IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DYAMONE WHITE; DERRICK SIMMONS; TY PINKINS; CONSTANCE OLIVIA SLAUGHTER HARVEY-BURWELL,

Plaintiffs,

vs.

STATE BOARD OF ELECTION COMMISSIONERS; TATE REEVES, *in his official capacity as Governor of Mississippi*; LYNN FITCH, *in her official capacity as Attorney General of Mississippi*; MICHAEL WATSON, *in his official capacity as Secretary of State of Mississippi,*

Defendants,

CIVIL ACTION NO. 4:22-cv-62-SA-JMV

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PLAINTIFFS' POST-*CALLAIS* PRE-TRIAL BRIEF

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INTRODUCTION

Following a two-week trial featuring testimony from nine experts as well as current and former Mississippi Supreme Court justices, judges, legislators, and citizens, this Court held that the Mississippi Supreme Court lines dilute the voting strength of Black Mississippians in violation of Section 2 of the Voting Rights Act. *White v. State Bd. of Election Comm'rs* ("*White v. SBEC*"), 795 F. Supp. 3d 794, 859–61 (N.D. Miss. 2025). While that liability ruling was on appeal, the Supreme Court issued *Louisiana v. Callais*, which "updated" the *Gingles* framework for Section 2 vote dilution cases, grafting a few additional requirements onto the existing test. 608 U.S. 85, 119–22 (2026). In the coming evidentiary hearing, Plaintiffs will supplement the existing trial record, address the new components of the updated *Gingles* standard, and re-confirm the Court's original vote dilution finding. The U.S. Supreme Court has undoubtedly raised the bar for plaintiffs in Section 2 cases, but this factual record—and the reality of racialized politics and Mississippi Supreme Court elections today—remains consistent with the post-*Callais* standard.

As to the first *Gingles* precondition, Plaintiffs will offer nearly a dozen illustrative maps, all of them featuring compact, whole-county districting plans, that are also (1) drawn in a race-blind fashion (*i.e.*, without "us[ing] race as a districting criterion") and (2) "meet all the State's legitimate districting objectives" by equalizing population between the districts, as the 1987 Legislature sought to do. *Callais*, 608 U.S. at 118–19. Mr. Bill Cooper will offer three illustrative plans drawn without the use of racial data, including options that minimize changes to the 1987 lines, maintain Mississippi Department of Transportation offices and boundaries, and utilize an East-West orientation. Dr. Ari Stern, a mathematician with expertise in algorithmic map-drawing, will offer additional maps generated by a computer program without access to racial data that necessarily incorporate no racial preference. Defendants, in response, will not meaningfully contest *Gingles* 1.

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Moreover, Professor James Campbell's original historical analysis will shed significant new light on the Legislature's "legitimate districting objectives" in constructing the existing Supreme Court lines, bearing both on *Gingles* 1 and on the totality of the circumstances. Professor Campbell will show that the Supreme Court district lines were historically designed to dilute the power of powerful White slaveowners in the riverine counties in the West of the State, and that, in the modern era, they were maintained because they continued to serve their intended function, diluting Black voting power in those same riverine counties following emancipation and enfranchisement. Professor Campbell will show that, when redrawing the lines in 1987 to avoid losing a one-person, one-vote lawsuit, the Legislature's other core objectives were (1) not diminishing the Black population of District 1 to avoid a Section 5 preclearance problem, and (2) not increasing the Black population of District 1 in a way that would give Black voters more power. The state's mapper indeed explicitly stated the goal was "keeping the black population the same." Whatever post-hoc arguments Defendants may now make about East-West alignment or Department of Transportation maintenance subdistricts, those are not supported by historical evidence. Rather, that evidence shows that the only legitimate purpose that the 1987 Legislature had was reducing the districts' population deviation, and that otherwise it was focused on level-setting Black electoral power—an impermissible racial goal that, along with all the other evidence, further supports a strong inference of racial discrimination here. *Callais*, 608 U.S. at 115–16.

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As for the second and third *Gingles* factors, this Court already determined based on extensive record evidence that extreme racial polarization in voting typically results in the defeat of Black-preferred candidates for the Mississippi Supreme Court, and that race, not partisanship, best explains these racially polarized voting patterns. *White v. SBEC*, 795 F. Supp. 3d at 826–27, 841–44. The supplemental evidence submitted by Plaintiffs will only further confirm that finding.

Dr. Orey will present analysis of a recent Supreme Court endogenous contest, the 2024 Supreme Court contest, which again shows the candidate preferred by Black voters losing in a Supreme Court District 1 election in a highly racially divided contest. And Plaintiffs will also supplement the record with expert testimony from Dr. Lisa Handley, who analyzed voting patterns in an array of party primaries and non-partisan judicial elections and found that racially divergent voting patterns persist even in a large body of contests "that control[] for party affiliation." *Callais*, 608 U.S. at 119–20. Dr. Handley's analysis shows that racial polarization persists in lower-profile judicial elections like chancery and circuit court contests in which neither political party makes an endorsement and partisan affiliation is less of a factor. Plaintiffs' hearing evidence will augment the existing trial record, which already covers the racial origins of the partisan realignment, the continued use of racial appeals by political parties and candidates that reinforce racial divisions, and testimony from former Justice Reuben Anderson and Rep. Percy Watson that race remains the "number one" factor in Mississippi politics today. The Court's prior finding that race best explains racial polarization in Mississippi was well-supported before, and it will be even more amply supported after the hearing.

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Defendants' experts will not contest *Gingles* 2 and 3, either. Defendants' lead expert, Dr. John Alford, does not purport to be offering any opinion on *Gingles* 2 or 3 and has not analyzed the relevant endogenous elections or the election data presented at the original trial showing that Black-preferred candidates are usually defeated by White-preferred candidates in District 1 Supreme Court elections due to racially polarized voting. Nor is he offering any opinions in response to Dr. Handley's analysis controlling for partisan affiliation. And Dr. Trey Hood, another defense expert, did not review any of Dr. Orey's analysis on *Gingles* 2 and 3 from either the original trial or this phase of the case. He purports to respond only to Dr. Handley, but does not

dispute her core conclusion about the independent and significant role of race in driving racially polarized voting in Mississippi.

Finally, this Court's prior ruling already did what *Callais* later instructed with respect to the totality of the circumstances—to focus on current conditions that shed light on intentional discrimination. Among other factors, this Court found that Mississippi continues to utilize various electoral mechanisms today that "enhance the opportunity to discriminate against or suppress the votes of Black Mississippians," that candidates like Justice Jim Kitchens are able to receive significantly greater White support than Black candidates preferred by Black voters, and that racial appeals continue to be used in recent elections. *E.g.*, *White v. SBEC*, 795 F. Supp. 3d at 836, 842–43, 852–53. Dr. Orey's analysis of the 2024 Supreme Court election will show that in 2024, Justice Kitchens again received a higher share of the White vote than prior Black candidates in District 1, but that even then, he eventually lost in a highly polarized, ultra-low-turnout runoff election under the longstanding majority-vote requirement—one in which the electorate was predominantly White due to a massive turnout gap. Moreover, additional testimony from Dr. Traci Burch will show that Black Mississippians continue to experience the effects of recent and ongoing intentional discrimination in education, employment, housing, banking, and the criminal justice system, all of which impact their ability to vote, as Dr. Burch's prior trial testimony demonstrated.

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In other cases, the revisions to the *Gingles* framework may make the task of a Section 2 plaintiff much harder, or even impossible. But in this case, exploration of the new questions opened by *Callais*, to the extent they were not already anticipated and addressed at the original trial, only yields more evidence of racial vote dilution. Indeed, the extensive trial record already covered much of the updated *Callais* standard, and the additional evidence that Plaintiffs will present at the coming hearing will fill in any remaining gaps. Plaintiffs will carry their burden to prove Section

2 liability again and will again seek fair Supreme Court district lines that give Black voters full representation on the State's highest court—a remedy that is just and long overdue.

DISCUSSION

I. *CALLAIS* UPDATED THE *GINGLES* FRAMEWORK FOR PROVING SECTION 2 VOTE DILUTION.

Section 2 prohibits voting rules and practices that "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color," and provides that such a denial or abridgement "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by [minority voters] in that [they] 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(a)–(b). This prohibition has long applied to the use of electoral district lines that dilute the voting strength of minority voters, under the framework set forth in *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986), and its progeny.

Following *Callais*, "a plaintiff asserting a Section 2 claim still must establish the three *Gingles* preconditions, in addition to satisfying the totality of the circumstances inquiry." *E.g.*, *Foster v. Mississippi*, No. 3:26-CV-181-SA-JMV, 2026 WL 2352910, at *7 (N.D. Miss. Aug. 13, 2026). *Callais* confirmed *Gingles*'s overall approach to assessing vote dilution under Section 2, but also "updated the *Gingles* framework" to specify certain additional requirements that plaintiffs must also meet. *Id.* These updates, which address issues like distinguishing partisan and racial polarization, were designed to "realign" the existing *Gingles* framework "with the text of § 2 and constitutional principles." *Callais*, 608 U.S. at 118. The Court specifically enumerated these updates in a labeled and numbered series. *Id.* at 118–21.

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Callais's reformulation of the *Gingles* framework proceeds as follows. For the first *Gingles* precondition, in addition to proving that "a community of minority voters [is] sufficiently numerous and compact to constitute a majority in a reasonably configured district," Plaintiffs must show: (i) that such a district can be created without "us[ing] race as a districting criterion"; and (ii) that the illustrative maps "meet all the State's legitimate districting objectives." *Callais*, 608 U.S. at 118–19. A state's legitimate districting objectives includes both "traditional districting criteria and the State's specified political goals." *Id.* at 119.

Next, for the second and third *Gingles* preconditions ("politically cohesive voting by the minority and racial-bloc voting by the majority"), plaintiffs also "must provide an analysis that controls for party affiliation." *Callais*, 608 U.S. at 119–20. Put differently, "they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Id.* at 120. Notably, some version of this analysis was already part of the inquiry in the Fifth Circuit even before the *Callais* decision. *See League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc).

Finally, *Callais* instructs that the totality of the circumstances analysis should give greater weight to "'current data' and 'current political conditions' that shed light on current intentional discrimination." *Callais*, 608 U.S. at 120 (citation omitted). Of the various factors that are part of the totality-of-the-circumstances analysis, the text of Section 2 specifically emphasizes one: "[t]he extent to which members of a protected class have been elected to office in the State or political subdivision." 52 U.S.C. § 10301(b). This factor, along with the existence of racially polarized voting, remain "the two most important factors considered in the totality-of-circumstances inquiry." *Fairley v. Hattiesburg, Miss.*, 662 F. App'x 291, 296 (5th Cir. 2016) (quoting *Clark v. Calhoun Cnty., Miss.,* 88 F.3d 1393, 1397 (5th Cir. 1996)); *accord White v. SBEC*, 795 F. Supp.

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3d at 837 (quoting *Miss. State Conf. of the NAACP v. State Bd. of Election Comm'rs*, 739 F. Supp. 3d 383, 449 (S.D. Miss. 2024)).

The Court in *Callais* did not impose an independent requirement that plaintiffs must prove intentional discrimination with respect to the challenged lines, or that courts must independently find intentional discrimination or an inference thereof to make a liability determination. Section 2 remains a results test. *Callais*, 608 U.S. at 110 ("[A] districting map may run afoul of § 2 if it "results in a denial or abridgement" of the right to vote "on account of race or color."); *see also id.* at 95–96 (explaining the history of Section 2 and finding that the legislative compromise produced a "final product [that] included both an effects test in § 2(a) and a 'robust disclaimer against proportionality' in § 2(b)." (quoting *Allen v. Milligan*, 599 U.S. 1, 13 (2023))); *Milligan*, 599 U.S. at 25 ("§ 2 turns on the presence of discriminatory effects, not discriminatory intent."). Rather, the Court explained that the purpose of the specifically enumerated updates to the *Gingles* test was to ensure, as a matter of course, that the vote-dilution test would be met "only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race." *Callais*, 608 U.S. at 115–16. In other words: To establish liability, Plaintiffs must meet the updated *Gingles* test; where Plaintiffs do meet the updated test, the inference that the challenged lines were drawn to disadvantage Black voters because of their race (as opposed to partisan reasons or neutral factors) naturally follows.

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The *Callais* Court's discussion of *White v. Regester*, 412 U.S. 755 (1973), which is the origin of Section 2's requirement that political processes be "equally open" to racial minorities (and indeed of much of the *Gingles* framework) is highly instructive in this regard. *Callais*, 608 U.S. at 96–97 ("Congress took [Section 2's] language almost verbatim from Justice White's opinion for the Court in *White v. Regester*."); *see also Gingles*, 478 U.S. at 35 ("Congress

substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the 'results test,' applied by this Court in *White v. Regester*[.]"). *Callais* reaffirmed *White*, explaining that "*White* presented a situation in which circumstantial evidence suggested very strongly that the State had . . . the purpose of diluting minority votes" in designing the challenged districting scheme. *Callais*, 608 U.S. at 97; *see White v. Regester*, 412 U.S. at 765–70. That circumstantial evidence, which was later incorporated into *Gingles* as the Senate Factors, included:

> (i) the "history of official racial discrimination in [the jurisdiction], which at times touched the right of [minorities] to register and vote and to participate in the democratic processes";
>
> (ii) the use of electoral mechanisms which, although not "in themselves improper nor invidious, enhanced the opportunity for racial discrimination," including the "majority vote" rule requiring a runoff if the leading candidate receives only a plurality of the vote;
>
> (iii) the extent to which the dominant political party is "white-dominated" and fails to nominate minority candidates;
>
> (iv) whether the minority group has "suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others";
>
> (v) the use of racial appeals, i.e., "racial campaign tactics . . . to defeat candidates who had the overwhelming support of the [minority] community";
>
> (vi) the frequency with which minorities have been elected to public office, which the Court referred to as a "more fundamental[]" consideration; and
>
> (vii) the failure of the dominant political party to "exhibit good-faith concern for the political and other needs and aspirations of the [minority] community," in part because it does "not need the support of the [minority] community to win elections."

Id. at 765–70. This protean Senate Factors evidence, while circumstantial in nature, nevertheless supported the conclusion that the challenged districts "are being used *invidiously* to cancel out or minimize the voting strength of racial groups." *Id.* at 765 (emphasis added).

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As the *Callais* Court's approving reference to *White* makes clear, the *Gingles* standard has *always* implicitly incorporated an inference of intentional racial discrimination—indeed, that is what it was designed to do. The *Callais* updates to *Gingles* raise the bar higher for Plaintiffs, to be sure, especially in adding further steps to disentangle race and political party. But they do not change the overall approach, whereby evidence of stark racial polarization and pervasive political inequality along racial lines are the foundation of a Section 2 liability determination.

II. PLAINTIFFS WILL PROVE THE UPDATED *GINGLES* PRECONDITIONS.

Much of what the *Callais* updates add to the *Gingles* standard was either anticipated by Plaintiffs and included in the evidence during the original trial, or else are not relevant on the facts of this case, which involves non-partisan elections and a districting plan that was drawn 40 years ago by a Democratic-controlled Legislature. Indeed, the facts in this case are especially well suited to meet the new *Callais* standard, as the trial record, as supplemented at the upcoming hearing, will show.

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A. Plaintiffs Will Prove the First *Gingles* Precondition as Updated.

Plaintiffs' experts Bill Cooper and Dr. Stern have submitted numerous illustrative plans that satisfy the updated first *Gingles* precondition by demonstrating compact, reasonably configured, whole-county districts that were drawn on a race-blind basis. The illustrative plans also all reduce the population deviation below the 10% threshold, which as Professor Campbell's extensive historical analysis and other evidence will show was the 1987 Legislature's only legitimate districting criterion. Defendants' expert Dr. Alford may purport to respond to Mr. Cooper and Dr. Stern, but he will not dispute that the first *Gingles* precondition has been met.

First, Plaintiffs' illustrative maps are obviously reasonably configured. Mr. Cooper's three illustrative plans are comprised of whole counties and are visually compact. PX-235 (Cooper Supp. Report) at 6, 16, 19. They are similar to the 1987 plan in terms of quantitative metrics of

compactness, splits, and other traditional redistricting principles, while significantly reducing the population deviation compared to the 1987 plan. *E.g.*, PX-235 (Cooper Supp. Report) at 23 fig. 15. The same is true of Dr. Stern's eight illustrative maps, which are also made up of whole counties and perform similarly or better on compactness and other metrics relative to the 1987 plan, while also significantly reducing population deviation. PX-238 (Stern Report) at 20–21, tbls. 2&3; *id.* at 22–29. In response, Defendants' expert, Dr. Alford, will not dispute that Plaintiffs' illustrative plans are reasonably configured or that a Black-majority Supreme Court district can readily be drawn in a manner consistent with traditional redistricting principles.

Second, both Mr. Cooper and Dr. Stern drew their maps in a race-blind manner, *i.e.*, without "us[ing] race as a districting criterion." *Callais*, 608 U.S. at 118–119. In Mr. Cooper's case, he did not review or consult racial data in any way until after his maps were complete. PX-235 at 10–11. And Dr. Stern drew his maps using a computer algorithm which did not include any racial demographic information in its parameters. PX-238 (Stern Report) at 7. Dr. Alford agrees that Dr. Stern's mapdrawing process is race-blind, Alford Report at 11 ("As Dr. Stern notes, this approach is race and partisan blind, as no racial or party data is employed."), and will not dispute that Mr. Cooper drew his maps without utilizing racial data. At most, Dr. Alford may point out that that Mr. Cooper could have background knowledge of Mississippi demographics given his experience drawing maps, but, as the Supreme Court has held, having general awareness of race does not raise constitutional concerns. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 22 (2024) (holding that legislature's mapdrawer did not impermissibly consider race even though he was familiar with racial data because "legislatures will . . . almost always be aware of racial demographics"). Indeed, state legislatures often retain professional mapdrawers who are

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familiar with the demographics of their jurisdiction, and such knowledge alone does not render their districting plan impermissible.

Finally, the illustrative plans "meet all the State's legitimate districting objectives." *Callais*, 608 U.S. at 118–19. The 1987 lines were drawn by a Democratic-controlled Mississippi Legislature, and there is no evidence that the Legislature specified a particular partisan outcome it sought to achieve, let alone any desire to protect any Republican-endorsed candidates today. Nor would any such desire make sense given the Legislature's decision, only a few years after the lines were redrawn, to make judicial elections in Mississippi non-partisan. Rather, the only legitimate districting objective from 1987 was improving population equality, which all of the illustrative plans do. The parties previously stipulated that the objective of the Mississippi Legislature in adopting the 1987 Supreme Court lines was to "correct[] population malapportionment of the then-existing Supreme Court districts" and reduce it below the 10% threshold to avoid a one-person, one-vote violation. *White v. SBEC,* 795 F. Supp. 3d at 856; *see also* PX-108 at 3 (Pittman memo explaining noncompliance with population equality); Slaughter-Harvey 08/07/24 Trial Tr. 466:17–468:14; Percy Watson 08/07/24 Trial Tr. 499:24–500:7. Professor Campbell's extensive, original historical analysis will confirm this fact. PX-242 (Campbell Supp. Report) at 6, 8.

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And Professor Campbell's analysis will also illuminate the context of the 1987 line-drawing in a way that strongly supports an inference of discrimination. As Professor Campbell shows (consistent with prior trial testimony), the Legislature resisted efforts by Black legislators and voters to enact a districting plan that gave Black voters greater electoral opportunity. PX-242 (Campbell Supp. Report) at 6–8, 11; Percy Watson 08/07/24 Trial Tr. 500:8–501:13; Slaughter-Harvey 08/07/24 Trial Tr. 470:15–17. The state's map-drawer, Hoyt Holland, was involved in the construction of numerous vote-dilutive districting maps in Mississippi that were later ruled

unlawful. Described by Dr. Campell as "the consultant of choice for white officials looking to circumvent the Voting Rights Act," Holland provided mapdrawing services in at least 30 of Mississippi's 82 counties that often strengthened White voting power to the detriment of Black Mississippians. PX-242 (Campbell Supp. Report) at 9. For instance, he once drew a map for Hinds County's supervisor districts that split the city of Jackson, where almost 70% of the county's Black population lived into five parts, creating five majority-White districts. *Id.* at 9–10; *see also Kirksey v. Board of Supervisors of Hinds County*, 468 F. Supp. 285 (S.D. Miss. 1979). Despite producing maps that fractured Black communities, Holland often feigned ignorance of the demographic areas he was mapping, claiming, for example, not to know where Black voters were in places like Jackson even though he resided there. PX-242 (Campbell Supp. Report) at 10. He also used the wrong decennial census on at least one occasion. *Id.*

As for the 1987 mapdrawing process, Holland himself said that the goals of the plan were "least change and keeping the black population the same." PX-242 (Campbell Supp. Report) at 11. As Professor Campbell explains in his report in great detail, "least change ... meant more than counting counties" moved—"it was also a racial calculus" to not give Black voters "one smidgeon more" of electoral opportunity than necessary to avoid legal liability, and to ensure that "all nine Justices of the Supreme Court would continue to be elected from white majority districts." *Id.* at 17–18. The Legislature thus "threaded the needle," by enacting a plan that (1) improved population equality (thus avoiding the one-person, one-vote problem), (2) did not *reduce* Black population in District 1 (thereby avoiding a Section 5 preclearance objection from the federal government), and also (3) sharply limited any increase in the Black population in District 1 to ensure no material change in Black voters' political power. *Id.* at 16. Of course, throttling Black voters' political power is not a "legitimate districting objective,"—it is vote dilution, pure and simple. Even

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Defendants' own historian, Dr. Rankin Sherling, will not dispute that Holland's statement could reflect discriminatory intent.

Professor Campbell's analysis will further show that the Legislature did not have reason to maintain the "East-West" configuration of the Supreme Court lines other than this configuration's naturally vote-dilutive effects from their division of the Mississippi Delta area. As Professor Campbell will explain, the Supreme Court districts remained largely unchanged from the instantiation of the three-district scheme in 1839 all the way until the enactment of the current lines in 1987. PX-242 (Campbell Supp. Report) at 2. In the pre-Civil War era, a wealthy planter class, "concentrated in the counties along the Mississippi River" in the west, wielded "outsize political power" due to the presence of the Black people they enslaved—"Black Mississippians could not vote, but each one counted as three-fifths of a person for purposes of enumeration, conferring an enormous political advantage on their enslavers." *Id.* at 3. To counter the strength of the plantation owners, the citizens of the poorer White counties to the east successfully drew "district lines that ran horizontally across the state" for both the state Supreme Court and federal congressional districts, which "deliberately fragmented concentrations of Black population." *Id.* While the congressional districts evolved, the Supreme Court districts persisted through the Civil War, emancipation, the gaining of the franchise by Black men, the era of an appointed judiciary, the restoration of an elected judiciary, the Civil Rights Movement, and the passage of the Voting Rights Act. *Id.* at 3–4. As Professor Campbell explains, this districting configuration endured "because, from the perspective of the defenders of white supremacy, it was already doing precisely what it needed to do, what it had been designed to do when first created in the 1830s." *Id.* at 4. That is, "[b]y dividing the state into three large, horizontal districts, the system enhanced the voting strength of the white-majority counties in the state's eastern and central regions at the expense of

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the Black-majority riverine counties." *Id.* The system had shifted from targeting the "wealthy white planters" who owned, enslaved, and disenfranchised Black people to disempowering "Black people themselves." *Id.*

Defendants may nevertheless argue that the objectives of changing a relatively small number of counties or maintaining the "traditional" "East-West" configuration of the districts should nevertheless be required. Such requirements will not be supported by the historical evidence regarding the 1987 Legislature's actions, but even if it were, several of Plaintiffs' illustrative plans meet those criteria anyway. Under Mr. Cooper's Illustrative Plan 2, all three districts span the full width of Mississippi, reaching from the Alabama border to the Mississippi River. PX-235 (Cooper Supp. Report) at 15, 17. That plan, which is Mr. Cooper's "least change" plan, shifts only eight counties. *Id.* Illustrative Plan 2 also largely follows MDOT's maintenance district boundaries, and all six MDOT offices remain in their current supreme court districts (to the extent Defendants continue to assert that maintenance boundaries and offices are relevant). *Id.* at 14–15, 17. Dr. Stern similarly provided two illustrative maps, Map Nos. 76325 and 74964, which also maintain the East-West configuration and do not move any MDOT offices between Supreme Court districts. PX-238 (Stern Report) at 28–29.

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Plaintiffs' illustrative plans meet all the requisite criteria while also adding an additional district that is over 50% BVAP, as required. *See Bartlett v. Strickland*, 556 U.S. 1, 20 (2009). And as Dr. Byron D'Andra Orey's effectiveness analysis shows, all of Mr. Cooper's and Dr. Stern's illustrative plans provide the requisite "increased opportunity" for Black voters despite being drawn in a race-blind fashion. *Harding v. Dallas County*, 948 F.3d 302, 309 (5th Cir. 2020); *See* PX-244 (Orey Supp. Report) at 4–5. The first *Gingles* condition will be satisfied.

B. Plaintiffs Will Prove the Second and Third *Gingles* Preconditions as Updated.

This Court has already determined based on the existing trial record that voting in Mississippi is highly polarized by race, that racial bloc voting typically results in the defeat of Black-preferred candidates in Supreme Court elections, and that race is what best explains the persistent and extreme patterns of racial polarization in voting in Mississippi. *White v. SBEC*, 795 F. Supp. 3d at 831, 839, 844. The additional evidence will only further support those conclusions.

1. Plaintiffs will meet the traditional *Gingles* 2 and 3 standard

Start with the traditional *Gingles* 2 and 3 analysis, which was already satisfied at trial and which remains largely if not entirely uncontested. Dr. Orey's analysis at trial showed, and this Court found, that in elections in District 1, and most importantly in endogenous contests, voting is extremely polarized along racial lines, with candidates preferred by Black voters usually losing. *White v. SBEC*, 795 F. Supp. 3d at 820–31, 841, 843. For example, and most centrally, in both elections where Black challengers have run for District 1 Supreme Court seats, they have lost due to massive (90%+) White bloc-voting against them. *Id.* at 827. None of the facts or data underlying the Court's prior findings on this score have changed, and, similar to the first trial, none of Defendants' new experts will revisit that data or rebut Dr. Orey's conclusions on the traditional *Gingles* 2 and 3. *Id.* at 823 ("The Court found Orey's methodology, testimony, and conclusions—most, if not all, of which were uncontradicted—on this point credible and persuasive."); *see* Alford Report at 5–11 (addressing only Dr. Orey's supplemental report and not his trial-phase *Gingles* 2 and 3 analysis); *see also* Hood Report at 3–8 (addressing only the analysis of Dr. Handley).[1]

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[1] Dr. Alford's will likely focus on Dr. Orey's effectiveness analysis of Plaintiffs' illustrative maps, which Dr. Alford will misuse to suggest that the existing 1987 Plan may already be effective for Black voters. *See* Alford Report at 7-9. But as Dr. Orey will explain, the

This Court also found, based on the unanimous testimony of experts on both sides and controlling Fifth Circuit precedent, that endogenous elections, *i.e.*, past Supreme Court elections, are most probative of Black voters' ability to elect their preferred candidates to the Mississippi Supreme Court. *White v. SBEC*, 795 F. Supp. 3d at 820 (citing *Miss. NAACP*, 739 F. Supp. 3d at 435–36); *Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1149 (5th Cir. 1993); *see also* Orey Testimony, 08/06/24 Trial Tr. 207:5, 215:23–24, 221:5–22; Bonneau Testimony, 08/12/24 Trial Tr. 829:7–14, 836:13–17. Defendants' new expert political scientists will join in agreement that endogenous elections are the most useful datapoints for an analysis of racially polarized voting under *Gingles* 2 and 3. *See* Hood Report at 3.

The only new evidence bearing on the traditional *Gingles* 2 and 3 analysis will strongly confirm the Court's original determination. Dr. Orey conducted an ecological inference analysis of the 2024 Supreme Court election—another endogenous contest, although not a biracial one—and his analysis will show that both the general election and the runoff were again highly polarized on the basis of race. PX-244 (Orey Supp. Report) at 6–9. Dr. Orey's analysis will show that Justice Kitchens won around 50% of the Black vote and around 25% White support in the five-way general election, in which no candidate won a majority. *Id.* at 7. It will show that in the runoff, Justice

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effectiveness analysis, which is based on a compilation of exogenous, partisan, statewide election results, and which does not include any endogenous contests, is not an appropriate way to assess whether the candodates preferred by Black voters can win in Supreme Court elections under the existing lines. PX-246 (Orey Rebuttal Report) at 1. Using such statewide contests to estimate electoral opportunity may be necessary to assess a hypothetical districting plan, but it is improper where, as with the 1987 lines, there are actual endogenous and quasi-endogenous elections, which Dr. Alford will not dispute are most probative, that must be considered. Indeed, as Dr. Orey will explain, the use of partisan statewide elections, such as presidential or U.S. Senate races, to predict performance in judicial elections in District 1 is likely to overestimate Black voters' ability to elect their preferred Supreme Court candidates. PX-244 (Orey Supp. Report) at 5.

Kitchens consolidated 90%-plus Black support, but still lost, with about 85% of White voters supporting Jenifer Branning. *Id.* at 8. It will show that turnout in the runoff dropped to a third of the general election, and that the turnout gap between White and Black voters grew larger. *Id.* at 9–10; *see also White v. SBEC*, 795 F. Supp. 3d at 836 (noting "cases where the majority vote requirement has been found to operate to the detriment of minority voters, such as *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1398 (5th Cir. 1996)"). This additional evidence, of another, very recent endogenous election in which voting was highly polarized and the Supreme Court candidate preferred by Black voters lost due to high levels of White-bloc voting, strongly confirms the Court's prior conclusions that White bloc-voting typically leads to the defeat of Black-preferred Supreme Court candidates in District 1.[2] *See White v. SBEC*, 795 F. Supp. 3d at 826–27; PX-11 (data tables from Dr. Orey's original trial-phase report); PX-244 (Orey Supp. Report).

2. Plaintiffs will show that race and not partisan affiliation is driving racial division in voting.

Next, turn to party versus race. The hearing evidence will also further confirm the Court's prior rejection of Defendants' argument that "'partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens,'" and will further support the Court's specific finding, based on the existing trial record, that "race best explains these divergent voting patterns." *White v. SBEC*, 795 F. Supp. 3d at 839 (quoting *Clements*, 999 F.2d at 850).[3] Plaintiffs'

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[2] Notably, despite losing in 2024, Justice Kitchens continued to win a significantly larger share of White crossover support compared to Black candidates that have run in District 1, garnering 27% of the White vote in the 2024 general election and 17% in the runoff when he lost to Justice Branning. *See* PX-244 (Orey Supp. Report) at 7-8, tbls. 3, 4; *see also infra* p. 20.

[3] This Court's discussion of race versus partisan affiliation came primarily as part of its analysis of Senate Factor 2. *White v. SBEC*, 795 F. Supp. 3d at 837-44. Under *Callais*, that inquiry is now properly part of the threshold analysis of the second and third *Gingles* preconditions, but the

evidence at the hearing will include additional analyses and evidence on top of the existing record that further "control[] for party affiliation" and further "show[s] that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Callais*, 608 U.S. at 119–20.

First, Plaintiffs' expert Dr. Lisa Handley, a political scientist with decades of experience conducting ecological inference analysis of racial voting patterns, will present a comprehensive survey of two types of contests that naturally control for partisan affiliation because there is no party label on the ballot: biracial non-partisan judicial contests and biracial intra-party primary contests. PX-247 (Handley Report) at 1, 11; PX-250 (Handley Rebuttal Report) at 3, 9. Using the ecological inference method, the quantitative approach will show that there is racially polarized voting in both types of contests that is statistically significant, and her analysis makes clear that race has a significant and independent effect. PX-247 (Handley Report) at 11–12; PX-250 (Handley Rebuttal Report) at 3 & App. B.

As for judicial contests, Plaintiffs acknowledge this Court's finding that "in some ways [Mississippi Supreme Court] elections, while technically nonpartisan, are still partisan." *White v. SBEC*, 795 F. Supp. 3d at 837–38. But Dr. Handley also analyzed a large body of lower court elections, including circuit and chancery court elections, in which there were no endorsements by either political party.[4] Overall, Dr. Handley evaluated 25 biracial judicial elections and determined

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same result obtains. *See* 608 U.S. at 119-20; *Miss. NAACP*, 739 F. Supp. 3d at 441 ("Just where the discussion best fits will not matter in this case, as ultimately the evidence does not support that racial polarization has become partisan divisions.").

[4] Of the 25 biracial judicial elections that Dr. Handley analyzed, 21 involved elections for chancery or circuit court, one involved the court of appeals, and three involved the Mississippi Supreme Court. According to declarations from the Mississippi Republican and Democratic Parties, the Republican Party did not endorse any of the lower court candidates and made endorsements only in the three supreme court contests (each time supporting the White candidate), and the Democratic Party did not endorse any candidate in those 25 judicial elections. PX-254, PX-255.

that 21 of them, or 84%, were racially polarized, with Black candidates receiving roughly 67% of the Black vote but only 16.1% of the White vote, a large and statistically significant difference. PX-250 (Handley Rebuttal Report) at 3 & App. B.

Dr. Handley also analyzed 29 biracial Democratic primaries at the state and local level and determined that White voters support Black candidates at significantly lower rates even within the Democratic Party, where, of course, all candidates share the same partisan affiliation. PX-247 (Handley Report) at 11–12. This statistically significant drop in White support for Black candidates even in Democratic primaries is especially important because evidence of racially divergent voting behavior in party primaries, which naturally control for partisan affiliation, is one way that the *Callais* Court acknowledged that race and party could be effectively disentangled. *See* 608 U.S. at 117 (noting that *Gingles* "arose in the context of a one-party system in which black and white voters had starkly different voting patterns despite their affiliation within the same party" and that "[s]uch intra-party disparities showed that black voters had less opportunity to elect their preferred candidate because of their race, not because of their partisan affiliation.").

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Neither of Defendants' political science experts will rebut Dr. Handley's conclusion, based on the analysis of non-partisan and intra-party contests, that race has a significant and independent effect in driving racially polarized voting behavior in Mississippi. Dr. Alford did not address Dr. Handley's analysis at all. *See* Alford Report at 2. And at most, Dr. Hood will argue that Black candidates often win the primary and judicial elections in Dr. Handley's dataset. Hood Report at 7. But Dr. Handley is not offering a traditional *Gingles* 2 and 3 analysis of elections in Supreme Court District 1; her dataset included biracial contests from across the state, and her purpose was to examine the racial nature of racially polarized voting patterns in Mississippi, not to assess whether such polarization typically results in the defeat of Black-preferred candidates in District

1. *See* PX-250 (Handley Rebuttal Report) at 1–2. On the actual topic that Dr. Handley addressed—examining racial polarization in Mississippi through ecological inference analysis of electoral data in a way that controls for partisan affiliation—Dr. Hood will offer no dispute.

Dr. Handley's opinion on the racial nature of racially polarized voting is consistent with the different levels of White crossover support garnered by Black-preferred candidates for Mississippi Supreme Court who are White versus those who are Black. As the Court previously found, Justice Kitchens, who is White, is the only Black-preferred candidate who has been able to garner double-digit White support in recent Supreme Court District 1 elections, and also the only Black-preferred candidate to win, as he did in 2016. *White v. SBEC*, 795 F. Supp. 3d at 840. The hearing evidence will show that even though he lost in 2024, Justice Kitchens still won 27% White support in the general election, and approximately 15% in the low-turnout runoff. PX-244 (Orey Supp. Report) at 8, tbl. 3. While that is less than the 40% White support Justice Kitchens obtained in the 2016 head-to-head election against then-Judge Kenny Griffis, it is still much higher than the 5% and 6% of the White vote earned by candidates Rep. Earle Banks and Judge Latrice Westbrooks. *See* PX-11 (data tables from Dr. Orey's original trial-phase report); PX-14 (data table from Dr. Orey's trial-phase rebuttal report); PX-244 (Orey Supp. Report) at 8, tbl. 3.

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Second, Plaintiffs have presented and will present historical analysis that also "show[s] that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Callais*, 608 U.S. at 119–20. The Court previously credited Professor Campbell's analysis on this point, finding that "there was a clear racial divide amongst Mississippians long before the current partisan alignment—that divide has remained since the realignment. This bolsters the Plaintiffs' contention that race, rather than partisanship, explains the division." *White v. SBEC*, 795 F. Supp. 3d at 839. Defendants' trial expert agreed with this historical analysis of racial politics and the racial nature

of the partisan realignment in the South, Bonneau Testimony, 08/12/24 Trial Tr. 838:11-15, and their new experts will, too. And Professor Campbell's testimony at the hearing will further expand on his historical analysis of race and voting behavior in Mississippi by showing how White Mississippians changed party preference in presidential elections nine times over the course of ten elections in the Twentieth Century—and at decisive rates, ranging from 80-95%. PX-242 (Campbell Supp. Report) at 19–21. These massive switches in partisan preferences can only be explained by racial bloc voting, which Professor Campbell will testify was driven by the candidates' stances on civil rights issues in each election. *Id.* at 20. Defendants experts will not disagree; indeed, Dr. Hood, one of their experts, had written peer-reviewed academic monographs and journal articles supporting the conclusion that "the growth of Southern Republicanism was *primarily* driven by racial dynamics, not class, demographic factors, or religion," both generally and particular in Mississippi. PX-259 (*The Rational Southerner*) at 181; *see also* PX-260 (*The Republican Party in the American South: From Radical Fringe to Conservative Mainstream*) at 342, PX-261 (*Race, Class, Religion and the Southern Party System: A Field Report from Dixie*) at 95–96, PX-262 (*Switching Sides but Still Fighting the Civil War in Southern Politics*) at 12–13; PX-263 (*The Changing South in Presidential Elections*) at 863.

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Third, in addition to quantitative analysis of election results and expert historical analysis, the Court also credited and can continue to credit fact testimony showing that race, not partisanship, drives the polarization patterns in Mississippi. That includes the testimony from Justice Reuben Anderson, the first Black justice to serve on the Mississippi Supreme Court, that "race is the 'number one' factor in Mississippi politics." *White v. SBEC*, 795 F. Supp. 3d at 838. Similarly, longtime legislator Rep. Percy Watson, testified that "racial polarization in the state is just as intense now as it was . . . nearly a half century ago." *Id.*; *see also, e.g.*, Watson Testimony,

08/07/24 Trial Tr. 498:3–4, 499:10–17 (discussing the lack of outreach to Black voters and Black candidates by the Republican Party).[5] *Cf. Clements*, 999 F.2d at 861 (discussed in *White v. SBEC*, 795 F. Supp. 3d at 839–40) (concluding that polarization might not be driven by race in part because "both political parties, and especially the Republicans, aggressively recruited minority" candidates and because White voters supported and elected minority candidates).

In sum, the existing record already amply supported this Court's conclusion that "race best explains [Black and White Mississippians'] divergent voting patterns." *White v. SBEC*, 795 F. Supp. 3d at 844. The hearing evidence will further confirm that conclusion. Plaintiffs will prove *Gingles* 2 and 3 as updated by *Callais*.

III. PLAINTIFFS WILL PROVE A SECTION 2 VIOLATION BASED ON THE TOTALITY OF THE CIRCUMSTANCES UNDER THE UPDATED *GINGLES* STANDARD.

Under *Callais*, the "totality of the circumstances" analysis "must focus on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting." *Callais*, 608 U.S. at 120; *cf. Veasey v. Abbott,* 830 F.3d 216, 232 (5th Cir. 2016) (holding, in constitutional case involving voting discrimination, that "the most relevant 'historical' evidence is relatively recent history, not long-past history."). The Court's analysis in its liability determination following trial in fact already did that, affording

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[5] Dr. Traci Burch's hearing testimony may also address the causal relationship between race, racial attitudes, and partisan choice and discuss how political science scholarship supports the conclusion that partisanship in Mississippi remains racialized. *See* PX-252 (Burch Supp. Report) at 12. Specifically, scholars have found that certain racial attitudes, including toward the effect of slavery and discrimination, are highly predictive of Republican Party affiliation in Mississippi, even more so than other Southern states. *Id*. Other studies have also found that, in Mississippi, the racial composition of a county is "the strongest factor predicting . . . election results," even after controlling for partisan identity and policy preferences. *Id.* at 12-13. Defendants' expert political scientists, who do not address Dr. Burch's supplemental report at all in their own reports, will not dispute this analysis, either.

more weight to relatively recent evidence of discrimination "and the *current* circumstances that Black Mississippians face[,]" while also acknowledging that "the full history provides context to those current circumstances." *White v. SBEC*, 795 F. Supp. 3d at 833 (emphasis in original). Plaintiffs' supplementation of the record only bolsters the Court's earlier assessment.

As discussed above, the Supreme Court in *Callais* identified *White v. Regester* as a paradigmatic case of unlawful vote dilution. Notably, when assessing Section 2 liability prior to *Callais*, the three-judge panel in *Miss. NAACP v. SBEC* drew parallels between the political reality of present-day Mississippi and the facts of *White v. Regester*. 739 F. Supp. 3d at 452. The panel specifically found:

> In *White*, the Court found Equal Protection violations in some Texas districts based on evidence of lack of minority political success since Reconstruction, a history of discrimination, voting requirements that depressed minority votes, racial campaign tactics, and a lack of responsiveness from elected officials in minority communities. Our facts and record are similar.

Id. (citations omitted). The record before this Court contains identical facts concerning the "reality of Mississippi's political process," *id.* at 464, and the Court should find the same and re-affirm its prior holdings based on the extensive trial record.

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Senate Factors 1 & 3: In addition to its indisputable "history of official racial discrimination," Mississippi has continued to utilize electoral mechanisms that "enhance[] the opportunity for racial discrimination." *White v. Regester*, 412 U.S. at 766.

One such mechanism is the "majority vote" requirement identified by the Supreme Court in *White v. Regester*, *id.*, which is applicable to state supreme court races in Mississippi. As Dr. Orey found in his analysis of the 2024 Supreme Court District 1 contest, the majority-vote requirement gave Justice Branning, the candidate preferred by White voters, several advantages—a reality that Justice Branning would not dispute. PX-244 (Orey Supp. Report) at 9-10. First,

Justice Branning was able to consolidate the support of White voters, with her share of the White vote increasing from 66.6% in the general to 85.6% in the runoff. *Id.* at 8. Second, although turnout rates fell dramatically across the board for the late-November runoff, the dropoff was much sharper among Black voters. *Id.* at 9–10. The result was a significantly Whiter electorate in the runoff, with White voters making up 63% of the voters participating in the runoff, compared to 57.1% in the general; Black voters declined from 38.6% to 31.8% of the electorate. *Id.* at 10.

That widening racial turnout gap in the runoff is consistent with the extensive expert analysis in the record showing that Black voters are more likely to be impacted by electoral mechanisms that raise the costs and burdens of voting, such as runoffs that require more frequent participation in elections. *See* Pls.' Proposed Findings of Fact (Dkt. 252) ¶¶ 254–63; M. King Testimony, 08/14/24 Trial Tr. 1318:18–1320:16 ("When you ask voters to vote often, they get tired of it. They get burned [out] by it."); *see also Nairne v. Ardoin*, 715 F. Supp. 3d 808, 871 (M.D. La. 2024) (finding that combination of run-off and off-year "elections breeds voter fatigue and confusion, which is amplified in poor and under educated communities."), *aff'd* 151 F.4th 666 (5th Cir. 2025), *vacated and remanded*, No. 24-30115, 2026 WL 1255781 (5th Cir. May 7, 2026). As this Court previously found, "Black Mississippians are exponentially more likely than White Mississippians to be poor, lack access to a vehicle, and face economic hardship by having to take off work to vote." *White v. SBEC*, 795 F. Supp. 3d at 836. These factors are all "compounded if an election goes to a run[off]," and the voter has to face these obstacles to vote on multiple occasions. *Id.* The 2024 election exemplifies how the different dynamics identified by the Senate Factors work in concert against Black voters and result in inequality of opportunity in violation of Section 2: Justice Kitchens earned well more than double the White crossover support of Judge Westbrooks in 2020 and Rep. Banks in 2012, but still lost in a highly polarized runoff election

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against Justice Branning when Black turnout dropped precipitously, the turnout gap grew, and the electorate became much Whiter.

Moreover, as the trial record already shows, other voting rules and procedures that enhance opportunities for discrimination in voting by disproportionately burdening Black voters remain in place as well. Those include lifetime felony disenfranchisement, strict voter identification laws, and strict absentee voting requirements. *White v. SBEC*, 795 F. Supp. 3d at 835–36; *see also Miss. NAACP*, 739 F. Supp. 3d at 443–449 (finding that Senate Factors 1 and 3 weigh in plaintiffs' favor because Mississippi's felon disenfranchisement regime and other measures disproportionately harm Black voters). Specific to the effects of felon disenfranchisement, this Court credited undisputed testimony that roughly 60% of Mississippi's disenfranchised individuals are Black, a point agreed to by Defendant's expert Dr. Swanson. *White v. SBEC*, 795 F. Supp. 3d at 835. The Court also credited Professor Campbell's testimony that strict voter ID laws and absentee voting requirements disproportionately impact Black voters. *Id.* at 835–36. None of that has changed.

In addition to those ongoing electoral practices that enhance the opportunity for discrimination, courts have repeatedly acknowledged Mississippi's long history of voting-related discrimination and the practices used to enhance the opportunity for discrimination against its Black voters. *See, e.g.*, *Miss. NAACP*, 739 F. Supp. 3d at 444 (finding no dispute "that Mississippi has a long and dubious history of discriminating against blacks" (cleaned up)); *Thomas v. Bryant*, 366 F. Supp. 3d 786, 807 (S.D. Miss. 2019), *vacated as moot, Thomas v. Reeves*, 961 F.3d at 800, 801 (5th Cir. 2020); *see also, e.g.*, *Teague v. Attala Cnty.*, 92 F.3d 283, 293–94 (5th Cir. 1996); *Clark*, 88 F.3d at 1399.

That history of discrimination bears directly on the 1987 Mississippi Supreme Court districts that are still used today. Professor Campbell's historical analysis of the origins of the 1987

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districts' configuration will show how the lines were originally drawn to divide and dilute the influence of more heavily-Black areas around the Delta and have continued to serve that purpose into the present day. PX-242 (Campbell Supp. Report) at 18–19; *see also* PX-243 (Campbell Rebuttal Report) at 2–3. He will explain that the first state judicial district maps drawn in the mid-1800s that extended East-to-West were created when Black Mississippians could not vote and were counted as three-fifths of a person, but the lines were nonetheless designed to dilute the political power that came with owning slaves. PX-242 (Campbell Supp. Report) at 3. Because enslaved Black Mississippians were concentrated along the Mississippi River where large cotton plantations were based, wealthy White enslavers had a political advantage over poor Whites in the Eastern part of the state, until the 1833 map allowed them to "fight back" against those elites. *Id.* at 3.

After Black people were emancipated from slavery, the Supreme Court district map remained unchanged until 1987 "because, from the perspective of the defenders of white supremacy, it was already doing precisely what it needed to do," and "what it had been designed to do when first created in the 1830s": "By dividing the state into three large, horizontal districts, the system enhanced the voting strength of the white-majority counties in the state's eastern and central regions at the expense of the Black-majority riverine counties." PX-242 (Campbell Supp. Report) at 4. Because the lines were drawn prior to November 1, 1964, the effective date of Section 5 of the Voting Rights Act, the majority-White Legislature could insulate the map from Department of Justice's review as long as they did not redraw it. *Id.* at 4.[6] On the facts of this case,

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[6] Professor Campbell will also compare the Supreme Court lines' configuration with those of the federal congressional districts. Despite having been originally drawn in a horizontal configuration

the history of slavery in Mississippi remains directly relevant because it shaped the district lines which were then maintained into the modern era.

Racial considerations also permeated the map-drawing process in 1987, with Black legislators opposing maps drawn by a map-drawing firm led by Hoyt Holland, who, as described above, was known for packing and cracking Black populations. PX-242 (Campbell Supp. Report) at 9–11, 15, 17. Despite the fury of Black legislators who decried one proposed map as a "bandaid" failing to afford Black Mississippians' appropriate voting power, in Holland's words, "[t]he parameters [they] used were least change and keeping the black population the same." *Id.* at 11. Professor Campbell thus appropriately concludes that, by only marginally increasing District 1's Black voting age population from 44.19% to 45.36%, the Legislature engaged in a "racial calculus," whereby it "enact[ed] the absolutely minimum change necessary to alleviate the threat of a malapportionment injunction on one hand and of a Section 5 objection on the other, and not one smidgeon more." *Id.* at 16, 18.

Defendants' expert Dr. Sherling will be unable to rebut Professor Campbell's comprehensive analysis showing how race is behind the remarkable endurance of the Supreme Court lines. *See* PX-243 (Campbell Rebuttal Report) at 2. Indeed, by his own words, Dr. Sherling is "not an expert in race relations or Mississippi legal history." *See* Sherling Report at 2. Any vague claim he may offer that the Legislature acted out of some fidelity to "tradition" in maintain the

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similar to the Supreme Court districts, by 1883, only one district stretched the width of the state, and by 1903, none did. *Id.* at 5. In 1966, the year following the passage of the VRA, the Mississippi Legislature passed a map—later successfully challenged under the VRA—that contained three congressional districts that were drawn horizontally across the state, dividing voters in the prior Black-majority Delta district that had been in place since 1873 into three separate White-majority districts in a design similar to the Supreme Court lines. *Id.*; *see Jordan v. Winter*, 604 F. Supp. 807, 809, 811 (N.D. Miss.), *aff'd sub nom. Mississippi Republican Exec. Comm. v. Brooks*, 469 U.S. 1002 (1984).

vote-dilutive districting configuration will not be grounded in historical evidence. *See* PX-242 (Campbell Supp. Report) at 2–3; PX-243 (Campbell Rebuttal Report) at 2–5. Moreover, Dr. Sherling will acknowledge that Professor Campbell "uncovered" "[t]he strongest evidence that racism was the driving factor" behind the 1987 Plan, by locating Hoyt Holland's statement that a central goal was to "keep the Black population the same." Sherling Report at 27.

Senate Factor 2: For the same reasons that Plaintiffs have shown racially polarized voting—at "extremely high" levels—for purposes of the *Gingles* preconditions, and shown, comprehensively and through multiple analyses, that race best explains this racial division in voting behavior, Plaintiffs have also shown that Senate Factor 2 favors a finding of vote dilution in this case. *See supra* pp. 17–22 & n.3.

Senate Factor 5: In *White v. Regester*, the Supreme Court's affirmed a finding of unconstitutional vote dilution based in part on the fact that the minority community "had long suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others." 412 U.S. at 768 (internal citations and quotation marks omitted). That same description indisputably applies to Black Mississippians today, and those disparities negatively impact their ability to vote, as this Court found on the existing trial record:

> In summary, there is extensive evidence in the record that Black Mississippians experience substantially greater hardships in education access, financial status, and wealth. The Court also accepts the evidence indicating that Black Mississippians participate in the political process at a rate lesser than White Mississippians. Additionally, the Court accepts the evidence presented linking the socioeconomic factors to political participation.

White v. SBEC, 795 F. Supp. 3d at 851. These facts have not been and will not be contested—Defendants concede that "black Mississippians lag behind whites in areas of education, employment, and health." *White v. SBEC*, 795 F. Supp. 3d at 846. Even Defendants' own expert,

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Dr. Bonneau, "agreed that the effects of historical discrimination continue to permeate life today in terms of the opportunities available to Black Mississippians." *Id.* at 836 n.13.

At the hearing, Dr. Burch will present further evidence that, consistent with *Callais*'s emphasis on present-day discrimination, that these disparities are connected to and deepened by intentional discrimination in education, employment, banking, housing and other areas affecting socioeconomic status. *See generally* PX-252 (Burch Suppl. Report). As Dr. Burch explains, educational attainment is one of the strongest predictors of voter participation, and "nearly a quarter of Mississippi's voting age population was educated during a time in which Black and White students did not have equal access to educational opportunities *by law*" as a result of legalized racial segregation. *Id.* at 3; *see also* Percy Watson 08/07/24 Trial Tr. 487:2–8 (testifying about personally attending a segregated high school). Even today, dozens of school districts in Mississippi remain under active desegregation orders. PX-252 (Burch Suppl. Report) at 3.

Socioeconomic factors, such as employment, income, and wealth, also affect political opportunity and the resources necessary to pay the costs of voting (or for that matter, of running for office), and Black Mississippians continue to face discrimination along all of these dimensions. Federal government data show that "Mississippi ranks second highest in the nation for employment discrimination complaints per capita based on color and/or race." PX-252 (Burch Supp. Report) at 5. Black Mississippians also suffer from discrimination by financial services institutions, which in turn impedes home ownership and wealth accumulation. *Id.* at 7. As Dr. Burch found, "[e]ven after controlling for income, Black borrowers in Mississippi are more likely to be denied loans, and if they are approved, more likely to be approved for higher APR loans than White borrowers." *Id.*

Black Mississippians also continue to encounter discrimination in the criminal justice system, which directly bears on their ability to vote given the State's felon-disenfranchisement

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regime. For instance, "Black drivers are stopped disproportionately in counties across Mississippi," PX-252 (Burch Supp. Report) at 9, and "Black people are overrepresented with respect to incarceration for drug crimes and lesser violent offenses relative to racial differences in arrest rates," *id.* at 10. Racial disparities in sentencing also persist, and, as the Supreme Court has recently found in reversing the Mississippi Supreme Court, state prosecutors have engaged in racial discrimination in jury selection through the use of peremptory challenges. *Id.* at 10. Indeed, "scholars have found that racial discrimination in the use of peremptory challenges is a widespread practice in Mississippi," with Black jurors being struck at higher rates than non-Black jurors even when controlling for possible explanations for striking. *Id.* The result is that Black Mississippians are disproportionately more likely to be disenfranchised, many permanently: An estimated 29,000 Mississippians who have finished serving prison sentences are permanently disenfranchised, 17,000 of which, or 58%, are Black. *Id.* at 8.

In short, Dr. Burch's further testimony and analysis will show that the racial disparities that diminish Black Mississippians' ability to participate equally in politics are not just traceable to racial discrimination in the distant past but are being reinforced today through ongoing, intentional discrimination affecting numerous aspects of civic life.

Senate Factor 6: With respect to the use of racial appeals, or "racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the black community," *White v. Regester*, 412 U.S. at 767, this Court previously identified numerous examples "illustrative of the continued utilization of racial appeals during elections in Mississippi." *White v. SBEC*, 795 F. Supp. 3d at 853. Those examples include racial appeals utilized against nearly every Black candidate who has sought election to the Mississippi Supreme Court, as well as Black candidates running in some of the highest profile elections in Mississippi, such as for U.S. Senate.

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Pls.' Proposed Findings of Fact (Dkt. 252) ¶¶ 382–85, 386–87. Again, those facts, and the reality that racial appeals continue to be a part of Mississippi politics, have not changed.

Senate Factor 7: The "extent to which members of the minority group have been elected to public office in the jurisdiction" is the only factor expressly written into the text of Section 2, and it is widely recognized, along with racially polarized voting, to be the most probative of unlawful vote dilution. *White v. SBEC*, 795 F. Supp. 3d at 854 (citing *Veasey*, 830 F.3d at 261). As this Court and the Fifth Circuit have recognized, this factor "contextualizes the degree to which vestiges of discrimination continue to reduce minority participation in the political process." *Id.* The Supreme Court in *White v. Regester* similarly recognized this factor to be "fundamental[]" to the analysis, noting that "since Reconstruction days, there have been only two" Black representatives elected to represent the jurisdiction in the state house. 412 U.S. at 766.

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The inability of Black candidates to win outside of majority-Black districts in Mississippi is just as dire as in *White v. Regester*. As this Court concluded on the basis of an extensive trial record, the prospects of Black candidates getting elected to the Mississippi Supreme Court "remain bleak":

> Out of the 125 Justices who have served on the Mississippi Supreme Court, only four have been Black. As noted above, all four of those Justices have held the same seat (District 1, Place 2). Notably, all four of them were first appointed by the then-sitting Governor. No Black person has ever been elected to the Mississippi Supreme Court without first obtaining a gubernatorial appointment. No Black person from either of the two other Districts has ever served on the Mississippi Supreme Court. *In short, the evidence illustrates that Black candidates who desire to run for the Mississippi Supreme Court face a grim likelihood of success.*

White v. SBEC, 795 F. Supp. 3d at 854 (emphasis added).

This stark reality again mirrors the facts of *White v. Regester*, where the Supreme Court upheld a finding that Mexican Americans had been "invidiously excluded . . . from effective participation in political life," in part because the county had elected only five Mexican Americans

to the Texas legislature since 1880. 412 U.S. at 769. Here too, nothing has changed about that reality, illustrated in depth by the existing trial record, in which Black Mississippians remain dramatically underrepresented on the Mississippi Supreme Court to this day.

Senate Factor 8: Another factor that supports a strong inference of racial discrimination is the extent to which the dominant political party "d[oes] not need the support of the [minority] community to win elections in the [jurisdiction], and it did not therefore exhibit good-faith concern for the political and other needs and aspirations of the [minority] community." *White v. Regester*, 412 U.S. at 767.

Whether in 1987 or the present day, the Mississippi Legislature, as the body responsible for judicial redistricting, has been controlled by a White-majority party unresponsive to the needs and concerns of Black voters. In 1987, the Mississippi Legislature expressly disregarded the concerns of Black voters and legislators seeking a districting plan that would have been nondiscriminatory and that would have given Black voters an equal opportunity to elect justices to the Mississippi Supreme Court, instead opting for a plan that would "keep[] the Black population the same." PX-235 (Cooper Supp. Report) at 6, 18. In the present, this Court has already heard extensive testimony that the Mississippi elected officials have "exhibit[ed] a lack of responsiveness to the needs of Black voters," including to address the myriad socioeconomic disparities that Black Mississippians continue to face, including education and healthcare. *White v. SBEC*, 795 F. Supp. 3d at 855. And despite that non-responsiveness to Black voters' concerns, the majority party has been able to retain super-majority or near-super-majority levels of control in state government and has been overwhelmingly successful in defeating minority candidates in statewide office. *See supra* pp. 31–32.

This Court previously determined that, although Plaintiffs had established the non-

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responsiveness of elected officials in Mississippi generally, the factor may be inapplicable to judicial office, particularly given the lack of "evidence presented that the Mississippi Supreme Court has played any role in the lack of responsiveness to the minority's particularized needs." *White v. SBEC*, 795 F. Supp. 3d at 856. However, given *Callais*'s new emphasis on facts that "shed light on current intentional discrimination," Plaintiffs would suggest that the non-responsiveness of the Legislature, as the body directly responsible for these challenged district lines, is more relevant to the question of Section 2 liability than the responsiveness of Mississippi Supreme Court justices. *Callais*, 608 U.S. at 120. And even if the responsiveness of the judiciary were at issue, Plaintiffs' supplemental evidence now includes further evidence of racial disparities in the criminal justice system, including sentencing disparities and widespread discrimination in jury selection, including cases in which the Mississippi Supreme Court has been reversed by the U.S. Supreme Court for failing to protect the right to an impartial jury. *See supra* pp. 28–31.

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Finally, another way in which the non-responsiveness of Mississippi's elected officials impacts Black voters' ability to elect candidates to the Mississippi Supreme Court is the governor's appointment power. There has never been a Black governor in Mississippi, and White governors are able to be elected in highly polarized elections without any meaningful Black support. *See* PX-11 (Dr. Orey's estimates showing that White candidates for governor have prevailed despite earning less than 10% of Black vote). Thus, there is little electoral reason for Mississippi governors to appoint more justices preferred by Black voters.

Senate Factor 9: The stated justifications for the 1987 lines remain tenuous under *Gingles*, 478 U.S. at 37. As explained, the Parties previously stipulated that the sole objective for the current electoral plan was to correct population malapportionment of the pre-1987 state supreme court districts, *White v. SBEC*, 795 F. Supp. 3d at 856 (citing Joint Final Pretrial Order [Doc. 228] at

20), and Professor Campbell's further analysis confirms that this was the impetus for taking up redistricting in 1987 following the call of Attorney General Pittman. *See* PX-242 (Campbell Supp. Report) at 6, 8; *see also* PX-107 (*McCray* summary judgment decision); PX-108 (Pittman Memo).

To be sure, the 1987 Legislature was not concerned with equalizing population as much as possible; if they were, they would not have chosen the second worst of the seven plans they considered in reducing population variance, which reduced the population variance to 8.8%, just under the 10% threshold. *See* PX-243 (Campbell Rebuttal Report) at 4. Rather, they were concerned with getting the deviation under the 10% threshold to avoid a one-person, one-vote violation. The final districting plan thus "'threaded the needle,' obviating the danger of a federal court injunction on one hand and of a Section 5 injunction on the other," all while ensuring that all nine Justices "would continue to be elected from comfortably white-majority districts." *Id.*

Today, the population equality objective is no longer being achieved. Four Censuses have come and gone since then, and no redrawing has occurred in the decades since, despite shifts in Mississippi's population, including in the most recent Census cycle. The Court thus credited Mr. Cooper's unrebutted testimony that "District 1 is underpopulated by 5.39 percent, which puts it *outside of the plus or minus 5 percent range which would normally be the standard for determining whether or not a district is properly apportioned for a legislative district or a judicial district*." *White v. SBEC*, 795 F. Supp. 3d at 857 (emphasis in original) (citing [Doc. 244] at 60). Nothing has changed to upset this Court's conclusion that the original, one-person, one-vote rationale for the challenged plan is thus no longer valid and instead would require the districts to be revised.

To the extent that Defendants advance an argument that the 1987 Legislature had a goal of avoiding Supreme Court districts being dominated by any particular region, the evidence will not support it. As Mr. Cooper's analysis shows and Dr. Alford would acknowledge, the Delta, even in

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Mr. Cooper's illustrative plans, makes up a smaller part of District 1 than the Gulf Coast does in District 2 and the Appalachian Region does in District 3. PX-235 (Cooper Supp. Report) at 22, fig. 14. The fact that the 1987 lines seem to preserve geographical regions *with the one exception of the Delta* confirms Professor Campbell's assessment that those lines carried forward the ancient design of splitting and diluting the political power of the riverine counties where Black population has long been most heavily concentrated. The continued use of that plan, and its continued dilution of Black citizens' voting power, is a historical injustice that should be righted for the benefit of all.

The factual support for the Court's original Section 2 liability determination was robust, based on an extensive trial record. After the coming hearing, the record as supplemented will fully support reaffirming that liability determination under *Callais*'s updated *Gingles* standard. At that point, a remedy for Black Mississippians—one that finally provides an equal opportunity to elect candidates to the Mississippi Supreme Court—should issue.

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CONCLUSION

Plaintiffs respectfully ask the Court to find a Section 2 violation pursuant to the updated legal standard set forth in *Callais*.

Date: November 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ari Savitzky, hereby certify that on November 2, 2026, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all parties on file with the Court.

Respectfully,

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