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,

v.

DESOTO COUNTY, MISSISSIPPI; DESOTO COUNTY BOARD OF SUPERVISORS; and DESOTO COUNTY ELECTION COMMISSION,

Defendants.

No. 3:24-cv-00289-GHD-RP

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Since the 2000 Census, the proportion of DeSoto County residents who are Black has grown from less than 12% to over 36%.[1] The Black population is concentrated in the northern part of the County around Horn Lake and bordering municipalities,[2] and has discrete policy needs and candidate preferences.[3] But the County's 2022 districting plan (the "2022 Plan") shuts them out of government.

[1] Ex. A (Cooper Report) at 10, fig. 1. The 2023 ACS estimate shows the percentage at 36.21%. *Id.* The post-2020 Census redistricting at issue in this case reflects the 2020 Census figures, in which the Black population was 31.71%. *Id.*
[2] Cooper Report at 13, fig. 3.
[3] *See, e.g.*, Ex. B (Grumbach Report); Ex. C (Grumbach Supplemental Report) (candidate preferences); Ex. D (Todd Dep.) at 150:1–11 (discrete needs).

The 2022 Plan splinters the Black community among several districts. Three districts converge at the heart of the Black population along the Tennessee border,[4] with majority-Black Horn Lake divided nearly in half: 53.69% of its population is placed in District 4 and 46.31% of its population is placed in District 3.[5] Black voters, including Plaintiffs and their members, who would otherwise live in a majority-Black district are placed into majority-white districts.

As a result, each of the 25 officials elected under the 2022 Plan is white.[6] That includes all five members of the Board of Supervisors; all five members of the Board of Education; all five Election Commissioners; all five Justice Court Judges; and all five Constables.

This situation is extraordinary. DeSoto County is one of 11 counties in Mississippi without a Black supervisor.[7] Those counties have, on average, a Black population percentage of 15.32%—less than half of DeSoto County's Black population percentage.[8] DeSoto County's Black population percentage is also higher than the average Black population percentage of the 27 counties with one Black supervisor.[9] Put simply, DeSoto County is an outlier among Mississippi counties in denying representation to its Black population.

Plaintiffs will prove at trial that this extraordinary situation reflects a violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. A case under Section 2 turns on a "flexible, fact-intensive inquiry based on 'an intensely local appraisal of the design and impact of the contested electoral mechanisms.'" *Nairne v. Landry* ("*Nairne II*"), 151 F.4th 666, 700 (5th Cir. 2025) (citation omitted). Each aspect of the case will turn on expert credibility determinations and the

[4] *See* Cooper Report at 19, fig. 7 (convergence of districts); *id.* at 13, fig. 3 (percentage of Black population).
[5] Ex. E (Exhibit D3 to Cooper Report).
[6] Answer and Affirmative Defenses ¶ 5, ECF No. 99.
[7] Ex. F (King Report) at 49.
[8] *Id.*
[9] *Id.*

weighing of an extensive factual record. Nevertheless, in a last-ditch effort to avoid trial, Defendants have filed a veritable "kitchen sink" motion for summary judgment. *See generally* ECF No. 298. In it, they unnecessarily complicate the law on standing, even as they concede that at least some Plaintiffs have standing to bring this case. On the merits, Defendants ignore clear precedent regarding every aspect of the legal test and cherry-pick the record to ask the Court to ignore mountains of evidence. Where there is unignorable evidence that is inconvenient to their case, Defendants seem to hope the Court will grant their meritless motions to exclude it. *See, e.g.*, ECF Nos. 205, 293, 295 (motions to strike or exclude testimony). As set forth below, there is extensive evidence supporting Plaintiffs' claim.

"[T]he question of vote dilution is 'peculiarly dependent upon the facts of each case.'" *Thomas v. Bryant,* 919 F.3d 298, 308 (5th Cir. 2019) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986)). Ultimately, as most Section 2 cases do, this case turns on competing expert testimony and assessments of how to weigh lay and expert evidence. None of these questions can be answered at the summary judgment stage. This case is fit for trial.

BACKGROUND

The 2020 Census reflected that DeSoto County's Black population had increased since the 2010 Census, while the white population had decreased.[10] The Black population is geographically concentrated in the northern part of the County, and Black voters are politically cohesive.[11] Nevertheless, Black voters have been unable to elect their preferred candidates to County government due to the makeup of the districts.[12]

[10] Cooper Report at 10.
[11] Cooper Report at 13, fig. 3 (Black population concentration); Grumbach Report at 2 (cohesion).
[12] Grumbach Supplemental Report at 2 ("[T]he Black candidate of choice was defeated in all 17 racially contested endogenous elections between 2016 and 2023.").

Against this backdrop, a group of interested citizens began to advocate for a fair map in which Black voters would not be cracked between districts. In anticipation of and following the release of the 2020 Census data, they organized the "DeSoto County Redistricting Committee" ("DCRC") and educated themselves on redistricting.[13] They monitored the Board of Supervisors' meeting agendas so that they could attend meetings in which redistricting would be discussed.[14] Publicly, the Supervisors assured this group of Black residents that the redistricting process would be open and the Supervisors would take Black residents' input into account.[15] Privately, Supervisors took a different approach. Just weeks after assuring the DCRC that the Supervisors would be transparent in hiring a redistricting consultant,[16] the Board voted to hire Christopher Watson at a meeting where the public agenda contained no mention of redistricting whatsoever.[17] As the County Administrator acknowledged, because of the last-minute change to the agenda, the public had no notice that redistricting would be discussed at all—let alone that the Board would hire a mapmaker.[18] Worse yet, several of the Supervisors admitted at their depositions that, after hiring Mr. Watson, they met with him alone or in pairs to avoid opening meetings to the public under Mississippi's open meetings law.[19] At those private meetings, Mr. Watson was instructed to

[13] Ex. G (Wofford Dep.) at 72:2–76:12.
[14] Todd Dep. at 190:24–191:18.
[15] *See, e.g.*, Ex. H (Meeting Minutes) at DEF00432–34 (Sept. 20, 2021 minutes).
[16] *Id*.
[17] *Compare id.* at DEF00434–35 (Nov. 15, 2021 meeting minutes at which Board voted to contract with Watson) *with* Ex. I (Nov. 15, 2021 meeting agenda).
[18] Ex. J (Lynchard Dep.) at 165:24–166:30 (Q: "If Mr. Watson's attendance at this meeting was an add to the agenda, then the public would not have been notified of that, correct?" A: "Correct.").
[19] Ex. K (Gardner Dep.) at 75:14–16 (Q: "Is there a reason he wouldn't have met with more than two at one time?" A: "Sunshine law."); Ex. L (Caldwell Dep.) at 66:7–12 ("In Mississippi we have the Sunshine law, so you . . . can only have one to two people. If you have three, you have a quorum. So that's why you could not meet more than in pairs, if you're . . . having a workshop to work."); Ex. M (Medlin Dep.) at 101:9–102:9 ("[I]f you got a quorum, which would be three on a five-member board, that you'd have to have the meeting open to the public and advertised."); Ex. N at DEF08838 (email from Supervisor Caldwell to Mr. Watson: "I would like for us to meet again individually or in pairs.").

maintain the racial ratios of the districts.[20] Throughout the process, the DCRC sought information about how to submit districting plans for the Board's consideration. They were provided with little substantive information and, by the time they were given the opportunity to meet with Mr. Watson, he had already proposed initial maps to the Board of Supervisors.[21] Community members testified that Mr. Watson was not receptive to their requests.[22] He himself could not point to any changes he made in response to the DCRC's desires.[23]

The process culminated on June 6, 2022, when the Board held a public hearing at 8 a.m. on a Monday to approve the maps drawn by Mr. Watson. Several Black audience members protested that the timing prevented many members of the public from attending and requested that the Supervisors continue the hearing.[24] The Supervisors declined. Two groups of citizens—the DCRC and another group calling itself the Community Redistricting Committee—presented alternative maps.[25] One Black attendee who presented a community-drawn map described the meeting as a "sham" where "De[S]oto County kicked us in the face" because the demeanor of the Supervisors revealed they had no interest in the community's concerns.[26]

The result of this process is a map that dilutes the voting power of DeSoto County's Black community, including Plaintiffs and their members. Three districts in the 2022 Plan converge

[20] Ex. O at DEF09036 (email from Mr. Watson indicating Supervisor requested a plan "which more closely equalizes the racial change across all five districts"); Ex. P at PLA000587 (memo from Watson explaining the plan "is designed to . . . hold each district relatively constant in terms of its racial makeup").
[21] Wofford Dep. at 141:18–142:9.
[22] Ex. Q (Woodard Dep.) at 295:4–24 ("[I]t seemed to me every time we had a suggestion, ... [h]e had a reason not to do it. So no, he didn't do anything that we asked him to do during that meeting."); Wofford Dep. at 141:18–142:9 ("He had already submitted the maps to the board of supervisors by the time we had the meeting with him. . . . [H]e was just explaining to us what he had already done.").
[23] Ex. R (Watson Dep.) at 163:19–164:6.
[24] Ex. H (Meeting Minutes) at DEF00441 (June 6, 2022 minutes).
[25] *Id*. at DEF00440–41 (June 6, 2022 minutes).
[26] Ex. S (Young Dep.) at 46:11–14; 71:7–72:4.

around Horn Lake and neighboring majority-Black areas to divide the Black population.[27] The majority-Black city of Horn Lake is divided with 53.69% of its population placed in District 4 and 46.31% of its population placed in District 3.[28]

This cracking has far-reaching consequences. There are no Black officeholders in the 25 positions elected under these lines.[29] The white officials elected under the dilutive district lines have kept the rest of County government nearly all-white, too. Ninety-one percent of the 43 appointees to the Board of Adjustment and Planning Commission since 2010 have been white,[30] and, since 2012, only a single Black person has served in one of the County's 13 high-level administrative positions.[31]

Multiple Black witnesses testified that they are not represented in their County government, and that there are disparities in services between majority-Black and majority-white areas of the County. For example, one witness testified that communities are "not being served" and "being ignored," explaining: "You can look at the improvements that are made within different communities in DeSoto County where there are poorer areas, where there are people of color and don't have as good responsive city services, roads, where all the new improvements are being made."[32] Plaintiff Harold Harris testified that his efforts to get Supervisor support for youth programs in predominantly-Black northwestern DeSoto County "fell on deaf ears."[33] There are substantial socio-economic disparities between Black and white residents, with Black residents having, on average, lower income, lower household wealth, lower rates of home-ownership, and

[27] *See* Cooper Report at 19, fig. 7 (convergence of districts); *id.* at 13, fig. 3 (percentage of Black population).
[28] Ex. E (Exhibit D3 to Cooper Report).
[29] Answer and Affirmative Defenses ¶ 5, ECF No. 99.
[30] Ex. T (Defs.' Interrog. Resp.).
[31] Ex. U (County 30(b)(6) Dep.) at 108:13–110:25.
[32] Todd Dep. 150:1–11.
[33] Ex. V (H. Harris Dep.) at 90:24–91:4; *see also id.* at 54:3–55:17.

higher poverty rates.[34] There are also stark racial differences in academic performance and school discipline in DeSoto County schools.[35] One witness explained that "[w]hen you look at the schools in Southaven, the schools in Olive Branch, and you look at the schools in [majority-Black] [W]alls and . . . Horn Lake, you can see" the difference in facilities.[36] Another explained that when she inquired about disparities in school discipline, she was given the "runaround."[37]

Other factors also depress Black political participation. Multiple Black candidates discussed being intimidated while running for office in recent years;[38] political signs are frequently removed;[39] and the KKK has distributed recruitment flyers, including in the neighborhood of Plaintiff Pastor Robert Tipton, Jr., the President of the local NAACP Unit.[40] In a widely reported 2018 incident, a white man entered a polling location wearing a t-shirt that depicted a Confederate flag, a noose, and the words "Mississippi Justice." The testimony of the Election Commission in this case is that "[i]t's not reasonable" for a Black person to find that shirt intimidating and "it's a choice as to how you look at the T-shirt as to whether it offends you or not."[41] The preceding is just a fraction of the facts adduced in discovery that the Defendants' summary judgment briefing asks the Court to ignore. It is also just a fraction of the many local circumstances that interact with the dilutive district map to constitute a violation of Section 2.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 56, summary judgment is appropriate only when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to

[34] King Report at 32–34; *see also* Ex. W (Exhibit H to Cooper Report) (2019-23 ACS data).
[35] King Report at 37–39.
[36] Ex. X (West Dep.) at 150:15–151:2.
[37] Todd Dep. at 134:14–135:1.
[38] Ex. Y (Isom Dep.) at 125:21–126:4, 129:23–131:4; Ex. Z (B. Harris Dep.) at 142:5–144:3.
[39] Isom Dep. at 89:3–93:1; Woodard Dep. at 68:17–23.
[40] Ex. AA (Tipton Dep.) at 104:21–105:11.
[41] Ex. BB (Election Commission 30(b)(6) Dep.) at 278:23–283:1.

judgment as a matter of law." Fed. R. Civ. P. 56(a). At the summary judgment stage, the Court should "make no credibility determinations or weigh any evidence" and should "disregard all evidence favorable to the moving party that the [factfinder] is not required to believe." *Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 229 (5th Cir. 2010). The evidence of the party opposing summary judgment "is to be believed, and all justifiable inferences are to be drawn in [its] favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The fact-intensive nature of vote dilution claims makes them particularly poor vehicles for disposition through summary judgment. *See Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1343 (11th Cir. 2015) ("Normally, claims brought under § 2 . . . are resolved pursuant to a bench trial.") (citing *McIntosh Cnty. Branch of the NAACP v. City of Darien*, 605 F.2d 753, 757 (5th Cir. 1979)).

ARGUMENT

I. Plaintiffs have standing to obtain their requested relief.

Defendants' motion for summary judgment unnecessarily complicates a straightforward standing analysis for both individual and organizational Plaintiffs. Their arguments are meritless.[42]

A. The individual Plaintiffs have standing.[43]

Both individual Plaintiffs, Harold Harris and Pastor Robert Tipton, Jr., are harmed because their vote is diluted by the 2022 Plan. The harm in a vote dilution case "arises from the particular composition of the voter's own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district." *Harding v. Cnty. of Dallas*, 948 F.3d 302, 307 (5th Cir. 2020). Under the 2022 Plan, Mr. Harris and Pastor Tipton live

[42] Defendants also argue that the organizational Plaintiffs do not have standing under a "diversion of resources" theory of harm, ECF No. 298 at 15–19, which Plaintiffs have never pled or pursued.
[43] Traceability and redressability are easily satisfied. The county districting plan is traceable to and redressable by the County and county-level officials who passed the 2022 Plan and enforce it via elections. *See, e.g.*, *OCA-Greater Houston v. Texas*, 867 F.3d 604, 613 (5th Cir. 2017); *Harding v. Cnty. of Dallas*, 336 F. Supp. 3d 677, 687 (N.D. Tex. 2018) (finding standing requirements satisfied).

in majority-white districts.[44] Each would live in a majority-Black district in at least one of Plaintiffs' illustrative plans.[45] In other words, each "is a Black registered voter residing in a district that is . . . cracked . . . under [the 2022 Plan]. That, on its own, is sufficient to confer standing to pursue a § 2 claim." *Nairne II*, 151 F.4th at 682 n.8.

Defendants resist this straightforward analysis by insisting that Mr. Harris and Pastor Tipton do not have standing to challenge the 2022 Plan in its entirety, relying on a partisan gerrymandering case. ECF No. 298 at 10 (citing *Gill v. Whitford*, 585 U.S. 48 (2016)). As a practical matter, Defendants' argument reflects a distinction without a difference. Defendants cannot meaningfully dispute that Mr. Harris and Pastor Tipton have standing to challenge the districts in which they live, nor do they appear to. Assuming, *arguendo*, that this were the full extent of Plaintiffs' standing in this case, the appropriate remedy would be an injunction against the 2022 Plan as a whole—precisely what Plaintiffs seek. *See, e.g.*, *Singleton v. Merrill* ("*Singleton I*"), 582 F. Supp. 3d 924, 938 (N.D. Ala. 2022), *aff'd sub nom*. *Allen v. Milligan*, 599 U.S. 1 (2023) (enjoining entire plan though plaintiffs lived in three districts). Indeed, the Fifth Circuit recently rejected the same argument Defendants advance here, holding that a district court's "order enjoining the maps in full does not constitute an attempt to dispense with standing in gross," even where plaintiffs lived in specific regions. *Nairne II*, 151 F.4th at 683; *see also id.* at 682 n.8.

Moreover, Defendants' reliance on gerrymandering cases ignores that a Section 2 claim challenges the dilutive effect of a districting *plan*, whereas a gerrymandering claim challenges a particular *district.* While the harm in a Section 2 vote dilution claim stems from a particular district, the challenge is necessarily broader: the *plan* as drawn dilutes voting power, which is why

[44] All the districts are majority-white. Mr. Harris lives in District 3 and Pastor Tipton lives in District 4. H. Harris Dep. at 60:24–61; Tipton Dep. at 13:19–21.
[45] *See* Ex. CC (Harris Interrog. Resp.) at 6; Ex. DD (Tipton Interrog. Resp.) at 6; *see also* Cooper Report at 21–28.

Plaintiffs must show "another, hypothetical district" in an alternative plan. *Harding*, 948 F.3d at 307. Gerrymandering claims, by contrast, challenge the construction of a *specific district* as drawn using unconstitutional criteria. *See Ala. Legislative Black Caucus v. Alabama* ("*ALBC*"), 575 U.S. 254, 262 (2015). In any event, courts enjoin entire plans when adjudicating those district-specific claims. *See, e.g.*, *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 581 U.S. 285 (2017) (enjoining entire plan where two districts were gerrymandered). Such relief is appropriate here, too.

B. The organizational Plaintiffs have standing.

"It is well settled that once [a court] determines that at least one plaintiff has standing, [it] need not consider whether the remaining plaintiffs have standing to maintain the suit." *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 471 (5th Cir. 2014). Nonetheless, should the Court reach the issue, it should conclude that organizational Plaintiffs DeSoto County NAACP Unit 5574 (the "NAACP") and Delta Sigma Theta Sorority, Inc. ("Delta") both have standing to bring this suit.

The organizational Plaintiffs have associational standing to bring this claim on behalf of their members. "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

Here, both the NAACP and Delta have identified members who would have standing in their own right. Mr. Harris and Pastor Tipton are both NAACP members[46] who, as detailed above, have

[46] Ex. EE (NAACP Interrog. Resp.) at 6; Tipton Dep. at 70:11–71:18; H. Harris Dep. at 42:23–43:9.

standing. Moreover, the NAACP has identified two additional members who are Black, registered voters and currently live in a majority-white district but would live in a majority-Black district under one of Plaintiffs' illustrative plans.[47] Delta has similarly identified members who are Black, registered voters who would reside in a majority-Black district under one of Plaintiffs' illustrative plans.[48] "That, on its own, is sufficient to confer standing to pursue a § 2 claim." *Nairne II*, 151 F.4th at 682 n.8.

Defendants' argument against associational standing appears to be solely predicated on the fact that the NAACP and Delta did not identify *every* member who would have standing in their own right. *See* ECF No. 298 at 15. Defendants frame this as a matter of the third prong of the associational standing test, presumably because both organizational Plaintiffs have plainly identified members to satisfy the first prong.[49] Whatever prong this argument addresses, Defendants cite no authority for their proposition.

There is no requirement that an organization identify *each* member who would have standing in their own right. Rather, it is enough that a plaintiff organization simply prove that "*at least one* identified member had suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). Despite *Summers* involving allegations that "many thousands" were harmed, the Court did not require that each of those "many thousands" be named. *Id.* at 499.

[47] NAACP Interrog. Resp. at 7.
[48] Ex. FF (Delta Interrog. Resp.) at 7; B. Harris Dep. at 141:12–24.
[49] Both organizational Plaintiffs satisfy the second and third prongs of the associational standing test. Voting rights are germane to both organizational Plaintiffs' purpose. *See, e.g.*, Ex. GG (composite exhibit of flyers and email for Delta redistricting education events); Ex. HH (Delta local alumnae chapter webpage); Ex. II (Delta 30(b)(6) Dep.) at 40:1–16, 44:12–46:21 (discussing political participation programming); Ex. JJ (NAACP Bylaws for Units) at 9. Courts routinely recognize the associational standing of organizations like the NAACP Unit and Delta to challenge voting rights violations. *See, e.g.*, *Nairne v. Ardoin* ("*Nairne I*"), 715 F. Supp. 3d 808, 829 (M.D. La. 2024) (NAACP associational standing in vote dilution case); *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1249 (N.D. Ga. 2023) (service-focused historically Black fraternity associational standing); *see also Hunt*, 432 U.S. at 343 (noting suits for injunctive relief are appropriate vehicles for associational standing).

Such a requirement would run headlong into the NAACP and Delta's constitutional rights. *See, e.g.*, *Hastings v. N. E. Indep. Sch. Dist.*, 615 F.2d 628, 631 (5th Cir. 1980) ("It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association." (quoting *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958))); *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021) (same).

II. There are numerous disputed facts that preclude summary judgment on the Plaintiffs' claim.

The record contains ample evidence to support Plaintiffs' Section 2 claim on its merits, and Defendants' motion rests on myriad misstatements of law and fact.

To prevail on their claim, Plaintiffs will satisfy each of the three *Gingles* preconditions, proving that: (1) DeSoto County's Black population is sufficiently large and compact to constitute a majority in a district; (2) Black voters are politically cohesive in support of their preferred candidates for office; and (3) white bloc voting usually defeats those candidates. *Milligan*, 599 U.S. at 18. As is typical in these cases, Plaintiffs will rely on expert testimony to prove these key elements of their case. Once Plaintiffs have proven these preconditions, Section 2 calls for an assessment of the "totality of the circumstances," *id.* at 18, an inquiry that is "peculiarly dependent upon the facts of each case," *id.* at 19 (citation omitted).

Each aspect of the Section 2 inquiry is deeply fact-bound. The factual record in this case is extensive. In many instances, Plaintiffs' evidence is unrebutted. In others, there is competing evidence for the Court to weigh. But at this stage, where Plaintiffs are entitled to every "justifiable inference[]," *Anderson*, 477 U.S. at 255, and where assigning weight and credibility to evidence is premature, *Chaney*, 595 F.3d at 229, Defendants cannot prevail.

A. Defendants are not entitled to summary judgment on the first *Gingles* precondition.

The first *Gingles* precondition ("*Gingles* I") requires Plaintiffs to demonstrate that DeSoto County's Black population is "sufficiently large and geographically compact to constitute a majority in a single-member district." *Nairne II*, 151 F.4th at 684. A district is "reasonably configured" and satisfies the first *Gingles* precondition "if it comports with traditional redistricting criteria, such as being contiguous and reasonably compact." *Milligan*, 599 U.S. at 18; *see also LULAC v. Perry,* 548 U.S. 399, 433 (2006) (Section 2 compactness accounts for traditional redistricting principles).

To satisfy the first *Gingles* precondition, Plaintiffs will present expert testimony from William S. Cooper. Mr. Cooper has drawn illustrative plans for scores of Section 2 cases. His testimony has been favorably cited by the Supreme Court, *Allen v. Milligan*, 599 U.S. 1, 31 (2023), and relied upon in two recent Section 2 cases in Mississippi, *Mississippi State Conf. of NAACP v. State Bd. of Election Comm'rs.* ("*Miss. NAACP*"), 739 F. Supp. 3d 383, 423–25 (S.D. Miss. 2024) (three-judge court) (per curiam); *White v. State Bd. of Election Comm'rs.*, No. 4:22-cv-62-SA-JMV, 2025 WL 2406437, at *13–16 (N.D. Miss. Aug. 19, 2025).

Mr. Cooper has drawn five illustrative plans to support his opinion that DeSoto County's Black population is sufficiently large and geographically compact enough to constitute a majority in a reasonably configured district.[50] Each illustrative plan complies with traditional redistricting criteria, "including population equality, compactness, contiguity, respect for communities of interest, and the non-dilution of minority voting strength."[51] And each illustrative plan includes a majority-Black district, ranging from 50.05% to 52.79% Black voting age population ("BVAP").[52]

[50] *See generally* Cooper Report; Ex. KK (Cooper Reply Report).
[51] Cooper Report at 6.
[52] Cooper Report at 29; Cooper Reply Report at 8, 11.

1. *Plaintiffs' illustrative districts satisfy the numerosity requirement of the first Gingles precondition.*

Defendants advance two flawed arguments that Mr. Cooper's illustrative districts lack sufficient Black population to satisfy *Gingles* I. First, they critique Mr. Cooper's illustrative plans for being just "barely" majority-BVAP. ECF No. 298 at 23. As a factual matter, this is incorrect; Mr. Cooper has created a district that is nearly 53% BVAP.[53] Defendants' arguments are also legally wrong; there is no requirement that a *Gingles* I illustrative district be anything more than 50% plus one person BVAP. Rather, the *Gingles* I numerosity requirement is an "objective, numerical test" of whether "minorities make up more than 50 percent of the voting-age population in the relevant geographic area." *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality opinion); *see also Pope v. County of Albany*, 687 F.3d 565, 574–77 (2d Cir. 2012) (no more than a simple majority is required to meet the *Gingles* numerosity requirement); *Ala. State Conf. of NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1262 (M.D. Ala. 2020) (*Gingles* numerosity requirement is "an objective 50% plus one rule"). The Fifth Circuit routinely accepts *Gingles* I illustrative districts with similar BVAPs. *See, e.g.*, *Nairne I*, 715 F. Supp. 3d at 841–42 (50.03%, 50.2%, 50.56%, and 50.6% BVAP illustrative districts), *aff'd Nairne II*, 151 F.4th 666; *Fusilier v. Landry*, 963 F.3d 447, 456–57 (5th Cir. 2020) (affirming that 50.4% BVAP district satisfied *Gingles* I).

Defendants wrongly insist that Mr. Cooper's purportedly "razor-thin 'bare-majority' districts are the very type that the Supreme Court warned against in *Bartlett*." ECF No. 298 at 23. *Bartlett* addressed whether *Gingles* I "can be satisfied when the minority group makes up *less than 50 percent* of the voting-age population in the potential election district." *Bartlett*, 556 U.S. at 12 (emphasis added). In answering that question, the Supreme Court adopted the "objective" 50% plus one test that "draws clear lines for courts and legislatures alike," satisfying "the need for

[53] Cooper Reply Report at 8.

workable standards and sound judicial and legislative administration." *Id*. at 17–18. If anything, *Barlett* warned *against* inserting subjectivity and blurring the lines of the *Gingles* numerosity requirement—which is precisely what Defendants seek to do. Defendants' efforts to discard or complicate this objective numerical rule have no basis in the law.

Defendants' next argument—that Plaintiffs failed to prove *Gingles* I because Mr. Cooper used BVAP—is equally wrong. The Fifth Circuit has repeatedly used BVAP to assess *Gingles* I in cases brought by Black plaintiffs. *See, e.g.*, *Robinson v. Ardoin*, 86 F.4th 574, 590 (5th Cir. 2023) (using BVAP); *Nairne II*, 151 F.4th at 686 (same); *Fusilier*, 963 F.3d at 456–57 (same). Mr. Cooper's assessment in this case, based on voting age population, calculated the number of all adults in his illustrative districts and determined that a majority of them were Black. Mr. Cooper followed the same approach (including the same type of population data) in two recent Mississippi Section 2 cases; in each case, the court relied on Mr. Cooper's reports and testimony. *See Miss. NAACP*, 739 F. Supp. 3d at 423–432 (analyzing *Gingles* I using BVAP); *White*, 2025 WL 2406437, at *13–16 (same).

There is no basis for Defendants' claim that Mr. Cooper should have used citizen voting age population ("CVAP") instead of total voting age population. CVAP is appropriate "only where there is reliable information indicating a significant difference in citizenship rates between the majority and minority populations." *Negron v. City of Miami Beach, Fla*., 113 F.3d 1563, 1569 (11th Cir. 1997); *see also Barnett v. City of Chicago*, 141 F.3d 699, 705 (7th Cir. 1998). Each of the cases Defendants cite involves alleged dilution of Hispanic people's votes. *See* ECF No. 298 at 23–24; *Campos v. City of Houston*, 113 F.3d 544, 547–48 (5th Cir. 1997); *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853 & n.4 (5th Cir. 1999); *Perez v. Pasadena Indep. Sch. Dist*., 165 F.3d 368, 372 (5th Cir. 1999). In such cases, citizenship is relevant because there is a

relatively high rate of non-citizens among the plaintiff Hispanic population, which affects whether that population can form an effective majority in a district. *LULAC*, 548 U.S. at 424–54. In *Campos*, for example, the Fifth Circuit explained that using CVAP was appropriate because "almost half of Houston's Hispanic voting-age population is ineligible to vote," and contrasted that with 1.6% of non-citizen Black adults. 113 F.3d at 547. But Defendants' reliance on these cases is misplaced here, where there is no evidence of a high non-citizenship rate among the Black population.

In recent years, several courts have addressed the use of CVAP in *Gingles* I illustrative districts in cases brought by Black plaintiffs. In these cases, it is *plaintiffs* who sought to use CVAP and *defendants* who opposed it. These cases involved instances where the *non-Black* population typically has higher non-citizenship rates, so using CVAP removes more non-Black population from the denominator (total number of citizen adults) than from the numerator (total number of Black citizen adults), which makes it *easier* to meet the *Gingles* numerosity requirement. For example, in a recent Section 2 case, plaintiffs' *Gingles* I expert testified that he did not use CVAP in certain areas "because 'there was no need to' since the 'majority-Black status [was] already there.'" *Ala. State Conf. of the NAACP v. Allen* ("*Ala. NAACP*"), No. 2:21-cv-1531-AMM, 2025 WL 2451166, at *18 (N.D. Ala. Aug. 22, 2025) (cleaned up). Elsewhere, however, he used CVAP to cross the *Gingles* I numerosity threshold because it was possible to do so using CVAP but *not* possible using voting age population. *Id.* at *57; *see also Pierce v. N.C. State Bd. of Elections,* 97 F.4th 194, 211 n.8 (4th Cir. 2024) (noting that Black CVAP of illustrative district exceeded 50% while BVAP did not). Similarly, in the recent *White* litigation in this district, the parties stipulated that Census data showed that the Black citizen voting age percentage was *higher* than the Black

voting age percentage in each of Mississippi's three Supreme Court districts. *White*, 2025 WL 2406437, at *4.

Here, Defendants have not put forth any "reliable information indicating a significant difference in citizenship rates between the majority and minority populations" or otherwise suggesting that use of CVAP is appropriate here. *Negron*, 113 F.3d at 1569. To the contrary, their own expert said of Mr. Cooper's majority-BVAP districts in Illustrative Plans 1, 2, and 3: "Plaintiffs' burden is to reach the 50% + 1 threshold, and these three districts appear to do so based on my review."[54]

2. Plaintiffs' illustrative districts have sufficiently compact Black population.

Defendants' arguments regarding population compactness are just as flawed as their arguments regarding population numerosity. *Gingles* I "requires that a 'minority group' . . . be 'sufficiently large and geographically compact to constitute a majority' in some reasonably configured legislative district." *Nairne II*, 151 F.4th at 685–86 (quoting *Cooper*, 581 U.S. at 301). Defendants' own expert, Dr. Trende, agrees that Mr. Cooper's Illustrative Plan 1 includes a majority-Black district with a compact Black population. His report acknowledges that Plan 1 "does appear to have relatively compact districts"[55] including a majority-Black district "based primarily in a compact population based in Horn Lake."[56] At his deposition, asked whether the Black population in the majority-BVAP district in Mr. Cooper's Illustrative Plan 1 was compact, Dr. Trende explained: "there's no sense denying things that can't sensibly be denied."[57] Under *Gingles* I, that

[54] Ex. LL (Trende Report) at 15.
[55] *Id*. at 35.
[56] *Id*. at 39. Mr. Cooper's Illustrative Plan 5 replicates the majority-Black district from his Illustrative Plan 1, Cooper Reply Report at 9, which Dr. Trende acknowledges is compact, Cooper Reply Report at 11.
[57] Ex. MM (Trende Dep.) at 215:7–10.

ends the inquiry. Both sides' experts agree that DeSoto County's minority population is sufficiently large and compact to form a majority in a district. *See Milligan*, 599 U.S. at 18; *Cooper*, 581 U.S. at 302 n.4 (*Gingles* I addresses whether minority group "in the region" can form the majority in reasonably shaped district).

Notwithstanding their own expert's concessions that the Black population's compactness "can't sensibly be denied," Defendants assert that Plaintiffs have "presented insufficient evidence that the Black population itself is geographically compact." ECF No. 298 at 24. In so doing, Defendants assert that it is "legally wrong" to say that compact *districts* are probative of a compact *minority population*. *Id.* This assertion ignores *Robinson v. Ardoin*, in which the Fifth Circuit held that "the geographic compactness of a district is a reasonable proxy for the geographic compactness of the minority population *within* that district." 37 F.4th 208, 221 n.4 (5th Cir. 2022) (emphasis in original). Courts routinely analyze compactness under *Gingles* by looking to whether the illustrative district is reasonably configured. *See, e.g.*, *Nairne II*, 151 F.4th at 691; *Milligan*, 599 U.S. at 18. Accordingly, this Court's inquiry properly considers whether the minority community is "sufficiently large and compact to form a majority in a *reasonably shaped district*." *Cooper*, 581 U.S. at 302 n.4 (emphasis added).

Defendants urge this Court to disregard that authority, based on misplaced reliance on *LULAC v. Perry* and *Sensley v. Albritton*. ECF No. 298 at 24–25. *LULAC* dealt with a district that spanned "300 miles" from the Mexican border to central Texas in a "long, narrow strip" that connected a population "mostly divided between the two distant areas, north and south." *LULAC*, 548 U.S. at 424. Here, by contrast, the majority-BVAP district in Illustrative Plan 1 has a *total area* of only 23.41 miles.[58] In each of Mr. Cooper's plans, the majority-BVAP district spans a limited portion

[58] Cooper Reply Report at 13.

of northern DeSoto County, and in all but one plan, this majority-BVAP district includes less square mileage than *any* district in the enacted 2022 Plan.[59] The illustrative plans in *Sensley*, meanwhile, carved towns in the "northeastern portion" and "southern center" of a Louisiana parish into a single district, linking these "two areas of highly-concentrated African-American population" with "a narrow corridor of land" that was "carefully drawn to avoid areas of higher Caucasian population concentration." *Sensley*, 385 F.3d 591, 597 (5th Cir. 2004). Mr. Cooper's illustrative plans do no such thing—Defendants' own expert has acknowledged the majority-Black district in his Illustrative Plan 1 is based on a "compact population based in Horn Lake."[60] Further, while the illustrative plans in *Sensley* ignored traditional redistricting criteria, 385 F.3d at 598, Mr. Cooper's illustrative plans often outperform the enacted 2022 Plan on traditional redistricting criteria, including municipal splits, precinct splits, and compactness.[61] *Contra* Defs.' ECF No. 298 at 25–26 (asserting that Mr. Cooper's plans "perform no better . . . than the 2022 Plan," but using as examples Mr. Cooper's Plans 2 and 3, which split *fewer* municipalities than the 2022 Plan).

LULAC and *Sensley* are not the only inapposite cases on which Defendants rely for their compactness claims. They rely on *Valdespino v. Alamo Heights Independent School District*, but the Fifth Circuit resolved that case on *numerosity* grounds and did not discuss compactness. 168 F.3d at 852–853 (holding that plaintiffs had not demonstrated that their proposed districts reached 50%+1 minority population). Defendants also cite *Westwego Citizens for Better Government v. City of Westwego*, but the portion they cite is about the second *Gingles* precondition, not the first. *See* 946 F.2d 1109, 1118 (5th Cir. 1991); *see also* ECF No. 298 at 25 (citing *Valdespino* and *Westwego*). The part of *Westwego* that does discuss the *Gingles* I precondition cuts in favor of

[59] *See id*.
[60] *See supra* nn. 55–56 and accompanying text.
[61] *See* Cooper Report at 29, fig. 20; Cooper Reply Report at 8, fig. 3; *id.* at 11, fig. 6.

Plaintiffs here: the Fifth Circuit held that the Black population was "sufficiently large and geographically compact to constitute a majority" in one of five aldermanic districts, *Westwego*, 946 F.2d at 1117, even though only 12.4% of the total voting age population was Black, *id.* at 1112, and 50% of Westwego's Black citizens lived in the central portion of the city while another large segment lived in the northeastern part of Westwego by the Mississippi River, *id.* at 1115. Defendants attribute to the Fifth Circuit an apparent quotation that *Gingles* I is not satisfied where a district "'stretches out to incorporate distinct pockets of minority population.'" *See* ECF No. 298 at 25. They cite *Valdespino*, *Westwego*, and *Sensley* for this proposition. The quoted language does not appear in any of those three cases (each of which is otherwise inapposite), and Plaintiffs have been unable to locate it in any Fifth Circuit case or other caselaw. In any event, the "quotation" is inapplicable to Mr. Cooper's illustrative plans, because they do not include such stretched out districts—and at least two are concededly compact in a way that "can't sensibly be denied," according to Dr. Trende.[62]

Nevertheless, Defendants introduce several purported methods of evaluating minority compactness, each of which is outside the record and lacks any basis in precedent. Defendants criticize Mr. Cooper for not conducting "a spatial analysis of the distribution of the Black population" or engaging "in any quantitative compactness testing, such as nearest-neighbor test, cluster analysis, or other spatial metrics." ECF No. 298 at 25. Defendants cite no caselaw that relies on these methods, let alone *requires* them. *But see Robinson v. Ardoin*, 605 F. Supp. 3d 759, 826 (M.D. La. 2022), *aff'd in part*, *vacated in part on other grounds*, 86 F.4th 574 (5th Cir. 2023) ("The time-tested, generally accepted statistical measures of compactness used by other experts in this case are qualitatively superior evidence and far more probative of compactness" than the

[62] *See supra* n. 57 and accompanying text.

"unhelpful and unilluminating" "spatial analysis" offered by an expert who was "not aware of any court considering the type of 'spatial analysis' . . . in the context of a Section 2 case.").

Again, Defendants' own expert belies their briefing arguments. While Defendants' briefing critiques Mr. Cooper's lack of "quantitative compactness testing," ECF No. 298 at 25, their expert testified that "we just no longer have available to us any type of numeric measurement of population compactness."[63] Dr. Trende himself used an "eyeball test"—his own subjective visual assessment—because "it's all we have."[64] Assuming it is valid, this "eyeball test" would be the factfinder's prerogative, depends on disputed facts, and is no basis for summary judgment. *See Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, No. 1:21-cv-5337-SCJ, 2023 WL 5674599, at *11 (N.D. Ga. July 17, 2023) ("The use of any 'eyeball test' to assess irregularities . . . is necessarily a matter for the factfinder.").

B. Defendants are not entitled to summary judgment on *Gingles* II or III.

To prevail at trial, Plaintiffs must satisfy the second and third *Gingles* preconditions, which operate together and reflect racial voting patterns. Under the second *Gingles* precondition ("*Gingles* II"), "the minority group must be able to show that it is politically cohesive." *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 51). Under the third precondition ("*Gingles* III"), "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.* (quoting *Gingles*, 478 U.S. at 51) (alteration in original). "Oftentimes, courts analyze the second and third preconditions together." *White*, 2025 WL 2406437 at *16.

As is typical, Plaintiffs will prove *Gingles* II and *Gingles* III with expert testimony on a racially polarized voting ("RPV") analysis. Plaintiffs' expert, Dr. Jacob M. Grumbach, examined 17

[63] Trende Dep. 218:14–219:14.
[64] *Id.* at 219:10–14.

endogenous elections (*i.e.*, elections for the five offices governed by the 2022 Plan) and 19 exogenous elections (*i.e.*, elections for other offices, analyzed based on results from DeSoto County only).[65] For each, he empirically assessed voting behavior to determine which candidate was preferred by Black voters ("Black candidate of choice"), and reported the levels of support that candidate received from Black and white voters.

Dr. Grumbach found that "elections in DeSoto County are racially polarized."[66] His analysis found a high level of cohesion among Black voters: "on average, 87% of the Black electorate in DeSoto County casts their ballots for the Black candidate of choice in racially contested endogenous elections" and "on average, 95% of the Black electorate in DeSoto County supports the Black candidate of choice in exogenous elections."[67] Dr. Grumbach also found strong evidence of white bloc voting: "on average, 80% of the non-Black electorate casts their ballots *against* Black candidates of choice in racially contested endogenous elections" and "on average, 80% of the non-Black electorate votes against Black candidates of choice in exogenous elections."[68] Unsurprisingly, this bloc voting usually defeats Black voters' candidate of choice. In each of the 17 racially-contested endogenous elections Dr. Grumbach studied, the Black candidate of choice lost.[69] The elections Dr. Grumbach studied in his reply report also showed racially polarized voting.[70]

Recent contests exemplify the extreme racial polarization in DeSoto County elections. Dr. Grumbach estimated that, in a 2023 campaign for School Board, for example, Dr. Bacardi Harris

[65] *See* Grumbach Report; Grumbach Supplemental Report.
[66] Grumbach Supplemental Report at 2.
[67] Grumbach Report at 16.
[68] *Id.* at 17.
[69] Grumbach Supplemental Report at 2.
[70] Ex. NN (Grumbach Reply Report) at 16–17.

received 81.81% of the Black vote and less than three percent of the non-Black vote.[71] She was defeated by Jerald Wheeler, who white voters supported.[72] Dr. Grumbach estimated that James Woodard received nearly all of the Black vote but just 6.92% of the non-Black vote in his campaign for Justice Court Judge in that same year.[73] Mr. Woodard lost to Brad Russell, preferred by white voters.[74] The high level of polarization here mirrors the polarization in *Milligan*, where, "on average, Black voters supported their candidates of choice with 92.3% of the vote" while "white voters supported Black-preferred candidates with 15.4% of the vote," 599 U.S. at 22 (citation omitted), and far exceeds the level of polarization present in *Gingles*, 478 U.S. at 59.

Defendants advance several flawed arguments on *Gingles* II and III. On *Gingles* II, they ignore precedent and quibble over Dr. Grumbach's methodology with baseless critiques, again citing cases for propositions they do not contain. On *Gingles* III, they misstate the law and the facts in arguing that party, rather than race, causes the extreme polarization in DeSoto County.

1. *Plaintiffs have put forth sufficient evidence of Black political cohesion.*

Plaintiffs' evidence is sufficient to prove Black political cohesion, satisfying *Gingles* II. As part of his RPV analysis, Dr. Grumbach has assessed recent elections and showed that Black voters tend to prefer the same candidates at high rates.[75] This assessment of *Gingles* II is consistent with the approach taken by the Supreme Court, the Fifth Circuit, and other courts. *See Milligan*, 599 U.S. at 22 (crediting finding of political cohesion based on expert testimony of RPV analysis); *Robinson*, 86 F.4th at 596 (same); *Nairne II*, 151 F.4th at 696 (same); *Miss. NAACP*, 739 F. Supp. 3d at 454 (same); *see also E. Jefferson Coal. for Leadership & Dev. v. Par. of Jefferson*, 926 F.2d

[71] Grumbach Supplemental Report at 13.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] Grumbach Supplemental Report at 2.

487, 492 (5th Cir. 1991) ("This Court has stated that the inquiry into political cohesion 'is not an inquiry to be made prior to and apart from a study of polarized voting . . . because the central focus is upon voting patterns.'" (alteration in original) (citation omitted)).

Ignoring the abundant precedential caselaw that takes this approach, Defendants claim that it is not enough to show that Black voters tend to support the same candidates. ECF No. 298 at 28. To advance this proposition, Defendants appear to rely on a case that the Fifth Circuit, in relevant portion, explicitly corrected because it was flawed. Defendants cite *Monroe v. City of Woodville* ("*Monroe I*") for the following: "[A] finding of racial polarization in voting behavior is not synonymous with a group's political cohesion. . . . 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." ECF No. 298 at 28 (citing 881 F.2d 1327, 1331 (5th Cir. 1989)). Page 1331 of that opinion does say: "Appellants err by implying that a finding of racial polarization in voting behavior is synonymous with a group's political cohesion." *Monroe I*, 881 F.2d at 1331. But the Fifth Circuit subsequently corrected that portion of the opinion and *removed the relevant language*. *See Monroe v. City of Woodville* ("*Monroe II*"), 897 F.2d 763, 763–64 (5th Cir. 1990); *see also Williams v. City of Dallas*, 734 F. Supp. 1317, 1414 (N.D. Tex. 1990) ("A majority of the Supreme Court held, in *Gingles*, that minority group political cohesion can be shown by the same statistical evidence and analysis showing racially polarized or bloc voting . . . . Insofar as [*Monroe I*] holds otherwise, it is a single panel departure from *Gingles* and Fifth Circuit precedent."). Ultimately, the *Monroe II* opinion makes clear "that establishing 'that a significant number of minority group members usually vote for the same candidates is one way of proving political cohesiveness,'" and "[s]tatistical proof of political cohesion is likely to be the most persuasive form of evidence." 897

F.2d at 764 (quoting *Gingles*, 478 U.S. at 56). That is exactly the analysis that Dr. Grumbach has done here.

Defendants' criticisms of Dr. Grumbach's methodology are also meritless and unsupported by the cases they cite. Defendants cite two cases to support their criticism of Dr. Grumbach's decision not to include error rate analysis and turnout data. ECF No. 298 at 29. But neither case stands for that proposition or offers any insights into proper RPV analysis metrics. *Valdespino*, as discussed above, is a *Gingles* I *numerosity* decision, and does not discuss racial polarization at all (let alone how to best run an RPV analysis). *See* 168 F.3d at 856. *NAACP v. Fordice*, meanwhile, turned on which elections were most probative at the totality-of-circumstances analysis and said nothing about how to conduct an RPV analysis. *See* 252 F.3d 361, 367 (5th Cir. 2001).

Finally, these critiques—in addition to being flawed—are all premature. Defendants' criticisms of which elections Dr. Grumbach included in his analysis, and how he assessed them, go to the weight to assign Dr. Grumbach's testimony. Defendants question, for example, Dr. Grumbach's decision not to assess primaries, citing *Perez v. Abbott*. *See* ECF No. 298 at 27–28 (citing 274 F. Supp. 3d 624, 658 (W.D. Tex. 2017)). But *Perez* itself notes that, while primaries "*can* aid courts" and are not *per se* irrelevant, their probative value is an open question. 274 F. Supp. 3d at 658. In other words, whatever criticism Defendants may have of Dr. Grumbach's work is a matter of fact for trial, not a basis for summary judgment on *Gingles* II, especially because Defendants have not sought to exclude his testimony. *See, e.g.*, *Berry v. Armstrong Rubber Co.*, 989 F.2d 822, 824 (5th Cir. 1993) ("In granting a motion for summary judgment, the district court is not to weigh the evidence or make credibility choices."); *Munoz v. Orr*, 200 F.3d 291, 301 (5th Cir. 2000) (limiting the circumstances under which "the district court may disregard [an expert]

opinion in deciding whether a party has created a genuine issue of material fact" to instances in which the "expert's opinion is clearly unreliable").

2. *Defendants' arguments on partisan polarization are legally premature at the Gingles III phase—and factually unsupported at any phase.*

Defendants erroneously assert that Plaintiffs cannot satisfy *Gingles* III because they contend that party, not race, explains divergent voting patterns among Black voters and white voters in DeSoto County. But at the *Gingles* stage, the relevant issue is *whether* Black voters vote differently than white voters, not *why* they do. To satisfy *Gingles* II and III, Plaintiffs need only prove that polarization is "at least plausibly on account of race." *Milligan*, 599 U.S. at 19. Any assessment of whether partisanship or race better explains electoral outcomes "is more appropriately addressed in connection with the totality of the circumstances analysis, rather than in connection with the *Gingles* preconditions." *White*, 2025 WL 2406437, at *20 (collecting cases); *see also Teague v. Attala Cnty.*, 92 F.3d 283, 292 (5th Cir. 1996) ("A defendant may try to rebut plaintiffs' claim of vote dilution via evidence of 'objective, nonracial factors under the totality of the circumstances standard.'" (citation omitted)). Summary judgment on the party-versus-race question is thus plainly inappropriate. As set forth below, Plaintiffs have put forward substantial evidence that race drives the polarization in DeSoto County. *See infra*. Because the facts are highly disputed, they must necessarily be weighed alongside other evidence as part of the totality-of-circumstances assessment, and not as a *Gingles* precondition question at the summary judgment stage.

And while certainly premature at the *Gingles* II and III stage, Defendants' arguments are misplaced at *any* stage of the analysis. *See* ECF No. 298 at 29–30. The two recent Section 2 decisions from Mississippi are instructive on this point because the defendants in each case also claimed that party, rather than race, explained polarized voting. Importantly, each court acknowledged "that partisanship plays *some* role in the outcome of these elections." *White*, 2025

WL 2406437, at *38; *see also Miss. NAACP*, 739 F. Supp. 3d at 454 ("[W]e acknowledge that partisanship plays a role."). Nevertheless, each court found high levels of legally significant racially polarized voting, sufficient to support a Section 2 claim. *See White*, 2025 WL 2406437, at *25; *Miss. NAACP*, 739 F. Supp. 3d at 441. Thus, as a legal matter, Defendants here are simply incorrect in implying that Plaintiffs must rule out partisanship as *some* factor in voting behavior. *Contra* ECF No. 298 at 29. Rather, the question is whether "partisan affiliation, not race, *best* explains the divergent voting patterns among minority and white citizens." *White*, 2025 WL 2406437, at *38 (emphasis added) (quoting *Miss. NAACP*, 739 F. Supp 3d at 454). Both federal courts to recently assess this question in Mississippi rejected that party best explains the polarization.

Here, there is substantial evidence indicating that race, rather than party, drives polarization. *First*, Dr. Grumbach found high levels of polarization in non-partisan school board elections.[76] *See White*, 2025 WL 2406437 at *38 n.16 ("[I]t cannot be ignored that racial polarization exists regardless of whether the race is partisan or not."). *Second*, Plaintiffs' expert, Dr. Marvin King, will testify that party is downstream from race, and that any partisan polarization is *caused* by racial polarization.[77] The *Mississippi NAACP* court credited substantially similar testimony from Dr. King himself. 739 F. Supp. 3d at 454 (crediting Dr. King's testimony that "racial polarization throughout Mississippi political history precedes the partisan polarization" to support its conclusion race "best explains the divide"); *see also White*, 2025 WL 2406437, at *34 (crediting historian testimony that "there is a strong correlation between partisanship and race in Mississippi," which "has existed for many decades").

[76] Grumbach Supplemental Report at 6, fig. 2.
[77] *See generally* Ex. OO (King Reply Report).

Finally, Defendants' expert, Dr. Christopher Bonneau, attempted to address the race-or-party issue, by "compar[ing] the electoral success of Black Democrats with white Democrats" in DeSoto County endogenous elections from 2016 through 2024.[78] He initially reported that white Democrats performed worse than Black Democrats in these elections, concluding this supported the thesis that party, not race, is what mattered.[79] But at his deposition, it was revealed that Dr. Bonneau made several coding errors in his work.[80] *See Ala. NAACP*, 2025 WL 2451166, at *44, *71 (noting that Dr. Bonneau committed a similar coding error, which reversed the results of his initial analysis); *Singleton v. Allen* ("*Singleton II*"), 782 F. Supp. 3d 1092, 1248, 1290 (N.D. Ala. 2025) (same).

In fact, Dr. Bonneau's corrected analysis revealed that the one white Democrat who ran (1) received 46.21% of the vote, compared to an average vote share of 36.8% for Black Democrats in the endogenous elections Dr. Bonneau studied;[81] (2) did better than any Black candidate, including those running with no party label, in *any* of the endogenous elections Dr. Bonneau studied;[82] and (3) was the only Democrat who was able to garner enough support for Dr. Bonneau to consider the election "competitive" under political science standards.[83] That white Democrat, William Egner, ran for Supervisor in District 3 in 2023. In that same year, a Black candidate, Dr. Bacardi Harris, ran in a non-partisan election for School Board in District 3.[84] Mr. Egner, the white candidate running as a Democrat, outperformed Dr. Harris, the Black candidate running with no partisan label, by nearly 14 percentage points in the *same* district in the *same* year.[85] After realizing

[78] Ex. PP (Bonneau Report) at 7.
[79] *Id.*
[80] Ex. QQ (Bonneau Dep.) at 142:18–155:8.
[81] *Id.* at 155:3–156:1.
[82] *Id.* at 165:6–12.
[83] *Id.* at 166:15–169:19.
[84] *Id.* at 157:25–159:14.
[85] *Id.*

his errors, Dr. Bonneau conceded: "if you were to line up all of the Democrats who ran[,] the White Democrat would have been at the top of the list, the highest percentage of the vote."[86]

Defendants' reliance on *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 868 (5th Cir. 1993) (en banc), is misplaced in contemporary Mississippi. "The dissimilarities between the facts of *Clements* and the record before this Court are vast." *White*, 2025 WL 2406437, at *35; *see also Miss. NAACP*, 739 F. Supp. 3d at 450. In *Clements*, white voters were the majority of *both* major political parties. 999 F.2d at 861. There is no evidence of that in DeSoto County. In *Clements*, both parties aggressively recruited minority candidates to run for the seats at issue. *Id.* Here, there is no evidence that the Republican Party has ever had a Black candidate in an endogenous election, let alone heavily recruited one. In *Clements*, the court found no evidence that white elected officials were non-responsive to the needs of minority voters. *Id.* at 859. Here, the record is replete with such evidence. *See infra* Part C. Both the *Mississippi NAACP* court and the *White* court rejected the notion that *Clements* is a factually apt comparison to contemporary Mississippi. Drawing all inferences in favor of Plaintiffs, this Court should do the same here.

Ultimately, Plaintiffs have raised numerous disputed material facts on each of the *Gingles* preconditions. Defendants' counterarguments are premised on a misreading of the law and ignore recent precedent. Properly weighing the facts and inferences in Plaintiffs' favor on summary judgment, Defendants' motion should be denied.

C. Plaintiffs have presented substantial facts demonstrating that the totality of circumstances favor them and preclude summary judgment.

Defendants' arguments based on the totality of the circumstances are equally inapt for the summary judgment stage. A plaintiff who demonstrates the three *Gingles* preconditions must also show, "under the 'totality of circumstances,' that the political process is not 'equally open' to

[86] *Id.* at 164:15–19.

minority voters." *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 45–46). To conduct this assessment, the Court must "balance nine factors articulated in the Senate Judiciary Committee majority report accompanying the bill that amended § 2" by "evaluat[ing] each factor and perform[ing] a flexible, fact-intensive inquiry based on 'an intensely local appraisal of the design and impact of the contested electoral mechanisms.'" *Nairne II*, 151 F.4th at 699–700 (quoting *Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1147 (5th Cir. 1993)). "[N]o one of the factors is dispositive." *Westwego*, 946 F.2d at 1120. This inquiry requires a weighing of evidence within each factor and across factors. It is inherently unsuitable for summary judgment.

In seeking summary judgment on the totality of circumstances, Defendants ask the Court to look past voluminous evidence, including unrebutted expert testimony,[87] that cuts in Plaintiffs' favor:

Senate Factor 1 concerns "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." *Gingles*, 478 U.S. at 36–37. Mississippi's history of official discrimination weighs heavily for Plaintiffs. Defendants have not disclosed an expert to rebut the testimony of Plaintiffs' expert, Dr. Marvin King, who documents Mississippi's sordid history of racial discrimination and explains its lingering effects. Instead, Defendants fault Dr. King for relying on "statewide" evidence. ECF No. 298 at 32. As an initial matter, Dr. King's reliance on statewide history goes to the weight of his testimony—a question for trial, not a basis for the Court to disregard unrebutted expert testimony at summary judgement. But more importantly, the Fifth Circuit has recognized that statewide history is probative in Section 2 cases brought at a county level, noting "[t]hat Mississippi has a long and dubious history of

[87] *See generally* King Report. The Defendants have not disclosed an expert report responsive to Dr. King's report.

discriminating against blacks is indisputable," in a case challenging a county redistricting plan. *Teague*, 92 F.3d at 293–94. Dr. King has explained the obvious connection between Mississippi and DeSoto County: the County, "governed as it is by the State of Mississippi laws, would have had to enforce the discriminatory laws of the State just like any other county."[88] And, contrary to Defendants' suggestion, Dr. King does, in fact, document DeSoto-specific history alongside other relevant history.[89]

Senate Factor 3[90] concerns "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." *Gingles*, 478 U.S. at 37. On this factor, Defendants' argument begins and ends in 1987, when a municipal single-shot provision was repealed and dual registration was found to violate the Voting Rights Act. ECF No. 298 at 32. *See Miss. State Chapter, Operation Push v. Allain*, 674 F. Supp. 1245 (N.D. Miss. 1987). But Plaintiffs present unrebutted evidence that: Mississippi provides no same-day registration;[91] permits absentee voting on narrow grounds that often require in-person visits to government officials;[92] does not offer no-excuse early voting;[93] and guarantees no time off to vote.[94] The record reveals that these policies, among others, make the "cost of voting" higher in Mississippi than in almost any other state.[95] Moreover, Dr. King

[88] Ex. RR (King Dep.) at 42:13–24.
[89] *See, e.g.*, King Report at 11, 17–18.
[90] Senate Factor 2 concerns "the extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 37. Plaintiffs address racially polarized voting *supra* Part II.B. Senate Factor 4 deals with candidate slating, which "Mississippi does not use." *Fordice*, 252 F.3d at 372.
[91] King Report at 21.
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*

offers unrebutted testimony about the consequences of an off-cycle fragmented election calendar;[96] frequent uncontested elections;[97] and chronically low turnout.[98] Defendants' own expert, Dr. Bonneau, acknowledges that these types of restrictions fall disproportionately on populations who are worse off socio-economically[99] (which, in DeSoto County, are disproportionately Black residents).

Senate Factor 5 concerns "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." *Gingles*, 478 U.S. at 37. Unrebutted evidence in the record shows that, across a host of socio-economic indicators, Black residents in DeSoto County are worse off than their white counterparts.[100] Defendants argue that, to be relevant, these conditions must actually hamper Black residents' ability to participate in the political process. ECF No. 298 at 32. Dr. King's report shows just that, tying these conditions to lowered political participation.[101] And, again, Dr. Bonneau agrees that voters who are worse off socioeconomically are disproportionately affected by restrictive voting policies.[102] Moreover, as a legal matter, "disproportionate educational, employment, income level and living conditions arising from past discrimination tend to depress minority political participation. Where these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further causal nexus." *Teague*, 92 F.3d at 294 (citation omitted). Nevertheless, Plaintiffs have put forth evidence of socio-economic conditions,

[96] *Id*. at 25.
[97] *Id*. at 21.
[98] *Id*. at 21.
[99] Bonneau Dep. at 69:11–72:9.
[100] Ex. W (Exhibit H to Cooper Report) (2019-23 ACS data); King Report at 32–34.
[101] King Report at 32–34.
[102] Bonneau Dep. at 72:1–23.

depressed minority political participation, *and* expert testimony tying those factors together. Defendants' scattered other criticisms of Dr. King—that he compared DeSoto County's turnout to that of other Mississippi counties and found that DeSoto County's was relatively low, *see* ECF No. 298 at 32, or that he considered voter registration rates as one part of his analysis, *id.* at 33—are hard to parse but would (at most) go to the weight of his testimony.

Senate Factor 6 concerns "whether political campaigns have been characterized by overt or subtle racial appeals." *Gingles*, 478 U.S. at 37. Dr. King documents several incidents of "dog-whistle" racial appeals.[103] Moreover, alongside its Senate Factor 6 inquiry, the *Mississippi NAACP* court credited testimony from Pamela McKelvy Hamner regarding threats she and her supporters experienced in DeSoto County due to her race. *Miss. NAACP*, 739 F. Supp. 3d at 460–61. Ms. McKelvy has been disclosed as a witness in this case. Other witnesses in this case have described similar experiences. For example, Theresa Isom, a Black candidate, received a threatening letter that made her question whether to seek office again, and described declining to knock on certain doors due to Confederate paraphernalia.[104] And the KKK has left flyers on the porches of Black churches and in Pastor Tipton's driveway.[105]

Senate Factor 7 concerns "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 37. None of the 25 officials elected under the challenged district lines is Black. DeSoto County is one of only 11 out of 82 counties without a Black supervisor, King Report at 46, and an outlier among counties with a similar size and growing Black population, *Id.* at 48–49. Defendants do not even attempt to address this factor in their summary judgment motion. Yet, as they acknowledge, it is one of the most important

[103] King Report at 42–46.
[104] *See* Isom Dep. at 129:22–131:4; *see also id.* at 125:16–126:4; *see also* B. Harris Dep. at 142:5–144:3.
[105] *See* King Report at 41; Tipton Dep. at 105:5–11.

factors in the totality-of-circumstances analysis. *See* ECF No. 298 at 31; *Gingles*, 478 U.S. at 48 n.15.

Senate Factor 8 concerns "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." *Gingles*, 478 U.S. at 37. The record belies Defendants' claim that "DeSoto County's elected officials have been consistently responsive to their requests for information or services (to the extent they had any)." ECF No. 298 at 33. Defendants cite a series of deposition snippets, almost all of which of are based on cherry-picked testimony in response to objectionable leading questions. For example, Defendants cite Plaintiff Harold Harris's testimony that he hasn't reached out to his Supervisor, Ray Denison, *see* ECF No. 298 at 33 n.101, but omit testimony that (1) he had made specific requests of Supervisor Denison's predecessor, who was not responsive and (2) Supervisor Denison had previously served as a Walls Alderman and, when Mr. Harris made requests of that Board, Mr. Denison and the others "didn't take kind to somebody questioning . . . their authority and their decision making."[106] Similarly, Defendants cherry-pick fifteen lines from the testimony of Dr. Darrylinn Todd about her Election Commissioner, ECF No. 298 at 33 n.102, but Dr. Todd also testified that DeSoto County is "not hearing what [the Black community's] needs are," that there is disparate investment in Black communities, and that that school district officials gave her "the runaround" when she asked them about racially disparate disciplinary policies.[107] This is hardly testimony that "runs headlong" into Plaintiffs' allegations of non-responsiveness. *Contra* ECF No. 298 at 33. In reality, the record includes voluminous testimony that resources are not allocated equally in the County,[108] and that white elected officials have an appalling record of failing to

[106] H. Harris Dep. at 55:6–17; 90:25–91:4, 92:23–93:10.
[107] Todd Dep. at 134:14–135:1, 149:21–23; 150:7–15.
[108] *See, e.g.*, *id.*; H. Harris Dep. at 55:6–17; 90:35–91:4, 92:23–93:10; West Dep. at 150:15–151:2.

appoint or hire Black individuals to County positions.[109] Defendants also ignore that the Board of Supervisors was wholly unresponsive to Black residents' desires to draw a fair districting plan.[110]

Senate Factor 9 asks "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." *Gingles*, 478 U.S. at 37. Defendants have not put forth a clear justification for the 2022 Plan, but to the extent their justification was to maintain the racial ratios of the districts,[111] that is a tenuous—if not constitutionally suspect—justification. *See, e.g.*, *ALBC*, 575 U.S. at 277. Any related desire to minimize district changes, likewise, cannot justify the dilutive 2022 Plan. *See Milligan*, 599 U.S. at 22 ("[T]his Court has never held that a State's adherence to a previously used districting plan can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan.").

The preceding necessarily reflects only a portion of the evidence Plaintiffs will present at trial on the totality of the circumstances. But there is no shortage of evidence to weigh or factual disputes to resolve. Those determinations cannot be made at the summary judgment stage. The Court should deny Defendants' motion, and this case should proceed to trial.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment.

Dated: November 10, 2025

[109] *See supra* nn. 30–31 and accompanying text.
[110] *See supra* nn. 13–28 and accompanying text.
[111] *See supra* n. 20 and accompanying text.

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CERTIFICATE OF SERVICE

I, Daniel J. Hessel, do certify that on this day I filed the foregoing with the ECF System which sent notification to all counsel of record.

This the 10th day of November, 2025.

/s/ Daniel J. Hessel

Daniel J. Hessel