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

TERREBONNE PARISH BRANCH NAACP, ET AL.	:	**CIVIL ACTION NO. 14-CV-0069**
VERSUS	:	
PIYUSH ("BOBBY") JINDAL, GOVERNOR OF THE STATE OF LOUISIANA, IN HIS OFFICIAL CAPACITY, ET AL.	:	**JUDGE JAMES J. BRADY**
	:	**MAGISTRATE JUDGE ERIN WILDER-DOOMES**

RESPONSE TO PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW INTO COURT, through undersigned counsel, come the Defendants, Governor of the State of Louisiana and Attorney General of the State of Louisiana (hereinafter collectively "the Defendants"), who respond to the Plaintiffs' Proposed Findings of Fact and Conclusions of Law, Doc. 284.[1]

Many changes have occurred with regard to Louisiana's segregationist and discriminatory past. Louisiana is no longer segregated by race. It is unlawful to discriminate in Louisiana. There is no evidence of recent discrimination occurring in Terrebonne Parish. The examples of alleged discrimination cited by the Plaintiffs at trial were decades old.[2] What the evidence shows is that all the Plaintiffs are registered to vote, experience no impediments with regard to voting, and enjoy successful careers in Terrebonne Parish.[3] Further, the Plaintiffs have elected candidates of choice to positions in Terrebonne Parish, despite allegations to the

[1] Note, this Honorable Court limited the parties to a forty-five page response and, therefore, it is not possible to respond to every allegation raised in the Plaintiffs' Doc. 284. The Defendants deny each and every claim pursuant to law, and as set forth by the evidence offered at trial, the arguments set forth in Doc. 285, and for the reasons explained herein.

[2] Doc. 284 at p. 56, 58, Tr. 3/13/17 at 28:13- 30:19, Tr. 3/14/17 at 182:16, Tr. 3/17/17 at 71:24-72:23.

[3] Tr. 3/13/17 at 32:1-32:5, 32:13-32:15, 39:20-39:24, 210:7-210:10 ; Tr. 3/14/17 at 7:19-7:22, 13:24-13:25, 182:18-182:20, 182:16, 185:20-185:21, Tr. 3/17/17 at 75:17-75:18; Tr. 3/20/17 at 94:11-13).

contrary.[4] As explained more completely by Dr. Ronald Weber and discussed in Doc. 285, there are only minor voter participation differences between white and black voters in Terrebonne Parish. Whatever socio-economic disparities exist between black and white persons within Terrebonne Parish have not led to differences in the voter registration or the turnout rates of the two groups, and the black population shows no signs of politically relevant lingering effects of past discrimination.[5] There are black elected officials today when there were none fifty years ago, which attests to the vast and welcome changes which have occurred in Louisiana.[6]

The record does not contain any resolution from the membership of the local Terrebonne Parish branch of the NAACP, authorizing the filing of this lawsuit on their behalf.[7] Jerome Boykin, President of the NAACP, does not live within the Dist. 1 of the Plaintiffs' Illustrative Plan.[8] It is not clear what he has in common with the residents of Dist. 1, and the court should weigh his testimony accordingly. Mr. Boykin lives in one of the most affluent area of Terrebonne Parish.[9] Mr. Boykin asked Timothy Ellender, Jr. to run against Juan Pickett, despite the fact that Mr. Pickett was black and minorities, including Plaintiff Daniel Turner, supported Mr. Pickett for judge.[10] Further, the evidence offered by Mr. Boykin in an attempt to establish that the NAACP expended money in their efforts to have the Legislature create a minority district does not show that any money was spent prior to the time that the legislation was offered in 2011.[11] The absence of evidence supports the testimony of the judges and other elected

[4] Tr. 3/14/17 at 191:4-191:8; Tr. 3/20/17 at 158:24-159:10; Tr. 4/26/17, morning, at 16:21-17:4.
[5] Def. Ex. 6, p. 65, Bates No. LADOJ-14CV0069-0001278.
[6] Tr. 3/13/17 at 206:11-206:12, 225:13-225:15; Tr. 4/26/17, morning, at 19:5-19:23.
[7] Jerome Boykin was unable to produce any resolution authorizing him to spend money on the advocacy efforts, to appear before the Legislature, or more importantly to file this lawsuit on behalf of the Terrebonne Parish Branch NAACP. (Tr. 3/13/17 at p. 97:2-98:8).
[8] Tr. 3/13/17 at 104:13-104:20.
[9] Tr. 4/26/17, morning, at 15:5-15:18.
[10] Tr. 4/26/17, morning, at 66:8-66:17.
[11] Jerome Boykin testified that several Terrebonne Parish Branch NAACP financial reports dated June 23, 2011, October 27, 2011, November 29, 2011, August 22, 2013 show expenses related to advocacy efforts to change the

officials that no one locally knew about the 2011 legislation until after it was filed.[12] It was not until after the legislation was filed that they learned that a non-local legislator had sponsored legislation that would change the method of electing judges to the 32nd JDC.[13] Despite the fact that four of the five incumbent judges planned to run for judge after 2011, no one reached out to them to discuss changes to the method of electing judges for the 32nd JDC.[14]

Governor and Attorney General The Defendants have raised the issue of standing at every stage of this proceeding, and it is specifically listed in the Pretrial Order in the "STATEMENT OF DEFENDANTS' CLAIMS AND DEFENSES." The Defendants adopt the arguments set forth in Rec. Doc. 285, and maintain their objection to the use of deposition testimony for the AG and the Governor.[15]

All of the Plaintiffs' testimony with regard to alleged harm by the Governor and AG is speculative and hypothetical. There is absolutely no evidence that the Governor or the AG were ever consulted with regard to legislation involving the 32nd JDC. Speaker Hunt Downer testified that the legislature has its own staff, its own lawyers, and its own demographers.[16] He also testified that it was a legislative staffer that advised him that the district that was presented in 1997 was noncontiguous and a gerrymander, and this is evident on the face of Plaintiffs' own exhibit.[17] There is no evidence that any of the Plaintiffs, or anyone else for that matter, ever

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method of election for the 32nd JDC (Ex. P-142, 143, 144, 145 and Tr. 3/13/17 at p. 81:6-84:25). However, the last effort to change to the method of election for the 32nd in the Louisiana Legislature was HB 582.The Legislature held hearings on HB 582 on June 1, 2011 and June 7, 2011. (Ex. Def-19, Bates No. LADOJ-14CV0069-1829). All expenses were incurred after the legislative session. The record is devoid of any evidence of the Terrebonne Parish Branch NAACP advocacy to change the method of election for the 32nd after June 17, 2011.

[12]Tr. 3/20/17 at 154:19-154:25, Tr. 3/20/17 at 134:5–134:11, Tr. 3/20/17 at 137:12–137:14, Tr. 3/20/17 at 186:10–186:11; Tr. 4/26/17, morning, at 79:16-80:13.

[13] *Id.*

[14] *Id.*

[15] Tr. 3/14/17 at 207:1-207:15. The Plaintiffs did not comply with FRCP 32.Representatives of the Governor and the AG were available for trial.

[16] Tr. 4/28/17 at p. 239:8-9.

[17] Ex. Pl. 17.

sought the assistance of a sitting AG or a sitting Governor with regard to legislation involving the 32nd JDC prior to filing this lawsuit.

The Plaintiffs try to blur the issues by stating that Louisiana and its subdivisions must obtain preclearance, and the AG has authored opinions on this issue.[18] This is a nonissue. Additionally, the fact that the AG serves as the chief legal officer, attorney for the state, is not grounds for naming him as a defendant. If the AG gives the wrong legal advice, the remedy belongs to the client, not a third-party. There is no evidence that the AG ever gave wrong advice to a client related to the 32nd JDC. The fact is that the AG provides legal representation to officials. It does not follow that by doing so, the AG steps into the shoes of the officials and assumes the policymaking roles of the officials.[19] The AG cannot bind the legislature and change the method of electing judges, if the officials charged with this responsibility, i.e. the legislature, do not agree to do so.[20] Similarly, the AG cannot stop election practices, if the election officer charged with maintaining the elections, i.e. the Secretary of State, decides to go forward with an election. The AG cannot remove a judge if the judiciary decides that it is not warranted. Additionally, the fact that the AG authors opinions is no basis to make him a party Defendant. There is no evidence that the AG authored an opinion relative to the 32nd JDC or that he was ever asked to render an opinion.[21]

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[18] See Plaintiffs Fn. 8, of Rec. Doc. 284; This is not a case about preclearance, and there is no Section 5 claim in this case. Further, there are no allegations that Louisiana or the AG failed to seek preclearance with regard to the laws establishing the 32nd JDC. This is hypothetical and speculative.

[19] *Terrazas v. Ramirez*, 829 S.W.2d 712 (Tex. 1991).

[20] *See LULAC v. Clements*, 999 F.2d 831 (citing *Terrazas* for position that the AG wanted to forego an appeal and enter into a consent decree while other parties with enforcement authority did not agree with the AG and wanted to continue with an appeal.)

[21] *See Hall v. State, et al*., 3:12-cv-00657, Rec. Doc. 556 at p. 8 of 9 (citing for fact that judges of the Middle District have refused to take judicial notice of AG opinions on the grounds that AG opinions do not carry the force and effect of law. They are merely advisory and are limited to the specific facts presented by the government entities or officials requesting the opinion. Opinions may be changed or recalled due to subsequent court decisions and/or legislative enactments. They are not "facts" of which the Court may take judicial notice.); See also http://ladoj.ag.state.la.us/Opinions

The fact that the Governor and the AG were parties in other VRA cases is irrelevant as to why they should be parties now. There is no evidence as to why they were parties in these cases; what the allegations were against these parties; whether they filed motions to dismiss; and/or whether they remained in the case due to political reasons. Moreover, they were not the *only* Defendants in the cases referenced by the Plaintiffs.[22]

The fact that the Governor has authority to call a special election has no bearing on the issues presented in this lawsuit, nor does it change the fact that the Governor does not maintain or administer election laws.[23] Moreover, the fact that the Governor can veto a bill is irrelevant. If this were the basis for bringing a lawsuit, the Governor would be a proper party in every lawsuit to the extent it involved a challenge to a state law. There is no evidence that the Governor vetoed a law relative to the 32nd JDC or ever threatened to veto a law with regard to the 32nd JDC. The facts in the record actually support a different position.[24]

32nd JDC members disciplined by the LA S.Ct., Plaintiffs' Paragraph 12 The fact that members of the 32nd have been disciplined by the LA Supreme Court is largely irrelevant. Still, in almost every pleading and at trial, the Plaintiffs discuss an incident involving former Judge Timothy Ellender, Sr., that occurred fourteen (14) years ago, where he dressed in a prison uniform for a Halloween party, and painted his face black and kept the face paint on for about an hour.[25] The people of Terrebonne Parish did not condone Judge Ellender's actions. The Judiciary Commission received six complaints about the incident, including complaints filled by

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[22] In *Clark v. Edwards*, U.S.D.C. LA M.D., Docket No. 86-435A, the case cited by the Plaintiffs repeatedly, the court can take judicial notice that the Secretary of State was a Defendant that actually signed the consent decree along with other named Defendants.

[23] There is no evidence that the Governor refused to call a special election, and there is no special election at issue here. This is hypothetical and speculative.

[24] Representative of the Governor, Stafford Palmieri stated during her deposition that if it was the will of the local legislative delegation, the Governor would have signed legislation redistricting the 32nd JDC if it reached the Governor's desk. (Ex. Def-48, Bates No. LADOJ-14CV0069-0006985).

[25] (Def. EX.28 at Bates Number LADOJ-14CV0069-0002632).

Judge Ellender's colleagues on the 32nd JDC.[26] The court imposed a severe penalty to facilitate the public in regaining its confidence in the judiciary.[27] Based on the handling of this case by the judiciary, the evidence shows that it is clear that racial slurs and stereotyping, whether intentional or merely thoughtless, are no longer tolerated in Louisiana. In fact, compared to similar situations in other states, Louisiana imposed a harsher penalty.[28] Further, if the Plaintiffs are not satisfied with how matters involving Judge Wimbash and Judge Ellender were handled, their remedy is with the judiciary, not the Governor or AG.

***Gingles* I** At the time of the *Clark* case, the demographics of the 32nd JDC did not support the creation of a majority black subdistrict.[29] In the late nineties, when the Plaintiffs allege that they began advocating for a minority subdistrict, the demographics of the 32nd JDC still did not

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[26] (Def. EX.28 at Bates Number LADOJ-14CV0069-0002633).

[27] The court imposed a severe penalty to facilitate the public in regaining its confidence in the judiciary. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002640). The event that formed the basis of the complaint occurred outside of the courtroom in Judge Ellender's private life. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002641). The Court found no evidence that Judge Ellender engaged in disparate treatment of African-Americans and considered the totality of the evidence presented by the Commission. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002641). The evidence before the Supreme Court demonstrated that he was probably more lenient in his handling of matters involving African Americans. (*citing dissent* Def. EX.28 at Bates Number LADOJ-14CV0069-0002646). Four African-American Americans testified, on behalf of Judge Ellender, that he was a good judge and that they considered him fair and impartial in carrying out his duties as a judge. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002641). One witness testified that the behavior was "stupid," which Judge Ellender conceded. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002641). The Court found that, based on the mitigating evidence, Judge Ellender did not intend to offer an affront to the African-American community. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002641).
Sanctions imposed in judicial disciplinary proceedings against judges range from removal to complete rejection of discipline. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002643). Still, the Court imposed a very serious penalty, as Judge Ellender was suspended from the bench for one year without pay for six months. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002643). He also was ordered to enroll in a course at one of the local universities in order for him to gain insight into the attitude of other racial groups. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002642). The witnesses who testified before the Commission stated that many in Houma have accepted Judge Ellender's apology and are moving forward. (Def. EX.28 at Bates Number LADOJ-14CV0069-0002643).

[28] *In re Stevens*, 31 Cal.3d 403,645 P.2d 99, 183 Cal. Rptr. 48 (1982) involved a judge who exhibited overtly racist behavior and the California Supreme Court imposed only a public censure. (*citing dissent* Def. EX.28 at Bates Number LADOJ-14CV0069-0002647). *In re Lowery*, 999 S.W.2d 639, 661 (Review Tribunal, Appointed by the Texas Supreme Court Feb. 13, 1998), involving a judge who used blatant racial slurs, the court stated that standing would justify a reprimand or censure. (*citing dissent* Def. EX.28 at Bates Number LADOJ-14CV0069-0002647). Lastly, *In re Agresta*, 64 N.Y.2d 327, 476 N.E.2d 285, 486 N.Y.S.2d 886 (1985) involved another judge that uses racial slurs and only received a public censure. (*citing dissent* Def. EX.28 at Bates Number LADOJ-14CV0069-0002647).

[29] (citing Dr. Weber at Tr. 4/28/17 at p. 132:24-25 and p. 133: 1-13).

support the creation of a majority black subdistrict, even when adding an additional sixth judgeship.[30] In 1997, the legislative staff of the House and Governmental Affairs Committee had conversations with two individuals who proposed amending HB 1399, by making the proposed sixth judgeship a majority black subdistrict.[31] Jerome Boykin and Anthony Lewis, lay citizens of Terrebonne Parish/not expert demographers, wanted a minority subdistrict and were involved in drawing the proposed black subdistrict. However, the subdistrict proposed by Mr. Boykin and Mr. Lewis was not contiguous. Legislative staff attempted to draw the proposed sixth judgeship as a subdistrict that was contiguous; however, in doing so, staff advised that the contiguous subdistrict was a racial gerrymander.[32]

The Plaintiffs' expert, William Cooper, testified that the Plaintiffs instructed him to draw a minority subdistrict for the 32nd JDC. He allegedly worked on the plan for over two years, coming up with several variations before it was final at the end of 2014.[33] Even working on the plan for over two years, the Plaintiffs' minority district is so razor-thin that it should be rejected, because it does not comply with traditional redistricting principles. Mr. Cooper admitted that he could have drawn a more compact subdistrict than his Illustrative Plan but the Plaintiffs directed his work and instructed him to include Schriever, Gray and Houma in the Plan.[34] Even today the demographics do not support the creation a majority black subdistrict.

Response to ¶26. Parish-level plans are traditionally drawn first using precinct boundaries established by the local parish governing authority.[35] Plaintiffs' expert had the precinct

[30] Ex. Pl-17.
[31] HB 1399 proposed the creation of an additional judgeship, which was opposed by Anthony Lewis and Jerome Boykin unless the sixth judgeship created a majority black subdistrict.
[32] Ex. Pl-17.
[33] Tr. 3/14/17 at p. 136:22-136:25; Tr. 3/14/17 at p. 137:1-137:25.
[34] Tr. 3/14/17 at p. 142:4-142:11 and at p. 143:9-143:16.
[35] La. R.S. 18:532.1.D.

boundaries in his GIS software; however, Mr. Cooper started at the census block level which led to the creation of split precincts from the start.

Response to ¶27. Mr. Cooper testified that he looked at state legislative redistricting plans because they reflect "input from local legislators in Terrebonne Parish" and "how decisions have been made" in redistricting. (3/14/2017 Tr. at 75:5-75:11). There is no evidence that Mr. Cooper spoke with any legislators or local elected officials about the State or local redistricting.[36]

Response to ¶28. Mr. Cooper testified that there were "many different possible configurations" for a majority-Black subdistrict for the 32nd JDC. (3/14/2017 Tr. at 83:24-83:25, 84:1-84:23). Yet his one plan provided later as an illustrative alternative plan dropped significantly in both compactness scores (Reock dropped from .39 to .20, Polsby-Popper from .13 to .09) and in Black VAP (49.7%).[37] This is further evidence to support Dr. Weber and Mr. Hefner's opinions that the Black VAP in Terrebonne Parish is not geographically compact enough to form a single member majority Black district. That *Alternative Plan* honored the precinct boundaries as opposed to the more race-centric technique of building a parish-level plan at the census-block level. In reality, and their own efforts prove this, there are no other feasible configurations that yield the Plaintiffs' target of a Black VAP in excess of 50%.

Response to ¶30. Mr. Cooper testified that he split a precinct (103) that left a majority-White census block in the Dist. 1 under the *Illustrative Plan*.[38] The inclusion of one majority-White census block in the *Illustrative Plan* that contains only 42 Voting Age Whites (Block ID 221090006006013, PL94-171 counts of 42 VAP Whites, 0 Blacks) does ***not*** negate the fact that

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[36] Mr. Cooper's assessment of the considerations that went into the configuration of the State House and Senate redistricting plan or the local Parish Council and School Board redistricting plans are purely conjecture on Mr. Cooper's part and have no credibility as to what may have been considered when those respective redistricting plans were drawn up or who had any input into their design.

[37] *See* Defendants Findings of Fact and Conclusions of Law; *See also* Tr. 4/27/2017at 158:1-158:9.

[38] Tr. 3/14/2017 at 83:24-83:25, 84:1-84:23.

Mr. Cooper used the technique of using census block level racial data to draw a plan that met the Plaintiffs' target of a Black VAP over 50%.[39] In fact, the splitting of Precinct 103 eliminated from District 1 some 552 VAP Whites and vastly outnumbered the 40 VAP Blacks. The districts under the *Illustrative Plan* were contiguous whether Precinct 103 was split or not. The minor block split did more to eliminate Whites from District 1 in that area than to preserve contiguity or make the district boundaries "more regular shaped".[40] Another example would be the exclusion of an adjacent census block in the south part of Houma that had a Black VAP of 345. That block could have easily been included but was not because it also had a White VAP of 442. Again, a significant number of Blacks could have been included in the representational majority-minority illustrative District 1 but were excluded simply because the Whites in that census block would have brought the Black VAP below 50%. Now they are stranded in the illustrative District 5 with virtually no voice since they are part of only 1,303 VAP Blacks against 13,538 VAP Whites. Simply put, as Mr. Hefner testified to, a demographer has the power to use the redistricting software to cherry-pick the census blocks that can achieve the Plaintiffs' desired racial demographic of 50% +1 Black VAP.[41] Here it is evident that Mr. Cooper did just that.

Response to ¶31. Plaintiffs infer from Mr. Cooper's testimony that simply seeing that Terrebonne Parish has two majority-minority parish council and school board seats is sufficient to conclude that there is enough of a Black VAP to constitute a judicial seat.[42] Plaintiffs and Mr. Cooper fail to take into account that both of the majority-minority parish council and school board seats are underpopulated for the simple reason that the Parish is becoming more diverse and there are not enough Blacks concentrated enough to maintain those two seats and maintain

[39] Tr. 4/28/2017 at 29:16-29:25, 30:1-30:5.
[40] Tr. 3/14/2017 at 78:2-78:7.

[41] Tr. 4/27/2017 at 82:24-84:25, 83:1-83:16.
[42] Tr. 3/14/2017 at 74:10-74:25, 75:1.

the one-man one vote redistricting principal.[43] Plaintiffs and Mr. Cooper acknowledge the underpopulation fact later but never applied it to their position that simply observing there were two majority-minority districts was sufficient to reach the conclusion that there was a sufficient Black VAP to meet *Gingles* I for a five seat jurisdiction.[44]

Response to ¶32. Plaintiffs cite to Mr. Cooper's use of the American Community Survey (ACS) data to arrive at an estimated non-Hispanic Black Citizen VAP of 53.33% and profess that it is proper to use estimated counts for the *Illustrative Plan*.[45] The cases Plaintiffs cite in FN18 can be distinguished from this case. In the *Patino v. City of Pasadena* case cited by the Plaintiffs, the pinpoint cite is just a list the current council representatives and is not probative of the use of ACS data.[46] The reference to the use of ACS data on pages 27 and 33 of the case was for the Hispanic population estimate across the citywide jurisdiction. Here the Plaintiffs and Mr. Cooper are attempting to extrapolate that narrow finding of the court to a *district* level estimated count.[47] Since the Census Bureau does not collect that estimated data at a district level within Terrebonne Parish it is not a neither legitimate nor proper census count to use in this case. A reading of the cases cited by the Plaintiffs actually go to the Defendants' point. In the case of *Benavidez v. City of Irving, Tex*, Plaintiffs cite to the Court taking notice that the U.S. Census Bureau issued a publication in 2009, and prior to the 2010 census, on how state and local governments could use the ACS data.[48] The Court held that the intent of the Census Bureau was that the ACS data could be used for Voting Rights Act cases. Dr. Ely, the expert for the plaintiffs in that case stated that he did not use the ACS data in the illustrative districts since the

[43] Tr. 4/27/2017 at 113:21:113:25, 114:1-114:10.
[44] (3/14/2017 Tr. at 103:5-103:8 and 150:23-150:25, 151:1-151:5).
[45] Tr. 3/14/17 at 66:8-66:25, 67:1-67:5, 73:16-73:22, 127:11-129:129:4.
[46] *Patino v. City of Pasadena*, No. 14-3241 ___ F.Supp.3d.___, 2017 WL 68467.
[47] Tr. 3/14/2017 at 128:17-127:22.
[48] 638 F. Supp. 2d 709 (N.D. Tex. 2009).

ACS is a sample.[49] He used the ACS data only to measure what *degree of changes* may have taken place within the Hispanic population in the City of Irving since the 2000 census. *emphasis added.* Distinguishable in this instant case versus the *Benavidez* case is that Texas does not allow a voter to self-identify as Hispanic or Non-Hispanic when registering to vote. The Court employed the use of Spanish surnames to estimate the number of Hispanic voters (at p.717). In Louisiana, the voter registration forms allow for self-identification of White, Black, Other, Hispanic or Non-Hispanic as noted in Doc. 285. The voter data limitation in *Benavidez* is not present here in this instant case. The *Benavidez* Court also noted that the 5th Circuit in *Valdespino v Alamo Heights Indep. Sch. Dist.*,[50] established that Census numbers are presumptively accurate until proven otherwise. The Plaintiffs here attempt to expand that definition to include the use of ACS data for district level demographics when in fact the ACS does not include district-level data. Mr. Cooper testified that he had to disaggregate the ACS data to the block level and then reaggregate to the district level.[51] This is a district estimate based on a disaggregation/aggregation estimate of the original ACS estimate. This introduces all kinds of inaccuracies in the census data the Plaintiffs are using. To further drive that accuracy point home, the 5th Circuit in *Rodriguez v. Bexar County, Tex.*, held that without a strict showing of probativeness, Spanish surnames are disfavored and Census data based on self-identification provide the proper basis for analyzing Section 2 claims.[52] Here we have a voter registry that allows detailed self-identification of the voter by race and ethnicity in Louisiana. The *Westwego* case cited by the Plaintiffs goes to the same point the Defendants are making. There, the court held that other probative evidence may be considered only where data from the decennial Census

[49] *Id.* at 715.
[50] *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853-54 (5th Cir.1999).
[51] (citing Cooper testimony Tr. 3/14/2017 at 128:7-128:15, 128:20-128:25, 129:1-129:4).
[52] *Rodriguez v. Bexar County, Tex.*, 385 F.3d 853, 867 n. 18 (5th Cir.2004).

is not available.[53] Here the Plaintiffs have not established that the decennial PL94-171 data is not available or accurate. The Plaintiffs' expert, Mr. Cooper, used the PL 94-171 data himself.[54] In reality, the PL94-171 actual counts are the most accurate. Here the Plaintiffs have not shown through any evidence or testimony that the PL 94-171 data is inaccurate. Therefore, the Plaintiffs' use of estimates of the ACS census estimates to bolster their demographic numbers at the illustrative district level are not only inaccurate, but they cannot be considered by the Court via the holdings of previous authorities, even the cases Plaintiffs have cited to.

Response to ¶41. Plaintiffs' rely on Mr. Cooper's assertion that in particular, the inclusion of parts of Houma, Gray, and Schriever into the majority-black Parish Council and School Board districts is evidence that there is a "community of interest in using those …places in a single district".[55] Lumping residents into a "community of interest" based solely on their race is presumptive if not stereotyping. The *Shaw* court described this type of situation very clearly "we believe that reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which the live think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes."[56] The two majority-minority PC/SB districts represent two widely separate parts of the Parish. Even Mr. Cooper himself

[53] *Westwego Citizens for Better Gov't v. City of Westwego*, 906 F.2d 1042, 1045 n.3 (5th Cir. 1990).
[54] Tr. 3/14/2017 at 71:13-71:21.
[55] Tr. 3/14/17 at 102:5-102:25,103:1.
[56] *Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993).

acknowledges this. In his testimony Mr. Cooper described District 2 as including parts of Houma and extending northerly to take in Schriever. District 1 takes in parts of south Houma and extends southward into the unincorporated areas.[57] While they both may have in common being a majority Black district, they nonetheless represent different parts of the Parish and most likely represent different needs based on their locations within the Parish. The Plaintiffs approach to this is akin to saying the Blacks in the City of Baker in north East Baton Rouge Parish has a common interest in all respects as with those Blacks in south Baton Rouge around Gardere. Logic says not. The interests in the Baker community are most likely quite different than the interests in the Black community in Gardere. So much so that Baker created its own school district out of the East Baton Rouge Parish school district.

Response to ¶44. Plaintiffs rely on the testimony of Mr. Shelby to demonstrate that the minorities in the Houma, Gray, and Schriever area form a "close-knit community."[58] Defendants agree. The *Plaintiffs' Illustrative Plan* violates this very premise. Defendants have argued deliberately that these communities are close knit. In the quest to reach the *Gingles* threshold of a Black VAP of 50%, the *Plaintiffs Illustrative Plan* splits apart the small communities of Shriever and Gray in particular.[59] Under the *Plaintiffs' Illustrative Plan,* Schriever is split at the neighborhood street level between the majority-minority District 1, and the majority-White District 2. Gray is in even worse shape. Illustrative Districts 1, 2, and 4 split Gray among themselves with only those Blacks in District 1 being in a majority-minority district.[60]

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[57] Tr. 3/14/2017 at 75:24-74:25, 75:1.
[58] Tr. 3/13/17 at 32:24-25, 33:1-33:7.
[59] Tr. 4/27/2017 at 51:8-51:25, 52:1.
[60] It is difficult to comprehend, must less defend, that the communities of interest traditional redistricting principle is not violated at even this basic level. The surgical precision of the carving in or out of census blocks in drawing illustrative District 1 to reach the racial goal of a Black VAP greater than 50% now has literally Black neighbors across the street from each other being in different judicial districts. One would be in a majority-Black district. The other in a majority-White district that has less than a 10% Black VAP at best.

Response to ¶47. The *Plaintiffs' Illustrative Plan* cannot respect precinct lines when eleven (11) precincts are split for the sake of only one judicial district. And of those eleven splits, fourteen (14) precinct parts are created.[61] The US Supreme Court has found that splitting numerous precincts conflicts with traditional redistricting principles. *see Cooper, Governor of North Carolina, et. Al v. Harris, et. al.*, n. 3 stating "And in any event, the evidence recounted in the text indicates that District 1's boundaries did conflict with traditional districting principles—for example, by splitting numerous counties and precincts." The Court in *Abrams v. Johnson* finding that "race was an overriding and predominate factor in drawing the Second District's borders…the district, the court noted, split 12 of the district's 35 counties, 28 of its precincts, and numerous cities." [62] As noted in Doc. 285, this case is no different considering the large number of precinct splits in the creation of only one district.

Response to ¶48. The Defendants agree that Louisiana law grants parish governing authorities the power to create, merge, or consolidate precincts. The issue is that the ability to merge precincts is very restricted based on the jurisdictional lines even the Plaintiffs recognize here. Any mergers must have the same State House, State Senate, Public Service Commission, State Board of Elementary and Secondary Education, as well as parish governing authority election districts. The absence of legislation that would allow judicial subdistrict precincts to be merged is a key point the Defendants are making to the Court here. Any remedial plan, if ordered by this Court, would likely split a number of precincts. There is no authority to then come back later to merge these splits. The best would be a rare coincidence that a precinct could be merged during redistricting for Parish Council and School Boards, which would be unlikely.[63]

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[61] Def. Ex. 1, Expert Report of Michael C. Hefner, 3/22/2015, Pg. 17.
[62] 521 U.S. 74, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997).
[63] Tr. 4/27/2017 at 80:3-80:18.

Response to ¶49. Defendants agree that lockouts exist in Terrebonne Parish just like any other parish in the State. Many taxing districts are based on the old ward lines from the 1970's. Some justice of the peace districts are based on those same ward lines. The point is not that lockouts cannot be done. Every registrar in the State knows how to do lockouts. The point is that lockouts divide voters within a precinct and cause confusion for both the voter and the candidates' part. Precincts make up the basic voting geography in a parish. As Mr. Hefner testified to, lockouts cause a lot of headaches for candidates, voters, registrars, and demographers.[64] Each voter in a precinct split must be put in the proper part. Candidates must know what part of a precinct they have and which they do not. Voters must know the difference between which candidates are running in their part of the precinct. Registrars must know exactly which part of a precinct to assign a voter's residence to. This opens the opportunity for the confusion Mr. Hefner was trying to point out. Plaintiffs actually make one of the Defendants primary points to the Court with regards to judicial lockouts in their own findings. As noted in ¶49 of their Doc. 284, the 19th JDC had 15 lockouts whereupon when it was created had none. The 9th JDC has 5 lockouts whereupon their creation they had none. The 16th JDC started with whole precincts when created. The last judicial election cycle saw over 90 lockouts just for one judicial contest. Tr. 4/27/2017 at 153:8-153:23.[65]

Response to ¶51. Plaintiffs concede that their *Illustrative Plan* splits 11 precincts for District 1. As noted in ¶47, some precincts are split into either three or four parts for a total of 14 precinct

[64] Tr. 4/27/2017 at 81:13-81:15.

[65] Furthermore, in FN27 in Doc. 284 Plaintiffs quote an AG Opinion that states that the judicial boundaries must stay the same if the precinct boundaries and designations change. La. Atty. Gen. Op. No. 02-189, 2002 WL 1483936, at *3 (2002). The AG opinion acknowledges that lockout situations have happened in order to preserve the original judicial subdistricts. And true to the Defendants arguments, this is what is happening in judicial subdistrict elections all over the State and why some elections have a large number of lockouts outside the municipal election cycles. Lastly, that AG opinion cited by the Plaintiffs does not provide any statement or evidence that the Legislature had the intent to create lockout situations when the respective legislation was passed as Plaintiffs assert. Furthermore, the AG in that opinion clearly states that it is only the Legislature that has the authority to create or modify the judicial districts in Louisiana.

parts. This is symptomatic that the Black VAP is not sufficiently concentrated enough to form a single member district using traditional redistricting principals. Plaintiffs attempt to compare the percentage of precinct splits under the *Illustrative Plan* to the percentage of splits in other parishes to justify the excessive splits. Terrebonne has a consolidated government so there are no municipal elections and therefore are no municipal splits for those elections. Virtually every other parish in the State has one or more municipal councils that are elected every four years.[66] By the nature of their size, municipalities involve precinct splits since their boundaries often cross parish precinct boundaries. Parish governing authorities must have whole precincts by law as noted *supra* in ¶26.[67]

Response to ¶52. See ¶49 for a detailed answer regarding the true issue surrounding the use of lockouts.

Response to ¶53. Plaintiffs hypothesize that the 2020 redistricting cycle for the Parish Council will allow for the precinct splits to be eliminated. Mr. Hefner testified that judicial subdistricts often cause more lockouts because their boundaries do not change but parish governing authorities do. *see* ¶49. In their citations to expert reports and testimony, Plaintiffs fail to show any evidence to support their contention that precinct splits created by the *Illustrative Plan* or any remedy plan will be eliminated with the 2020 redistricting cycle.[68] The difficulties in aligning precincts between the nine districts of the Parish Council and five districts of an illustrative plan is that the population pie is divided differently. Since the population does not fall

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[66] Louisiana Municipal Association Member Search: http://www.lma.org/LMA/About/Directory/LMA/About_LMA/directory_search.aspx?hkey=694df395-d483-47a4-b63a-361064fa308b.

[67] The Legislature has limited parish-level school board plans to where a district cannot split more than two precincts. The comparison of the one illustrative district with other entire parishes regarding the percentage of precinct splits is misleading and should be disregarded as not being probative by the Court.

[68] More likely, as Mr. Hefner testified to, the difficulties the Terrebonne Parish Council and School Board will face in trying to maintain their current two majority-minority districts in the face of a Parish that is racially diversifying will cause more precinct splits, not less. Tr. 4/27/2017 at 45:2-45:22 and 81:16-81:25, 82:1.

evenly across the parish, this disparity in the equal population of the districts will affect where the district lines fall. A plan having the population divided nine ways is much different than having a plan dividing the population five ways. It is not just a simple mathematical calculation as the Plaintiffs allude to in ¶31 of the Doc. 284.[69]

Response to ¶56. Plaintiffs criticize Mr. Hefner on serving as an expert on only two Section 2 cases. They fail to note for the Court that his testimony in both of those cases were accepted by the respective judges and were an integral part of the courts opinions in favor of his client. *See* Hefner's CV attached to his expert report at Ex. Def. 1. Plaintiffs also critique that Mr. Hefner did no work representing minority individuals or groups representing minority individuals. Plaintiffs ignore Mr. Hefner's CV where he demonstrates that he has extensive experience since the 1990 census of drawing redistricting plans throughout Louisiana.[70] All of those plans withstood scrutiny by the Justice Department or in those two cases *supra*, the court hearing the litigation. As Mr. Hefner testified, he always checks for minority representation proportionality first when starting a redistricting project. If the minority population is sufficient in number and geographically compact enough to draw an additional minority district he recommends an additional minority district to his jurisdiction client. From there he facilitates the drawing and ultimate approval of the new plan with a new minority district. Mr. Hefner testified that two recent examples were the St. Landry Parish Council and School Board and the City of Marksville.[71] While not directly related to voter redistricting, Mr. Hefner's CV shows extensive experience drawing school attendance zones in school desegregation cases. The process is

[69] The Plaintiffs and their experts have presented no evidence that the precincts split under the *Illustrative Plan* will be remedied with the 2020 redistricting cycle. If anything, the Plaintiffs' own examples cited in their findings and unrefuted testimony from the Defendants' expert, Mr. Hefner, has more than adequately shown that the precinct splits and/or lockouts will prevail and most likely increase.

[70] See Ex. Def. 1 at Bates No. LADOJ-14CV0069-0000027-35.

[71] Tr. 4/27/2017 at 97:7-97:15.

similar but instead of assigning voters to an election district, you assign students to an attendance district in compliance with applicable Federal law or court holdings. Mr. Hefner's student attendance zone plans have prevailed in over a dozen school desegregation cases in Louisiana. His plans have been selected by the respective Federal courts as the basis of their consent decree or ultimately granting Unitary Status on the student attendance *Green* factor; typically, the most difficult Green factor for the school district and the court to work through. Mr. Hefner's work on drawing *functional* plans that meet constitutional muster has earned him the respect of those Federal judges hearing these cases in Louisiana.

Response to ¶57. Mr. Hefner's use of the Department of Justice definition of Black for the purposes of the Voting Rights Act analysis is well grounded. After the 2000 census, the Department of Justice issued their rule on which racial categories they would be using for reviews under the Voting Rights Act. In their Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, the Justice Department specified the following eight categories:

> Non-Hispanic White; Non-Hispanic Black plus Non-Hispanic Black and White; Non-Hispanic Asian plus Non-Hispanic Asian and White; Non-Hispanic American Indian/Alaska Native plus Non-Hispanic American Indian/Alaska Native and White; Non-Hispanic Pacific Islander plus Non-Hispanic Pacific Islander and White; Non-Hispanic Some Other Race plus Non-Hispanic Some Other Race and White; Non-Hispanic Other multiple-race, and Hispanic.[72]

Louisiana has only two major races, White and Black. The proper Black category therefore is the Department of Justice's Non-Hispanic Black definition which includes both Black as the sole race or Black and White. This is the category that has been used in Louisiana for redistricting

[72] U.S. Department of Justice, "Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c," 66 Fed. Reg. 5412.

since the 2000 census cycle. Plaintiffs' deviation from the traditional redistricting race categories rests on but one Supreme Court case that used Any Part Black in 2003.[73]

Response to ¶59. Plaintiffs misconstrue Mr. Hefner's opinion and testimony regarding the viability of a majority-minority district. Mr. Hefner did not offer the viability in the context of a threshold Black VAP for *Gingles* I. He clearly agreed that a Black VAP over 50% was the required threshold in his reports and testimony. Mr. Hefner's opined that should the Court side with the Plaintiffs in this case, any remedy plan will have trouble creating a viable majority-minority district while adhering to traditional redistricting principles. It is evident as discussed here and in Rec. Doc. 285, that the Plaintiffs are taking drastic measures to even reach the *Gingles* threshold using the PL94-171 census data and the proper race categories. This is not to mention the sole use of race at the census block level to create the *Illustrative Plan*.[74] The

[73] In the *Georgia v. Ashcroft* case, the Court had only two racial categories to work from because of the way the State of Georgia registered their voters: White or Black (which included all other minority races). As explained in the Defendants Findings of Facts and Conclusions of Law, the Supreme Court had no option but to consider Any Part Black and thus the meaning of looking at "all individuals who identify themselves as Black. *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003). The Plaintiffs cite to the *Ala. Legislative Black Caucus v. Alabama*, 137 S.Ct. 12547, 1273 (2015) is off point. The Court at 1273 was referring to the changes in the statute by Congress regarding *Ashcroft's* holding on cross-over and influence districts. In the minority opinion, Justice Souter's point was that in a *retrogression* case the Court should take into account all significant circumstances as in *Ashcroft. (emphasis added*). Again, *Ashcroft* presented special circumstances to the Court regarding the limitations of the voter data used by the Georgia Legislature and those were necessarily used by the Court. No other U.S. Supreme Court case hearing a Section 2 violation since *Ashcroft* has referred to the Court using for their ultimate holding the racial category of Any Part Black either in their holding, dicta, or footnotes. The fact that Mr. Cooper has used Any Part Black for his expert work here and in other cases around the country is irrelevant. The issue is that the overwhelming caselaw and authorities use the Black and Black/White categories for evaluating challenges under Section 2 by Blacks. This held true even in the 2015 *Alabama* case cited by Plaintiffs. Mr. Hefner's use of the NH DOJ Black category is not because it is "narrower" (¶57), but because that is the category traditionally used. Plaintiffs acknowledge this in FN42 in the Plaintiffs Statement of Facts and Conclusions of Law: *"As noted above, however, Mr. Hefner's exclusive use of the non-Hispanic DOJ Black category and his rejection of the Any-Part Black category is consistent with Supreme Court precedent."* The fact that the Plaintiffs must resort to the very broad category of Any Part Black is symptomatic on its face that the *Illustrative Plan* and the *Alternative Plan* are having trouble or respectively cannot reach the *Gingles* I threshold of over 50% Black VAP. Absent any special circumstances, the Court should use the traditional NH DOJ Black category in its analysis of this case. The metrics of this category align most closely with the census categories used by the courts prior to 2000 for Section 2 cases.

[74] The point Mr. Hefner was making was that a remedial plan would have to take this into account and there is not a sufficient number or concentration of minority Black VAP to do so even if ordered by the Court. As the Court in *Bartlett* held "In setting out the first requirement for § 2 claims, the *Gingles* Court explained that "[u]nless 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." 478 U.S., at 50, n. 17, 106 S.Ct. 2752. The *Growe* Court

absence of Black voters at the polls for a judicial election under a potential remedial plan will jeopardize any chance of electing their chosen representative when the Black VAP cannot be brought up much over 50%.[75]

Response to ¶60. Mr. Hefner's agreement that the *Illustrative Plan* met the traditional redistricting principal of incumbent protection was based solely on the fact that there may not be a residential requirement for judicial elections in Louisiana. Plaintiffs still puts incumbents in the same districts, including Judge Juan Pickett.

Response to ¶62. Section 5 Pre-Clearance was required at the time the plans were drawn for all of the jurisdictions Mr. Cooper used to compare his *Illustrative Plan*. Those jurisdictions had to avoid retrogression at the time they were drawn as well as adhering to other traditional redistricting principals such as incumbency. The *Illustrative Plan* was drawn under no such restrictions but yet Mr. Cooper had to work at the census block level instead of the normal precinct level in order to reach the demographic target that would just barely cross the *Gingles* I threshold and in the process divided 11 precincts into 14 parts.

Response to ¶63. The Court has noted that redistricting is "a balancing act of competing considerations."[76] Likewise, Mr. Cooper and the Plaintiffs have not presented any testimony or expert witness reports that would suggest that all redistricting principles were adhered to equally or may have been compromised in some form or fashion in the plans Mr. Cooper compared the

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stated that the first *Gingles* requirement is "needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district." 507 U.S., at 40, 113 S.Ct. 1075. Without such a showing, "there neither has been a wrong nor can be a remedy." *Id*., at 41, 113 S.Ct. 1075. (*Bartlett v. Strickland*, 556 U. S. 1, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009). The observation of the *Bartlett* Court is certainly applicable here. Considering the testimony of Dr. Ron Weber regarding Black turnout in the various elections, it appears that the turnout is usually low with little crossover votes. Tr. 4/28/2017 at 14:1-14:4, 46:10-46:18.

[75] S*ee also Bethune-Hill v. Va. State Bd. of Elections* (2017) "the record here supports the State's conclusion that this was an instance where a 55% BVAP was necessary for black voters to have a functional working majority. pp. 13-16."

[76] *Miller v. Johnson*, 515 U. S. 900, 916.

Illustrative Plan to.[77] As discussed in the Doc. 285, precinct boundaries are considered a community of interest. Therefore, maintaining whole precincts in a plan can negate a claim of racial gerrymandering. The *Illustrative Plan* splits numerous precincts because the precincts are not fitting to provide the demographics the Plaintiffs are seeking.[78]

Response to ¶64. Mr. Hefner is aware that there is no bright line or cutoff for statistical measures of compactness. Mr. Hefner did not calculate the compactness scores of any other Louisiana district because he did not have to in order to opine on this issue. In support of Mr. Hefner statements on the lack of compactness with the *Plaintiffs' Illustrative Plan*, the Courts have noted that appearances do matter. In *Shaw I*, the Court said that "reapportionment is one area in which appearances do matter."[79] The Court in *Bush v. Vera* used an "eyeball approach" to evaluate compactness.[80] The Court also noted in *Stone v. Hechler* that compactness does not have to be measured, nor does a state have to show that it drew the most compact district possible, but compactness does have to be one of the primary goals.[81] The Courts have noted, as Mr. Hefner has, that by looking at the District itself, as with District 1, one can make an initial determination as to whether a district is compact or not. Mr. Hefner is also in good company with the Court noting that compactness does not have to be measured therefore he was under no obligation to do as part of his analysis. The Courts' holdings in the cases cited s*upra* provide a very objective benchmark for Mr. Hefner's opinion that "the general shape" of District 1 is

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[77] Plaintiffs only put forward that assumption without any evidence to back it up. Mr. Hefner was merely pointing out the fact that Mr. Cooper picked only those jurisdictional plans that were less compact than his *Illustrative Plan*. On the flip side, one can argue that many more of the State and Parish level jurisdictions likely had districts that had a higher compact score than the *Illustrative Plan* and the *Alternative Plan*. With regards to Mr. Hefner's approach to the Plaintiffs' question regarding racial gerrymandering of the State House and Congressional Districts, Mr. Hefner made it very clear in his testimony that the State used whole precincts and did not split nor get down to the census block level in those plans. Tr. 4/27/2014 at 125:4-125:10.

[78] Tr. 4/27/2017 at 125:11-125:13.

[79] 509 U.S. at 647

[80] *Bush v. Vera*, 517 U.S. 952, 960 (1996).

[81] *Stone v. Hechler*, 782 F. Supp. 1116, 1127 (N.D. W. Va. 1992).

"unusual and irregular."[82] Plaintiffs' own expert, testified that he uses the same visual analysis.[83]

Response to ¶66. While there is no bright line measure for assessing whether community of interest is maintained, the Courts have taken note that they should be maintained and traditional boundaries honored in a redistricting plan.[84]

Response to ¶67. Mr. Hefner agreed that other jurisdictions join parts of Houma, Gray, and Schriever into a single district. The *Illustrative Plan* can be distinguished from those jurisdictions. The shape of the Illustrative Plan "C" takes parts of north Houma, Gray, and Schriever *and then joins them* with parts of the rural west part of the parish and then joins them up with populations that reside in central and south Houma. (4/27/2017 Tr. at 48:23-48:25, 49:1-49:9). What Mr. Hefner described as the *Plaintiffs' Illustrative Plan* is a completely different district than the districts the Plaintiffs cite to for comparison. As related to this, the *DeWitt* Court provided a good definition of compactness that really goes to this point. The compactness requirement was described by a federal district court in California in the partisan gerrymandering case as having a "functional" component: "Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. Further it speaks to relationships that are facilitated by shared interests and by membership in a political community including a county or a city."[85] The Plaintiffs have not put forward any convincing evidence that those parts of the communities in the north part of the parish have the same shared interests as those in the

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[82] Tr. 4/27/17 Tr. at 117:15-118:1,126:16-18.
[83] Tr. 3/14/2017 at 86:7-86:8.
[84] In the *LULAC* case the Court noted "While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries. *LULAC*, No. 05-204, slip op. at 27 (2006). That is consistent with Mr. Hefner's testimony that the census designated places are one of the first things he examines when approaching a redistricting plan., and why he testified that he is very conscious of maintaining precinct boundaries and splitting as few as possible and only when absolutely necessary. See Tr. 4/27/2017 at 150:4-150:5.
[85] *DeWitt v. Wilson*, 856 F. Supp 1409, 1414 (E.D. Cal 1994), *summarily aff'd,* 515 U.S. 1170 (1995).

south part of the parish. Defendants continue to maintain that if it were not for race, these two parts of the parish would not be in the same judicial subdistrict. They are in separate districts for the House, Senate, Parish Council, and School Board jurisdictions.[86]

Response to ¶68. Mr. Hefner noted to the Court in his testimony that in the election where Ms. Carter was a candidate for the Houma City Court, that she did not win some precincts that were majority Black registered voters.[87] He clearly offered that testimony only as to the election results, not a racial analysis.[88] As the Court is fully aware of, Mr. Hefner was not offered as an expert to determine the racial composition of the voters who turned out to vote in those precincts in those elections. Therefore, he rightly limited his reports and testimony only to the overall election results as compared to the number of Black registered voters in those precincts.

Response to ¶69. Mr. Hefner fully agrees that a plan drawer can split a census designated place. However, the issue in Mr. Hefner's opinion is *why* are we splitting a community of interest represented by a census designated place? As discussed *supra*, other jurisdictions such as the Parish Council and School Board split those communities within separate districts to avoid retrogression, such as District 1 taking in the west and south side of Houma and District 2 taking in the north part of the parish to maintain their majority-minority status. Mr. Cooper testified that he could have drawn a more compact district but the Plaintiffs directed him to include the

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[86] As the *Gingles* Court noted "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." The Court went on to comments by Blackshere and Menefee "If minority voters' residences are substantially integrated throughout the jurisdiction, the at-large district cannot be blamed for the defeat of minority-supported candidates . . . . [This standard] thus would only protect racial minority votes from diminution proximately caused by the districting plan; it would not assure racial minorities proportional representation."*Blacksher & Menefee* 55-56. *Thornburg v. Gingles*, 478 U.S. 30, 50 n.17, 106 S.Ct. 2752, 2766, 92 L.Ed.2d 25, 46 (1986).

[87] Tr. 4/27/2014 at 137:1-137:3.

[88] Tr. 4/27/2017 at 137:6-137:8.

communities of Schriever, Gray, and Houma.[89] In carrying out the Plaintiffs' directions on how to draw the *Illustrative Plan*, Mr. Cooper, according to his testimony, divided two communities of interest that are represented as census designated places. The Schriever community in particular, was unnecessarily divided. (3/14/2017 Tr. at 142:7-142:11). Indeed, the resulting *Illustrative Plan* violates two small communities of interest. The community of Schriever was severely cut up at the census block level. The community of Gray too was cut up at the census block level.[90] As testified to by Dr. Weber and Mr. Hefner, in their opinions, the dividing of these established communities of interest are solely because certain census blocks at the neighborhood level were necessary to reach the Plaintiffs' goal of a Black VAP in excess of 50%.[91] So, the issue is not whether you can split a census designated place but whether there are valid and compelling reasons to do so. Defendants maintain the reasons given by Mr. Cooper *supra*, for splitting those communities of interest are not credible in this case.

Response to ¶71. In citing the creation of the subdistricts in the Shreveport City Court by the Legislature and the Baton Rouge City Court remedy plan adopted in the *Hall v. Louisiana* case, Plaintiffs' are attempting to equate a city court subdistrict jurisdiction with that of parish-level state court jurisdictions. They are two different geographical jurisdictions and cannot be compared in order to justify the excessive splits in the *Illustrative Plan*. In the Shreveport City Court, the Legislature was able to create the subdistricts by splitting only one (1) precinct. The illustrative plan accepted by the *Hall* Court split only one (1) precinct to create the subdistricts. The *Plaintiffs' Illustrative* Plan splits 11 precincts into 14 parts to create <u>one</u> subdistrict. The disparity between the number of precincts splits required to create the judicial subdistricts is shocking in the least. The issue of splitting precincts was not an issue raised by the Defendants

[89] Tr. 3/14/2017 at 142:4-142:25, 143:1-143:15.
[90] See Defendants Exhibit No. 1 Map 5, LADOJ-14CV0069-0000001).
[91] Tr. 4/28/2017 at 36:4-36:13; Tr. 4/27/2017 at 50:12-50:25, 51:1-51:7.

in *Hall*. In *Hall* the Defendants did not retain a separate expert demographer, as in this case. The Court does not discuss split precincts. Here the Plaintiffs have offered yet another comparison of the extreme degree to which illustrative District 1 had to be manipulated in order to just barely cross the 50% Black VAP in the *Illustrative Plan*. It goes directly to the finding that the Black VAP in Terrebonne Parish is not sufficiently concentrated to form a reasonably compact district that adheres to traditional redistricting principals under *Gingles* I.

Response to ¶72. The Plaintiffs cite to a 2002 Louisiana AG Opinion that states the obvious…that the judicial geographic boundaries are not changed when precincts are changed during parish reapportionments. That goes directly in support to Mr. Hefner's cited testimony that any future remedy plan would likely begin to have lockouts after one or more redistricting cycles. The point Mr. Hefner is trying to make in his testimony is why, at the very beginning of implementation, would you start with fourteen lockouts? Testimony by Mr. Hefner discussed *supra*, was that Terrebonne Parish is becoming more diverse and the Parish Council and School Board were having difficulties maintaining the two existing majority-minority Black districts with the 2010 redistricting cycle. His cited testimony was that if the diversity trend continued it would be worse after 2020. If the Black population was as concentrated, as the Plaintiffs contend, then the current Parish Council and School Board Districts 1 and 2 would not be underpopulated following the 2010 census and it would not be such a problem after 2020 that precincts would have to be split on account of. This is not the case.[92]

Response to ¶73. Mr. Hefner does not contend that there is an authority that prevents precincts being split for the creation of a judicial subdistrict. Mr. Hefner contends in his reports and testimony that all other parish-level state court subdistricts were able to be created using whole precincts. None had to resort to splitting precincts to accomplish the task using traditional

[92] Tr. 3/14/2017 at 150:23-150:25, 151:1-151:5.

redistricting principals. The fact that Mr. Cooper had to split so many precincts to create just one subdistrict is suspect on its face and cause for the Court to consider that the *Illustrative Plan* was drawn solely based on racial characteristics at the census block level in order to reach the 50% + 1 Black VAP.

Response to ¶74. Related to ¶73 is the number of precincts split with the *Illustrative Plan*. Mr. Hefner has already testified that the *Alternative Plan* using whole precincts falls short of the 50% Black VAP threshold.[93] Use of block level race data to exceed that threshold was necessary by the Plaintiffs and Mr. Cooper in designing the *Illustrative Plan*. And that should cause concern by the Court, if not validate Defendants position that the Black VAP is not sufficiently compact. One category of evidence considered by the *Bush* court is the type and detail of data used by the state or in this case the Plaintiffs. The court has recognized the power redistricts have "to manipulate district lines on computer maps, on which racial and other socioeconomic data were superimposed."[94] This power extends far beyond the paper, pencil, and calculator method. When racial data is available at the most detailed block level, and other data such as party registration, past voting statistics, and other socioeconomic data is only available at the much higher precinct ("Voting Tally District") or tract level, a red flag is raised. The *Bush* Court went on to say "The use of sophisticated technology and detailed information in the drawing of majority-minority districts is no more objectionable than it is in the drawing of majority-majority districts. But ... the direct evidence of racial considerations, coupled with the fact that the computer program used was significantly more sophisticated with respect to race than with respect to other demographic data, provides substantial evidence that it was race that led to the

[93] Tr. 4/27/2017 at 159:23-159:25.
[94] *Bush v. Vera*, 517 U.S. 952, 961 (1996).

neglect of traditional districting criteria..."[95] Here, a red flag was raised. Mr. Cooper testified that he used redistricting software.[96] Mr. Cooper testified he worked with his software only at the census block level in creating the *Plaintiffs' Illustrative Plan*.[97] Mr. Hefner testified that the large number of precincts that were being split just within the illustrative District 1 threw up a red flag for him and that there was another purpose for breaking up all those precincts.[98]

Dr. Weber testified he, independent of Mr. Hefner's report, had a similar "red flag" moment for the same reasons as Mr. Hefner. Mr. Cooper was using the software to use the demographic technique of picking and choosing blocks to include or exclude based upon the race of the voters in the block.[99] As with the *Bush* Court, this case presents elements parallel to this Court on all points. Plaintiffs' expert used specialized software to create a race centric block-level illustrative plan that ignored the existing precinct boundaries and communities of interest in order to reach the *Gingles* I threshold. Deductive reasoning says that the numerous precinct splits necessary to reach the *Gingles* I threshold is evidence that the Black VAP in Terrebonne, at this point in time, is not geographically compact to create a single member majority-minority district.

Response to ¶76. Plaintiffs cite to Mr. Cooper having served as an expert in at least five local-level redistricting plan and in every instance precincts were split and the court did not take any issue with that. Plaintiffs fail to inform the Court that Mr. Cooper's plans were never considered by those courts and therefore made no judgement regarding his use of precinct splits. In the *St. Landry School Board* Section 2 case, the Court never considered Mr. Cooper's plan.

[95] 517 U.S. 952, 962-63.
[96] Tr. 3/14/2017 at 71:7-71:12.
[97] Tr. 3/14/2017 at 75:24-75:25, 76:1.
[98] Tr. 4/27/2017 at 35:20-35:25, 36:1-36:18 and 149:20-149:25.
[99] Tr. 4/28/2017 at 29:16-29:25, 30:1-30:5.

Mr. Cooper testified that the Court used defense expert's, Mr. Hefner's, plan to fashion a compromise remedy.[100] In the *Prejean v. Foster* case, Mr. Cooper testified the Court there did not use his plan. The court used another expert's plan.[101] In the *Hays* case, Mr. Cooper stated in his report that his plan was not used by the Court. The court there used another expert's plan.[102] In that same report and paragraph, Mr. Cooper credits himself with changes in local election plans of the parish governments of East Carrol, West Carrol, Madison, and West Feliciana, and the St. Landry Parish School Board. Yet he states that none of his plans were taken up by the court in litigation or that he testified to any of his plans. In other words, Mr. Cooper's plans were never put to the test before any of those courts. The Plaintiffs' position that somehow the courts take no issue with a split-precinct plan as evidenced by Mr. Cooper's past work in Louisiana is unsubstantiated at best. (Of note, it is the Secretary of State, the chief election officer that retained Mr. Hefner on the issue of split precincts in this case.) What is more probative is that it goes to show that Mr. Cooper's plans submitted in those cases were ***not*** taken into consideration by those courts. Through his own testimony and report, Mr. Cooper stated that the courts in those cases used plans drawn by *other* experts.

Response to ¶77. Plaintiffs take issue with Mr. Hefner's extensive testimony opining that the *Plaintiffs' Illustrative Plan* is racially gerrymandered since it used race as the sole criteria. In their own testimony, Plaintiffs' expert Mr. Cooper testified that reaching the *Gingles* I threshold of a Black VAP in excess of 50% was the goal in drawing the *Illustrative Plan*. [103] In the *Miller v. Johnson* case, the Supreme Court said that, even absent a bizarrely shaped district, an allegation that race was the Legislature's dominant and controlling rationale in drawing district

[100] Tr. 3/14/2017 at 157:4:157:14.
[101] Tr. 3/14/2017 at 134:11-134:22.
[102] Declaration of William Cooper, ¶3.
[103] Tr. 3/14/2017 at 125:12-125:14.

lines was sufficient to state a racial gerrymandering claim.[104] Here it is the Plaintiffs who are using race as the sole criteria to cherry-pick a plan that meets their demographic objective. The same observation of the *Miller* Court should be applied here.

Response to ¶78. Plaintiffs allege that Mr. Hefner's opinion that the *Plaintiffs' Illustrative Plan* is racially gerrymandered conflicts with the 5th Circuit court decision in *Clark v Calhoun County*. Plaintiffs are expanding the Equal Protection holding in Clark to attempt to divert the Court's considerations regarding the circumstances arising from the development of the *Plaintiffs' Illustrative Plan*. Contrary to the Plaintiffs assertion that there is binding precedent that an Equal Protection Clause cannot be invoked for the *Gingles* preconditions, the Court in *Clark* merely noted that the shape of the district at issue was not as bizarre as the district in *Shaw* and therefore the Court was not going to apply the Equal Protection Clause in that particular case. The Court did ***not*** make any holdings or set any precedent that the application of equal protection was precluded when reviewing any plans under the *Gingles* preconditions for any other cases. The 5th Circuit in the *Clark* case has recognized that race, necessarily so, must be taken into account when analyzing a Section 2 case "It is also true that *Miller*, *Bush*, and *Shaw II* make clear that a majority-minority district is not per se unconstitutional." (at 1407). Defendants have no issue here. Defendants note though that the *Clark* Court further stated: "To be sure, this ***test of causation*** insists upon a compact district, and a ***remedial response*** narrowly tailored to remedying a found violation ***must also be compact***. However, that tailored response must use race at the expense of traditional political concerns ***no more than is reasonably necessary*** to remedy the found wrong." (at 1407, emphasis added).[105]

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[104] *Miller v. Johnson*, 515 U.S. 900 (1995).

[105] This is consistent with Mr. Hefner's testimony regarding the lack of compactness in the *Plaintiff's Illustrative Plan* as evidenced by the substantial number of precincts that were divided and maze of census blocks creating District 1. Compactness was comprised in order to reach the threshold *Gingles* I precondition. On a related facet,

Response to ¶80. Plaintiffs allege that because census blocks have been properly used in this case the *Illustrative* Plan is not a racial gerrymander and that it is a proper plan. As Mr. Hefner and Dr. Weber testified *supra*, Mr. Cooper did pick and choose which blocks to put into District 1 that would advance the racial numbers to the goal of over 50% Black VAP. The issue raised by Mr. Hefner is that for parish-level jurisdictions, traditional redistricting principals state that you should preserve communities of interest. As discussed *supra*, precincts are considered a community of interest. Therefore, any plan should at least be able to use precincts to the greatest extent possible first and then fine tune the demographics at the block level. Plaintiffs did not do that in this case.[106] As testified to, Mr. Cooper used solely the block geography.

Response to Dr. Weber's Answers

Response to ¶82. *See* related answer at ¶64 *supra*.

Response to ¶84. *See* related answer at ¶64 *supra*.

Response to ¶85. *See* related answer at ¶62 *supra*.

Response to ¶86. *See* related answer at ¶64 *supra*.

Response to ¶89. *See* related answer at ¶31 *supra*.

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the Court found that "*Bush* established a two-part inquiry for determining whether a majority-minority district passes constitutional muster. Such a district is constitutional if the State has a "strong basis in evidence" for concluding that the three Gingles preconditions are present and if the district drawn in order to satisfy § 2 does not "subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." (at 1407). Here the contention of the Defendants is that the *Illustrative Plan* subordinates the traditional redistricting principle of compactness more than would be otherwise necessary. Although the *Illustrative Plan* is just an illustrative plan, proof that another configuration could serve as a remedy and still meet the *Gingles* I precondition is questionable. The Plaintiffs have proven this by Mr. Cooper's *Alternative Plan* that uses whole precincts but comes short of the required 50% Black VAP. Therefore, that may leave the Court with only the *Illustrative Plan* to consider. If the Black VAP were sufficiently concentrated this would not be an issue. This Court does have the precedent authority to evaluate both the causation plan and any future remedy plan under the auspices of the Equal Protection Clause.

[106] As testified to, Mr. Cooper used solely the block geography. Actually, as the *Alternative Plan* later proved, the Black VAP is not sufficiently concentrated enough to be able to largely use precincts in the construction of a complying illustrative plan. That is the reason why the *Plaintiffs' Illustrative Plan* was drawn exclusively at the block level and why the plan did not comport to compactness and preservation of communities of interest traditional redistricting principles. Plaintiffs attempt to divert attention away from the race-centric approach of their *Illustrative Plan* by highlighting one majority-White census block Mr. Cooper chose to include in the plan. Inclusion of one block that had a total of 42 VAP Whites does not negate the overall race-centric approach of the Plaintiffs' Illustrative Plan. (*see* ¶30 *supra*).

Response to ¶90. *See* related answer at ¶78 *supra*.

Senate Factors In evaluating the Senate factors, "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" *Id*., at 30 (footnote omitted), and a "functional" view of the political process.[107] Therefore, an evaluation of both past and present is needed to evaluate each factor.

Senate Factor 1: Extent of Discrimination in Terrebonne Parish Plaintiffs have mistakenly only looked to the past. Plaintiffs' post-trial brief highlights that Louisiana's coverage under Section 5 ended in 2013, several years ago.[108] [109] Furthermore, Plaintiffs erroneously interpret the extent of the first Senate factor by focusing on factors outside of Terrebonne Parish. Gingles stated the first Senate factor was, "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."[110] Clearly, the conjunctive use of the word "or" in "political subdivision or state" is indicative that it is the jurisdiction at issue to be studied, which in this case is Terrebonne Parish. Plaintiffs point to many factors outside of Terrebonne Parish that have nothing to do with Terrebonne Parish, such as the *Chisom*[111] judgement regarding Louisiana Supreme Court Justice Johnson and the Fifth Circuit Court of Appeal, First District.[112] By reaching decades into the past and outside of Terrebonne Parish, Plaintiffs have ignored recent facts in Terrebonne Parish.

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[107] *Thornburg v. Gingles*, 478 U.S. 30, 45, 106 S.Ct. 2752, 2764, 92 L.Ed.2d 25, 43 (1986).
[108] Doc. 284 at p. 56.
[109] In Plaintiffs' efforts to cite cases finding at-large voting discriminatory, the most recent case they cite is from 1991, nearly thirty years ago. (Doc. 284 at p. 57). Plaintiffs go back decades to cite the votes of delegates at the 1973 Louisiana Constitutional Convention (Doc. 284 at p. 58). Plaintiffs also cite a rebuke from 1990, again almost three decades ago, for Louisiana not seeking preclearance on certain judgeships. (Doc. 284 at p. 58).
[110] *Gingles*, 478 U.S. 30, 36-37, 106 S.Ct. 2752, 2759, 92 L.Ed.2d 25, 38 (1986).
[111] Defendants' dispute Dr. Lichtman's characterization of the procedural history in *Chisom*, as well as the positions advanced by the Justices of the LA Supreme Court and other elected officials.
[112] Plaintiffs also cited to federal DOJ objections in locations hundreds of miles away from Terrebonne Parish. (Doc. 284 at p. 58). Such citations illuminate Plaintiffs' general unfamiliarity with Louisiana and the applicable law.

At trial, the former Terrebonne Parish Registrar of Voters testified it is very easy to vote in Terrebonne Parish[113] People are allowed to register vote regardless of what race they are.[114] By analyzing the *present* reality, it is clear that Black voters are able to register and vote without any discrimination in Terrebonne Parish. Furthermore, no Plaintiffs testified of any discrimination against them as it relates to voter registration and voting.

Senate Factor 2: Racially Polarized Voting Plaintiffs take issue with the fact that Dr. Weber did not find racially polarized voting in two of the elections he studied. Plaintiffs also find that his classification rule is not credible. *Id.* However, Dr. Weber has testified in dozens of Voting Rights Act cases and was qualified as an expert by this Court. His classification rule is merely a common sense rule applied by Dr. Weber that is based on positive voting.[115] The fact that Plaintiffs disagree with this rule make it no less reliable. Plaintiffs cannot prove RPV because there are insufficient elections to analyze.

Senate Factor 3: Enhancing Policies or Procedures Plaintiffs claim that a minority must compete in a runoff election because of the 32nd JDC majority-vote requirement. However, the current 32nd JDC judge Juan Pickett was elected without opposition. He was not required to participate in a runoff, as Plaintiffs suggest he would have been required to do.[116] Furthermore, no evidence was admitted at trial that Terrebonne Parish had ever considered or rejected a numbered post system that would allow single-shot voting. Without such a basis, clearly there is no discriminatory intent here. Plaintiffs fail to prove that Senate Factor 3 exists here.

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[113] Tr. 3/20/17 at 93:9-12.

[114] Tr. 3/20/17 at 94:11-13; Note numerous Plaintiffs and Plaintiffs' witnesses testified that they are registered to vote and actually participate in voter registration drives. (Tr. 3/13/17 at 61:12-61:18, 31:9-31:17, 218:15-218:23; Tr. 3/14/17 at 13:24-13:25, 18:3-18:7, 185:20-185:21; Tr. 3/17/17 at 75:19-75:24, 67:4-67:11).

[115] Tr. 4/28/17 at p. 170.

[116] Furthermore, Dr. Lichtman's statement that if single-shot voting existed in the 32nd JDC, African-Americans could "focus all of their votes on one candidate" is based on pure speculation, as he has been criticized for in the past. (Tr. 3/14/17 at 238:14-238:24).

Senate Factor 4: Candidate Slating Process Plaintiffs did not introduce any evidence to prove Senate Factor 4.

Senate Factor 5: Effects of Discrimination and Political Participation In regards to discrimination in education, Plaintiffs again reach back far into the past in order to attempt to make their claim. For example, Plaintiffs point to the *Brumfield* decision from 1975. (Doc. 284 at p. 64). This case was decided four decades ago. Plaintiffs also cite to a case about discrimination in higher education from 1951. (Doc. 284 at p. 65). While pointing to Louisiana's low rank on the percentage of minorities in majority-minority schools, Plaintiffs tacitly admit that over a dozen other states have lower ranks. By reaching to such past instances of discrimination, Plaintiffs ignore *Gingles*' requirement of analyzing the facts of the present. Plaintiffs clearly ignore other aspects of education described at trial, such as Terrebonne Parish School Board Member Gregory Harding stating that, "Terrebonne Parish school district's grades are "really outstanding."[117] and that one of the Plaintiffs, Wendell Desmond Shelby, testified that he received a "great education in Terrebonne Parish public schools.[118] Plaintiffs have also ignored modern-day features of education access in Louisiana, such as the TOPS program in Louisiana that created opportunities for students to go to college in Louisiana, and TOPS is a non-discriminatory program available to all races.[119] Some Plaintiffs and a Plaintiffs' witness received higher education in Louisiana.[120] The evidence, specifically in regards to present day circumstances, does not show that discrimination is present in Terrebonne or Louisiana education. With regard to health, Plaintiffs' post-trial brief only mentions the infant mortality

[117] Tr. 3/13/17 at 226:10-226:13.
[118] Tr. 3/17/17 at 87:14-87:17.
[119] Tr. 4/28/17 at 164:18-165:5.
[120] Tr. 3/13/17 at 33:3-33:12, 3/14/17 at 185:8-185:10, 3/17/17 at 88:12-88:22.

rate.[121] Plaintiffs also did not present evidence of many health factors at trial. Plaintiffs have simply not provided enough evidence of discrimination in the areas of health to prove it affects voter participation. Plaintiffs also cite to a law review article to address the role of race in the criminal justice system.[122] Criminal justice is not enumerated as an area of this factor. Plaintiffs also expand the boundary of Senate Factor 5 by saying that Plaintiffs testified to "racial discrimination in myriad aspects of life in Terrebonne."[123] Plaintiffs failed to state how these "myriad aspects" relate to education, employment, and health.[124] Defendants' expert Dr. Ronald Weber testified that "whatever socio-economic disparities exist between African-American and non-African-American persons within Terrebonne Parish have not led to differences in the voter registration or the turnout rates of the two groups."[125] However, Plaintiffs' own argument contains Dr. Weber's findings that there were two elections where Black turnout exceeded white turnout, namely in the 2008 and 2012 presidential elections.[126] Plaintiffs also point out there was one election in 2000 where Black registration exceeded white registration.[127] Clearly, it is quite possible for Black turnout and registration to exceed white turnout and registration. Such facts have been recorded. As a result, Plaintiffs cannot claim that such lingering effects of discrimination have prevented the Black population from political participation.

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[121] (Doc. 284 at p. 67).

[122] This law review article was not admitted into evidence, and Plaintiffs failed to provide statistics of any correlation involving race and criminal justice issues. Furthermore, Plaintiffs have again expanded the boundaries of a Senate factor, as Senate Factor 5 is "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." *Thornburg v. Gingles*, 478 U.S. 30, 37, (1986).

[123] Doc. 284 at p. 66.

[124] Rather, Plaintiffs point to an incident involving former Judge Ellender, who was later disciplined for his actions. Doc. 284 at p. 66. Plaintiffs in no way connected how Judge Ellender's actions at a Halloween party several years ago to Senate Factor 5, which questions how minorities are affected in the areas of education, employment, and health.

[125] Def. Ex. 6, p. 65, Bates No. LADOJ-14CV0069-0001278). Plaintiffs criticize Dr. Weber for this expert conclusion; Doc. 284 at p. 68.

[126] Doc. 284 at p. 68.

[127] Doc. 284 at p. 69.

Senate Factor 6: Racial Appeals in Political Campaigns Plaintiffs did not introduce any evidence to prove Senate Factor 6, and this factor cannot be proved to exist in Terrebonne Parish.

Senate Factor 7: Extent of Black Electoral Success Plaintiffs expand the boundaries of Senate factor 7 with no basis. Senate Factor 7 is, "the extent to which members of the minority group have been elected to public office in the jurisdiction."[128] The jurisdiction at issue is the 32nd JDC.[129] Such expansion demonstrates the difficulty in proving the existence of this factor.

Election of Juan Pickett Plaintiffs take issue with the election of Judge Juan Pickett to the 32nd JDC, and the timing of Judge Pickett's election and the lawsuit.[130] Judge Pickett's long desire to be a judge is well documented. Judge Pickett testified that he planned to run for the 32nd JDC as early as 2002, but decided he was not ready at that time. Because of his expressed intent to run, Judge Pickett was confident that local people knew as early as 2002 that he planned to run for judge.[131] He expected that a judicial seat would open up in 2008; however, there ended up not being an open seat until 2014.[132] Judge Pickett's decision to run for judge very much predates the filing of this lawsuit. Next, Plaintiffs take issue with the fact that Judge Pickett was unopposed. Non-incumbent judicial candidates are not rare in Louisiana.[133] Juan Pickett's election without opposition is not an outlier or a unique phenomenon as Plaintiffs maintain. Plaintiffs also contend that the evidence does not demonstrate that Judge Pickett was the candidate of choice of Black voters in Terrebonne Parish. In reality, one Plaintiff, Daniel Turner, testified that Juan Pickett was his candidate of choice. (Tr. 3/14/17 at 191:4-191:8). Furthermore, the testimony cited by other Plaintiffs do not rule out that Juan Pickett could have been their candidate of

[128] *Thornburg v. Gingles*, 478 U.S. 30, 37, 106 S.Ct. 2752, 2759, 92 L.Ed.2d 25, 38 (1986).
[129] Plaintiffs instead make arguments about Louisiana statewide offices and the Legislature. (Doc. 284 at p. 72). Plaintiffs also point to statistics about Congress. (Doc. 284 at p. 72).
[130] Doc. 284 at p. 73.
[131] Tr. 3/17/17 at p. 129:9-17.
[132] Tr. 3/17/17 at p. 127:17-23.
[133] In fact, for the election of November 4, 2014, there were 77 non-incumbent judicial candidates without opposition. See Def. 4 at pp. 8-9 Bates No. LADOJ-14CV0069-0000078, 79.

choice. Plaintiffs also point out that Juan Pickett did not sign a letter from Black lawyers supporting a majority-Black subdistrict for the 32nd JDC. There was no evidence at trial that Judge Pickett was ever shown this letter or given an opportunity to sign it. Plaintiffs also state that Judge Pickett testified in front of the Judiciary Commission regarding Judge Ellender's Halloween incident, and that Judge Pickett testified that he did not find Judge Ellender's acts to be offensive. Plaintiffs inexplicably ignore the testimony Plaintiffs' counsel elicited from Judge Pickett at trial, in which Judge Pickett testified that he did not know all the details of the incident.[134] Judge Pickett did say that he found Judge Ellender's conduct offensive.[135] Plaintiffs also maintain that Juan Pickett was "sponsored by the white community."[136] By doing so, Plaintiffs hint at some broader conspiracy or joint plan by the "white community" to elect Juan Pickett.[137] No such evidence exists, despite Plaintiffs' expert Dr. Lichtman's broad and unfounded conclusions. Dr. Lichtman did not interview anyone, and on cross admitted at trial that his determination of race of donors was based on hearsay within hearsay. Reverend Fusilier testified that Judges and the District Attorney "fixed" the election involving Juan Pickett to ensure that he would win judge. (Tr. 3/14/17 at p. 43:14-15). The 32nd JDC judges and the District Attorney are not defendants in this case. All judges and the district attorney appeared at the trial and offered testimony responding to the Plaintiffs' allegations, and the Plaintiffs claims are unsupported. [138]

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[134] (Tr. 3/17/17 at 177:7-177:14).
[135] (Tr. 3/17/17 at 177:20).
[136] (Doc. 284 at p. 77).
[137] Plaintiffs' failed to plead a conspiracy, even though they allege it at trial.
[138] Judge Walker never asked a black attorney or a white attorney not to run against Juan Pickett. (Tr. 3/20/17 at p. 181:25-182:4). He never tried to moot out the Plaintiffs' lawsuit. (Tr. 3/20/17 at p. 182:5-182:7). He does not control the lawyers in Terrebonne Parish. (Tr. 3/20/17 at p. 182:8-182:9). Judge Arceneaux was never part of a meeting with the judges of the 32nd JDC to come up with a plan to defeat the Plaintiffs' lawsuit and to select a black candidate to run for judge. (Tr. 3/17/17 at p. 222:10-222:13). He never encouraged a white lawyer not to run against Juan Pickett and he does not remember if there were any white lawyers that wanted to run for judge. (Tr. 3/17/17 at p. 222:14-222:24). Judge Arceneaux never talked to any black lawyer and discouraged them to run for

Plaintiffs also ignore completely valid reasons of why various white leaders in the community donated to and supported Judge Pickett's campaign for judge. Terrebonne Parish President and former state representative Gordon Dove testified that he knew Juan Pickett through the District Attorney's office.[139] He supported Judge Pickett, donated money to him, and stated clearly that his support had nothing to do with this lawsuit.[140] Parish President Dove stated he donates money to many candidates and various levels of government.[141] He also stated that he has supported and donated to Black officials who have run for office locally.[142] Former Speaker of the Louisiana House of Representatives Hunt Downer testified that Juan Pickett worked in his private law office for about five years.[143] In fact, Juan Pickett went to meet Mr. Downer to seek his advice before running for office.[144] This testimony is not indicative of some

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any reason but particularly to moot out the Plaintiffs' lawsuit. (Tr. 3/17/17 at p. 222:24-223:3). Houma City Court Judge Hagan was not part of a plan to make sure that Juan Pickett won as District Court Judge to defeat the Plaintiffs' lawsuit, nor did he know of a plan involving the judges or elected officials in Terrebonne Parish to select Juan Pickett as the candidate to moot out the lawsuit. (Tr. 3/17/17 at p. 204:15-204:23). In fact, he did not what the Defendants' attorney was talking about when he was asked about such a plan. (Tr. 3/17/17 at p. 204:18). Judge Larke never told any white or black lawyer not to run against Juan Pickett to moot out the Plaintiffs' lawsuit. (Tr. 3/20/17 at p. 125:14-125:17). He testified that there was never any plan by the judges to try to defeat the Plaintiffs' lawsuit. (Tr. 3/20/17 at p. 125:21-125:24). Judge Bethancourt never told any white or black lawyer not to run against Juan Pickett. (Tr. 4/26/17 at p. 87:5-87:7). Judge Pickett's decision to run for judge was something he wanted to do. The Plaintiffs' lawsuit did not play role in his decision nor did anyone wanted him to run or push him or encourage him. (Tr. 3/17/17 at p. 132:13-132:20). Judge Pickett was unaware of whether there was any plan or any type of conspiracy to see that he was elected to moot out the Plaintiffs' lawsuit. (Tr. 3/17/17 at p. 138:7-138:13). Judge Pickett was emphatic that he knew nothing a plan, did not participate in a plan and that people who knew him knew he did not operate that way. (Tr. 3/17/17 at p. 138:11-138:113). Judge Pickett did not find it an aberration that out of 168 white lawyers in Terrebonne Parish that not one of them ran against him. (Tr. 3/17/17 at p. 169:16-169:20). He did not think it was more of an aberration that he was black and no other lawyer ran against Chris Boudreaux who was white ran for Judge in Lafourche Parish. (Tr. 3/17/17 at p. 169:21-170:3). District Attorney Joe Waitz never asked Juan Pickett to run for Judge. (Tr. 3/20/17 at p. 153:24-154:2). He never told any white or black lawyers not to run against Juan Pickett. (Tr. 3/20/17 at p. 154:13-154:5). He was not aware of nor was he part of any plan to have Juan Pickett elected to moot out the Plaintiffs' lawsuit. (Tr. 3/20/17 at p. 154:16-154:18). Plaintiffs' attorneys, in direct contradiction of their own expert's testimony, offered to stipulate to the fact the Judges of the 32nd Judicial District Court have not taken part in a conspiracy to let Judge Pickett run unopposed. (Tr. 3/20/17 at p. 201:8-201:11.

[139] Tr. 4/26/17, morning, at 26:1-26:7.
[140] Tr. 4/26/17, morning, at 26:8-26:15.
[141] Tr. 4/26/17, morning, at 26:16-26:21.
[142] Tr. 4/26/17 at 27:9-29:17.
[143] Tr. 4/28/17 at 219:5-219:13.
[144] Tr. 4/28/17 at 219:16-220:2.

broader conspiracy, but it is rather indicative of existing relationships Judge Pickett had cultivated after decades of working in Terrebonne Parish.

Plaintiffs also criticize Michael Beychok's analysis of Judge Pickett's election, claiming that "no reliable conclusions can be drawn from the examples he presents."[145] However, Mr. Beychok did provide examples of how other candidates could be deterred from running against Judge Pickett.[146] As for other elections, Mr. Beychok noted that each election was different, and what deterred someone in the 32nd JDC may not have deterred someone running for City Court, and not all campaigns are created equal. In fact, Mr. Beychok testified that based on his professional experience, a candidate has decided not to run many times because they started their campaigns late and other candidates had already raised money.[147] Plaintiffs' own expert, Dr. Lichtman, testified that it would have been futile for other candidates to solicit money from affluent people in Terrebonne Parish because "they were all lining up behind Juan Pickett." This statement from Dr. Lichtman lends support to Mr. Beychok's theory that starting a campaign earlier and raising money is invaluable to a political campaign to help deter other candidates from running.

Plaintiffs also take issue with the fact that Judge Pickett was elected during the pendency of this lawsuit.[148] However, Plaintiffs attempt to bolster their case by pointing to the electoral losses of Cheryl Carter for Houma City Court and David Mosely for Houma City Marshal.[149] Plaintiffs' arguments run counter to each other by pointing out one election during the pendency

[145] Doc. 284 at p. 80.
[146] For example, Mr. Beychok noted that a candidate trying to raise funds would have learned that a donor had already donated money to Judge Pickett. (Tr. 4/26/17, afternoon, at 165:21-166:5).
[147] Tr. 4/26/17, afternoon, at 169:22-170:4).
[148] (Doc. 284 at p. 145).
[149] (Doc. 284 at p. 43).

of the lawsuit while ignoring the other.[150] The notion that the "white community" got together to "sponsor" Judge Pickett's election to moot out this lawsuit is a false narrative. Rather, Plaintiffs attempt to discredit the completely valid election of a minority, Judge Juan Pickett, to the 32nd JDC.

Miscellaneous Elections Plaintiffs criticize Mr. Beychok's analysis of ward-level elections to prove Black candidates can win in Terrebonne Parish. However, Plaintiffs again downplay the relation of this statistic to the Senate factor, which is the extent of minority success in Terrebonne Parish. These ward-level elections must be considered for a complete analysis of Senate Factor 7. The elections analyzed by Mr. Beychok prove that Black candidates can be successful in non-majority-minority districts in Terrebonne Parish.

Michael Beychok's Analysis Plaintiffs criticize Mr. Beychok's expert analysis by claiming that Mr. Beychok did not analyze race. (Doc. 284 at p. 85). However, Mr. Beychok acknowledged that race is a factor in Terrebonne Parish elections. (Tr. 4/26/17, afternoon, at 118:8-118:9). What Mr. Beychok found, in conducting his analysis, is that money, time, and people turned out to be the most important factors in elections. (Tr. 4/26/17, afternoon, at 121:13-121:20). He testified that money is the most important factor in determining whether someone can be elected. (Tr. 4/26/17, afternoon, at 32:7-32:15). He also testified that if someone does not have money, they can compensate for that with time and people. (Tr. 4/26/17, afternoon, at 32:20-33:10). Plaintiffs attempt to make the claim that Mr. Beychok's analysis is somehow flawed because he did not do a statistical analysis on race in elections. However, Mr. Beychok did consider race in his analysis. After conducting his analysis, he found time, money, and people to be the most important factors, with money being the most important among those

[150] Also, the time from the filing of the lawsuit to the conclusion of trial was over three years. Plaintiffs would have this Court ignore the three most recent years' worth of elections. This is highly improper. Also, candidates elected during the pendency of a lawsuit are no less elected to office than candidates elected at the time.

factors. Mr. Beychok's analysis finding that time, money, and people were more important factors than race do not lead less credibility to his testimony. In fact, the results of Mr. Beychok's analysis prove his methods to be true. In the elections he studied, he found that, "the top fundraiser in every race won the race in 4 out of 5 cases and made the runoff election in every case. It is not a coincidence that the candidate who started his campaign before all other candidates also won the race in 4 out of 5 cases." (Ex. Def-8, Bates No. LADOJ-14CV0069-0001392). Mr. Beychok's analysis explains why Black candidates have tended to lose elections because, "in almost all of the elections examined, the African American candidates were outspent by a considerable margin." *Id.* Also, he found that, "African American candidates started their campaigns later than nearly all of their opponents in their respective races." *Id.*

Plaintiffs also criticize Mr. Beychok for not considering socioeconomic disadvantages of Black residents in Terrebonne Parish. However, this was studied by another Defendants' witness, Dr. Weber, who found that socioeconomic differences between Black and white voters in Terrebonne Parish do not yield differences in political participation. (Ex. Def-6, p. 65, Bates No. LADOJ-14CV0069-0001278). Evidence introduced at trial showed that Black candidates can just as easily obtain campaign donations as any other candidate. Testimony at trial from Terrebonne Parish President Gordon Dove stated he donated space in his businesses to minority candidates such as Arlanda Williams and Juan Pickett. (Tr. 4/26/17, morning, at 27:12-27:17). Additionally, Judge Pickett raised over $60,000 for his campaign from a variety of sources, including white leaders in Terrebonne Parish. (Ex. Def-8, Bates No. LADOJ-14CV0069-0001379).

Plaintiffs have also mischaracterized Mr. Beychok's testimony, claiming that in the 2014 City Marshal election, D.L. Mosely was at a "racial disadvantage." However, a thorough

reading of the transcript reveals that Mr. Beychok actually stated Mr. Mosely had a disadvantage regarding the number of African-American registered to vote. (Tr. 4/26/17, afternoon, at 130:5-130:11). Plaintiffs also mischaracterize Mr. Beychok's testimony regarding race, claiming that Mr. Beychok had a "failure to consider race as a factor." (Doc. 284, fn. 100). In fact, Mr. Beychok made it clear that race is a factor in Terrebonne Parish elections. (Tr. 4/26/17, afternoon, at 118:8-118:9). However, his analysis showed that time, money, and people were the most important factors contributing to the election or defeat of a candidate. (Tr. 4/26/17, afternoon, at 121:15-121:20).

Angele Romig's Analysis Plaintiffs criticize Ms. Romig's analysis of non-racial factors. (Doc. 284 at p. 91). However, Plaintiffs ignore Ms. Romig's testimony in which she stated, "[r]egardless of your race, if you can go to the jurisdiction and show them your strategy for winning, you can fundraise." (Tr. 3/20/17 at 76:17-76:22). In fact, Ms. Romig worked on campaigns where Black candidates raised money and were able to win their campaigns. (Tr. 3/20/17 at 87:5-87:8). Also, Plaintiffs do not appear to dispute Ms. Romig's findings that 95% of judicial incumbent candidates win election in Louisiana. Such an important factor as incumbency is necessary to consider for analysis of non-racial factors.

Lack of Black candidates Plaintiffs also state that minorities are discouraged from running for office in Terrebonne Parish because of racially polarized voting and enhancing factors. (Doc. 284 at p. 94). No minority lawyers have run for judge on the 32nd JDC between 1995 and 2014. Rather than discouragement from running, the lack of Black candidates for the 32nd JDC has more to do with the lack of Black individuals who are qualified to run for judge. Dr. Weber performed analysis to determine how many minority lawyers are in Terrebonne Parish that may be able to qualify to run for judge to the 32nd JDC. He came up with approximately 10 lawyers,

which included Judge Pickett and his wife. (Tr. 4/28/17 at p. 77:12-25). Furthermore, no minority lawyers testified that they were somehow prohibited from running for judge on the 32nd JDC. None of the Plaintiffs are minority lawyers. There is clearly a lack of Black lawyers interested in running for judge. Not only are Black lawyers disinterested, white lawyers are disinterested from running. In the entire history of the court, there have only been a total of 14 elections, and most judges are re-elected unopposed.

Judge Pickett's election, and the election of many other Black candidates in Terrebonne Parish, proves that Black voters can be successful for both the 32nd JDC and other offices in Terrebonne Parish. Therefore, Plaintiffs cannot prove that Senate Factor 7 is in their favor.

Senate Factor 8: Responsiveness of Elected Officials Plaintiffs do not address Senate Factor 8 in their post-trial brief, other than to state that "Senate Factor 8 may be less relevant in this case." (Doc. 284 at p. 147). Plaintiffs have failed to prove Senate Factor 8 is in their favor. Rather, as Defendants described in details in Doc. 285, elected officials in Terrebonne Parish have been very responsive to the minority community in Terrebonne Parish. (Doc. 285 at p. 78).

Senate Factor 9: Tenuousness of Policy Plaintiffs begin their analysis of Senate Factor 9 by noting that Louisiana has established district-based voting at all levels of government. (Doc. 284 at p. 95). However, Plaintiffs acknowledge in their own brief that only 12 of 41 JDC's in Louisiana use district-based voting to elect judges. (Doc. 284 at p. 97). The vast majority of judicial districts in Louisiana do not utilize district-based voting. Plaintiffs then go on to state that based on Dr. Lichtman's testimony, the policy underlying at-large voting in the 32nd JDC is "pretextual." (Doc. 284 at p. 98). Plaintiffs do not explain how this policy is pretextual, and only base this statement on the words of Dr. Lichtman, whose testimony is speculative as detailed in Doc. 285.

Linkage Plaintiffs also attack linkage as indefensible in maintaining the current at-large system of electing judges in the 32nd JDC. Although the U.S. Supreme Court held that linkage does not automatically outweigh proof of racial vote dilution in every case, it certainly did not rule it out and held that, "[a] State's justification for its electoral system is a proper factor for the courts to assess in a racial vote dilution inquiry, and the Fifth Circuit has expressly approved the use of this particular factor in the balance of considerations." *Hous. Lawyers' Ass'n v. Atty. Gen.*, 501 U.S. 419, 426-27, 111 S.Ct. 2376, 2381, 115 L.Ed.2d 379, 387 (1991). Therefore, when considering all factors, a state's linkage interest *can* be used to defeat a Section 2 claim. Further, the *LULAC* case found a state's interest in linkage to be substantial. *League of United Latin Am. Citizens, Council No. 4434 v. Clements,* 999 F.2d 831, 876 (5th Cir. 1993). The rulings of the Supreme Court and Fifth Circuit have plainly held a state's linkage to be very significant, and require it to be considered among other factors. Plaintiffs' arguments that this linkage is "tenuous" or "pretextual" are simply without merit.

Plaintiffs also criticize the value of accountability in at-large elections in the 32nd JDC by pointing to the reelection of Judge Ellender in 2008. (Doc. 284 at p. 98). The fact that Judge Ellender won reelection after his Halloween incident is proof of accountability, not proof of lack of accountability. Judge Ellender was disciplined for his actions. (Ex. Def-28). He then had to qualify to run for office, and stand before the entire electorate of Terrebonne Parish. No one ran against him. Any qualified candidate in the parish could have opposed him, yet no one chose to oppose him. He was able to win reelection without opposition. It is obvious no attorney, black or white, wished to replace him on the bench. However, the current at-large system in place in Terrebonne Parish gave every qualified attorney in Terrebonne Parish the opportunity to run against him, and if he had an opponent, every qualified voter in Terrebonne Parish would have

been able to vote for or against him. If there was some form of district-based voting, it is possible Judge Ellender would have only had to be accountable to a much smaller portion of the population, even though all of the population may have had proceedings in his court.

The current system of electing judges in Terrebonne Parish ensures accountability of all the judges to all the voters. The voters of Terrebonne Parish get to maintain the linkage they have with the judges they elect and the judges they appear before. Changing this method, a substantial state interest, would remove the right of individuals to have a say in their judicial system.

Plaintiffs claim they have established Senate Factors 1, 2, 3, 5, 7 and 9. (Doc 284 at p. 146). As discussed supra and in Doc. 285, Plaintiffs have failed to prove any of these factors. By struggling to meet even one Senate Factor, Plaintiffs' claims cannot be successful.[151] Further, as discussed in Doc. 285, Plaintiffs have not proven that their candidates of choice for the 32nd JDC have not been elected. Plaintiff Daniel Turner noted that Juan Pickett was his candidate of choice. (Tr. 3/14/17 at 191:4-191:8) Gordon Dove testified at trial that he was the candidate of choice of minorities and won minority precincts by 65%-80% when his entire election was won with only 60%. (Tr. 4/26/17, morning, at 16:21-17:4). District Attorney Joseph Waitz, a white man, testified that he was some Black voters' candidate of choice. (Tr. 3/20/17 at 158:24-159:10). Plaintiff Rev. Fusilier confirmed that District Attorney Waitz was his candidate of choice each time District Attorney Waitz ran for office. (Tr. 3/14/17 at 30:22-

[151] "Minority voters may be able to prove that they still suffer social and economic effects of past discrimination, that appeals to racial bias are employed in election campaigns, and that a majority vote is required to win a seat, but they have not demonstrated a substantial inability to elect caused by the use of a multimember district. By recognizing the primacy of the history and extent of minority electoral success and of racial bloc voting, the Court simply requires that § 2 plaintiffs prove their claim before they may be awarded relief."*Thornburg v. Gingles*, 478 U.S. 30, 48 n.15, 106 S.Ct. 2752, 2765, 92 L.Ed.2d 25, 45 (1986)

30:24, 31:6-31:9). Plaintiffs have not met *Gingles*' burden of proving they cannot elect their candidates of choice. [152]

Wherefore, the Defendants pray that there be judgment in their favor, dismissing the Plaintiffs' claims at the Plaintiffs' costs.

RESPECTFULLY SUBMITTED,

/s/ Angelique Duhon Freel

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 19th day of June 2017, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system which gives notice of filing to all counsel of record. Counsel of record not registered in the CM/ECF systems were served via other means. Counsel of record who will receive the filing using the CM/ECF system include:

Leah C. Aden, Madeline S. Carbonette, Natasha M. Korgaonkar, Deuel Ross, Ronald Lawrence Wilson, Victorien Wu

____/s/ Angelique Duhon Freel

[152] Furthermore, the Supreme Court has highlighted the possibility that minority voters can elect candidates of choice without subdistricts:

> If the lesson of *Gingles* is that society's racial and ethnic cleavages sometimes necessitate majority-minority districts to ensure equal political and electoral opportunity, that should not obscure the fact that there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice. Those candidates may not represent perfection to every minority voter, but minority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics.
> *Johnson v. De Grandy*, 512 U.S. 997, 1020, 114 S.Ct. 2647, 2661, 129 L.Ed.2d 775, 796 (1994).