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

HAROLD HARRIS; PASTOR ROBERT TIPTON, JR.; DELTA SIGMA THETA SORORITY, INC.; and DESOTO COUNTY MS NAACP UNIT 5574 — **PLAINTIFFS**

VS. — **CIVIL ACTION NO.: 3:24-CV-00289-GHD-RP**

DESOTO COUNTY, MISSISSIPPI; DESOTO COUNTY BOARD OF SUPERVISORS; and DESOTO COUNTY ELECTION COMMISSION — **DEFENDANTS**

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Two individuals—Harold Harris ("Harris") and Robert Tipton, Jr. ("Tipton")—and two organizations—Delta Sigma Theta Sorority, Inc. ("DST") and DeSoto County MS NAACP Unit 5574 ("Unit 5574")—brought this lawsuit, challenging DeSoto County, Mississippi's ("DeSoto County" or the "County") 2022 redistricting plan ("2022 Plan") from which twenty-five county officials are elected from single-member districts across five separate sets of county offices. Plaintiffs claim the entire 2022 Plan dilutes Black voting power in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

Plaintiffs cannot establish the essential elements of their case for two independent reasons. First, Plaintiffs lack standing to mount a wholesale challenge to the entire 2022 Plan. Second, Plaintiffs have failed to proffer sufficient evidence to establish the necessary elements of their vote dilution claim under Section 2, particularly the threshold *Gingles* preconditions. Nor can Plaintiffs demonstrate that, under the totality of the circumstances, the challenged 2022 Plan results in the denial or abridgment of their right to vote on account of race of color. As a result, Plaintiffs cannot establish a viable Section 2 vote dilution claim, and Defendants are entitled to summary judgment.

RELEVANT BACKGROUND

The Plaintiffs. Harris is a Black, registered voter residing in Walls, Mississippi.[1] Under the 2022 Plan, Harris' supervisor is Ray Dennison, the county supervisor for District 3.[2] He is a member of Unit 5574.[3]

Tipton[4] is a Black, registered voter, residing in Nesbit, Mississippi, where he has lived for the past ten years.[5] Under the 2022 Plan, Tipton lives in District 4.[6] Tipton is currently the president of Unit 5574 and has been a member of the unit for approximately nine years.[7]

DST is a national, non-profit organization incorporated under the laws of the District of Columbia.[8] It was formed as a "union among college-educated women for the fostering of high ideals in moral, social, and intellectual life" with its "principal purposes and aims" being to "engage in cultural, education, advocacy and service activities; to establish, maintain, and enforce high cultural, intellectual and moral standards; and to direct and guide the chapters of the Sorority established under the authority and sanction of this organization."[9] DST's representative testified that it has "five programmatic thrusts" including "educational development, economic development, international involvement and awareness, physical and mental health, and political

[1] Harris Discovery Resp, **Ex**. **A**.
[2] Harris Depo. at 60:24-61:1, **Ex**. **B**. Ray Dennison is the supervisor for District 3. *See* DeSoto County Board of Supervisors, https://www.desotocountyms.gov/100/Board-of-Supervisors.
[3] Harris Depo. at 42:23-24.
[4] Defendants took the deposition of Robert Tipton individually on Sept. 18, 2025 ("**Tipton Depo**."), **Ex**. **C**. Robert Tipton was also deposed as the designated corporate representative for NAACP Unit 5574 ("Unit 5574 Depo.").
[5] Tipton Depo. at 10:2-11, Ex. C; *see also* Tipton Discovery Resp., **Ex**. **D**.
[6] Tipton Depo. at 13:12-23.
[7] *Id*. at 13:13-15; 70:11-24.
[8] Compl. [1] at ¶ 41; *see also* Except of Delta Sigma Theta Bylaws, **Ex**. **E**.
[9] Excerpt of Delta Sigma Theta Constitution, **Ex. F**.

awareness and involvement."[10] DST uses these five areas as a guide to develop programs and determine what is needed in the communities in which its members live and serve.[11]

Civic engagement is one of DST's "core tenant[s]" and "ensuring fair district lines that do not dilute the voting strength of Black communities is among the organization's top social action priorities."[12] One of DST's goals is to "fight[ ] for voters' rights" and to "make sure everyone . . . is aware of what they are entitled to nor not entitled to as far as when it comes to voters' [ ] rights."[13]

DST claims it has 138 members in DeSoto County, including "several members who are Black registered voters of DeSoto County who live and vote in Horn Lake, Walls, Nesbit, and the surrounding areas where a reasonably configured majority-Black district can be drawn consistent with traditional redistricting principles."[14] Plaintiffs claim these members' votes are diluted in violation of Section 2.[15] But DST does not keep track of the race of its members or how many of its members are registered to vote.[16] Nor does DST have any practices related to getting its members out on election days.[17] Nor does DST know which district its own corporate representative lives in under the 2022 Plan.[18] Neither DST nor Unit 5574 tracks information about its members' preferred candidate of choice.[19] DST does not have information on whether there are impediments to women or black voters getting to the polls and voting in DeSoto County.[20]

[10] DST Dep. 40:4-9, **Ex. G**.
[11] *Id*. at 40:9-11.
[12] Compl. [1] at ¶ 43.
[13] *Id*. at 68:12-22.
[14] *Id*. at ¶ 44.
[15] *Id*.
[16] DST Depo. 54:24-25, 73:19-21.
[17] *Id*. at 73:24-74:1.
[18] *Id*. at 62:20-23.
[19] *Id*. at 66:13-21; *see also* Unit 5574 Depo. at 91:6-92:11, **Ex. H**.
[20] *Id*. at 69:7-20.

DST testified that this lawsuit supports its political programmatic area by "allowing equal representation or fair representation" and that the "redistricting lines . . . have taken away some of the African American representation in the communities."[21]

DST was not involved in the redistricting process in 2022.[22] DST is not aware of "any discriminatory effect" that the 2022 Plan has had.[23] DST was not aware of any funds that it expended related to redistricting.[24]

Unit 5574 is a unit of the National Association for the Advancement of Colored People ("NAACP").[25] Plaintiffs claim that Unit 5574 "has worked for decades to expand voting rights and fair representation for the County's Black residents."[26] Plaintiffs' allege that Unit 5574 has "members throughout DeSoto County," including "Black residents" in "Horn Lake, Walls, Nesbit, and the surrounding areas, where a reasonably configured majority-Black district can be drawn consistent with traditional redistricting principles."[27] Plaintiffs contend these members' votes, including Harris and Tipton, are diluted in violation of Section 2."[28]

Only six members of Unit 5574—Theresa Isom, Gail Lyons, Hester Jackson-McCray, James Woodard, and Dianne Black—have run for public office in DeSoto County.[29] Of those members, only one has run for one of the twenty-five (25) County offices at issue.[30] Members of

[21] *Id.* at 70:22-24, 72:9-12
[22] *Id.* at 136:15-19.
[23] *Id.* at 137:3-7.
[24] *Id.* at 156:18-20.
[25] Compl. [1] ¶ 46.
[26] *Id.* at ¶ 47.
[27] *Id.* at ¶ 49.
[28] *Id.*
[29] *Id.* at 15:17-17:14, 19:4-19:21.
[30] *Id.* In 2021, Elsie Miller ran for Board of Education in District 2. *Id.* at 20:2-5.

Unit 5574 help with voting registration in DeSoto County.[31] Unit 5574 encourages its members to "get out and vote."[32] But Unit 5574 is not even aware there was a District 5.[33]

Tipton is the president of Unit 5574 and is responsible for all DeSoto County.[34] Nevertheless, any lawsuit involving redistricting or purported "unfair map drawing" in DeSoto County needs approval from the National NAACP.[35]

At the time the Board of Supervisors adopted the 2022 Plan, there were approximately 146 members of Unit 5574.[36] Unit 5574 does not keep track of which of its members are registered to vote in DeSoto County.[37] Nor does Unit 5574 know which members presently live in which supervisory district.[38] Unit 5574 does not have a chapter newsletter.[39]

Unit 5574 did not participate in the redistricting process in DeSoto County after the 2020 census, did not retain anyone to prepare alternative maps related to redistricting in DeSoto County after the 2020 census, did not partner with any other organizations related to redistricting in DeSoto County after the 2020 census, and did not provide support to any organizations related to redistricting in DeSoto County.[40] Unit 5574 was not involved in the state lawsuit.[41] Unit 5574 conceded as much, stating "[y]ou got me thinking why am I involved [in this lawsuit] now."[42]

DeSoto County's 2022 Redistricting Process. The 2022 Plan consists of five single-member districts.[43] One member from each of these five districts is elected to the County's Board

[31] *Id.* at 21:22-24.
[32] *Id.* at 22:15-22.
[33] *Id.* at 20:22-25.
[34] *Id.* at 24:1-2; 25:20-25.
[35] *Id.* at 28:12-19.
[36] Unit 5574 Depo. at 12:10-17.
[37] *Id.* at 13:24-14:2.
[38] *Id.* at 20:8-25.
[39] *Id.* at 36:5-7.
[40] *Id.* at 35:12-36:4.
[41] *Id.* at 36:18-20.
[42] *Id.* at 32:11-12.
[43] Compl. [1] at ¶ 1.

of Supervisors, Election Commission, School Board, Justice Court Judges, and Constables.[44] The result is twenty-five elected officials in all.[45]

Following the 2020 Census, the Board of Supervisors determined that it was necessary to redraw the district lines used in the prior map to account for the growth of the County's population.[46] To conduct this endeavor, the Board of Supervisors contracted with Chris Watson, a demographer, to prepare redistricting maps for the Board's consideration.[47] Watson has over thirty (30) years of experience in demography and has worked and crafted numerous county redistricting plans and other similar plans for local governments throughout Mississippi.[48]

Throughout the redistricting process, Watson met with County government officials to gather information needed for his redistricting work.[49] Watson also met with citizens who had voiced interest in the County's redistricting process to explain and discuss the redistricting process and to receive their input.[50] Beginning March 21, 2022, Watson prepared several proposed redistricting plan alternatives for the Board of Supervisor's consideration.[51]

After considering numerous potential maps, the Board of Supervisors selected four alternatives for final consideration, provided notice for a public hearing to be held on June 6, 2022 at 8:00 a.m., and displayed the four alternate maps, respectively labeled Alternate 1, 2, 3, and 4, at the County's administrative building located in Hernando in the days prior to the public hearing.[52] During the June 6 public hearing, the Board considered Alternates 1, 2, 3, and 4, opened the floor

[44] *Id*.
[45] *Id*.
[46] Caldwell Depo. at 36:1-13, **Ex**. **J**.
[47] Watson Depo. at 44:7-14, **Ex**. **K**.
[48] *Id*. at Ex. 4 (Curriculum Vitae of Christopher Watson).
[49] *Id*. at 79:4-81:10
[50] *Id*. at 162:23-163:18.
[51] *See* March 21, 2022, Ltr. from C. Watson to V. Lynchard, **Ex**. **L**.
[52] Watson Depo. at 138:8-139:1; 140:4-7.

to public comment, and was presented with two additional plans, one proposed by Mississippi State Representative Hester Jackson McRay titled the "Magnolia Flower Plan"[53] And one proposed by the DeSoto County Redistricting Committee (DCRC).[54] As the Board began to gravitate toward Alternate 1, Alderman Andrew Miller, an African American Alderman from Hernando, asked that changes to the lines within his district be adjusted to allow a precinct to remain within his district so that his constituents could continue voting at the precinct they had traditionally voted at and were familiar with.[55] After a brief recess to allow Watson to assess the impact of this change on the overall redistricting plan within Alternate 1, the Board made this change and referred to this revised plan as "Alternate 1 Revised."[56] At the conclusion of the June 6 public hearing, the Board of Supervisors unanimously voted to adopt Alternate 1 Revised.[57]

Plaintiffs' Lawsuit. On September 12, 2024, Plaintiffs sued DeSoto County, the Board of Supervisors, the DeSoto County Election Commission ("Election Commission"), and Dale Thompson, in her official capacity as Circuit Court Clerk.[58] Plaintiffs allege the 2022 Plan "dilutes Black voting power in DeSoto County" by "crack[ing]" and "split[ting]" the majority Black city of Horn Lake between District 3 and District 4, thereby denying "Black voters an equal opportunity to elect a candidate of choice to any County Office in any of the five districts" in violation of Section 2 of the VRA.[59]

[53] *Id*. at 151:5-20; PLA00529-00539 (Ex. 28 to Watson Depo.)

[54] DCRC is the Desoto County Community Redistricting Committee. *See* Ex. 28 to Watson Depo.

[55] Watson Depo. at 163:23-164:2; Medlin Depo. at 114:5-25; *see also* June 6, 2022, Board Meeting Minutes, **Ex**. **M**.

[56] Medlin Depo. at 115:6-23, **Ex**. **N**.

[57] *Id*. at 117:20-118; 108:6-9.

[58] Compl. [1] at ¶ 54. Thompson was originally named as a defendant in her official capacity as Circuit Clerk. *Id*. Defendants sought dismissal of Plaintiffs' Complaint on various grounds including Plaintiffs' lack of standing to sue Thompson, and, on April 28, 2025, this Court granted in part Defendants' motion, dismissing Thompson as a defendant. Mot. to Dismiss Order [98].

[59] Compl. [1] at ¶¶ 27, 81-82, 237.

Plaintiffs seek extraordinary relief from this Court, including that it "declar[e] that the district boundaries adopted by the Board of Supervisors and used to elect" the County offices at issue "deny or abridge the rights of Plaintiffs to vote in violation of Section 2 of the VRA . . . ."[60] Plaintiffs ask that the Court "[p]ermanently enjoin Defendants and their agents from holding an any election for" the County offices at issue "under the existing district boundaries;" "[d]irect Defendants, their agents and all persons acting in concert with Defendants to take appropriate action to ensure uniform compliance with this Court's Orders by authorities administering the County's electoral processes;" and "set a reasonable deadline for DeSoto County to adopt county elections districts that do not abridge or dilute the ability of Black voters to elect candidates of their choice . . . ."[61] Should the County fail to do so by that deadline, Plaintiffs ask that the Court "order the adoption of remedial plans that do not abridge or dilute the ability of Black voters to elect candidates of their choice;" and "order Defendants to hold special elections to limit the harm to Plaintiffs should adequate relief be unavailable prior to the next regularly scheduled elections."[62]

LEGAL STANDARD

Under Rule 56, the question is whether the record evidence provides a viable basis for relief. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Summary judgment is warranted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact. Fed. R. Civ. P. 56(c). A fact is material if it is essential to the plaintiff's cause of action under the applicable theory of recovery, without which the plaintiff cannot prevail. *Celotex v. Catrett*, 477 U.S. 317, 322-323 (1986).

[60] *Id.* at ¶¶ 35-36.
[61] *Id.* at ¶ 36.
[62] *Id.* at ¶ 35-36.

When, as here, the plaintiff would bear the burden of proof at trial, the defendants need only "identif[y] an absence of evidence that supports a material fact[.]" *Ruiz v. Whirlpool, Inc.*, 12 F.3d 510, 513 (5th Cir. 1994). Once the movant meets this burden, the nonmovant must go beyond the pleadings and "identify specific evidence in the record, and [] articulate the 'precise manner' in which that evidence support[s] [his] claim." *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir. 1994). To defeat a motion for summary judgment, Plaintiffs must present more than "conclusory allegations, speculation, and unsubstantiated assertions." *Ramsey v. Henderson*, 286 F.3d 264, 269 (5th Cir. 2002) (quotation omitted). Summary judgment must be entered against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (quoting *Celotex*, 477 U.S. at 322).

ARGUMENT AND AUTHORITIES

Plaintiffs' sole claim is that the 2022 Plan dilutes the voting strength of the Black population in DeSoto County in violation of Section 2. However, their claim to invalidate the entire 2022 Plan cannot survive summary judgment for two independent reasons. As a jurisdictional matter, Plaintiffs lack standing to challenge the entirety of the 2022 Plan and to justify their requested relief. Substantively, Defendants are entitled to summary judgment because Plaintiffs cannot prove all *Gingles* preconditions, which is fatal to their claim. Nor can Plaintiffs establish a Section 2 violation under the totality of the circumstances in any event. Moreover, to the extent Plaintiffs attempt to advance an alternative theory of liability or seek relief under any other federal law, they still would not have a viable basis for relief and thus their claim would fail as a matter of law. The analytical path toward dismissal is discussed in turn.

I. Plaintiffs lack standing to challenge the entire 2022 plan and to obtain their requested relief.

Article III of the U.S. Constitution limits the federal judiciary's power to deciding only "Cases" and "Controversies." *See Lutostanski v. Brown*, 88 F.4th 582, 586 (5th Cir. 2023) (citing U.S. CONST. art. III, § 2, cl. 1); *NAACP v. Tindell*, 95 F.4th 212, 216 (5th Cir. 2025) (per curiam) (citing U.S. CONST. art. III, § 2). Standing is an "unchanging part of the case-or-controversy-requirement of Article III." *El Paso Cnty., Tex. v. Trump*, 982 F.3d 332, 354 (5th Cir. 2020) (quotation omitted). To establish standing, a plaintiff must show (1) an injury in fact that is (2) fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by favorable judicial decision. *Fusilier v. Landry*, 963 F.3d 447, 454 (5th Cir. 2020) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)); *see also Harding v. Cnty. of Dallas, Tex.*, 948 F.3d 302, 307 (5th Cir. 2020) (citation omitted). These elements of standing are "an indispensable part of the plaintiff's case," and as the parties invoking federal jurisdiction, Plaintiffs bear the burden of establishing standing. *Cameron Cnty. Hous. Auth. v. City of Port Isabel*, 997 F.3d 619, 622 (5th Cir. 2021) (citation omitted). And because "standing is not dispensed in gross," *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006), Plaintiffs must establish standing for each claim they assert and for each form of relief they seek. *El Paso Cnty.*, 982 F.3d at 338, 342 (citations omitted); *see also Town of Chester v. Laroe Ests. Inc.*, 581 U.S. 433, 439 (2017). Standing is therefore assessed plaintiff-by-plaintiff and claim-by-claim. *See In re Gee*, 941 F.3d 153, 171 (5th Cir. 2019).

Plaintiffs lack standing to challenge the entire 2022 Plan and to justify their requested relief because Plaintiffs have not suffered a legally cognizable injury in fact and the harm for which they complain is speculative and cannot be redressed by the requested relief.

As the "[f]irst and foremost" requirement of standing, an injury in fact requires a plaintiff to "show that he [ ] suffered an invasion of a legally protected interest" that is concrete and

particularized and "actual or imminent, not conjectural or hypothetical." *Harrison Cnty., Miss. v. U.S. Army Corps of Eng's*, No. 24-60553, 2025 WL 2860643, at *3-4 (5th Cir. Oct. 9, 2025) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338-39 (2016)). For an injury to be particularized, it "must affect the plaintiff in a personal and individual way." *Gill v. Whitford*, 585 U.S. 48, 66 (2018) (quoting *Lujan*, 504 U. S. at 560 & n.1) (cleaned up). Put differently, a litigant must have "a personal stake in the outcome of the controversy" distinct from a "generally available grievance about government." *Id*. at 54 (citing *Baker v. Carr,* 369 U. S. 186, 204 (1962)).

The right to vote is "individual and personal in nature" and thus, "voters who allege facts showing disadvantage to *themselves* as individuals have standing to sue' to remedy that disadvantage[.]" *Id.* (emphasis added) (first quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964); and then citing *Baker*, 369 U. S. at 206). Here, the heart of this case is Plaintiffs' contention that the voting strength of the Black population in DeSoto County has been diluted by "cracking," "splitting," and "splintering" the Black community among elections such that the Black population does not have an opportunity to elect their candidate of choice to any of the five County offices at issue. *See* Compl. [1] at ¶¶ 2, 9, 20, 27, 81, 82. When, as here, "the plaintiffs' alleged harm is the dilution of their vote, that injury is district specific." *Id*. at 66; *see also Harding*, 948 F.3d at 307 & n.11 (applying *Gill's* holding in the racial vote dilution context); *League of Latin Am. Citizens v. Abbott*, 604 F. Supp. 3d 463, 485-86 (W.D. Tex. 2022).

This is because "[t]he boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked" and "[t]his disadvantage to [the voter] as [an] individual[ ] . . . results from the boundaries of the particular district in which he resides." *Gill*, 585 U.S. at 60 (quoted case omitted). A federal court is not "a forum for generalized grievances," and the requirement that plaintiffs have a personal stake in the

claim they bring "ensures that courts exercise power that is judicial in nature." *Id.* at 66 (quoting *Lance v. Coffman*, 549 U.S. 437, 439, 441 (2007)). Accordingly, individual voters only have standing to challenge their own districts and not those in which they do not reside.

A. The individual Plaintiffs lack standing to challenge the entire 2022 Plan.

As to the individual Plaintiffs—Harris and Tipton—Plaintiffs have offered evidence that Harris is a resident of District 3 living in Walls[63] and Tipton is a resident of District 4 living in Nesbit.[64] The individual Plaintiffs' theory to establish standing appears to be that they reside in a majority-Black district that was not created under the 2022 Plan.[65] That theory presents at least two problems.

First, Plaintiffs appear to conflate their evidentiary burden for establishing the threshold *Gingles* preconditions of their Section 2 claim with a cognizable injury in fact for Article III standing purposes. *See Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 463 (E.D. Tex. 2020) ("The *Gingles* framework sets out a threshold *evidentiary burden*, not a proxy test for standing."); *El Paso Cnty.*, 982 F.3d at 354 (5th Cir. 2020) ("[T]he question of standing is whether the litigant is entitled to have the court decide the merits of the dispute.").

Second, this theory "rests on a failure to distinguish injury from remedy." *Gill*, 585 U.S. at 50, 68. Just like the plaintiffs in *Gill*, the individual Plaintiffs here seem to contend that regardless of whether they themselves reside in a district that has been allegedly "cracked" or "split," they have been harmed by the drawing of the district lines because throughout the entire county the Black community does not have the same opportunity to elect their candidate of choice to any of the five county offices at issue.[66] This argument, however, has been rejected by the Supreme Court.

[63] Harris Depo. at 60:24-61:1.
[64] Tipton Depo. at 13:19-23.
[65] Compl. [1] at ¶¶ 35-36, 39-40.
[66] Compl. [1] at ¶¶ 81, 89-90.

Gill, 585 U.S. at 66 (holding that, where a plaintiff's alleged harm is vote dilution, "that injury is district specific[,]" "[t]he boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked[,]" and a plaintiff's remedy must be "limited to the inadequacy that produced [his] injury in fact."). It is also at odds with Fifth Circuit precedent. *See McMahon v. Fenves*, 946 F.3d 266, 270 (5th Cir. 2020) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972)) (holding that to satisfy the injury in fact requirement for standing, a plaintiff "must allege more than an injury to *someone's* concrete, cognizable interest; they must 'be [themselves] among the injured.'"). Here, Plaintiffs' claim turns on allegations that their votes have been diluted. *See, e.g.*, *Gill*, 585 U.S. at 50, 68. Because an individual voter is placed in a single district under the 2022 Plan and then votes for a single representative to each of the county offices at issue, the harm arises from the particular composition of the voter's own district. Thus, the alleged injury resulting from vote dilution is district specific. *See Gill*, 585 U.S. at 66; *accord Abbott*, 604 F. Supp. 3d at 490.

This fits the statutory mandate that nothing in Section 2 establishes a right to have members of a protected class elected in numbers equal to their proportion of the population. *See* 52 U.S.C. § 10301(b). "[T]he ultimate right of [Section] 2 is the equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Johnson v. De Grandy*, 512 U.S. at 1014 n.11. Thus, lack of proportional representation alone cannot be the alleged injury in a Section 2 vote dilution claim to establish standing. *See Perez v. Abbott*, 267 F. Supp. 3d 750, (W.D. Tex. 2017) (citing *Pope v. City of Albany*, 2014 WL 316703, at *5 (N.D. N.Y. 2014)). Therefore, to the extent Plaintiffs' alleged dilution injury is based on the failure to create a majority-Black district or a Black-opportunity district, the individual Plaintiffs still lack standing to challenge the entire 2022 Plan.

As to Districts 1, 2, and 5 where the individual Plaintiffs do not reside, they do not have standing to challenge those districts because "mere proximity to other districts where vote dilution may have occurred does not create standing to challenge . . . those districts." *LULAC v. Abbott*, 604 F. Supp. 3d 463, 490 (W.D. Tex. 2022); *accord Petteway v. Galveston Cnty.*, 667 F. Supp. 3d 443 (W.D. Tex. 2017). In those allegedly dilutive districts in which the individual Plaintiffs do not reside, they are "assert[ing] only a generalized grievance" that does not create Article III standing. *Abbott*, 604 F. Supp. 3d at 486 (quotation omitted). As a result, the individual Plaintiffs cannot establish that they have a personal stake in this statutory challenge to the entire 2022 Plan as purportedly dilutive of their voting strength in those districts in which they do not reside. *See Abbott*, 604 F. Supp. 3d at 490 (rejecting claim by plaintiffs that resided in districts adjoining the districts actually being challenged, reasoning that none of the plaintiffs resided in the districts they challenged and that, in vote dilution cases, "the harm arises from the particular composition of the voter's own district") (quoting *Harding*, 948 F.3d at 306); *see also Dutmer v. City of San Antonio*, 937 F. Supp. 587, 591 (W.D. Tex. 1996) (holding that a plaintiff that had not been "denied the opportunity to participate in the electoral process by reason of her race or language" had not suffered an injury in fact and did not have standing under the VRA).

B. **The organizational Plaintiffs lack standing to challenge the entire 2022 Plan**.

The organizational Plaintiffs—DST and Unit 5574—similarly lack standing to challenge the entire 2022 Plan. An organization can establish an injury in fact "either by showing it can sue on behalf of its members ('associational' standing) or sue in its own right ('organizational' standing)." *La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 286 (5th Cir. 2025) (quoting *Texas State LULAC v. Elfant*, 52 F.4th 248, 253 (5th Cir. 2022)). Both types of standing are addressed in turn.

1. DST and Unit 5574 lack associational standing to advance a Section 2 claim here.

Associational standing is derivative of the standing of the organization's members. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). To establish associational standing, each organizational Plaintiff must show "[1] its members would otherwise have standing to sue in their own right; [2] the interests it seeks to protect are germane to the organization's purpose; and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Elfant*, 52 F.4th at 253 (citation omitted). It is not enough to simply allege that the organization has members in the affected area—the organization must identify a specific member who has been injured. *NAACP v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010).

With particular respect to DST, Plaintiffs also do not have sufficient facts to establish the first element for associational standing, whether its members otherwise having standing to sue in their own right. DST members do not necessarily live in DeSoto County, and DST failed to meaningfully identify who its members are in DeSoto County.[67]

With respect to both DST and Unit 5574, this third element for associational standing—the required participation of its members in the lawsuit—precludes both organizations from establishing associational standing. "[P]laintiffs claiming an organizational standing [must] identify members who have suffered the requisite harm . . . ." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). Both DST and Unit 5574 nevertheless refused to provide sufficient specific information related to their respective members, those members' identities, or their addresses during discovery.[68] This refusal to identify members who have suffered cognizable harm thus

[67] DST Depo. at 21:4-15, 82:3-9. At the eleventh hour on the discovery deadline, Plaintiffs disclosed two members of DST who would ostensibly reside in a majority-Black district and who have information regarding standing. *See* Plaintiffs' third supplemental initial disclosures. Defendants' contemporaneously filed motion to strike seeks to have these individuals excluded due to the untimely nature of their disclosure which precluded Defendants from deposing them. Doc. Nos. [293, 293-1 & 294].

[68] DST Depo. at 82:3-9; Unit 5574 Depo. at 13:2-14.

necessitates participation of both groups' members to make such a showing, but discovery has closed without such members being sufficiently identified and disclosed. Both DST and Unit 5574 thus lack associational standing, requiring them to come forth with facts to establish organizational standing.

2. Unit 5574 and DST lack organizational standing to advance a Section 2 claim here.

By contrast, organizational standing does not depend on the standing of the organization's members. *OCA-Greater Houston*, 857 F.3d at 610. An organization has standing to sue in its own right "if it meets the same standing test that applies to individuals." *El Paso Cnty.*, 982 F.3d at 344 (citations omitted). In this context, an organization can establish that it suffers an injury in fact if its "ability to pursue its mission is 'perceptibly impaired' because it has 'diverted significant resources to counteract the defendant's conduct.'" *Elfant*, 52 F.4th at 253. Known as a "diversion of resources theory," such an injury must be concrete and demonstrable. *Id.* An organization can show standing through a diversionary injury by identifying "specific projects that [it] had to put on hold or otherwise curtail in order to respond to the [challenged redistricting plan]." *Id.*

But an organization does not automatically suffer a cognizable injury in fact by diverting resources in response to a defendant's conduct. "[T]he mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization." *Ass'n of Comm. Org. for Reform Now v. Fowler*, 178 F.3d 350, 358 (5th Cir. 1999) (*ACORN*) (quoting case omitted). Further, the organization's reaction to the allegedly unlawful conduct must differ from its routine activities. Here, the organizational Plaintiffs cannot establish a cognizable injury in fact under organizational standing.

There is insufficient evidence that DST has diverted resources of any kind to respond to the 2022 Plan. For example, DST testified that it was not aware of DST expending any funds related to the County's redistricting,[69] it did not know if any of its members attended the June 6, 2022, meeting at which the Board of Supervisors approved the 2022 Plan,[70] and the June 6, 2020, board meeting was never brought up any at future DST meetings.[71] DST also is not aware of any "disparities" at the voting polls in DeSoto County since August 2023, DST is not aware of and does not "poll or track" any needs of the black community in DeSoto County, DST is unaware of and does not track whether voting at the county level in DeSoto County is equal or fair, DST does not poll, track, or do anything else to observe how the 2022 Plan impacts economic prospects for black citizens in DeSoto County.[72] DST added that it was not aware of any discriminatory effect that the 2022 redistricting had,[73] and DST is not aware of how this lawsuit supports its mission.[74]

There is no evidence that Unit 5574 has diverted any resources to responding to the 2022 Plan. Unit 5574 did not participate in the redistricting process in DeSoto County leading up to the 2022 Plan,[75] and it did not partner with or provide support for any organizations related to the redistricting in DeSoto County underlying the 2022 Plan.[76] Unit 5574 is not aware of any action that the DeSoto County Board of Supervisors took that was bad for Unit 5574 during the redistricting underlying the 2022 Plan.[77] Other than educating voters on voting registration, voting

[69] *Id*. at 156:18-20.
[70] *Id*. at 158:10-18.
[71] *Id*. at 158:19-21.
[72] *Id*. at 46:7-48:8, 71:7-13, 77:23-78:12, 91:20-92:21.
[73] *Id*. at 137:3-7.
[74] *Id*. at 77:17-78:12. On questioning by its attorney after having given this testimony, DST attempted to add that its mission included support of "disenfranchised communities[,]"*id*. at 205:15-25, but on redirect by the County, DST did not know whether there were any "disenfranchised communities" in DeSoto County and added that it did not poll or track that information. *Id*. at 211:15-212:19.
[75] Unit 5574 Depo. at 35:12-15.
[76] *Id*. at 35:20-36:2.
[77] *Id*. at 42:15-19.

time, and voting place, Unit 5574 has not formally or informally participated in any political campaigns in DeSoto County since 2020.[78] Unit 5574 made no effort, as a unit, to get involved in the County's redistricting process underlying the 2020 Plan, and Unit 5574 has not determined whether it believes the County's Board of Supervisors intentionally discriminated against black citizens during the redistricting process.[79] With the exception of informal (unwritten) complaints from three individuals who lost their respective bids for public office in DeSoto County, Unit 5574 has not received any formal, written complaints (and thus has not had to expend resources to investigate) related to the district lines in the 2022 Plan.[80] Unit 5574 has not presented any complaints to the Board of Supervisors or the Election Commission related to the 2022 Plan.[81]

As this evidence makes clear, both DST and Unit 5574 fail to link any purported diversion of resources specifically to the 2022 Plan. An organizational plaintiff must show it diverted resources "as a **direct** result of" the challenged redistricting plan—not as a result of the challenged redistricting plan. *Elfant*, 52 F.4th at 254 (emphasis added). Neither Unit 5574 nor DST have evidence that they have diverted resources as a direct result of the 2022 Plan, and thus they lack organizational standing to advance claims in this case.

At bottom, DST and Unit 5574 fail to show that any diversion was a direct response to the 2022 Plan specifically, and thus neither organization can establish traceability. *ACORN*, 178 F.3d at 359 (holding that diversion of resources must be "fairly traceable" to the conduct . . . that [plaintiff] claims in its complaint is illegal"). For similar reasons, DST and Unit 5574 also fail to show redressability. *See Elfant*, 52 F.4th at 255 (citing *Larson v. Valente*, 456 U.S. 228, 243 n.15

[78] *Id.* at 52:20-53:10.
[79] *Id.* at 98:21-1007.
[80] *Id.* at 106:3-107:10, 113:1-116:3.
[81] *Id.* at 179:19-180:14.

(1982) (redressability requires "a favorable decision will relieve a discrete injury to [the plaintiff]")). DST and Unit 5574 thus fail to satisfy any of the elements of Article III standing.

II. Defendants are Entitled to Summary Judgment on Plaintiffs' Section 2 Claim.

Defendants are entitled to summary judgment on Plaintiffs' claim that the 2022 Plan violates Section 2 because they do not have sufficient evidence to establish all three *Gingles* preconditions or to demonstrate that the 2022 Plan results in the denial or abridgment of the right to vote on account of race.

Section 2 provides that "[n]o voting . . . standard, practice or procedure shall be imposed or applied by any . . . political subdivision in a manner which results in a denial or abridgment of the right of any citizens of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). A violation of Section 2 is established only "if, based on the totality of the circumstances, it is shown that the political process leading to the nomination or election in the . . . political subdivision are not equally open to participation by members" of the relevant protected group "in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b).

The framework for analyzing vote dilution claims under Section 2 comes from *Thornburg v. Gingles*, 478 U.S. 30 (1986). *See Petteway v. Galveston Cnty.*, 111 F.4th 596, 602 (5th Cir. 2024) (en banc). To succeed on their Section 2 vote dilution claim, Plaintiffs must first prove all three *Gingles* preconditions: (1) "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a [reasonably configured] single-member district;" (2) "the minority group must be able to show that it is politically cohesive;" and (3) "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." *Id.* (citing *Gingles*, 578 U.S. at 50–

51); *see also Harding*, 948 F.4th at 309. "Failure to establish any one of these threshold requirements is fatal." *Id.*; *see also Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852 (5th Cir. 1999) (citing cases holding the same). These preconditions "guide the determination of whether 'minority voters possess the potential to elect representatives in the absence of the challenged structure or practice[.]'" *Harding*, 948 F.3d at 309. After all, if minority voters lack this potential, "they cannot claim to have been injured by that structure or practice." *Id.*; *see also Growe v. Emison*, 507 U.S. 25, 42 (1993) ("Unless [the three *Gingles* preconditions] are established, there neither has been a wrong nor can be a remedy."). Thus, these preconditions are necessary but not sufficient to prevail on a Section 2 claim. *Fusilier*, 963 F.3d at 456 (citing *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 868 (5th Cir. 1993) (en banc) (*Clements IV*)).

If Plaintiffs have met their burden of establishing all the *Gingles* preconditions, they must then prove that under the totality of the circumstances, the political process is not equally open to the minority group in that its members have less of an opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. *Clements IV*, 999 F.2d at 849. The totality of the circumstances inquiry entails a functional analysis that is "peculiarly dependent upon the facts of each case and requires an intensely local appraisal of the design and impact of the contested electoral mechanisms." *Gingles*, 478 U.S. at 79–80 (citations omitted

Plaintiffs bear the burden of proving that all three *Gingles* preconditions are met and that based on the totality of the circumstances, the challenged redistricting plan dilutes the voting strength of the minority group. *See Rodriguez v. Bexar Cnty.*, 385 F.3d 853, 860 (5th Cir. 2004); *League of United Latin Am. Citizens #4552 v. Roscoe Indep. Sch. Dist.*, 123 F.3d 843, 846 (5th Cir.

1997); *Overton*, 871 F.2d at 532. "Any lack of evidence in the record regarding a violation of the Voting Rights Act . . . must be attributed to the plaintiffs." *Roscoe Indep. Sch. Dist.*, 123 F.3d at 846; *Harding*, 948 F.3d at 312.

A. Plaintiffs cannot establish all of the *Gingles* preconditions.

Plaintiffs fail to meet even the first *Gingles* precondition. They have not presented a legally viable illustrative district demonstrating that the minority population is sufficiently numerous and compact to form a majority-minority district. Plaintiffs also have offered no expert analysis or electoral data supporting the second and third *Gingles* preconditions. No evidence shows that the minority community is politically cohesive, nor that racially polarized voting exists at a level sufficient to usually defeat the minority's preferred candidate. Summary judgment is warranted on this independent basis. *See Clements III*, 986 F.2d at 743 (citations omitted).

1. Plaintiffs cannot establish the first *Gingles* precondition.

The first *Gingles* precondition requires proof that the minority group is sufficiently large and geographically compact to constitute a majority in a reasonably configured single member district. *Petteway*, 111 F.4th at 609 (citing *Gingles*, 478 U.S. at 50). Thus, this precondition consists of a numerosity requirement and a compactness requirement. *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994).

The numerosity requirement relies on an objective, numerical test: "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, 19–20 (2009). In the Fifth Circuit, this percentage is analyzed based upon individuals who are of voting age and capable of voting in elections. *See Valdespino*, 168 F.3d at 853 (citing Fifth Circuit cases holding the same). Thus, citizen voting age population is the proper measurement for purposes of the first *Gingles* precondition. *Id.*

As to the compactness requirement, Plaintiffs must show that the minority population is geographically compact. *Rodriguez*, 964 F. Supp. 2d at 737–38. The compactness inquiry focuses on the compactness of the minority population and not compactness of the contested district. *Id*. Put differently, the compactness inquiry focuses on the population dispersal of the minority community, not on the geographic density of the proposed district. *Id*.

The compactness requirement is necessary to show that challenged electoral practice, rather than the dispersion of the minority community, prevents the affected minority community from electing the candidates of their choice. *Id*. (citing *Bush v. Vera*, 517 U.S. 952, 979 (1996) (plurality opinion) (if, "because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, § 2 does not require a majority-minority district."). A district is sufficiently compact if it allows for effective representation, while a district would not be sufficiently compact if it was so convoluted that there was no sense of community, that is, if its members and its representatives could not easily tell who actually lived in the district. *Clark v. Calhoun Cnty., Miss.*, 21 F.2d 92, 96 (5th Cir. 1994) (*Clark I*).

Although compactness is an imprecise concept, courts must consider the shape of the plaintiff's proposed maps, *Sensley*, 385 F.3d at 596, as well as the degree to which the plaintiff's proposed map comports with traditional redistricting principles such as maintaining communities of interest and traditional boundaries. *Clements IV*, 999 F.2d at 433. Courts must also determine if the illustrative districts have similar needs and interests beyond race. *Id*. The Supreme Court has recognized that urban and rural communities can reasonably be configured into a compact district if they share similar interests, they are in reasonably close proximity, and if the district is not obviously irregular and drawn into "bizarre shapes." *Perry*, 548 U.S. at 435.

When, as here, a plaintiff employs the use of illustrative maps to establish the first *Gingles* precondition, plaintiff must introduce a demonstrative map that creates a geographically compact single-member district in which the majority of the citizen voting age population is Black. *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853 (5th Cir. 1999). "Where the minority group meets these requirements, the representatives that it could elect in the hypothetical district . . . in which it constitutes a majority will serves as the measure of its undiluted voting strength." *Gingles*, 478 U.S. 90–91 (O'Connor, J., concurring); *Growe*, 507 U.S. at 40–41.

Here, Plaintiffs do not have sufficient evidence to establish the first *Gingles* precondition. Plaintiffs solely rely on the reports of their expert, William Cooper, to establish the first *Gingles* preconditions. None of the illustrative maps included in Cooper's reports demonstrate that the Black population is sufficiently large and geographically compact to constitute a majority in a single-member district.

Although Cooper claims his districts satisfy the 50%+1 Black Voting Age Population (BVAP) requirement, each of his majority-Black districts barely exceed that threshold, ranging from 50.05% to 50.17%.[82] These razor-thin "bare-majority" districts are the very type that the Supreme Court warned against in *Bartlett*. 556 U.S. at 18–20. It is clear the purported majority-Black districts are statistical artifacts, not genuine majority-minority districts capable of affording Black voters a realistic opportunity to elect their preferred candidates.

Cooper also fails to use the proper electorate measure for the first *Gingles* precondition. In the Fifth Circuit, citizen voting age population (CVAP) is the proper measurement to use for purposes of the first *Gingles* precondition. *Valdespino*, 168 F.3d at 853 & n. 4 (holding that to satisfy the first *Gingles* precondition, the plaintiff must show that the minority group exceeds 50%

[82] Cooper's Initial Report, **Ex**. **O**; Rebuttal Report, **Ex**. **P**.

of the relevant population within the district and that the relevant population examined is limited to those of the requisite voting age and citizenship); *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997) (courts "must consider the citizen voting-age population" in evaluating the first *Gingles* precondition); *Perez v. Pasadena Indep. Sch. Dist.*, 165 F.3d 368 (5th Cir. 1999) (holding that the courts must consider citizenship and voting age of the population when making a determination concerning the first *Gingles* precondition). Cooper admits that he measures "Any Part Black" among the 18+ population, not among citizens.[83] He provides no analysis of naturalization rates, citizenship data, or estimates of CVAP. His purported "majority-BVAP" districts may therefore include substantial numbers of non-citizens or ineligible voters, thus inflating the apparent minority percentage. This failure alone defeats the first *Gingles* precondition and is fatal to Plaintiffs' Section 2 claim. *See Valdespino*, 168 F.3d at 852–53.

Plaintiffs have also presented insufficient evidence that the Black population itself is geographically compact in the proposed new district. The first *Gingles* precondition focuses not on the compactness of the district lines, but on the compactness of the minority population itself. *See LULAC v. Perry*, 548 U.S. 399, 433 (2006) (quoting *Bush*, 517 U.S. at 997 (1996) ("The first *Gingles* condition refers to the compactness of the minority population, not the compactness of the contested district."); *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1117 (5th Cir. 1991). Cooper conflates these two concepts. He asserts that "the compactness of the district is proof of the sufficient compactness of the minority community."[84] This assertion is premised on the assumption that if the district is compact, then the Black population within it must also be compact. But that is legally wrong.

[83] Cooper Initial Report at p. 6 n.1.
[84] Cooper Reply Report at p. 12.

Importantly, Cooper does not provide a spatial analysis of the distribution of the Black population, nor does he engage in any quantitative compactness testing, such as nearest-neighbor test, cluster analysis, or other spatial metrics, to demonstrate that DeSoto County's Black population is geographically compact within his illustrative district. Instead, he relies on visual maps and conclusory statements that his districts are "reasonably shaped."[85] A district can be drawn to appear compact on a map even if it connects spatially dispersed minority communities that lack geographic or social cohesion. But the Fifth Circuit has rejected precisely this type of reasoning, holding that the first *Gingles* precondition is not satisfied where a proposed district "stretches out to incorporate distinct pockets of minority population" that are separated by miles of nonminority areas." *See Valdespino*, 168 F.3d at 853; *Westwego*, 946 F.2d at 1118; *Sensley v. Albritton*, 385 F.3d 591 (5th Cir. 2004).

Even if a majority-Black district can be drawn, it must be configured consistent with "traditional districting principles such as compactness, contiguity, maintaining communities of interest, and respect for incumbency" in order to be legally adequate. *Fairley v. Hattiesburg, Miss.*, 584 F.3d 660, 669 (5th Cir. 2009) (citing *Sensley*, 385 F.3d at 597–98; *Prejean v. Foster*, 227 F.3d 504, 512 & n.12 (5th Cir. 2000)); *see also Clark v. Calhoun Cnty.*, 88 F.3d 1393, 1397 (5th Cir. 1996).

Although Cooper asserts that all his Illustrative Plans "comply with traditional redistricting principles,"[86] his own metrics show that his plans perform no better—and in some cases worse—than the 2022 Plan with respect to municipal and voting district integrity and compactness. For instance, Illustrative Plans 2 and 3 split fourteen municipalities compared to fifteen under the 2022

[85] Cooper Initial Report at pp. 20, 21.
[86] Cooper Initial Report at p. 6, 20; Cooper Reply Report at p. 2.

Plan.[87] Illustrative Plans 2 and 3 also exhibit lower compactness scores than the 2022 Plan.[88] Cooper, moreover, admits to splitting Walls and portions of Horn Lake and Southaven, and to pairing incumbents in as many as 15 of 25 offices.[89] While he attempts to justify this by offering two additional illustrative plans (Illustrative Plans 4 and 5) in his "reply" report, those plans—which are procedurally improper[90]—still rely on the same flawed assumptions and do not meaningfully enhance compactness or population integrity.[91] Plaintiffs therefore cannot satisfy the first *Gingles* precondition and this is sufficient to defeat their Section 2 claim. *See Gonzalez v. Harris Cnty.*, 601 F. App'x 255, 259 (5th Cir. 2015); *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1116 (5th Cir. 1991).

2. Plaintiffs cannot establish the second and third *Gingles* preconditions.

Even if Plaintiffs could establish the first *Gingles* precondition, they still cannot prevail on their Section 2 claim because they cannot show that Black voters are politically cohesive. Nor can they show that white bloc voting exists to usually defeat the Black preferred candidate.

Although the second and third *Gingles* preconditions are related and often considered together, they involve distinct concepts. *See Monroe*, 891 F.2d at 1331; *Rodriguez v. Harris Cnty., Tex.*, 964 F. Supp. 2d 686, 757 (S.D. Tex. 2013); *Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 503 (E.D. Tex. 2020).

The second *Gingles* precondition requires Plaintiffs to show that Black voters in DeSoto County "constitute a politically cohesive unit." *Gingles*, 478 U.S. at 56. Political cohesion contemplates the extent to which "a specified group of voters shares the same beliefs, ideals,

[87] Figures 16 and 19 in Cooper Initial Report at p. 26, 28.
[88] *Id.*
[89] *Id.* at p. 22–23; Cooper Reply Report at pp. 9–10.
[90] Defendants moved to strike these portions of Cooper's "reply" as improper. Doc. Nos. [205, 206].
[91] Figures 3 and 6 in Cooper Reply Report at pp. 8, 11.

principles, agendas, and concerns, such that they generally unite behind or coalesce around particular candidates and issues." *LULAC v. Clements*, 986 F.2d 728, 744 (5th Cir. 1993) (*Clements III*) (citing *Monroe v. City of Woodville*, 881 F.2d 1327, 1331 (5th Cir. 1989), *modified*, 897 F.2d 763, *cert. denied*, 498 U.S. 822 (1990)). Put differently, the political cohesiveness inquiry examines the extent to which the minority group has distinctive minority group interests such that the affected minority group has a preferred candidate. *Gingles*, 478 U.S. at 56. If the minority group is not politically cohesive (i.e., does not have a candidate of choice), it cannot be said that the challenged redistricting plan "thwarts distinctive minority group interests." *Id.* at 51.

The third *Gingles* precondition requires Plaintiffs to prove that "whites vote sufficiently as a bloc usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 56. The relevant inquiry is not whether whites generally vote as a bloc but whether such bloc voting is legally significant. *Monroe*, 881 F.2d at 1333. In contrast to political cohesion, racially polarized voting "describes an electorate in which white voters favor and vote for certain candidates or propositions, and minority voters vote for other candidates or propositions." *Clements III*, 986 F.2d at 743.

Plaintiffs rely on the reports of their expert, Dr. Jacob M. Grumbach. But his methodology, assumptions, and conclusions are insufficient to establish either precondition. Dr. Grumbach only considered general elections and did not consider any primary elections in conducting his analysis.[92] During his deposition, Dr. Grumbach explained that he did not consider primary elections, even though often contested, because the racial group's candidate of choice would have to win a general election and because "in this case, it's unlikely that large numbers of black voters are voting in the Republican primaries."[93] However, in addition to examining data from general

[92] Grumbach Initial Report at 4, **Ex**. **Q**; Reply Report, **Ex**. **R**; Supplemental Report, **Ex**. **S**; *see also* Grumbach Depo. at 77:21-78:9, **Ex**. **T**.

[93] Grumbach Expert Reports; Grumbach Depo. at 77:25-78:2; 79:18-80:4.

elections, "primaries can aid courts in determining voters' candidates of choice" and are relevant to assessing political cohesion under the second *Gingles* precondition. *Perez v. Abbott*, 2017 WL 3495922, at *23 (W.D. Tex. Aug. 15, 2017). His decision not to review primary elections in his reports undermines the usefulness of the data and analysis Plaintiffs present as purported evidence of racial polarization.

Dr. Grumbach also assumes that because there is "strong evidence [of] racially polarized voting" based on his review of 17 endogenous and 4 exogenous elections, there is "cohesive voting by Black voters" and "non-Black bloc voting against Black voters' candidates of choice."[94] But a finding of racial polarization in voting behavior is not synonymous with a group's political cohesion. *Monroe*, 881 F.2d at 1331. The Fifth Circuit has rejected the argument that a finding that minority group votes as a bloc for candidates, political cohesion within the minority group is proven. *Id*. Similarly, while a showing of racially polarized voting will frequently demonstrate that minority voters are politically cohesive, a showing that minority voters are politically cohesive will not, by itself, establish racially polarized voting." *Clements*, 986 F.2d at 744. Put simply, evidence of racially polarized voting does not "automatically establish minority political cohesion." *Id*. at 744 n.5; *see also Gingles*, 478 U.S. at 46 (holding that "the results test does not assume the existence of racial bloc voting; plaintiffs must prove it"). Without specific, reliable evidence of political cohesiveness among Black voters in DeSoto County, Plaintiffs cannot satisfy the *second Gingles* precondition.

Dr. Grumbach's reports also make no distinction between defeats caused by bloc voting and defeats caused by population distribution, incumbency, turnout, or partisan reasons. Plaintiffs therefore cannot show any sufficient pattern of defeat of Black-preferred candidates due to white

[94] Grumbach Initial Report at p. 8-9.

bloc voting. In the absence of such proof, the third *Gingles* precondition cannot be established. *See, e.g.*, *Magnolia Bar Ass'n v. Lee*, 994 F.2d 1143, 1147 (5th Cir. 1993). Even so, he relies heavily on ecological inference models and provides no error rate analysis, turnout data, or district-level examination of whether Black voters could have elected their preferred candidates "but for" white bloc voting. *NAACP v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001); *Valdespino*, 168 F.3d at 853.

Most fundamentally, Plaintiffs cannot prevail because they have not shown legally significant racially polarized voting. The basis for a Section 2 vote dilution claim must be more than a simple failure to win elections because in a majoritarian system, "numerical minorities lose elections." *Holder v. Hall*, 512 U.S. 874, 901 (1994) (Thomas, J., concurring) (citations omitted). To succeed, Plaintiffs must show that minority voters, though able to vote, are unable to elect their preferred candidates because their votes have been "submerge[d]" in a majority that votes as a "racial bloc" against them. *Gingles*, 478 U.S. at 46, 49–52. This racial bloc must be attributable to race, rather than other race-neutral reasons, such as partisan politics. Otherwise put, it is just majority bloc voting or "interest-group" politics. *Id.* at 83 (White, J., concurring). As the *en banc* Fifth Circuit has recognized, "Congress and the Supreme Court" have refused "to equate losses at the polls with actionable vote dilution where these unfavorable results owe more to party than race." *Clements IV*, 999 F.3d at 850.

Plaintiffs cannot succeed on their claim when they "have not even attempted to establish proof of racial bloc voting by demonstrating that race, not . . . partisan affiliation, the predominant determinant of political preference." *Id.* at 855. It is insufficient for Plaintiffs to merely establish the presence of racially polarized voting for Section 2 claims. *Id.* at 850. Rather, Plaintiffs must show that the voting choices are caused by race, rather than politics, in order for polarized voting to be "legally significant." *Id.* And the evidence shows quite differently that partisan polarization,

rather than race, explains "divergent voting patterns." [95] *Clements IV*, 999 F.2d at 861. Otherwise, racial bloc voting would be present anywhere a minority happens to vote for a different candidate than the minority. Thus, the Fifth Circuit holds that there is no third *Gingles* precondition without proof of racial, as opposed to partisan, polarization. *Id*. at 892.

Plaintiffs cannot establish the second and third *Gingles* preconditions because political affiliation, not race, explains the racial divergence in voting patterns. Plaintiffs did not even attempt to meet their burden of proof. The failure to offer any other evidence means that Plaintiffs cannot show that the second and third *Gingles* preconditions are met. Defendants are entitled to summary judgment on Plaintiffs' Section 2 claim. *See Fairley*, 584 F.3d at 667 (citing *Sensley*, 385 F.3d at 595). Additional reasons warrant this result.

B. Because Plaintiffs cannot establish all of the *Gingles* preconditions, they cannot establish a violation of Section 2 under the totality of the circumstances.

Even if Plaintiffs could establish all three *Gingles* preconditions necessary to prove their vote dilution claim, that still would not be sufficient to prevail on their Section 2 claim. *See Fusilier*, 963 F.3d at 456 (citing *Clements IV*, 999 F.2d at 868). The ultimate determination of whether Plaintiffs have proven vote dilution under Section 2 is "based on the totality of circumstances." *Clements IV*, 999 F.2d at 868 (citing 52 U.S.C. § 10303(b)). In making this inquiry, courts are guided by a list of "objective factors" commonly known to as the Senate Factors,[96] which include:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

[95] Table 1 in Alford Expert Report at p. 13, **Ex. U**.

[96] These factors are listed in the Senate Report accompanying the 1982 amendment to Section 2—many of which are derived from *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), and are sometimes referred to as the "*Zimmer* factors."

> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Id. at 850 n.22. Additional factors that may have probative value in some cases include "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group" and "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." *Id.*

No one of these factors is dispositive. *Westwego*, 946 F.3d at 1121. Nor are they given equal weight. The two most important factors in a Section 2 claim are "the extent to which members of the minority group have been elected to public office and the extent to which voting in the jurisdiction is racially polarized." *Id.* at 1120.

Plaintiffs allege the presence of Senate Factors 1, 3, 5, 6, 7, and 8. Compl. [1] at pp. 18–34. They principally rely on expert reports from Dr. Marvin King to meet their burden of showing a violation of Section 2 under the totality of the circumstances.

As to Senate Factor 1, Dr. King's report focuses much of his analysis on Mississippi as a whole and provides little analysis as to DeSoto County. It is well settled, however, that the totality of the circumstances inquiry entails a "functional analysis" that is "peculiarly dependent upon the facts of each case . . . and requires an intensely local appraisal of the design an impact of the

contested electoral mechanism." *Gingles*, 478 U.S. at 79–80 (citations omitted). Focusing not on DeSoto but the State of Mississippi as a whole, King's analysis is insufficient to support a finding of a Section 2 violation.

As to Senate Factor 2, Plaintiffs can provide no evidence for the same reason they fail at establishing the second and third *Gingles* preconditions—that is, to the extent whites bloc vote in DeSoto County, partisanship, not race, explains their decision. *See supra* at pp. 28-30. When the record indisputably proves that partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens in the contested counties, legally significant racially polarized voting cannot be established. *See Clements IV*, 999 F.2d at

As to Senate Factor 3, in 1987, the Mississippi legislature repealed the anti-single slot requirement[97] for municipal elections, which never applied to counties. *See Monroe v. City of Woodville, Miss.*, 881 F.2d 1327, 1329 n.9 (5th Cir. 1989). That same year the dual county-city registration requirement was also abolished. *Id.* at 1329 n.9.

As to Senate Factor 5, socioeconomic disparities stemming from past discrimination, by themselves, are insufficient to support a finding that minorities do not enjoy equal access to the political process absent some indication that these effects of past discrimination actually hamper the ability of minorities to participate in the political process. *Clements IV*, 999 F.3d at 867. Plaintiffs have offered no evidence of reduced level of black voter registration, lower turnout among black voters, or any other factor tending to show that past discrimination has affected their ability to participate in the political process. In his report, Dr. King only looked at voter turnout in DeSoto County as a whole compared to other counties in Mississippi.[98] And for the 2023

[97] Where voters are allowed to vote for multiple candidates in a race for multiple seats, single-shot voting is the practice of voting for only on candidate. *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 673 n.12 (2021).

[98] *See* King Initial Report at pp. 28-31.

legislative and county races, Dr. King's analysis was based on turnout totals and registration numbers.[99] But "registration figures should be treated with skepticism." *Fairley*, 584 F.3d at 674. That is because "voter registration responds to incentives, including the results of the political process" and is thus "inherently unstable." *Id.* Moreover, as to any claimed healthcare disparities, Dr. King admits that "this research did not include DeSoto County."[100] This evidence does not show that past discrimination has inhibited the ability of the Black community in DeSoto County to participate in the political process.

As to Plaintiffs' allegations of lack of responsiveness by elected DeSoto County officials, that runs headlong into Plaintiffs' own testimony in this case.[101] The record evidence shows quite differently that the DeSoto County's elected officials have been consistently responsive to their requests for information or services (to the extent they had any).[102]

Finally, Plaintiffs allege that the "proportionality analysis of *Johnson v. De Grandy*, 512 U.S. 997 (1994), shows a violation of the VRA" because "Black residents form nearly a third of DeSoto County's population, yet have no representation in any of the county bodies elected under the 2022 Plan." *Id.* at ¶ 236. But a lack of proportionality does not establish a per se violation of Section 2.

Plaintiffs do not provide sufficient evidence showing that considerations of the totality of the circumstances favor a finding of vote dilution, and Plaintiffs' Section 2 claim thus should fail.

[99] *Id*. at p. 28 n.126.
[100] *Id*. at p. 35.
[101] *See, e.g.*, Tipton Depo. at 31:17-22, 43:19-44:44:5; Harris Depo at 64:21-65:25; DST Depo. at 86:22-87:8, 99:16-19; Unit 5574 Depo. at 49:21-50:1.
[102] *See id*. Todd Depo. at 90:21-91:10, **Ex**. **V**.; *compare also* Excerpt of Defs.' Response to Interrog. No. 8, **Ex**. **W**; *with* Isom Depo. at 104:7-113:20, **Ex**. **X**.

CONCLUSION

For the foregoing reasons, Defendants respectfully request summary judgment as to Plaintiffs' Section 2 claim.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 24, 2025, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record in this action.

/s/ Nicholas F. Morisani
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