

**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

**REPLY IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

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Plaintiffs have not satisfied their burden of “demonstrating by competent summary judgment proof that there is an issue of material fact warranting trial” on any of the essentially elements of their case. *Hankins v. Wheeler*, 109 F.4th 839, 845 (5th Cir. 2024). Accordingly, Rule 56 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, 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) (emphasis in the original).

REBUTTAL ARGUMENTS

I. Plaintiffs have failed to put forth sufficient facts to support standing.

In their response, Plaintiffs assert that Defendants’ analysis of standing “unnecessarily complicates a straightforward standing analysis”¹ However, in conflating the proper standing analysis with their burden of proof to succeed on their claims, Plaintiffs muddy the waters regarding individual and organizational standing.² Contrary to Plaintiffs’ analysis, they must demonstrate standing as of the time the complaint is filed. *Bryant v. Holder*, 809 F. Supp. 2d 563, 566 (S.D. Miss. 2011). In doing so, Plaintiffs must demonstrate standing from the pleadings, rather than word play and arguments from allegations in the pleadings. *See FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990) (“standing cannot be inferred argumentatively from averments in the pleadings, but rather . . . it is the burden of the party who seeks the exercise of jurisdiction in his favor clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute”) (internal citations and punctuation omitted). Plaintiffs have failed to provide sufficient evidence to demonstrate organizational or individual standing.

Individual Plaintiffs. In order to have standing, Plaintiffs must show, among other things, that they have suffered an “injury in fact,” which requires a showing of “an invasion of a legally protected

¹ Pl.’s Resp. [319] at 8.

² Plaintiffs concede that they are not pursuing pursuing organizational standing under a “diversion of resources” theory. *Id.* at 8 n.42.

interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Wendt v. 24 Hour Fitness USA, Inc.*, 821 F.3d 547, 550 (5th Cir. 2016). A concrete and particularized injury must “affect the plaintiff in a personal and individual way and not be a generalized grievance.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (internal citation omitted).

In support of their argument that the individual Plaintiffs, Harris and Tipton, have standing, Plaintiffs assert that both are harmed because their vote is allegedly diluted by the 2022 Plan and that each would live in a majority-Black district in Plaintiffs’ illustrative plans.³ Plaintiffs, however, support this position by arguing that an unknown injury would be redressed by the creation of a reasons configured majority-Black hypothetical district. This is the exact type of alleged injury which is not particularized or concrete and cannot confer standing upon the individual Plaintiffs. *See All. for Hippocratic Med.*, 602 U.S. at 381 (“By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action.”). This type of alleged injury is not concrete or particularized, it is not actual, and it cannot provide a basis for standing.

Plaintiffs primarily rely on *Nairne v. Landry* for the proposition that the individualized Plaintiffs have standing because “[e]ach would live in a majority-Black district in at least one of Plaintiffs’ illustrative plan.”⁴ Plaintiffs’ reliance on *Nairne*, however, is misplaced because it lacks any precedential value and is not binding on this court, as an appellate mandate has been withheld.⁵ *Spikes v. Wheat*, 141 F.4th 662, 668 n.1 (5th Cir. 2025) (“An opinion cannot be law of the case absent an appellate court mandate.”) (cited cases omitted).

³ [319] at 8-9.

⁴ [319] at 9.

⁵ *Nairne v. Landry*, No. 24-30115, at Doc. No. 313 (5th Cir. Aug. 14, 2025).

Presumably understanding that *Nairne* cannot carry the day, Plaintiffs take issue with Defendants analysis because Defendants “rely[] on a partisan gerrymandering case” and claim it “reflects a distinction without difference.”⁶ Yet, Plaintiff rely on “gerrymandering case[s]” to justify the blanket injunction they seek.⁷ Nonetheless, Plaintiffs miss the mark as they concede that “the harm in a Section 2 vote dilution claim stems from a particular district.”⁸ Moreover, the gerrymandering case Plaintiffs take issue with, *Gill v. Whitford*, 585 U.S. 48 (2018), “turned on allegations of vote dilution”—the exact same basis for Plaintiffs’ claim in this case.⁹ Further, courts have found that *Gill* has equal application to Section 2 claims because “cracking” and “splitting” explain why vote dilution is purportedly occurring and thus can be used to describe types of Section 2 vote dilution claims. *See Thomas v. Bryant*, 919 F.3d 298, 311 (5th Cir. 2019) (citing *Gill*, 585 U.S. at 56) (explaining types of Section 2 vote dilution claims).

Plaintiffs distance themselves from *Gill* by claiming that the “challenge” in this case is “necessarily broader” because the plan as drawn dilutes voting power, whereas in gerrymandering cases the challenge is to a specific district.¹⁰ Plaintiffs attempt to rationalize this distinction by explaining that Plaintiffs must show “another, hypothetical district.”¹¹ However, the use of another hypothetical district to substantiate standing is rife with conjecture and speculative at best. As such, Plaintiffs lack standing to challenge the entire 2022 Plan and to justify their requested relief because the individual Plaintiffs have not suffered a legally cognizable injury in fact.

Organizational Plaintiffs. As noted, the individual Plaintiffs lack standing to pursue this action. The organizational Plaintiffs in this matter, Unit 5574 and DST, also lack standing. Plaintiffs summarily state that because the individual Plaintiffs have standing, the standing inquiry is over.

⁶ [319] at 9.

⁷ Compare *id.* at 9 with *id.* at 10 (discussing gerrymandering cases).

⁸ *Id.* at 9.

⁹ [319] at 9.

¹⁰ [319] at 9-10.

¹¹ *Id.*

However, because the individual Plaintiffs lack standing, the Court must determine whether the organizational Plaintiffs have standing. Insofar as Plaintiffs assert that the organizational Plaintiffs have “associated standing,” this standing is “derivative of the standing of the association's members requiring that they have standing and that the interests the association seeks to protect be germane to its purpose.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017).¹²

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).

Here, Plaintiffs asserts that both Unit 5574 and DST have associational standing because each have allegedly “identified members who have standing in their own right.”¹³ To bolster their claims, Plaintiffs state that the individual Plaintiffs are members of Unit 5574. This is of no matter, as neither of the individual plaintiffs have standing on their own as explained above.

Next, Plaintiffs recognizing that the individual Plaintiffs do not have standing, attempt to bolster Unit 5574’s associational standing position by claiming it 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.”¹⁴ Similarly, Plaintiffs argue that DST has associational standing because it has “identified members who are Black, registered voters and currently live in a majority-white district but would live in a majority-Black district under

¹² Plaintiffs concede that they do not seek organizational standing nor present any argument in their response regarding organizational standing. *See* [319] at 8 & n. 42.

¹³ [319] at 10.

¹⁴ *Id.* at 8-9.

one of Plaintiffs' illustrative plans."¹⁵ In sum, Plaintiffs' only evidence to support the organizational Plaintiffs standing is that, in the abstract, members of Unit 5574 and DST would reside in a reasonably configured majority-Black district, meaning that an unknown injury would be redressed by the creation of a reasonably configured majority-Black district. This is a leap too far because the alleged injury is not concrete or particularized, nor is it actual. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (requiring an injury in fact to be concrete and actual or imminent, not conjectural or hypothetical); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006) (requiring that, for associational standing, the members must independently meet the Article III standing requirements).

Regarding the second and third requirements to satisfy associational standing, Plaintiffs must establish that the interests it seeks to protect are germane to the organization's purpose; and neither the claim asserted, nor the relief requested requires the participation of individual members in the lawsuit. *Harrison Cnty., Miss. v. U.S. Army Corps of Eng'rs*, 651 F. Supp. 3d 843, 848 (S.D. Miss. 2023). Plaintiffs summarily assert that they satisfy both of these "prongs" using a litany of exhibits that purport to support that "[v]oting rights are germane to both organizational Plaintiffs' purpose."¹⁶ Such toothless assertions cannot support a basis for associational standing. *See Saget v. Trump*, 375 F. Supp. 3d 280, 337–38 (E.D. N.Y. 2019) (finding that associational standing requirements would become "toothless" if the court were to accept conclusory recitation that the interests in the lawsuit are germane to the association's purpose without more).

Rather, to satisfy the "germane" inquiry, Plaintiff must provide evidence of how this lawsuit would "reasonably tend to further the general interests that individual members sought to vindicate in joining the association and ... bears a reasonable connection to the association's knowledge and experience." *Kravitz v. United States Dep't of Com.*, 366 F. Supp. 3d 681, 741 (D. Md. 2019)

¹⁵ *Id.* at 9.

¹⁶ [391] at 11 n.49

(quotation omitted). Plaintiffs fail to carry this burden, as none of the proffered evidence shows how Unit 5574 and DST's interests as organizations, such as voting education, would be harmed based on the 2022 Plan because both organization members are free to vote as they see fit. As for the third requirement to satisfy associational standing, Plaintiffs have presented no evidence or argument that "neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit." *Elfant*, 52 F.4th at 253 (citation omitted).

II. Plaintiffs have failed to create a fact question as to the *Gingles* preconditions.

Plaintiffs do not have sufficient evidence to establish any of the *Gingles* preconditions. This is fatal to their claim, and summary judgment is warranted on this basis alone.

First *Gingles* precondition. Plaintiffs intend to present expert testimony from Cooper to satisfy the first *Gingles* precondition.¹⁷ Pointing to Cooper's initial report and reply report, Plaintiffs contend that he "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."¹⁸ But the Court recently entered an order, striking portions of Cooper's reply report pertaining to Illustrative Maps 4 and 5 as an improper and untimely rebuttal report and further precluded him from testifying about those plans at trial.¹⁹ Plaintiffs, therefore, cannot rely on Cooper's Illustrative Maps 4 and 5 as evidence for purposes of satisfying the first *Gingles* precondition.²⁰ Thus, it remains true that Cooper's remaining maps included in his initial report (Illustrative Maps 1, 2, and 3) cannot satisfy the first *Gingles* precondition.

Plaintiffs fail to grapple with legal standards that dictate the outcome of this case. As the parties asserting Section 2 liability, Plaintiffs must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50%. *Bartlett v. Strickland*, 556

¹⁷ [319] at 13.

¹⁸ *Id.* (citing Cooper Report [318-1]; Cooper Reply Report [318-37]).

¹⁹ *See* Order [322].

²⁰ The same is true for the second and third *Gingles* preconditions to the extent Plaintiffs attempt to rely on portions of Cooper's reply report pertaining to Illustrative Maps 4 and 5 for those preconditions.

U.S. 1, 19-20 (2009); *see also Petteway v. Galveston Cnty.*, 111 F.4th 596, 610 (5th Cir. 2024) (en banc). In submitting an illustrative district, Plaintiffs must prove that the minority’s group’s citizenship voting age population of the illustrative district exceeds 50% of the total citizen voting age population within the district. *See Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 492 (E.D. Tex. 2020) (citing *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999); *Westwego Citizens for Better Gov’t v. City of Westwego*, 946 F.2d 1009, 1117 n.7 (5th Cir. 1991)). The majority-minority requirement ensures that absent the challenged electoral plan, “minority voters possess the potential to elect representatives of their choice” *LULAC v. Clements III*, 986 F.2d at 743.

Plaintiffs improperly contend that CVAP is appropriate “only where there is reliable information indicating a significant difference in citizenship rates between majority and minority population.”²¹ They cite only to two cases—both of which are not from this Circuit—to support that proposition.²² As already explained in Defendants’ opening brief, in this Circuit, citizenship and voting age population are relevant to the first *Gingles* precondition analysis.²³ In fact, the Fifth Circuit has rejected similar arguments Plaintiffs attempt to advance here and has expressly “declin[ed] to reject citizenship as a relevant factor in the *Gingles* analysis.” *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997). The fundamental reason for this is because the plain text of Section 2 of the VRA—the sole basis for Plaintiffs’ vote dilution claim—makes clear that its protections only apply to United States citizens. *Id.* (citing 52 U.S.C. § 10301(a)).

Equally fundamental is that the foundational inquiry of the first *Gingles* precondition is whether “the minority has the potential to elect a representative of its choice in some single-member district.” *Grove v. Emison*, 507 U.S. 25, 39 (1993). As the *Gingles* Court explained:

²¹ [319] at 15

²² *Id.* (citing *Negron v. City of Miami Beach, Florida*, 113 F.3d 1563, 1569 (11th Cir. 1997), and *Barnett v. City of Chicago*, 141 F.3d 699, 705 (7th Cir. 1997)).

²³ Def.’s Memo Mot. Summ. J. [298] at 23-24 (citing Fifth Circuit cases).

The reason that a minority group making [a vote dilution] challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: Unless minority voters *possess the potential to elect representatives* in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice Thus, if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure.

478 U.S. at 50 n.17 (emphasis added). The Fifth Circuit has long recognized this foundational reason for the first *Gingles* precondition. See *Campos*, 113 F.3d at 548; *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529, 542 (5th Cir. 1989) (Jones, J., concurring); *Harding*, 948 F.3d at 310 & n.27; *Petteway*, 111 F.4th at 610. Accordingly, “only voting age persons who are United States citizens can vote.” *Campos*, 113 F.3d at 548.

Contrary to Plaintiffs’ argument, Defendants were not required to “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.”²⁴ Plaintiffs, again, point to *Negron* to support that position.²⁵ But that case neither says such thing nor suggests that it was Defendants’ responsibility to do so. Quite differently, the Eleventh Circuit specifically rejected the same position Plaintiffs advance, carrying that “[w]hether citizenship should be taken into account for the first *Gingles* precondition is a question of law” and that “any failure of the defendants to put on testimony” by an expert explaining how or why citizenship should be taken into account “ha[s] no bearing on the resolution of that legal question.” *Negron*, 113 F.3d at 1566.

And on summary judgment, where the nonmoving party would bear the burden of proof on an essential element at trial, the moving party is not required to present evidence proving the absence of a material fact issue, *Bourdeaux v. Swift Transp. Co. Inc.*, 402 F.3d 536, 545 (5th Cir. 2005), and

²⁴ [319] at 17.

²⁵ *Id.*

“may merely point to an absence of evidence.” *Hankins v. Wheeler*, 109 F.4th 839, 845 (5th Cir. 2024); *see also Little*, 37 F.3d at 1075-76 (the moving party “need not negate the elements of the nonmovant’s case”); *Fontenot v. Upjohn Co.*, 780 F.3d 1190, 1195-96 (5th Cir. 1986 (“There is no sound reason why conclusory allegations should suffice to require a trial when there is no evidence to support them even if the movant lacks contrary evidence.”)). Defendants did just that and it was incumbent upon Plaintiffs to come forward with specific facts showing that there is a genuine dispute of material fact for trial. *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). Instead of doing so, Plaintiffs improperly said it was Defendants’ responsibility to do so and offered no such evidence about citizenship and voting age population.

Plaintiffs pointed only to Cooper’s Illustrative Map 4 for the proposition that he “has created a district that is nearly 53% BVAP.”²⁶ As noted above, because the Court struck portions of Cooper’s reply pertaining to Illustrative Maps 4 and 5 and precluded him from testifying about those maps at trial,²⁷ and Plaintiffs thus cannot rely on Illustrative Map 4 to establish the first *Gingles* precondition. Plaintiffs failed to address or even point to the purported majority-Black districts in Cooper’s Illustrative Maps 1, 2, and 3.²⁸ As such, that evidence is not before the Court. *See Smith ex rel. Estate of Smith v. United States*, 391 F.3d 621, 625 (5th Cir. 2004) (citation omitted) (“When evidence exists in the summary judgment record but the nonmovant fails even to refer to it in the response to the motion for summary judgment, that evidence is not properly before the district court.”).

In any event, the BVAP percentage in his purported majority-Black districts is 50.06% in Illustrative Map 1, 50.05% in Illustrative Map 2, and 50.17% in Illustrative Map 3.²⁹ These percentages merely show that perhaps there is a slim minority majority district in Cooper’s other illustrative maps. *See Brewer*, 876 F.2d at 452. That evidence is not enough to show that the minority

²⁶ [319] at 14 & n.53. That illustrative district’s BVAP is actually 52.79%. *See Cooper Reply Report* [318-37] at 6.

²⁷ [322].

²⁸ *See* [319] at 14-15.

²⁹ *See Cooper’s Report* [318-1] at pp. 23 (Figure 12), 26 (Figure 16), 28 (Figure 19).

group is sufficiently large to constitute a majority in a single-member district for purposes of satisfying the first *Gingles* precondition. *See, e.g., Campos*, 113 F.3d at 548 (affirming grant of summary judgment where the plaintiffs failed to establish a genuine issue of material fact as to the first *Gingles* precondition analysis).

Finally, that “the parties stipulated that Census data showed that the Black citizen voting age was higher than the Black voting age percentage in each of Mississippi’s three Supreme Court districts” in *White v. State Board of Election Commissioners*³⁰ is wholly irrelevant. Of course, there is no such stipulation here. More importantly, for Plaintiffs to succeed on their claim, they must show vote dilution based on an “intensely local appraisal” of the facts in the local jurisdiction. *Gonzalez v. Harris Cnty., Tex.*, 601 F. App’x 255, 260 (5th Cir. 2015); *Johnson v. De Grandy*, 512 U.S. 997 1020-21 (1994) (noting that there are no statistical shortcuts to determining vote dilution); *Gingles*, 478 U.S. at 45, 78. Any stipulation by parties in a different case involving different redistricting plans for different offices at issue adopted by different legislative bodies does not adequately answer the relevant “local appraisal” that precedent demands. *See Petteway v. Galveston Cnty.*, 667 F. Supp. 3d 447, 469 (S.D. Tex. 2023) (“Because *Gingles* claims relate to the political experiences of a minority group in a particular location, a ‘generalized conclusion’ cannot adequately answer ‘the relevant local question’ whether the preconditions would be satisfied as to each district.”) (citations omitted).

Equally meritless is Plaintiffs’ contention that the illustrative districts have sufficiently compact Black population.³¹ Plaintiffs advance many of the same arguments as those in their pending motion to strike the proposed testimony of Defendants’ expert, Dr. Sean Trende, namely their suggestion that the geographic compactness of the minority population within an illustrative district is unnecessary or irrelevant for the first *Gingles* precondition analysis.³² As Defendants explained in

³⁰ [319] at 16-17 (citing --- F. Supp. 3d ---, 2025 WL 2406437, at *4 (N.D. Miss. Aug. 19, 2025)).

³¹ *Id.* at 17.

³² Pl.’s Memo Mot. to Exclude [291] at 5-9.

response to that motion, Plaintiffs' position is meritless.³³ The mere fact that Dr. Trende stated it "can't sensibly be denied"³⁴ does not carry Plaintiffs' burden on the first *Gingles* precondition at this stage. Plaintiffs must develop theories supporting their Section 2 claim and provide the Court with the evidentiary basis for evaluating their claim. *Fairley v. Hattiesburg*, Miss., 584 F.3d 660, 669 (5th Cir. 2009).

Likewise, Cooper did not assess the compactness of a minority population in any given district at all. Rather, he analyzed the compactness of the entirety of his illustrative maps to conclude that his maps have districts which are similarly compact to, or more compact than, those in the 2022 Plan. Contrary to Plaintiffs' position, no "reasonable" inference can be made that just because a district is purportedly compact, the minority population within that district is also compact. Indeed, it is improper to rely on "generalizations to reach the conclusion that the preconditions [are] satisfied." *Wis. Legis. v. Wis. Elections Comm.*, 595 U.S. 398, 405 (2022) (per curiam) (citing *Cooper v. Harris*, 581 U.S. 285, 304 n.5 (2017)). And in the absence of any proof, courts do not "assume that the nonmoving party could or would prove the necessary facts." *Little*, 37 F.3d at 1075.

Second Gingles precondition. Plaintiffs' meager evidence remains insufficient to avoid summary judgment. It is insufficient for Plaintiffs to merely establish the presence of racially polarized voting for Section 2 claims. *Clements IV*, 999 F.3d at 850. Rather, Plaintiffs must show that the polarized voting choices are caused by race, rather than politics, for polarized voting to be "legally significant." *Id.* As the Supreme Court has held, Section 2 "does not assume the existence of racial bloc voting; plaintiffs must prove it." *Grove*, 507 U.S. at 42; *see also Rodriguez v. Harris Cnty., Tex.*, 964 F. Supp. 2d 686, 699 (S.D. Tex. 2013) (citations omitted).³⁵ Whether the minority group is

³³ Def.'s Memo Resp. to Mot. to Exclude [317] at 4-11. These arguments are fully incorporated herein.

³⁴ [319] at 17.

³⁵ In *Rodriguez* the Court found political cohesiveness crediting the testimony of members of the community regarding Latino bloc voting for candidates that are sensitive to the needs of the Latino community along with statistical analysis. 964 F. Supp. 2d at 756. Here, there is statistical analysis (of a sort), but no reliance on any testimony regarding political cohesiveness or the needs of the Black community that are different than the needs of other members of the community.

politically cohesive is a question of law. *LULAC v. Abbott*, 601 F. Supp. 3d 147, 169 (W.D. Tex. 2022) (three-judge court).

While Plaintiffs are correct that the language of the Fifth Circuit’s opinion in *Monroe I* was altered in *Monroe II*,³⁶ the substance remained the same. The *Monroe II* panel still found that a stipulation that “whites and [B]lacks in Woodville generally vote along racial lines” was evidence in support of non-partisan racial polarization but was not sufficient to prove racial polarization.³⁷ 897 F.2d at 764 (affirming denial of relief under Section 2 of the VRA).

To support their position that Grumbach’s RPV analysis is sufficient to show a genuine dispute as to whether political cohesion exists, Plaintiffs point to *Robinson v. Ardoin*,³⁸ *Nairne v. Landry*,³⁹ *Mississippi State Conference of NAACP v. State Board of Election Commissioners*,⁴⁰ and *East Jefferson Coalition for Leadership and Development v. Parish of Jefferson*.⁴¹ Yet, these cases do not help Plaintiffs’ position. Again, mandate was withheld in *Nairne* and as a result, it has no binding effect.⁴²

Plaintiffs’ reliance on *Robinson* is equally unavailing. In his dissenting opinion to the Supreme Court’s order restoring *Louisiana v. Callais* to the calendar for reargument, Justice Thomas called into question the “legitimacy of the *Robinson* court’s § 2 rulings in prior litigation.” 606 U.S. ----, 145 S.Ct. 2608, 2611 (June 27, 2025) (Thomas, J., dissenting). But “[t]he primary power of any precedent lies in its power to persuade—and poorly reasoned decisions may not provide reliable

Instead, as set forth in detail in this briefing, Grumbach could not rely on any such testimony because the witnesses that live in DeSoto County consistently testified that there was no such cohesion.

³⁶ [319] at 24 (citing *Monroe v. City of Woodville* (“*Monroe II*”), 897 F.2d 763, 763-64 (5th Cir. 1990).

³⁷ Later panels have found that that facially plausible statistical analysis focusing only on vote outcomes instead of motivations is probative to the issue of bloc voting but have also reiterated that actual race-based cohesion, not just partisan politics leads to this bloc voting. *Houston v. Lafayette Cnty.*, 56 F.3d 606, 612 (5th Cir. 1995) (citing *Clements IV*, 999 F.2d at 859).

³⁸ 86 F.4th 574, 596 (5th Cir. 2023).

³⁹ 151 F.4th 666, 696 (5th Cir. 2025).

⁴⁰ 739 F. Supp. 3d 383, 454 (S.D. Miss. 2024).

⁴¹ 926 F.2d 487, 492 (5th Cir. 1991).

⁴² See *supra*, at p. 3, n. 5.

evidence of the law’s meaning.” *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2280 (2024) (Gorsuch, J., concurring). *Robinson* therefore cannot seriously support Plaintiffs’ position here.

The portion of *Mississippi State Conference of NAACP* Plaintiffs point to in their response discussed Senate Factor 2—the extent to which voting in the elections of the state or political subdivision is racially polarized—as part of the totality of the circumstances analysis, not under the standard applied to the *Gingles* factors. 739 F. Supp. 3d at 454. It bears repeating that the totality of the circumstances inquiry is reached only after all *Gingles* preconditions are satisfied. *See De Grandy*, 512 U.S. at 1011; *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).

Finally, Plaintiffs’ reliance on *East Jefferson* for the proposition 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’” is misplaced. There, the Fifth Circuit cited *Campos v. City of Baytown*, 840 F.2d 1240, 1249 (5th Cir. 1988), for this statement. *E Jefferson*, 926 F.2d at 493. *Campos*, in turn, recognized that the Supreme Court “has made clear that ‘[t]he purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority’s preferred candidates.’” 840 F.2d at 1245 (citing *Gingles*, 478 U.S. at 56). It is clear that political cohesion and racially polarized voting are related but two distinct concepts. *Kumar*, 476 F. Supp. 3d at 492; *Rodriguez*, 964 F. Supp. 2d at 757.

Operating under the incorrect view that political cohesion and polarized voting are one-in-the same, Plaintiffs argue Grumbach’s statistical analysis is sufficient to meet the burden imputed by *Gingles*. Yet, Grumbach’s findings offer nothing in support of voter motivations or political cohesiveness. Grumbach does nothing more than show the statistical probability of Black and white voters voting for certain candidates in the elections he chose to include in his analysis.

Even through that analysis, Grumbach found significant crossover voting in both endogenous and exogenous elections, exactly the sort of evidence the Fifth Circuit has found undercuts a claim of

political cohesiveness. *Monroe II*, 897 F.2d at 763-64. For instance, Grumbach notes that “Barbara Gunn Chatham won a majority of both Black and non-Black voters.”⁴³ In fact, Chatham won a higher percentage of the non-Black vote than the Black vote.⁴⁴ Further, based on his confidence intervals, he was also unable to determine whether a higher percentage of Black or non-Black voters chose Zelda Hill as their candidate of choice.⁴⁵ Finally, as it relates to endogenous elections, Grumbach’s confidence intervals make it unclear that Gail B. Lyons or Zelda Hill were more or less likely to be supported by Black voters based on the reported margin for error.⁴⁶ This means the math shows uncertainty about racially polarized voting. As it relates to exogenous elections, Grumbach determined that essentially half of all non-Black voters supported Josiah Coleman’s election to the Supreme Court at a time when he was the Black candidate of choice.⁴⁷ Further, Grumbach’s confidence intervals show he was unable to conclusively determine whether Theresa Isom was the Black candidate of choice in her loss in a 2018 Mississippi House of Representative election.⁴⁸

While Defendants disagree with Grumbach’s conclusions, they do not dispute that his analysis is relevant to determining if racially polarized voting exists in DeSoto County. However, without any evidence or even claim that this voting is based on the needs of the Black community as opposed to for other reasons, such as the partisan divide, there is no “genuine” dispute of “material” fact as to whether political cohesiveness of the minority group exists. *See Brown v. City of Houston, Tex.*, 337 F.3d 539, 541 (5th Cir. 2003) (“Unsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.”). As the Supreme Court has made clear, “for all the virtues of majority-minority districts as remedial devices, they rely on a quintessentially race-conscious calculus aptly described as the ‘politics of second best.’” *De Grandy*,

⁴³ Grumbach Report [318-2] at 11.

⁴⁴ *Id.* at 10.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 15.

⁴⁸ *Id.*

512 U.S. at 1020 (quotation omitted). Section 2 is supposed to level the playing field. Without proof that Black voters are cohesive so as to have those Black community needs met, as opposed to cohesiveness merely based on loyalty to a political party, Section 2 has no place in providing a remedy because Congress has not determined that any harm has occurred.

Third Gingles precondition. In an effort to shore up what their statistical evidence lacks, Plaintiffs posit that “any assessment 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” and that such “arguments are misplaced at *any* stage of the analysis.”⁴⁹ But this position is fundamentally flawed for a few reasons. For one thing, consideration of the totality of the circumstances is reached only after the three *Gingles* preconditions are satisfied. *De Grandy*, 512 U.S. at 1011. Plaintiffs cannot side-step their evidentiary burden under *Gingles* at the summary judgment stage under the guise that partisanship consideration is premature. Legalistic arguments “are not an adequate substitute for specific facts showing a genuine issue for trial.” *Williams v. North Hill Square Apartments*, 2009 WL 3805520, at *2 (S.D. Miss. 2009) (citing Fifth Circuit cases). Indeed, it is axiomatic that “[s]tatements by counsel in briefs are not evidence.” *See Skyline Corp. v. Nat’l Labor Relations Bd.*, 613 F.2d 1328, 1337 (5th Cir. 1980).

For another thing, Plaintiffs mischaracterize Defendants’ argument as being “that party, not race, explains divergent voting patterns among Black voters and white voter in DeSoto County.”⁵⁰ The third *Gingles* precondition requires Plaintiffs to prove that “the white majority votes sufficiently as a bloc usually to defeat the minority group’s preferred candidate.” *Gingles*, 478 U.S. at 51. In arguing that Plaintiffs do not have sufficient evidence to establish the third *Gingles* precondition, Defendants’ position is that based on the record evidence, Plaintiffs cannot show that the white majority voted sufficiently as a bloc usually to defeat the minority group’s preferred candidate.

⁴⁹ [319] at 26 (emphasis in the original).

⁵⁰ [319] at 26.

Rather, partisan reasons—not white bloc voting—explained this usual defeat and thus, white bloc voting cannot be legally significant. *See, e.g., Clements IV*, 999 F.2d at 850.

While Section 2 protects against “defeats experienced by voters ‘on account of race or color,’” there is “a clear divide between actionable vote dilution and ‘political defeat at the polls.’” *Clements IV*, 999 F.2d at 850 (quoting *Whitcomb v. Chavis*, 403 U.S. 124 (1971)). For example, the VRA is implicated only where “Democrats lost because they are [B]lack, not where [B]lacks lost because they are Democrats.” *Id.* at 854. Accordingly, in evaluating the cohesiveness and bloc voting standards, there must be a consideration of “whether partisan affiliation, not race, best explains the voting patterns.” *Id.* at 850.

Plaintiffs’ remaining evidence that they submit to support their position that “race, rather than party, drives polarization” is insufficient to withstand summary judgment. Although Plaintiffs say that “Grumbach found high levels of polarization in non-partisan school board elections,” that evidence reveals that he considered only three school board elections out of the fourteen total endogenous elections he analyzed.⁵¹ No reasonable inference can be made that “high levels of polarization” based on race, not party, exist.

Plaintiffs also generally reference the reply report of one of their experts, Dr. Marvin King, to say that he “will testify that party is downstream from race, and that any partisan polarization is *caused* by racial polarization.”⁵² But Plaintiffs fail to point to any specific opinions contained in King’s reply report and explain precisely how it relates to the element governing their claim. *See Adams v. Travelers Indem. Co.*, 465 F.3d 156, 164 (5th Cir. 2006) (noting that Rule 56 imposes no obligation for a court “to sift through the record in search of evidence to support a party’s opposition to summary judgment”).

⁵¹ Grumbach Supp. Report [318-3] at 6 (Figure 6).

⁵² *Id.* at 27 & n.77 (citing generally to King’s reply report).

Moreover, Plaintiffs submit the report of Defendants' expert, Dr. Christopher Bonneau, to support their position. But, again, Plaintiffs misapprehend their summary judgment burden. Because Defendants did not submit Dr. Bonneau's report in support of summary judgment, it was not part of the record evidence and instead, Plaintiffs were required to come forward with their own evidence to create a triable fact issue. *See Little*, 37 F.3d at 1075 (instructing that factual controversies are to be resolved in favor of the nonmovant, "but only when . . . both parties have submitted evidence of contradictory facts"); *see also cf. Fontenot v. Upjohn Co.*, 780 F.3d 1190, 1195-96 (5th Cir. 1986 ("There is no sound reason why conclusory allegations should suffice to require a trial when there is no evidence to support them even if the movant lacks contrary evidence.")).

In sum, under the record as it stands, Plaintiffs have failed to carry their evidentiary burden to show a genuine issue of any material fact exists as to any of the *Gingles* preconditions. That is fatal to their claim as a matter of law and summary judgment is warranted for these reasons alone. *See Little*, 37 F.3d at 1076 ("Summary judgment is appropriate in *any* case 'where critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant.'").

III. Plaintiffs have not created a triable question as to the totality of the circumstances.

Defendants sought summary judgment on the basis that Plaintiffs lacked sufficient evidence to satisfy their burden under the totality of the circumstances.⁵³ Plaintiffs oppose summary judgment on this point, relying heavily on King's report and testimony.⁵⁴ To a lesser extent, Plaintiffs rely on testimony from Bonneau that they misconstrue and testimony from a handful of fact witnesses.⁵⁵

While they oppose summary judgment predicated on a failure of evidence supporting the totality of circumstances analysis, Plaintiffs' opposition reveals one of the glaring problems with King's analysis in this case: it lacks the requisite "intensely local" focus characterizing the totality of

⁵³ [298] at 30-33.

⁵⁴ [319] at 30-35.

⁵⁵ *Id.*

the circumstances analysis. *Rodriguez v. Bexar Cnty., Tex.*, 385 F.3d 853, 860 (5th Cir. 2004) (quoting *Gingles*, 478 U.S. at 79).⁵⁶ The consequence of this flaw in King’s analysis—and, in turn, Plaintiffs’ opposition relying so heavily on that analysis—goes not to the weight of his testimony but to a threshold inquiry: it’s relevance. *See Puga v. RCX Solutions, Inc.*, 922 F.3d 285, 293-94 (5th Cir. 2019) (noting that “[t]o be relevant, the expert’s ‘reasoning or methodology [must] be properly applied to the facts in issue’” and further stating that “questions relating to the bases and sources of an expert’s opinion affect the weight to be assigned that opinion rather than its admissibility”) (citation omitted). Put simply, by focusing on statewide and even nationwide data and information as opposed to data and information specific to DeSoto County, much of King’s analysis cited by Plaintiffs is not relevant to the totality of the circumstances inquiry. *Rodriguez*, 385 F.3d at 860 (explaining that “proper assessment of vote dilution claims 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’”) (quoting *Gingles*, 478 U.S. at 79).

Looking first at Senate Factor 1,⁵⁷ Plaintiffs claim that sufficient evidence exists in the record to support this factor based primarily on what they concede is statewide evidence from Mississippi’s history as opposed to evidence specific to DeSoto County.⁵⁸ To address this deficiency in the evidence underlying their claim, Plaintiffs quote *Teague v. Attala County, Miss.*, 92 F.3d 283, 296-94 (5th Cir. 1996), and claim “the Fifth Circuit has recognized statewide history is probative in Section 2 cases brought at a county level”⁵⁹ Plaintiffs, however, misconstrue *Teague* in that the quoted language is merely dicta as opposed to any recognition that statewide history is probative, and they omit a key statement made by the Fifth Circuit two sentences later: “Still, what **must** be shown is that

⁵⁶ The County seeks King’s exclusion from serving as an expert in this case due to this and other problems with his work and purported “expertise.” *See* [295] Motion and [296] Memorandum in Support.

⁵⁷ 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” *Clements IV*, 999 F.2d at 849 n.22 (citation omitted).

⁵⁸ [319] at 30-31.

⁵⁹ [319] at 30-31.

the effects of past discrimination impede the ability of blacks **in Attala County** to participate in the political process.” *Teague*, 92 F.3d at 294 (quoting *Clements IV*, 999 F.2d 831 at 866 (emphasis added)). Plaintiffs point to King’s ambiguous, conclusory testimony to argue that because the County is governed by the State of Mississippi it had to enforce Mississippi’s discriminatory laws, but Plaintiffs do not cite or offer any evidence of the **effects** of DeSoto County’s purported enforcement of those unidentified laws on DeSoto County citizens, Black or White. Lastly, Plaintiffs conclude that King “document[s] DeSoto-specific history alongside other relevant history[,]” but the portions of King’s report cited for this proposition either do not support it,⁶⁰ or include a lone complaint that school desegregation was slow to start in DeSoto County.⁶¹ This is not sufficient evidence supporting the first Senate factor.⁶²

Plaintiffs fare no better in their effort to satisfy Senate Factor 3.⁶³ Plaintiffs first assail DeSoto County for election laws and regulations imposed by the State of Mississippi and catalogued by King.⁶⁴ Plaintiffs then point to King’s complaints about the tenuous concept of “voter fatigue[,]”⁶⁵ apparently claiming that the number and frequency of elections set by the State of Mississippi (not DeSoto County) creates this purported “voter fatigue” that they claim provides evidence relevant to Senate Factor 3. Lastly, Plaintiffs overstate Bonneau’s testimony related to alleged impact of voting laws and regulations on citizens of different socio-economic levels.⁶⁶

As for the reasons underlying the election laws and regulations catalogued by King, he concedes that the motivation behind those laws and regulations “can be difficult to discern”⁶⁷

⁶⁰ King Report [318-6] at 11

⁶¹ *Id.* at 17-18.

⁶² Senate Factor 2 looks to “the extent to which voting in elections in the state or political subdivision is racially polarized.” *Clements IV*, 999 F.2d at 849 n.22. As already explained above, Plaintiffs’ evidence used to support the second and third Gingles preconditions is similarly insufficient to support Senate Factor 2. *See supra*, at pp. 13-20.

⁶³ Senate Factor 3 looks to “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” *Clements IV*, 999 F.2d at 849 n.22.

⁶⁴ [319] at 31 & nn.91-94.

⁶⁵ *Id.* at 31-32.

⁶⁶ *Id.* at 32.

⁶⁷ [318-6] at 22.

King then claims that “the research indicates that efforts to reduce access are intentionally targeted to reduce turnout of minority voters in general and Black voters in particular.” Tellingly, King does not cite anything for this conclusory statement. Worse, the resource King cites for his next point, that “minority turnout” somehow makes “restrictive voting legislation . . . appear[,]” indicates that this purported “restrictive voting legislation” is imposed “for partisan gain.” See Bentele, K. G., & O’Brien, E. E. 2013. *Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies*, Perspectives on Politics 11 (4), p. 1104 (“Overall, we find strong empirical support for the position that recent legislative efforts to restrict voter access are usefully conceptualized as yet another wave of election reforms in a long history for such reforms, pursued in order to demobilize and suppress particular categories of voters *for partisan gain.*”) (emphasis added).⁶⁸

Plaintiffs should be precluded from relying on any supposed “voter fatigue” created by the number and frequency of elections in DeSoto County. They have repeatedly demanded that this case proceed on an expedited basis so that they can force special elections.⁶⁹ As the County has explained, this would trigger special elections for as many as 24 offices in 2026, with 18 of the winners whose offices are regularly scheduled for elections in 2027 serving merely one year and then run for election all over again in 2027.⁷⁰

As for Plaintiffs’ reliance on Bonneau’s testimony, Plaintiffs claim he “acknowledges that these types of restrictions fall disproportionately on populations who are worse off socio-economically”⁷¹ In reality, Bonneau’s testimony makes clear that “socio-economic status” “is not [his] area of expertise[.]”⁷² In fact, Plaintiffs’ attempt to turn Bonneau’s agreement with the “cost of voting theory[.]” which he described as “an economic theory” that “when you make it more costly for people to vote they are less likely to vote,” into his “acknowledgement” that socio-economic status

⁶⁸ Excerpt of *Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies*, attached as **Exhibit 1**.

⁶⁹ Pl.’s Memo Mot. to Allow Discovery [39] at 2; Pl.’s Memo Resp. to Mot. to Stay Proceedings [282] at 3.

⁷⁰ [287] at 6 & n.8

⁷¹ [319] at 32.

⁷² Bonneau Depo. [318-43] at 71:18-24.

has any impact on the “cost of voting” is refuted by the first line of next page from Bonneau’s deposition: “That’s not my area of study. I have no opinion on that.”⁷³

With respect to Senate Factor 5,⁷⁴ Plaintiffs similarly fail to point to sufficient evidence. Plaintiffs first cite statistics they claim show that “Black residents of DeSoto County are worse off than their white counterparts.”⁷⁵ They add that King’s report shows that the conditions allegedly reflected by these statistics “actually hamper Black residents’ ability to participate in the political process” in DeSoto County, and they reuse the misconstrued reference to Bonneau’s testimony related to the connection between socioeconomics and “restrictive voting policies.”⁷⁶ Plaintiffs cite *Teague* to argue that they need not prove any further causal nexus related to Senate Factor 5 beyond showing “disproportionate educational, employment, income level, and living conditions arising from past discrimination” and a “depressed” “level of black participation in politics” Plaintiffs then claim—without actually citing any evidence—to have put forth evidence of both as well as “expert testimony tying those factors together.”⁷⁷

Plaintiffs’ reliance on the mere fact that there are statistical differences between the Black and White populations in DeSoto County does not amount to sufficient evidence supporting their claim. Nothing about that statistical evidence addresses the cause (discriminatory or otherwise) of the various differences between the Black and White populations in DeSoto County.⁷⁸ Similarly, nothing about these statistical differences says anything about the impact (a hinderance or otherwise) on Black residents’ “ability to participate effectively in the political process” in DeSoto County.⁷⁹

⁷³ Bonneau Depo. at 72:17-73:1, attached as **Exhibit 2**.

⁷⁴ Senate Factor 5 looks at “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” *Clements IV*, 999 F.2d at 849 n.22.

⁷⁵ [319] at 32.

⁷⁶ [319] at 32; *see also supra*, at n.73 and accompanying text.

⁷⁷ [319] at 32-33.

⁷⁸ *See* Selected Socio-Economic Data [318-23].

⁷⁹ *Id.*

Recognizing this reality, Plaintiffs point to King’s report at pages 32-34, maintaining that he ties “these conditions to lowered political participation.”⁸⁰ The relevant section of King’s report reveals that he did not tie the statistical differences between Black and White residents of DeSoto County to “lowered political participation” by Blacks in DeSoto County.⁸¹ Rather, King described his review of DeSoto County-specific information as limited to “agendas and stated priorities” of the DeSoto County school board and board of supervisors (as opposed to actual meeting minutes) and statistical data regarding poverty rate, household income, unemployment rate, and owner-occupied housing rates,⁸² and his discussion of political participation is rife with conclusory statements (mostly based on national statistics) about what “we would then expect[,]” what “can reduce political participation[,]” and what is “reasonable to assume”⁸³ This guesswork does not tie statistical differences to lowered political participation in DeSoto County.

Looking next to Senate Factor 6,⁸⁴ Plaintiffs merely offer tenuous anecdotes that fall short of creating a question of fact related to establishing that factor. Of course, Plaintiffs point to King’s report, noting he “documents several incidents of ‘dog-whistle’ racial appeals[,]” but, once again, King offers almost nothing related to DeSoto County except a single anecdote involving DeSoto County Chancery Court Judge Percy Lynchard.⁸⁵ Specifically, King claims that Judge Lynchard engaged in “dog-whistle politics” by taking a stand against crime in DeSoto County when the Judge claimed that “those who want to come here and live outside the law” should not to come to DeSoto County because “justice will be swift and it will be harsh.”⁸⁶

⁸⁰ [319] at 32.

⁸¹ *Cf.* [318-6] at 32-36.

⁸² *Id.* at 32-34.

⁸³ *Id.* at 34, 35.

⁸⁴ Senate Factor 6 looks to “whether political campaigns have been characterized by overt or subtle racial appeals” *Clements IV*, 999 F.2d at 849 n.22.

⁸⁵ [318-6] at 45-46.

⁸⁶ *Id.* at 45-46, n.198; *see also* Bakken, Bob, *County officials take office for 2020*, DeSoto Times-Tribune (Jan. 1, 2020), available at https://www.desototimes.com/news/county-officials-take-office-for-2020/article_ba90f426-2b32-11ea-bfa4-d77924c2ce49.html (last visited Nov. 21, 2025).

As for Plaintiffs' anecdotal evidence related to "experiences" campaigning in DeSoto County, it is tenuous at best. The citation to Pamela McKelvy Hamner's testimony makes no reference to anything happening to Hamner "due to her race" and instead involves a finding that her testimony merely "implies" she and her party members had the police called on them while campaigning in Hernando because they were Black and "campaigning in a predominantly white area." *Compare* [319] at 33 *with Miss. NAACP*, 739 F. Supp. 3d at 461.

The citation to Theresa Isom's testimony reveals Isom found a letter in her mailbox while she campaigned for public office in 2019 stating she was "the wrong person running" and "was not supposed to be running for office" but without saying why she was not supposed to be running.⁸⁷ Isom has not received a similar letter since, she did not have any other issues related to her 2019 campaign, and although her family didn't feel as comfortable with her running for public office, she continued running for office and recently won election to the Mississippi State Senate, District 2.⁸⁸

Plaintiffs' reliance on Bacardi Harris' testimony about having a woman tell Harris she was in the "wrong place" while door knocking as part of Harris' campaign for public office omits a key fact from Harris' testimony. Specifically, Harris later testified that the woman could have been telling Harris (who testified she had all types of identification with her) that she was in the wrong place for partisan reasons.⁸⁹

Plaintiffs' claim that "the KKK has left flyers on the porches of Black church and in Pastor Tipton's driveway" is not supported by either King's report or citation to Robert Tipton's testimony. King's report says nothing about who placed the flyers on the steps of Black churches, and he merely parrots language from an article discussing the distribution of flyers.⁹⁰ While Tipton found a flyer in

⁸⁷ Isom Depo. [318-25] at 129:23-131:1.

⁸⁸ Isom Dep. 131:5-132:9, attached as **Exhibit 3**. Isom also testified that she did not knock on doors "[i]f [she] saw . . . somebody had a Rebel tag on their car or something," because it did not appear safe to her, but it is unclear how this testimony is relevant to establishing Senate Factor 6, and, even more perplexing on the topic of relevance, Isom could not recall how many Rebel tags she claims to have seen. [318-25] at 125:25-126:15.

⁸⁹ B. Harris Depo. at 144:6-148:5, attached as **Exhibit 4**.

⁹⁰ [318-6] at 41 & n.178.

his driveway, Tipton testified he did not know who placed the flyer there, did not know whether the people throwing the flyers were actually affiliated with the KKK, did not know how the person throwing the flyers knew where to throw them, and that this has not happened since.⁹¹

As to Senate Factor 7,⁹² Plaintiffs overlook the fact that two Black officials were elected to public office in DeSoto County in 2023. Rodney Hall was elected State Representative for District 20 of the Mississippi House of Representatives, which district encompasses all of DeSoto County,⁹³ and Sheriff Thomas Tuggle was elected DeSoto County Sheriff.⁹⁴

With respect to Senate Factor 8,⁹⁵ many of Plaintiffs' complaints about non-responsiveness suffer from the same flaw—that is, a lack of evidence showing Black residents going to the County with their needs.⁹⁶ In other points, the evidence Plaintiffs cite amounts to conclusory opinions by fact witness void of record support.⁹⁷ Further testimony from fact witnesses reveals Plaintiffs' lack of evidence to support this factor.⁹⁸ Of course, Plaintiffs fail to acknowledge evidence showing the Board responding to the needs of Black residents.⁹⁹

⁹¹ Tipton Depo. at 109:1-113:18, attached as **Exhibit 5**.

⁹² Senate Factor 7 looks at “the extent to which members of the minority group have been elected to public office in the jurisdiction” *Clements IV*, 999 F.2d at 849 n.22.

⁹³ See Official Website for Rep. Rodney Hall, District 20, available at <https://rodneyhall.ms/about-rodney-hall/> (last visited Nov. 21, 2025).

⁹⁴ See <https://www.desotocountymms.gov/342/Sheriff-Thomas-E-Tuggle> (last visited Nov. 21, 2025).

⁹⁵ 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.” *Clements IV*, 999 F.2d at 849 n.22.

⁹⁶ See, e.g., Todd Depo. [318-4] at 134:14-135:9 (Darryl Todd admits she never contacted the school board to ask follow-up questions despite the school board inviting her to do so.).

⁹⁷ See, e.g., [318-4] at 149:17-23 (Todd claiming white Supervisors don't hear needs of Black residents and simply vote “in their own best interests”).

⁹⁸ Todd Depo. at 150:15-152:2, attached as **Exhibit 6** (Todd claiming Board of Supervisors is supporting a municipality to develop certain areas as opposed to others but admitting she has not actually looked to determine whether the Supervisors are actually supporting the municipality); West Depo. at 156:12-158:1, attached as **Exhibit 7** (West testifying she has not looked into the County's budget to see how it funds schools but she just “can look at the schools and tell [funding is] not equal”).

⁹⁹ See, e.g., [318-8] at DEF-00439, June 6, 2022 Minutes from Board of Supervisors' Public Hearing on Redistricting (demonstrating, at DEF-00440-DEF-00444, the Board hearing and responding to concerns of the Black community, even adjusting district lines on the adopted map so that concerns of a Black Alderman from Hernando, Andrew Miller, and his constituents could be addressed, DEF-00445-DEF00446).

Lastly, with respect to Senate Factor 9,¹⁰⁰ Plaintiffs point to two communications related to draft plans that were not ultimately adopted by the County's Board to argue the policy underlying the County's maps is tenuous.¹⁰¹ Relying on preliminary maps that merely were being considered by County supervisors to contend that the County's justification for the challenged maps was to "maintain racial ratios," this argument fails to identify sufficient evidence to meet Plaintiffs' burden on summary judgment. Worse, Plaintiffs' argument wholly ignores the fact that a primary policy underlying the challenged district maps was to protect incumbents and avoid redrawing the maps in a way that would pit incumbents against incumbents.¹⁰² Incumbent protection is a traditional redistricting principle. *See, e.g., Chen v. City of Houston*, 206 F.3d 502, 512 (5th Cir. 2000) (observing that "protection of political incumbents" is a "traditional districting principle").

CONCLUSION

For all the reasons explained here and in the opening brief, Defendants respectfully request entry of summary judgment in their favor as to Plaintiffs' Section 2 claim.

¹⁰⁰ Senate Factor 9 looks to "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." *Clements IV*, 999 F.2d at 849 n.22.

¹⁰¹ [319] at 35 n.111.

¹⁰² *See, e.g.,* Watson Depo at 58:16-60:22; Caldwell Depo. at 41:6-42:4; Gardner Depo. at 56:18-57:5, all attached as Composite **Exhibit 8**.

Dated: November 21, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 21, 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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