plaintiffs who are arguing for two black
12 seats in a six member district plan, correct?

13 A. I have not examined any plans
14 presented by plaintiffs, but I presume that's
15 what we are doing.

16 Q. Okay. And you don't remember
17 whether or not the court in the Hayes case versus
18 the State of Louisiana in 1993, you don't
19 remember whether or not the court credited your
20 testimony?

21 A. I'm sure they didn't. We lost the
22 case.

23 Q. Yeah.

24 A. Normally when you lose a case, work
25 was not credited, your testimony, but that's all

1 I remember.

2 Q. Yes.

3 MR. BRADEN:

4 If we could -- I think maybe I can
5 refresh your recollection. If you go to
6 -- we can bring up a copy of the Hays
7 versus State of Louisiana. It's at 839
8 FED SUP 1188. I wish I could hand you a
9 copy of it, but I believe we can bring it
10 up on the screen.

11 TRIAL TECH:

12 (Complied.)

13 BY MR. BRADEN:

14 Q. And just really quickly, I believe
15 there's a Footnote 48 at page 1203, if I've got
16 it right. So if you could take a minute and look
17 at paragraph 48 -- Footnote 48 and see whether or
18 not that refreshes your recollection as to the
19 court's view on your testimony.

20 A. I don't see it. I'm sorry. I don't
21 see the heading.

22 Q. Okay. There's a Footnote 48 either
23 on I believe it's -- bring up page 46 of 50. I'm
24 sorry. I'm looking at this item in my hand and
25 it doesn't do you any good. I printed a copy out

1 here for you, but it doesn't do you much good to
2 try to hand you a printed copy I presume.

3 MR. BRADEN:

4 There we are. That's Footnote 48.

5 Could you just highlight it for him and
6 bring it up and make it larger? He has
7 probably the same eyesight I do.

8 TRIAL TECH:

9 (Complied.)

10 THE WITNESS:

11 Okay. Now, I can see it.

12 BY MR. BRADEN:

13 Q. Okay. Great. And it's easy to pick
14 out, there's a couple of references to you which
15 have been italicized.

16 A. Let me read it.

17 Q. Yeah.

18 A. Because I don't remember it.

19 Q. Great.

20 A. But I'm sure this will help refresh
21 my memory, but I need a minute or two.

22 Q. Oh, absolutely.

23 A. I'm old and slow.

24 Q. Absolutely.

25 A. Got it.

1 Q. Okay.

2 A. It doesn't refresh my memory
3 particularly, but I understand it the same, so
4 you can ask me questions.

5 Q. So --

6 A. It's pretty self explanatory.

7 Q. And it should be. I believe here
8 that the court rejected your expert testimony in
9 support of a plan with two black seats; am I
10 correct?

11 A. (Witness nodded head affirmatively.)

12 THE COURT:

13 You have to --

14 THE WITNESS:

15 That's correct. But that's the
16 exact opposite of what we have here where
17 the defendants have packed blacks into a
18 single district far beyond what was
19 necessary to elect black candidates of
20 choice, so I don't see how this criticism
21 -- I'm not disputing what the court says
22 relates to the current situation in
23 Louisiana.

24 THE COURT:

25 Counsel, Mr. Hawley is about to

1 internally combust.

2 MR. HAWLEY:

3 I'm sorry. Mr. Braden, do you have
4 another copy of the --

5 THE COURT:

6 Mr. Hawley, we can't hear you.

7 MR. HAWLEY:

8 I'm sorry. I was just asking
9 Mr. Braden for a copy of the
10 demonstrative.

11 MR. BRADEN:

12 My apologies. I actually should
13 have given it to you upfront.

14 MR. HAWLEY:

15 Thank you.

16 THE COURT:

17 Okay. Emergency averted. You may
18 continue.

19 BY MR. BRADEN:

20 Q. And so you don't remember holding
21 this case rejecting the plan as a racial
22 gerrymander, had two black seats; you just don't
23 have any recollection of that?

24 A. I do remember the state lost the
25 case. I don't remember the details of the

1 finding, but it probably was racial
2 gerrymandering. I think it's the same case as
3 what the state is doing now.

4 Q. If you can't remember, we will just
5 move on from there.

6 In -- in your report in this case,
7 do you provide any geographic analysis showing
8 whether or not the black population has become
9 more compact in the case or geographically
10 concentrated since the 1990 geography?

11 A. I've not analyzed plans --

12 Q. Okay.

13 A. -- in this case, so --

14 Q. It's really more --

15 A. -- I can't answer that question --

16 Q. Okay.

17 A. -- one way or the other. You have
18 to ask the plan drawers.

19 Q. I really wasn't asking you about the
20 plans. I was asking you about the dispersion of
21 the black population in the State of Louisiana.
22 Do you have any familiarity with that?

23 A. I didn't look at that.

24 Q. Okay. And I just -- let me use
25 Maryland as an example. So maybe this will

1 enable you to answer the question as to whether
2 there's been a change in that.

3 In Maryland, the black population is
4 essentially concentrated in -- in one or two
5 urban areas, depending how you define urban
6 areas, the Washington Baltimore corridor and the
7 rest is predominantly white.

8 A. Washington, although it's not quite
9 the corridor because you have in the Washington
10 suburbs two very large counties, Prince George's
11 County and Montgomery County, so not necessarily
12 the corridor. And Prince George's County is very
13 heavily black; and while Montgomery County is not
14 majority black, it has a very substantial black
15 population as well and it's very big. It's got
16 over a million persons in-large geographically,
17 so it's certainly not true that in my home state
18 the African-American population is very narrowly
19 concentrated in confined geographical areas.

20 Q. So you wouldn't -- you don't believe
21 that a majority of the black population in
22 Maryland lives in -- in what would be considered
23 to be urban or suburban areas?

24 A. It's -- you know, Montgomery, you
25 can call urban. It's really suburban. Certainly

1 there is a correlation between geographic area
2 and black population, absolutely. There
3 certainly is a degree of concentration there that
4 can effect the drawing of districts.

5 Q. So --

6 A. But it's not just confined to a very
7 narrowly circumscribed city.

8 Q. And so you don't understand -- I'm
9 going to waste your time here for just a second.
10 You don't understand or not -- you didn't opine
11 in any way that the -- that Louisiana is
12 different than many other states in the sense
13 that it has large urban black populations in a
14 couple locations but very dispersed rural black
15 populations in virtually every parish in the
16 state?

17 A. I can't answer your question. As I
18 told you, that's beyond the scope --

19 Q. Beyond the scope?

20 A. -- of my expertise.

21 Q. So do you happen to know how many
22 black elected officials there are in the state?

23 A. Not for every jurisdiction, but I
24 can tell you there is none statewide, none in the
25 U. S. Senate, one in Congress and something like

1 34 maybe in the legislature and something like 7
2 in the -- I forget how many, but over 20, close
3 to 30 mayoral situations and municipalities that
4 are comfortable overall.

5 THE COURT:

6 Mr. Braden, I'm going to ask that
7 you speak up or use the microphone. I'm
8 having trouble hearing you and I know
9 Dr. Lichtman has already said that he has
10 a -- a little bit challenge in determining
11 his ability in hearing.

12 MR. BRADEN:

13 My apologies.

14 THE COURT:

15 Thank you.

16 BY MR. BRADEN:

17 Q. Now, as to gubernatorial elections
18 in Louisiana, did the candidate of black choice
19 win?

20 A. In which elections?

21 Q. The last two gubernatorial races.

22 A. In the majority races?

23 Q. Last two races for governor in the
24 State of Louisiana.

25 A. Oh, yes, of course.

1 John Bel Edwards, you know, one swallow does not
2 make a sprig, and he's not black.

3 Q. Okay. And you talked about racial
4 -- from the 1990s, the runoff race between the
5 Klan candidate and Edwin Edwards; and I guess we
6 could come up with some colorful descriptions of
7 that race, but we won't go that way. But my
8 understanding is you testified that it showed the
9 impact of slating, but didn't the black preferred
10 candidate win in that race too?

11 A. I did not testify at all about that
12 race as an example of slating. I simply said in
13 a different factor, factor relating to runoff and
14 at-large elections. And it's Factor 3 not Factor
15 4 that that was an example of a runoff election
16 that caught nationwide attention. That was well
17 before the Foster decision. I didn't put it in
18 the context of slating at all.

19 Q. And so I heard you say that -- that
20 black candidates don't win at-large elections.

21 Do you know whether the mayor -- I
22 don't think I can see it. I don't think we are
23 in East Baton Rouge. I think we are in
24 Baton Rouge parish. I could be wrong about that,
25 but my understanding is that the mayor of East

1 Baton Rouge is black. Do you know that?

2 A. Let me check. I might have that
3 information. I'm not sure.

4 THE COURT:

5 We are in -- we are in East Baton
6 Rouge Parish, and the Mayor Broome, over
7 greater Baton Rouge --

8 THE WITNESS:

9 Yes, ma'am.

10 THE COURT:

11 -- is African-American.

12 THE WITNESS:

13 You are talking about the mayor of
14 Baton Rouge city?

15 MR. BRADEN:

16 I don't know. The judge graciously
17 answered the question for us.

18 THE COURT:

19 No, I didn't answer. I just was
20 correcting you that we are not in Baton
21 Rouge Parish. There's an East Baton Rouge
22 Parish and there's a West Baton Rouge
23 Parish and the Mississippi River, and one
24 bridge connects those. Actually, it's two
25 bridges I guess.

1 BY MR. BRADEN:

2 Q. And I understood from you that the
3 mayor of East Baton Rouge is black?

4 A. I can answer you. Yeah, Baton Rouge
5 is a black city and likely a black mayor. That's
6 exactly my point. Blacks can win in black
7 jurisdictions and they are getting shut out in
8 white districts, statewide in white
9 jurisdictions, and none of the blacks are
10 Republicans.

11 Q. Is it your position that it's a
12 majority black parish?

13 A. I didn't look at the parish. I
14 looked at the city.

15 MR. BRADEN:

16 Okay. No further questions,
17 Your Honor.

18 THE COURT:

19 Okay. Is there any redirect?

20 MR. HAWLEY:

21 It's brief, Your Honor. Thank you.

22 REDIRECT EXAMINATION BY MR. HAWLEY:

23 Q. Dr. Lichtman, just a few moments ago
24 Mr. Braden asked you about some of the
25 particulars of your expert testimony in the Hays

1 case in the '90s. Do you recall that?

2 A. I recall the questions, yeah.

3 Q. Yes?

4 A. And it did help me refresh a bit on
5 Hays, which I didn't remember in detail.

6 Q. Here I will represent to you, since
7 we no longer have it on the screen, that the
8 court characterized the defendants' objective in
9 that case as to, quote, prove that factors other
10 than race could explain District 4."

11 My question is, is that the inquiry
12 you were asked to undertake in this case, to
13 explain what factors explain a challenged
14 district?

15 A. If you correctly -- and I don't
16 remember, but I assume you correctly
17 characterized that my query here is quite
18 different.

19 Q. And what is your inquiry here?

20 A. Well, my inquiry here is to look at
21 the Senate factors and with respect to the
22 tenuousness of the plan to determine whether or
23 not the five white majority districts established
24 communities of interest between blacks and whites
25 to assess the rationale of maintaining continuity

1 of districts and to assess the rationale with
2 respect to the traditional redistricting
3 requirement of the factors, all eight or the
4 Senate factors related to different matters.

5 Q. And ultimately the Senate factor
6 inquires assist in considerations; that is to
7 say, no matter what the particular legal claim or
8 a particular district at issue; is that fair to
9 say?

10 A. I don't want to give you a legal
11 opinion. I can say I have done Senate factor
12 analyses under very different cases and
13 situations.

14 MR. HAWLEY:

15 Thank you, Dr. Lichtman. No further
16 questions. Thank you.

17 THE COURT:

18 Okay. Thank you, Dr. Lichtman. We
19 are going to let you go for the afternoon.
20 Okay. It's --

21 THE WITNESS:

22 Thank you, Your Honor.

23 THE COURT:

24 Thank you, sir. It's quarter to
25 5:00. Have we got any other witnesses

1 that we can go until 5:30?

2 MR. RIZZUTO:

3 Yes, Your Honor. My name is Ryan

4 Rizzuto, and I represent the Robinson

5 plaintiffs. This is my first appearance

6 before the court.

7 THE COURT:

8 Give me the last name, spell it for

9 me.

10 MR. RIZZUTO:

11 R-I-Z-Z-U-T-O.

12 THE COURT:

13 Okay. Mr. Rizzuto, your witness.

14 MR. RIZZUTO:

15 Plaintiffs call Dr. R. Blakeslee

16 Gilpin, G-I-L-P-I-N.

17 ROBERT BLAKESLEE GILPIN, Ph.D,

18 after having first been duly sworn by the

19 above-mentioned Court Reporter did testify as

20 follows:

21 DIRECT EXAMINATION BY MR. RIZZUTO:

22 Q. Could you please state your full

23 name for the record?

24 A. Yep. My name is Robert Blakeslee

25 Gilpin. The standard spelling of Robert,

1 B-L-A-K-E-S-L-E-E, G-I-L-P-I-N.

2 THE COURT:

3 Go ahead, counsel.

4 DIRECT EXAMINATION BY MR.

5 Q. Good afternoon, Dr. Gilpin. Could
6 you please introduce yourself to the court?

7 A. Yes. My name is Dr. Robert
8 Blakeslee Gilpin. I am an associate professor of
9 history at Tulane University and the director of
10 graduate studies at the history department there.

11 Q. Can you tell us about your
12 educational background?

13 A. Yes. I received my BA and MA
14 simultaneously from Yale University in 2001 in
15 American history, M fill from Cambridge
16 University in 2002 in British history, and then
17 an M fill and a PhD from Yale University in 2009
18 in American History.

19 Q. And you mentioned that you were at
20 Tulane. Could you speak to your role there?

21 A. Yes. So I teach a variety of
22 classes on American history, U.S. history and the
23 laws, civil War reconstruction, southern
24 intellectual and cultural history and mentor and
25 advise undergraduate and graduate students.

1 Q. And do any of those courses you just
2 mentioned cover Louisiana's history of official
3 discrimination against black voters?

4 A. Yes. All of the courses that I just
5 mentioned touch directly on that subject.

6 Q. Have you ever written anything that
7 has covered the history of voters registration in
8 Louisiana?

9 A. Yes. I've written chapters and
10 volumes about the reconstruction period moving
11 into the 20th century that deal directly with
12 that subject matter.

13 Q. Professor Gilpin, is this your first
14 time testifying as an expert witness in a case?

15 A. It is indeed.

16 MR. RIZZUTO:

17 Your Honor, we tender Professor
18 Gilpin as an expert in southern history.

19 THE COURT:

20 Any objection?

21 MS. MCKNIGHT:

22 We have no objection.

23 THE COURT:

24 Okay. Dr. Gilpin will be admitted
25 without any objection on that matter.

1 MR. RIZZUTO:

2 Your Honor, if it please the court,
3 may I approach the witness to hand him
4 what we marked as PR-13 and 88?

5 THE COURT:

6 You may.

7 BY MR. RIZZUTO:

8 Q. Now, Professor Gilpin, I just handed
9 you what is marked as PR-13 and PR-88. Do you
10 recognize those?

11 A. Yes, I do.

12 Q. What's PR-13?

13 A. PR-13 is the main report I was asked
14 to produce for this case.

15 Q. And PR-88?

16 A. Is the supplemental report I was
17 asked to produce.

18 Q. Now, let's start with your first
19 report, PR-13. Can you speak to its purpose?

20 A. The purpose of the report was to
21 talk about the State of Louisiana's long history
22 of discrimination against its black citizens and
23 specifically how that history fed into voter
24 discrimination, particularly after the franchise
25 was granted in the late 1860s.

1 Q. And what was the scope of your
2 inquiry in that report?

3 A. So my report began in pre-American
4 Louisiana, which is really when the racial
5 categories that are going to later be used by the
6 State of Louisiana both pre-suffrage and
7 post-suffrage were created and sort of honed by
8 the state and are used up until the present day.

9 Q. Broadly speaking, what were your
10 conclusions?

11 A. So from the very beginning, the
12 state has been quite seriously invested in
13 categorizing its citizens by race and
14 specifically to use those categories to
15 discriminate against black freedoms and after the
16 1860s, particularly or specifically against the
17 right to vote. So that was really the target of
18 a huge number of efforts by the State of
19 Louisiana throughout the post 1868 period.

20 Q. I'd like to start at the beginning
21 of that history. Dr. Gilpin, can you speak to
22 the historical roots of racial discrimination in
23 Louisiana?

24 A. Yeah. So, as I was just mentioning,
25 that process began with categorizing its

1 citizens; and there was a period of fluidity
2 before the state became much more rigid about
3 defining who was black and who was white and
4 there was a middle category that basically began
5 to be erased in the 1840s and '50s when the state
6 became very concerned with the influx of
7 immigrants that didn't really fit any of the
8 categories they had.

9 And that was when the State of
10 Louisiana created a lot of methods and tools that
11 they would use to disenfranchise black voters, so
12 property requirements, poll taxes, and things
13 like this, literacy tests were actually developed
14 in the 1840s and '50s and then repurposed later
15 on. So that's really the antebellum roots of
16 modern voter discrimination in the State of
17 Louisiana.

18 Q. What's the purpose within your
19 report of letting out this antebellum history?

20 A. Well, as I was just mentioning, the
21 sort of connection between these things is often
22 quite concrete. So literally the white elites in
23 the post-bellum period simply just sort of went
24 back into their own history to find these tools
25 and repurpose them, but basically that the -- the

1 foundation of both racial categorization and
2 voter discrimination itself is really firmly
3 established in the antebellum period and then
4 carried through very kind of unintentionally into
5 the post-bellum period.

6 Q. Now, moving forward in history to
7 efforts of before, how did voter discrimination
8 against black Louisianans evolve after the Civil
9 War?

10 A. So in the first constitutional
11 regression, which had actually happened in the
12 middle of the Civil War, was the first effort by
13 white Louisianans to kind of refashion old laws
14 and maintain some of the racial hierarchies that
15 they established in the antebellum period.

16 The black codes that were written in
17 1865 are the first examples of that and are
18 really quite explicitly understood as a way of
19 commonly bringing together as much of the slavery
20 rules that they could. It's not until the 1890s
21 that those had kind of taken a much more
22 explicitly political form, and that is most
23 notably with the adoption of the grandfather
24 clause, which was created by white Louisianians
25 in 1898 that establishes a rule where black

1 voters have to be able to trace their ancestry of
2 either a father or a grandfather that had to have
3 voted before January 1st of 1867, which was an
4 illogical impossibility because black people
5 can't -- could not vote before that date. So it
6 was an effective way of taking black Louisianans
7 out of politics.

8 At the time of the grandfather
9 clause, they represented about 44 percent of the
10 electorate in Louisiana, which has never been
11 reached ever since then. Within two years, that
12 was below 1 percent because of the effectiveness
13 of the grandfather clause, so it took black
14 voters from about 130,000 down to about 5,000 in
15 two -- just two years.

16 Q. And did tactics like the grandfather
17 clause and the other tactics you mentioned
18 continue into the 20th century?

19 A. Yes. The grandfather clause was
20 struck down by the Supreme Court in 1915, but the
21 variety of total conventions that Louisianians
22 had developed in the 1840s and '50s, there were
23 some tests, poll taxes. Understanding clauses
24 and really investing a lot more power in white
25 registrars of voters was something that was --

1 really the weight of the state was putting behind
2 that, so to the degree where you could have a
3 white registrar reject a voter if they could not
4 count the number of jelly beans in a jar that was
5 at the polling station.

6 Q. Now, moving a bit farther into the
7 20th century, how did voting discrimination in
8 Louisiana change after the Voting Rights Act was
9 passed in 1965?

10 A. So it's not so much the
11 discrimination change, especially in terms of
12 magnitude or the determination by the State of
13 Louisiana to disenfranchise its black voters.
14 What the Voting Rights Act really did was make
15 both citizens in Louisiana in both the state and
16 federal government aware of these attempts to
17 disenfranchise black voters. And this is
18 particularly through the pre-clearance clause
19 that made it possible for the -- where sort of
20 the kind of dizzying extent of these efforts were
21 kind of brought to light, and then also it gave a
22 possibility for those efforts to disenfranchise
23 black voters, to actually contest it in court.

24 Q. Can you speak about any of these
25 Section 2 violations that you note in your

1 report?

2 A. Yeah. So I think the one that I
3 find most compelling is the -- is the Chisom
4 versus Roemer case of 1991, because it bears such
5 a strong resemblance to things that have happened
6 in the last calendar year in the State of
7 Louisiana, whether up in West Monroe or in
8 Baldwin.

9 So these are the exact same themes
10 30 years apart. The first one we were made aware
11 of because of pre-clearance. The second one is
12 just through the doggedness of -- I'm sure some
13 of the people in this room could actually bring
14 those kinds of things to light because the
15 determination of the state has remained
16 inexplicably unaltered. The mechanism of making
17 us aware of them has drastically changed after
18 2013.

19 Q. Now, turning to your second report,
20 PR-88, what was the purpose of that report?

21 A. So that report is -- the purpose was
22 to talk about the history of racial
23 classification by the State of Louisiana, again,
24 stretching back to the pre-American Louisiana,
25 which is when these racial categories sort of

1 started to be formulated; but particularly after
2 the Treadaway case of 1910, which is when the
3 State of Louisiana adopted this one-drop rule.
4 If anyone could be proven to have 1 percent
5 ancestry, they were going to be considered black
6 by the State of Louisiana.

7 Q. Now, how long was this one-drop rule
8 on analog and in place in Louisiana?

9 A. So that remained in place until 1970
10 when it was replaced by the 132nd law. That was
11 very vigorously contested in the 1970s actually
12 by white Louisianians or people who considered
13 themselves white who sued the state to try and be
14 reclassified. That law was changed in 1983 to
15 try to lower the standard by which -- what the
16 state would accept, although during that case I
17 think quite interestingly the state was citing
18 ancestry going back to Mobile, Alabama in 1760 to
19 prove that the citizen in question was black, at
20 least by the standards of the state.

21 So, again, it's really interesting
22 how invested the State of Louisiana is in those
23 categories and how they were used quite
24 explicitly then to disenfranchise voters.

25 Q. Stepping back a moment to something

1 more generally, what was your conclusion in your
2 report?

3 A. Most particularly that those
4 categories have been used over -- certainly over
5 the course of the 20th and 21st centuries to
6 disenfranchise black voters, but overall that
7 there is just such a basic absurdity to racial
8 categorization because there's no real science
9 behind it, but the state remains very invested in
10 making those distinguishing categories so that
11 they then can be used in cases like this.

12 Q. Did you find anything related to how
13 the history may effect the ways that multiracial
14 Louisianians might identify today?

15 A. Yeah. Well, I think one of the
16 things you have to take into consideration, we
17 are talking about over 300 years of history and
18 Louisianians of all colors are keenly aware of
19 the consequences of what their category is both
20 in terms of their self identification and how the
21 state identifies them. And so there's just --
22 there is an enormous amount at stake in terms of
23 what they identify as and what the state
24 identifies them, and they are very aware of that
25 and that sort of guides a lot of the idea going

1 forward.

2 Q. And just to be clear, this history
3 timeline is the history you discussed in your
4 original report?

5 A. Yes. I mean, I think it is -- it's
6 pretty much -- it's a real cornerstone of
7 everything that's discussed in the first report
8 is what I'm discussing in the second report.

9 Q. Dr. Gilpin, how would you respond to
10 the critique that your reports don't include
11 enough examples of race discrimination?

12 A. Well, I disagree pretty
13 fundamentally with that premise most particularly
14 because after the Voting Rights Act was renewed
15 in 1982, to me, everything that's come since then
16 -- and we are talking about the last four
17 decades -- I recall in recent history and also
18 particularly I recall that because of the
19 remarkable consistency with which white
20 Louisianians have attempted to disenfranchise
21 black voters. This is not something that sort of
22 stopped at any given point, but it's really been
23 a through line in the entire history of Louisiana
24 even if we are talking about pre-suffrage, but
25 particularly when we are talking about post 1982

1 where the state has just displayed a remarkable
2 degree of continuity, doggedness, determination
3 to stop black people from voting.

4 Q. Could you please outline for the
5 court one of the examples of recent
6 discrimination that you outline in your report?

7 A. Sure. I mean, I mentioned a few
8 minutes ago the West Monroe Baldwin case which I
9 think is probably the most scrutinized thing
10 that's been used by the Louisiana politicians to
11 try and disenfranchise black voters. That is the
12 method of elections in the state and in West
13 Monroe. The Hardy versus Edwards case is also a
14 very, very recent example. We are talking about
15 in the last calendar year of these, of a variety
16 of schemes, basically whatever people can come up
17 with in order to disenfranchise black voters.
18 That's always the goal and it's really whatever
19 tools are at their disposal to do that they will
20 try to utilize.

21 Q. Dr. Gilpin, in your view, are
22 similar practices made by -- made against black
23 voters a thing of the past?

24 A. I would say they are very much the
25 defining characteristics of Louisiana politics

1 past, present and certainly it looks like in the
2 future.

3 MR. RIZZUTO:

4 Thank you, Dr. Gilpin. At this
5 time, we move PR-13 and PR-88 into
6 evidence.

7 THE COURT:

8 Any objections?

9 MS. MCKNIGHT:

10 No objection, Your Honor.

11 THE COURT:

12 PR-13 and PR-88 admitted.

13 MR. RIZZUTO:

14 Thank you, Your Honor.

15 THE COURT:

16 Any cross?

17 MS. MCKNIGHT:

18 Yes, ma'am.

19 CROSS-EXAMINATION BY MS. MCKNIGHT:

20 Q. Good afternoon, Dr. Gilpin. I'm
21 Kate McKnight with legislative intervenors, and I
22 have a few questions for you this afternoon or
23 this evening.

24 A. Okay.

25 Q. Let's start with PR-13, your report

1 in this case. We are going to start on page 39.

2 MS. MCKNIGHT:

3 He needs to be switched.

4 TRIAL TECH:

5 (Complied.)

6 MS. MCKNIGHT:

7 Thank you.

8 BY MS. MCKNIGHT:

9 Q. So, Dr. Gilpin, you include in your
10 report a section titled Voting Rights in
11 Louisiana, 1982 to 2013. Do you see that?

12 A. I do.

13 Q. Okay. And in this section, you
14 study case law developments related to the Voting
15 Rights Act, right?

16 A. Yeah. I think that's one of the
17 things that are examined in this section.

18 Q. Okay. Now, during this time period
19 following the 1990 census, Louisiana tried to
20 comply with a Voting Rights Act by drawing two
21 majority-minority congressional districts,
22 correct?

23 A. I mean, I am aware of this. I'm not
24 sure it's discussed at any length in the report.

25 Q. Okay. And Louisiana's effort to

1 draw a second congressional district after the
2 1990 census was struck down by courts as a racial
3 gerrymander, correct?

4 A. Again, I'm not sure if that's in the
5 scope of this report. I'm dimly aware of this,
6 otherwise.

7 Q. Okay. So a Voting Rights Act case
8 in the early 1990s would not be within the scope
9 of your report, which includes a section titled
10 Voting Rights in Louisiana, 1982 to 2013?

11 A. No. I mean, it would fall under
12 that heading perfectly comfortably, but it may
13 not have been included for whatever reason.

14 Q. And what might that reason be?

15 A. Possibly that I overlooked it;
16 possibly that the report was getting quite long.
17 I'm not entirely sure.

18 Q. Okay. So I understand that in your
19 report you do not address Louisiana's effort to
20 comply with the Voting Rights Act by creating a
21 second majority-minority district following the
22 1990 census, correct?

23 A. I mean, if you didn't find it, I'm
24 not sure that it's in there.

25 Q. Okay. And, in fact, you do not even

1 -- you cite a lot of case law, but you did not
2 even cite one of the Hays cases in the Hays line
3 of cases, correct?

4 A. No. I don't believe that I did cite
5 any of the Hays cases.

6 Q. Okay. Thank you. Let's move on to
7 page 45 in your report.

8 A. (Complied.)

9 Q. Dr. Gilpin, you note toward the end
10 of the fourth paragraph, the one that starts "The
11 hotly contested," you note, quote, the changes to
12 the VRA in the wake of Shelby County meant that
13 states were no longer under the burden of proving
14 their laws to be nondiscriminatory." Do you see
15 that?

16 A. Yes, I do.

17 Q. Okay. So before Shelby County,
18 which was a 2013 Supreme Court opinion, Louisiana
19 was under a burden of proving its voting laws to
20 be nondiscriminatory, correct?

21 A. Yeah. That's my understanding of
22 the Section 5 pre-clearance.

23 Q. Okay. And in 2011, so before Shelby
24 County, Louisiana's Congressional Map was
25 pre-clear, correct?

1 A. I'm not sure that I discuss that in
2 this report. I mean, I heard it in the courtroom
3 today.

4 Q. Okay. So you understand that to be
5 true?

6 A. Sure.

7 MS. MCKNIGHT:

8 Okay. Thank you. No further
9 questions, Dr. Gilpin.

10 THE COURT:

11 Any redirect?

12 MR. RIZZUTO:

13 No redirect, Your Honor.

14 THE COURT:

15 Okay. Thank you. Dr. Gilpin, you
16 may go or you are released. Next witness?

17 MR. SAVITT:

18 Good afternoon, Your Honor. I'm
19 making my first appearance. I'm Adam
20 Savitt. That's S-A-V-I-T-T, on behalf of
21 the Robinson plaintiffs, and we would like
22 to call Ashley Shelton.

23 ASHLEY SHELTON,
24 after having first been duly sworn by the
25 above-mentioned Court Reporter did testify as

1 follows:

2 THE DEPUTY:

3 And would you please state your name
4 and spell it for the record, please?

5 THE WITNESS:

6 Sure. My name is Ashley,
7 A-S-H-L-E-Y, Shelton, S-H-E-L-T-O-N.

8 DIRECT EXAMINATION BY MR. SAVITT:

9 Q. Good afternoon, Ms. Shelton.

10 A. Good afternoon.

11 MR. SAVITT:

12 Could we please pull up PR
13 Exhibit 11?

14 TRIAL TECH:

15 (Complied.)

16 BY MR. SAVITT:

17 Q. And do you recognize this document,
18 Ms. Shelton?

19 A. I do.

20 Q. And what is it?

21 A. It is my declaration.

22 Q. Okay. Thank you very much. We can
23 put that down. Ms. Shelton, where do you live?

24 A. In Baton Rouge.

25 Q. And how long have you lived in

1 Baton Rouge?

2 A. My whole life.

3 Q. Okay. And thank you. And what is
4 your current job title?

5 A. I am the president and CEO for the
6 Power Coalition of Equity and Justice.

7 Q. And what does the Power Coalition
8 do?

9 A. We are a voting educational
10 organization. We work with historically
11 disenfranchised communities throughout Louisiana
12 engaging, helping connect them back to their
13 voice, their vote and their power.

14 Q. Thank you. And would you say you
15 focus on communities of color in your Power
16 Coalition?

17 A. Yes.

18 Q. And, Ms. Shelton, why are you -- are
19 you here today?

20 A. I am here today because we did a ton
21 of work working across communities in the State
22 of Louisiana. I participated in redistricting
23 last cycle, and I probably could have shot a
24 cannon through the capital and not hit one
25 person. And this particular Power Coalition

1 engaged over a thousand citizens across the state
2 that participated in this process from census all
3 the way to the road show and then the special
4 session, and so I am here today to represent the
5 folks that consistently asked for a fair and
6 equitable redistricting process and did not
7 receive that.

8 Q. Thank you, Ms. Shelton. And you
9 mentioned that the Power Coalition works
10 predominantly with communities of color.

11 Based on your experience working
12 with Power Coalition, do black voters face
13 discrimination related to voting?

14 A. Yes.

15 Q. And could you describe that
16 discrimination?

17 A. Sure. I mean, you know, Gosh. So
18 for, you know, just in our own experiences, we --
19 during COVID, so 70 percent of the deaths from
20 COVID early on were African-American people, so
21 disproportionately black people were dying from
22 COVID; and in that -- you know, in that process
23 of, you know, the then -- the Secretary of State
24 then put into place during the primary several
25 reasons that votes could -- you know, could

1 request an absentee ballot especially if they
2 have underlying conditions, but when we got to
3 the general election, they did not want those
4 reasons to stand and so we ended up having to
5 organize and sued the Secretary of State.

6 And the governor did stand with us,
7 even though we had to name him in that lawsuit,
8 that at the end of the day with so many
9 African-American votes dying early on, had COVID
10 continued -- this was before vaccines, before we
11 understood how it was going to continue to grow
12 and change. We were able to ensure that black
13 voters that disproportionately had underlying
14 conditions had access to their vote.

15 Also, there is an example in Baker,
16 where Baker is right outside. It's one of the
17 many unincorporated areas of Baton Rouge right
18 outside. And during the 2020 election, there was
19 a white man who sat in his chair with a very
20 large gun outside of a black precinct. He was,
21 you know, 600 yards away or feet away, which is
22 the law, but clearly sitting there with a large
23 gun in proximity to a black -- black precinct,
24 you know, was alarming. And very squarely the
25 police were called, FBI, State Troopers. I mean,

1 everyone was there, but no one, you know, took
2 action because it clearly was, you know, voter
3 intimidation, but nobody took action on that.
4 And so basically multiple -- you know, multiple,
5 you know, police groups just kind of sat and
6 watched him instead of removing him which black
7 voters were comfortable making their vote.

8 Q. Thank you. And was Power Coalition
9 and its constituents present at that Baker roll
10 eight poll?

11 A. Yes. We were there, had two staff
12 members and several mens of the community and we
13 had to move them back so they could be in a safe
14 distance as the police kind of worked out what
15 was going on, but, again, he was able to sit
16 there for a good bit of the day.

17 Q. And so is it fair to say that you
18 didn't feel like your needs were adequately
19 responded to by the Louisiana officials?

20 A. They were not.

21 Q. Thank you. In your experience, are
22 there greater obstacles for black voters than for
23 white voters?

24 A. Yes.

25 Q. Could you describe some of them?

1 A. So in -- you know, in Louisiana, we
2 have transportation issues, you know, if you --
3 like even New Orleans, which probably has our
4 best transit system, is still lacking, you know,
5 in many ways. Baton Rouge has a system that is
6 not -- you know, that works, but is not meeting
7 the needs of our entire city, and Shreveport has
8 even less of an transit system. Those are our
9 three largest metros with Jefferson, but -- you
10 know, but Jefferson has none either. And so the
11 idea that black voters have to -- like we provide
12 rides to the polls so that we can ensure that
13 black voters can actually vote in elections.

14 But, again, black voters
15 disproportionately experience poll closures and
16 poll changes. They -- also too, whenever they
17 have a polling location, they also experience
18 that their polling locations also have issues
19 with disability accessibility; and so for us, the
20 ability to be able to engage black voters ensure
21 black voters and ensure that they have access to
22 their voice and their vote is really critical for
23 us.

24 And one of the things that I love in
25 New Orleans is we get to work with a funeral home

1 that they have old vehicles that they donate to
2 the process, not the hearse. So people
3 understand the importance of getting people to
4 vote. And in the rural communities, it's even
5 harder, but we do work with partners and churches
6 across the state to make sure that people can
7 access their right to vote.

8 Q. So is it fair to say that lack of
9 access to transportation makes it harder for
10 black Louisianians to participate in the
11 political process?

12 A. Yes.

13 Q. And, Ms. Shelton, does Power
14 Coalition work to contact Louisianians about
15 voting?

16 A. Yes.

17 Q. Can you describe some of Power
18 Coalition's efforts in that front?

19 A. Absolutely. So we work -- we
20 basically build what we call a universe; and
21 usually for statewide elections, it's about
22 500,000 people. And we do text messages, phone,
23 phone banking, phone calls as well as canvasing
24 where we are door knocking and talking to
25 communities. We also do candidate surveys and

1 candidate forums. We also do candidate surveys
2 and candidate forums.

3 Q. And, Ms. Shelton, do black voters
4 need this extra out each in your experience?

5 A. Yes.

6 Q. And why is that?

7 A. One of the things that we found in
8 our work is that nobody was talking to black
9 voters or brown voters or indigenous or ABI and
10 that the work that -- you know, we know that of
11 our universe of voters that we are reaching, we
12 are sure, you know, historically disenfranchised
13 communities, that we can get up to about
14 55 percent of our universe to turn out to vote,
15 which proves to me that no one was talking to
16 them, no one was addressing them, no one was
17 including them in the process. And, you know, a
18 lot of our work is reconnecting people to their
19 agency as a voter.

20 Q. Thank you. In your experience
21 working with Power Coalition, are there
22 technology barriers that make it difficult to
23 reach black voters?

24 A. Yes. We -- I mean, many folks have
25 talked about and it's no secret that broadband is

1 an issue throughout our rural communities, but

2 it's also an issue in our urban communities.

3 You know, we work with the voter

4 files. Phone numbers change, you know,

5 constantly. You know, folks are dealing with

6 housing, security and other issues, and so,

7 again, it certainly is an issue of access and

8 whether or not -- you know, whether or not they

9 can afford a cell phone, a house phone or

10 whatever, rent, so those are some other ways that

11 we would try and contact them.

12 Q. Thank you, Ms. Shelton. And you

13 mentioned the impact of poll closures on the

14 communities you served. Are you aware of poll

15 closures that resulted from precinct

16 consolidation?

17 A. Yes.

18 Q. Could you speak to that issue?

19 A. So, I mean, we have one, you know,

20 instance, you know, that kind of comes to --

21 clearly to mind in New Orleans east. They were

22 closing and consolidating a polling location that

23 was predominantly African-American; and in that

24 polling location, you know, we tried to work with

25 the Secretary of State to make it -- make sense

1 for those voters that were chronic voters, many
2 of them in that area. And what -- ultimately,
3 you know, their argument was well, we are just
4 moving it a couple of miles, but in moving it a
5 couple of miles meant that the community would
6 have to, you know, cross a dangerous highway.

7 And so, again, on paper, it doesn't
8 look like it is this big deal, but to those
9 voters that are -- are trying to access their
10 vote and used to walk to the polls, can no longer
11 do that in a safe way if they have got to cross a
12 major interstate to access their vote.

13 Q. Thank you, Ms. Shelton. I'd like to
14 shift gears. Could you please provide a brief
15 overview of Power Coalition activities relating
16 to the 2020 redistricting process?

17 A. Yes. We started our process and
18 worked all over the state to engage rural
19 communities in the Power census, in being
20 counted, try to address some of the fear and fear
21 monitoring that was happening about what did it
22 mean to take the census; and we did that work
23 throughout the census process and then shifted
24 gears, you know, shortly thereafter to start
25 teaching people what redistricting was. So we

1 had -- we held redistricting academies where we
2 taught folks the language, cracking, packing or
3 other definitions.

4 And we also, you know, worked with
5 them to actually learn the map system. They
6 learned how to draw their own maps. We also have
7 three redistricting fellows that also did
8 trainings across the -- you know, across the
9 state. I think they did like 43 trainings in
10 individual small clusters, different parts of the
11 state.

12 And I think most importantly we
13 supported, you know, people to participate in the
14 road shows. And so, I mean, again, there were --
15 at almost every road show, there were at least a
16 hundred people that came and testified at each
17 stop; and overwhelmingly, the majority of the
18 testimony at every single road show, white and
19 black, old and young, was they wanted a fair and
20 equitable plan and they wanted a second majority
21 district. It was clear. It was real that people
22 said this all over the State of Louisiana, and
23 they were ignored by House governmental affairs
24 and Senate governmental affairs.

25 Q. Thank you, Ms. Shelton. As part of

1 Power Coalition's efforts, did it submit
2 districting maps to the legislature that
3 contained more than one majority black district?

4 A. We did.

5 Q. And why was it important to provide
6 those maps to the legislature?

7 A. It was important for us to prove
8 that it could be done, that -- that, you know,
9 again, we lost 5 percent in white population, we
10 gained almost 3 percent in black and other, you
11 know, populations; so for us, this was about
12 honoring the fact that we have the second largest
13 black population in the country and that actually
14 that it could be drawn in many different ways to
15 prove that it wasn't just an idea or something
16 that -- you know, that I wanted, but that it
17 actually was something that was possible and
18 necessary for fair and equitable maps in
19 Louisiana.

20 Q. Thank you, Ms. Shelton. How did
21 Louisiana state officials treat Power Coalition
22 and its constituents during the road shows in the
23 legislative sessions?

24 A. We were treated -- it was
25 unfortunate, because I think for many of the road

1 shows, you could see how the House governmental
2 affairs, Senate governmental affairs members,
3 they were, you know, doodling, not looking up and
4 these people are telling their story of
5 generations of voting rights work, the work that
6 they had to ensure that they had a right to vote;
7 and, you know, folks are looking down and not
8 paying attention.

9 And then when we went to the capital
10 and we -- also, you know, we had over -- you
11 know, for the opening of the redistricting
12 session, there were over 250, you know, people of
13 color, white allies that showed up to say we are
14 here, we are watching you, and this is what we
15 said we wanted and we are going to continue to
16 say what we want. And even in the legislative
17 commute rooms, legislators walking around, not
18 paying attention, basically waiting to see when
19 all of the testimony would be done so they could
20 vote.

21 Not one map that included a second
22 majority-minority district came out of that
23 committee. They wouldn't even allow it to be
24 discussed on the floor.

25 Q. And, Ms. Shelton, were there any

1 other instances that you felt that you were not
2 heard by the legislature during this -- during
3 that time?

4 A. Yes. So on the day when they were
5 overriding the veto, we were all at the Capitol.
6 We were in -- the House voted before the Senate.
7 You know, the House voted -- I mean, it came down
8 to a couple of votes, right. And at the end of
9 the day, we didn't -- you know, the veto was
10 overturned.

11 Basically, they knew in the house
12 that it was overturned because they hadn't voted
13 on the Senate side. And once that happened, once
14 the vote was made, they cheered, they celebrated.
15 The vote was a long racial line.

16 And then you walk across the hallway
17 to the Senate chamber and it is like a funeral;
18 it is somber, it is quiet. The black Senators
19 testified and said, you know, we can't change
20 their mind, but this is the historical nature of
21 what we are trying to do here. And, again, the
22 vote, of course, the governor's veto was
23 overturned.

24 Q. And just, for the record, who
25 cheered?

1 A. The conservative members of the
2 House and -- and members of the Senate because
3 they both came to both sides.

4 Q. And could you please describe what
5 it felt like to you and Power Coalition's
6 constituents when the legislature overrode the
7 veto?

8 A. I mean, I think it's, you know,
9 deflating and it's also, again, like a true sign
10 of disenfranchisement. And so how is it
11 thousands of people participate and they say
12 specifically two very key messages, and that
13 message is that -- I gave them the messages that
14 were on their card that were messages that had --
15 you know, again, like a familial fight for them
16 around having their voice -- their voice and
17 their vote.

18 And to then, you know, one, get a
19 community outcry for the governor to veto and
20 then to have that -- that veto overturned, it
21 just basically tells voters that we have worked
22 so hard to give agency to as a voter and remind
23 them that their vote and voice actually has
24 power, it just basically says to them it's
25 politics as usual, it doesn't matter, you know,

1 and so they disengage and so it makes our work
2 doubly hard.

3 Q. And following up on that,
4 Ms. Shelton, how did the legislature's enacted
5 congressional map impact the Power Coalition's
6 work?

7 A. So the Power Coalition, again, you
8 know, we have got midterms coming up in the fall,
9 and so this current -- you know, like so we do a
10 lot of education work with our communities, the
11 historically disenfranchised communities in
12 Louisiana. And in the process of doing that
13 work, right, like we've got to -- you know, like
14 we've got to educate them on like what district
15 do they live in, what changes have happened, and
16 then also too, engage them in, you know, the
17 process of understanding, you know, what and when
18 they are going to vote

19 And I think that specifically for
20 Power Coalition, again, we are -- we are doing
21 touches, right. Like, you know, last -- last
22 year we did over -- I want to say over a million
23 touches. And when you talk about a million
24 touches, that means that, you know, we are
25 touching voters at least three times, so a phone

1 call, a door knock, you know, a text message or a
2 whole bunch of other things.

3 And so the difference is me having
4 to do double work because I'm dealing with
5 disenfranchised voters: You told me that if we
6 engage and we provided our voice that it would be
7 okay, and so they are deflated and disconnected.
8 And so, again, double work, right, versus working
9 with a population and -- and group of voters who
10 don't feel disenfranchised, who feel like they do
11 have a voice and power and that they are going to
12 be able to elect a candidate of choice. And we
13 know that being able to elect a candidate of
14 choice drives voter interest and voter excitement
15 in these processes. And so on -- you know, so,
16 again, this map that is enacted, I've got both a
17 disenfranchised and deflated group of people who
18 feel the system does not work.

19 Q. Thank you, Ms. Shelton. Shifting
20 gears, you said you lived in Baton Rouge your
21 whole life?

22 A. Yes.

23 Q. Are there differences between north
24 Baton Rouge and south Baton Rouge?

25 A. Yes. I think it's -- Baton Rouge is

1 a tale of two cities. Here we basically have the
2 worst and the best quality of life within a few
3 square miles of each other in that, you know,
4 north Baton Rouge being predominately
5 African-American, south Baton Rouge being
6 predominately white. You know, and the income
7 matching, you know, certainly with north
8 Baton Rouge's community poor and moderate income
9 and south Baton Rouge is a much more wealthy
10 community.

11 And then, you know, also too
12 politically it's been interesting because
13 basically voters in the State of Louisiana and in
14 the City of Baton Rouge, basically they have
15 voted to secede from north Baton Rouge is the
16 best way I could put it. It is currently in
17 court, but -- but, I mean, it gives you an idea
18 of how powerful that difference is or that -- or
19 this division between communities in Baton Rouge
20 Parish.

21 Q. Thank you. And you mentioned that
22 north Baton Rouge was predominantly people of
23 color.

24 Would you say that north Baton Rouge
25 or the people of north Baton Rouge have common

1 needs that go beyond race?

2 A. Yes.

3 Q. And could you speak to those,
4 please?

5 A. Yeah. I mean, I think that, you
6 know, we've -- again, you know, second, we are
7 the second poorest state. I think maybe some of
8 the data we saw today, maybe we beat Mississippi,
9 unfortunately, to be the poorest state. You
10 know, in north Baton Rouge, we have got housing
11 insecurity, we have got food insecurity, we have
12 absolutely, you know, food desserts as well as,
13 you know, just not -- no opportunities for
14 economic -- you know, economic growth and, you
15 know -- and yeah.

16 Q. Thank you, Ms. Shelton. Shifting
17 gears again, the defendants argue that political
18 party rather than race is responsible for voting
19 patterns in Louisiana.

20 In your experience as president and
21 CEO of Power Coalition, do you find that black
22 voters vote for Democrats just because they are
23 Democrats?

24 A. No. I think they vote for -- I
25 mean, I think they vote for who is going to care

1 about their self interest. Does that happen to
2 be democrats? Most -- most of the time, more
3 than likely. However, I think it is also true
4 that I don't think the black community is served
5 well by either side.

6 Q. Thank you, Ms. Shelton. Just one
7 more topic. Why is it important to Power
8 Coalition's constituent to be an additional black
9 majority district?

10 A. Because, again, I think that one of
11 the things that was so beautiful was that when we
12 started the redistricting journey as an
13 organization and trying to engage people in very
14 dense content, it's not like anything that we
15 have been talking about. It's not easy to
16 understand and multiple definitions.

17 And so to be able to engage that
18 many people in the process, to have them show up
19 at the Capitol every day and have them engaged
20 and feel like they are empowered and like that
21 this was what was right, I mean, the way that --

22 Again, there was several different
23 ways that they could have gotten a second
24 district, and then to have the legislature tell
25 them no at every turn from the road show to the

1 redistricting special session to the veto
2 override.

3 And so the Power Coalition, this is
4 about voice and power and, you know, about black
5 people being able to have -- to elect their
6 candidates of choice. And by packing us all into
7 one district, we basically minimize the ability
8 of black voters to elect candidates of choice.

9 MR. SAVITT:

10 Thank you, Ms. Shelton. No further
11 questions, Your Honor.

12 THE COURT:

13 Yeah. I have two just before cross,
14 if you don't mind. One is you mentioned
15 the precinct consolidation in New Orleans
16 east. You said it moved a few miles but
17 across a dangerous highway. Can you tell
18 me what highway that was?

19 THE WITNESS:

20 I'm pretty sure it was -- it's I-10.
21 I think it's still I-10.

22 THE COURT:

23 It's I-10.

24 THE WITNESS:

25 Yeah.

1 THE COURT:

2 You said a highway and I didn't know
3 if it was actually the interstate or a
4 highway.

5 THE WITNESS:

6 Yeah.

7 THE COURT:

8 My other question was: You said
9 that two messages came through in these
10 road shows from various people that Power
11 Coalition encouraged to participate in the
12 political process. You didn't say what
13 those two messages were.

14 THE WITNESS:

15 Oh, sorry. That they wanted a fair
16 and equitable redistricting process, and
17 that they wanted a second
18 majority-minority district to honor the
19 change in population and shift in
20 population.

21 THE COURT:

22 Okay. Thanks. That may have
23 provoked additional questions, which I'm
24 certainly going to allow counsel to have.
25 Cross?

1 MR. WALE:

2 Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. WALE:

4 Q. Hi, Ms. Shelton. My name is Jeffrey
5 Wale. I'm an attorney for the state, and I'll be
6 asking you a few questions this afternoon.

7 A. Hi.

8 Q. Hi. How long has the Power
9 Coalition -- the full name is Power Coalition for
10 Equity and Justice, correct?

11 A. Yes.

12 Q. But you just call it Power
13 Coalition?

14 A. Yes.

15 Q. That's what everybody refers to it
16 as, Power Coalition?

17 A. Right.

18 Q. How long has Power Coalition existed
19 in the state?

20 A. Gosh, since so about 2015.

21 Q. 2015. Okay.

22 A. And I think there's a little bit of
23 gray because we did spin out of another nonprofit
24 organization onto our own and so -- and so -- and
25 also too, we are physically sponsored by another

1 nonprofit. And so, again, probably within the,
2 you know, Secretary of State's registry, that
3 date might be different.

4 Q. What are that -- what is that
5 nonprofit that you-all split from?

6 A. It's called One Voice.

7 Q. One Voice?

8 A. Uh-huh (affirmatively).

9 Q. And what's the nonprofit that you
10 are financially sponsored by?

11 A. Public Allies.

12 Q. Public Allies. And so from that, is
13 that the sole source of your funding or do you
14 have other contributors and donors and things of
15 that nature?

16 A. No. They are our individual sponsor
17 and we raise own like through foundations, donors
18 and individuals.

19 Q. Okay. Do you disclose or publicly
20 release your foundation's donors?

21 A. It is -- it is released within
22 Public Allies within their 990, and, I mean, they
23 have to still report our -- our grants and our
24 information because we are a fiscally responsible
25 project.

1 Q. Okay. And -- and I've been looking
2 at your website, and so I know you partner with
3 several organizations. What are some of those
4 organizations that you primarily partner with?

5 A. Yes. Power Coalition is a voting
6 educational organization. It is our belief that
7 in order to serve people and to -- to address
8 policy advocacy issues you have to actually work
9 with directly impacted people. So voice of
10 experience holds, you know, they all have
11 specific content area expertise. So Vote Works
12 around criminal justice, the Louisiana Alliance
13 around housing, the -- I'm trying to think, go
14 around the table. Basically it networks within
15 the Vietnamese community in New Orleans east.
16 And so, again, you know, it's a broad spectrum of
17 groups that have specific issues, area of
18 content, expertise.

19 Q. And was the Louisiana Budget Project
20 mentioned as one?

21 A. Oh, yes. Yes. And Louisiana
22 Partnership For Children and Families as well as
23 Louisiana Policy Institute and women with a
24 vision, so yes, there are several -- several
25 different groups. And the budget project,

1 although not a base building group, does provide
2 foundational expertise on budget and fiscal
3 issues that impact poverty stricken communities
4 across Louisiana.

5 Q. So in paragraph 15 of your
6 declaration that you made in this case, you state
7 that your member organization was directly
8 impacted by vote dilution.

9 And so my question for you, are
10 organizations voters? In other words, do
11 organizations have a right to vote?

12 A. Organizations do not have a right to
13 vote. I think what we are specifically talking
14 about is that these organizations represent a
15 base, which means that they have a membership.
16 And so, for example, Vote has several hundred
17 members in New Orleans, they have about a hundred
18 members here in Baton Rouge, they have got
19 members in Shreveport and all over the state.

20 And so, again, it's not -- the
21 individual organization is the people that they
22 represent and the people that they work with.

23 Q. So you had testified that you were
24 engaged in the redistricting process and Power
25 Coalition was engaged in the redistricting

1 process -- in the most recent --

2 A. Yes.

3 Q. -- redistricting session, correct?

4 A. Right.

5 Q. And so at the road show and at the
6 Capitol, every member of the Power Coalition who
7 attended could turn in a card in support or
8 opposition to any bill proposed, correct?

9 A. Correct.

10 Q. And everyone had the opportunity to
11 provide public comment at those events?

12 A. Most of the time. I mean, there
13 were a lot of people some days and so we
14 couldn't. They had to break and we couldn't get
15 to everybody, especially on the first day, but
16 for the most part.

17 Q. Okay. And does the Power Coalition
18 typically engage in the legislative process?

19 A. We do.

20 Q. On many different issues?

21 A. Yes.

22 Q. And as far as legislative activity,
23 would that include encouraging the governor to
24 veto bills that you were in opposition to?

25 A. Yes. I mean, it's advocacy. I

1 mean, you have the power. We are the Power
2 Coalition, so we look for the path that will get
3 -- get people what they deserve and what they
4 need.

5 Q. And, in the future, you would
6 continue to fight for laws or bills that you
7 support or oppose, either support or oppose at
8 the legislature, correct?

9 A. Restate.

10 Q. So in the future -- let me restate
11 that. If this enact -- the enacted map goes
12 forward, the enacted map is allowed, you will
13 continue to fight for issues that the Power
14 Coalition cares about, correct?

15 A. We will. And I think the
16 difference, though, that's very important that I
17 want to continue to make is that I am working to,
18 you know, move people that are excited and feel
19 like they are living in a state that's listening
20 to them and giving them equal voice or are they
21 living or -- you know, or are they actually
22 living in a state that, again, like does not do
23 that.

24 So it's about moving disenfranchised
25 folks, which is the work we have done for years,

1 and so it makes us compromise and forces us to
2 have to do double work because we have got to
3 reconnect to their agency as a voter.

4 Q. So for the -- the past decade you've
5 had the previous congressional map that only had
6 one majority maritime district, correct?

7 A. Correct.

8 Q. And the Power Coalition was able to
9 encourage individuals to register to vote under
10 that map?

11 A. Yes.

12 Q. All right. And you had attempted --
13 as you had stated earlier, you reached out and
14 did text messages, phone calls encouraging both
15 registration and turnout, correct?

16 A. Uh-huh (affirmatively).

17 Q. All right. And you had said
18 something earlier about candidates of choice.
19 Are -- so the Power Coalition members does have
20 candidates of choice?

21 A. I mean, the members that live in
22 District 2.

23 Q. All right. In District 2, they do?

24 A. I mean, in that district, yes.

25 That's a majority African-American district,

1 Congressional District 2. But I currently live
2 in Congressional District 6, and I do not
3 actually have the opportunity to pick a candidate
4 of choice.

5 Q. So you don't have an opportunity to
6 elect a candidate of choice in District 6; that's
7 your testimony?

8 A. Yes.

9 Q. And is your candidate of choice, is
10 that limited to any particular political party?
11 Can your -- stated across the way, can your
12 candidate of choice be a conservative Republican?

13 A. My candidate of choice is anybody
14 that is going to center around the issues that I
15 care about. I mean, I am a black mother. I have
16 a beautiful, goofy 6'4 son that's 200 pounds. I
17 mean, anybody that's going to care about those
18 issues.

19 If you look at Garrett Graves, my
20 current congressman, if you look at his record,
21 his voting record does not vote for anything that
22 I care about, including the fact that the
23 infrastructure bill that just passed, he voted
24 against that. And our city is crumbling -- I
25 mean, our state is crumbling in terms of

1 infrastructure; and so even when it makes sense,
2 even when it made sense to vote for that bill, he
3 voted against it.

4 Q. But you would say a candidate of
5 choice could be conservative and could be
6 Republican?

7 A. Yes.

8 Q. And they could be white?

9 A. I mean, it's not been my experience
10 to date, but, I mean, I guess it's possible.

11 Q. All right. I just have one more
12 question for you. On December 14th, you wrote a
13 letter to the legislature stating "We conducted
14 an analysis of recompiled election results and
15 determined that the two repetitive majority white
16 community districts in the coalition maps CD2 and
17 CD5 were reliably performed to provide an
18 opportunity for a candidate preferred by a black
19 voter to prevail." Do you recall this letter?

20 A. Yes. But, I mean, I don't -- I
21 mean, if you want to put it up.

22 Q. Yeah, we can. We can go to
23 Exhibit 9, if that helps at all.

24 But my question was basically
25 there's a mentioned analysis in there which is on

1 page 2 of the letter, there's an analysis
2 mentioned. Why was this analysis never provided
3 to the legislature?

4 A. So as we sat in committee day after
5 day throughout the redistricting process, you
6 know, Representative Sklefani, you know, asked
7 that question; and I think that's part of what --
8 even in that space, you know, like I think it is
9 -- the work is there, right.

10 Like maps were drawn by a
11 nationally-recognized demographer whom this court
12 has had the opportunity to talk to. The -- you
13 know, it's like at the end of the day, like why
14 did we have to do the state's work for them. I
15 mean, at the end of the day, we were able to show
16 what was necessary for the record and what was
17 necessary for them to make a decision about
18 whether or not -- you know, whether or not these
19 seven maps that met all of the traditional
20 redistricting principles that showed a second
21 majority-minority district, all of those things
22 were met, and so --

23 Q. But you didn't feel the need to show
24 that to the legislature?

25 A. Again, I mean, we worked with lots

1 of partners and so I don't want to -- you know, I
2 mean, it wasn't my decision, but I do think that
3 at the end of the day, I do agree it's not our
4 job to -- to do every single part.

5 I mean, like we have done every
6 single part of this process for the state to
7 fight for African-American communities to have
8 voice. And the idea that like I got to also show
9 you my math and show you my homework, even though
10 I do in the sense that there were seven maps
11 submitted with that letter that show that it's
12 possible for African-Americans, for a second
13 majority-minority district, to honor the growth
14 in the black population, which is the purpose of
15 redistricting, which is to honor changes in
16 population.

17 Q. You said the court had heard from
18 that demographer who drew that for you. Which
19 one was that?

20 A. Well, I mean, one of the two that's
21 -- but either one of the two that spoke today. I
22 want to say it was Tony Fairfax, but I -- but one
23 of the two that were here today, well, yesterday.

24 Q. And just short, just some -- just a
25 couple more really quick questions. How long

1 have you lived in Baton Rouge?

2 A. All my life. I'm 46.

3 Q. All your life?

4 A. I'm 46.

5 Q. So you were here when Kip Holden was
6 elected?

7 A. Yes.

8 Q. And Sharon Broome was elected,
9 obviously?

10 A. Yes.

11 Q. And they were elected parish wide,
12 correct?

13 A. Yes.

14 Q. And was Kip Holden elected when East
15 Baton Rouge Parish was majority white?

16 A. I'm not sure.

17 MR. WALE:

18 Okay. Thank you very much. That's
19 all the questions I have.

20 THE COURT:

21 Any redirect?

22 MR. SAVITT:

23 No, Your Honor.

24 THE COURT:

25 All right. You are free to go.

1 Thank you for your help, ma'am.

2 Okay. We will adjourn. It's almost
3 5:40. We will reconvene at 9:30, but
4 before that, can you give the court a
5 sense on whereabouts you are? It's
6 looking like that you are going to be able
7 to close this thing out on Friday? I have
8 -- I haven't counted heads, so I don't
9 have a sense in my mind how many -- how
10 many -- how many witnesses we are into on
11 your witness lists.

12 MS. KHANNA:

13 I believe we will be fine to close
14 out on Friday, Your Honor. Tomorrow the
15 plaintiffs will have, I would say, no more
16 than one to two relatively short
17 witnesses, and I imagine the defendants
18 will be able to put on their case in chief
19 in the morning.

20 THE COURT:

21 The plan tomorrow is we will convene
22 at 9:30. Yeah, that's correct. We will
23 be able to convene at 9:30. We will break
24 early tomorrow. There's a court-wide
25 function that I'm really -- really need to

1 go to, but I'll play it by ear. I can go
2 late. I mean, my goal would be to break
3 around 3:30, but if we are in a spot where
4 we need to go until 4:00 or a little after
5 4:00, we can -- we can do that, okay, but
6 we do need to plan to break a few minutes
7 early tomorrow. All right. Rest well.
8 See you in the morning at 9:30 a.m.

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1 REPORTER'S PAGE

2 I, CHERIE' E. WHITE, Certified Court
3 Reporter, in and for the State of Louisiana, the
4 officer, as defined in Rule 28 of the Federal
5 Rules of Civil Procedure and/or Article 1434(B)
6 of the Louisiana Code of Civil Procedure, before
7 whom this sworn testimony was taken, do hereby
8 state on the record;

9 That due to the interaction in the
10 spontaneous discourse of this proceeding, dashes
11 (--) have been used to indicate pauses, changes
12 in thought, and/or talkovers; that same is the
13 proper method for the court reporter's
14 transcription of a proceeding, and that dashes
15 (--) do not indicate that words or phrases have
16 been left out of this transcript; also, that any
17 words and/or names which could not be verified
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19 the phrase "(spelled phonetically)."

20

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22 CHERIE' E. WHITE, CCR (LA NO. 96002)

23 CSR (TX NO 10720)

24 CSR (MS NO. 1514)

25 RPR (NATIONAL NO. 839452)

1 REPORTER'S CERTIFICATE

2

3 This certification is valid only for a
4 transcript accompanied by my original signature
5 and original seal on this page.

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7 I, CHERIE' E. WHITE, Certified Court
8 Reporter, in and for the State of Louisiana, do
9 hereby certify that the transcript set forth in
10 the foregoing 275 pages; that this testimony was
11 reported by me in the stenotype reporting method,
12 was prepared and transcribed by me or under my
13 personal direction and supervision, and is a true
14 and correct transcript to the best of my ability
15 and understanding; that I am not related to
16 counsel or the parties herein, nor am I otherwise
17 interested in the outcome of this matter.

18

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22 CSR (TX NO. 10720)

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