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

TERREBONNE BRANCH NAACP, *et al.*, *Plaintiffs*, v. PIYUSH ("BOBBY") JINDAL, the GOVERNOR of the STATE OF LOUISIANA, in his official capacity, *et al.*, *Defendants*.	Civil Action. No. 3:14-cv-69-JJB-EWD

PLAINTIFFS' POST-TRIAL
PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Plaintiffs challenge Louisiana's use of at-large voting for the 32nd Judicial District Court ("32nd JDC"), a state court that exercises jurisdiction over Terrebonne Parish ("Terrebonne"), because it dilutes Black voting strength in violation of Section 2 of the Voting Rights Act of 1965 ("Section 2"), 52 U.S.C. § 10301, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution ("Fourteenth and Fifteenth Amendments"). A bench trial was held on March 13-20 and April 26-28, 2017. The Court, having considered all testimony, evidence, and arguments presented by the parties, hereby enters the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a).[1]

FINDINGS OF FACT

BACKGROUND

2. Plaintiff Terrebonne Branch NAACP ("Terrebonne NAACP") is a nonprofit, nonpartisan,

[1] To the extent that any finding of fact constitutes a conclusion of law, the Court adopts it as such, and to the extent that any conclusion of law constitutes a finding of fact, the Court adopts it as such. The Court is mindful that "the resolution of a vot[e] dilution claim requires [a] close analysis of unusually complex factual patterns, and . . . district courts [must] explain with particularity their reasoning and the subsidiary factual conclusions underlying their reasoning." *Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1203 (5th Cir.1989).

Unless otherwise noted, the stipulations are identified in the Second Amended Joint PTO. Doc. 236 at 12-14. Plaintiffs' Exhibits are identified as P1, P2, and so forth. Defendants' Exhibits are identified as D1, D2, and so forth.

interracial civil rights organization founded in 1984. Stip. No. 1; 3/13/17 Tr. at 47:20-22, 50:12-17. It maintains an office in Houma and has approximately 300-400 members who reside in various parts of the parish, including Houma, Gray, and Schriever. 3/13/17 Tr. at 36:21-37:11, 50:9-11; 3/14/17 Tr. at 10:18-20. Terrebonne NAACP seeks to eliminate racial discrimination in the parish. 3/13/17 Tr. at 48:9-13. Jerome Boykin has been a member and President of Terrebonne NAACP since 1997 and, in that capacity, is the spokesperson of the organization, oversees its operations, and chairs all meetings. 3/13/17 Tr. at 36:13-20, 47:17-19, 47:23-48:6. Terrebonne NAACP's advocacy for a majority-Black subdistrict for the 32nd JDC has spanned 20 years and six different pieces of legislation and has involved legislators, judges, parish officials, and others. 3/13/17 Tr. at 69:6-25, 75:12-24. Terrebonne NAACP has expended financial and other resources in this advocacy. P142; P143; P144; P145; 3/13/17 Tr. at 80:22-84:25.[2]

3. Each individual Plaintiff, Rev. Vincent Fusilier, Lionel Myers, Daniel Turner, and Wendell

[2] Since 1997, Terrebonne NAACP has advocated for a majority-Black subdistrict for the 32nd JDC. 3/13/17 Tr. at 62:25-64:2. In 1997, after learning about House Bill ("H.B.") 1399, a bill to create a sixth 32nd JDC judgeship elected at-large, Mr. Boykin traveled to Baton Rouge with Anthony Lewis and Kevin Thompson, two Black attorneys in Terrebonne, to urge Rep. Hunt Downer, then-Speaker of the Louisiana House of Representatives, to create a majority-Black subdistrict. *Id.* at 63:9-65:15, 67:12-15; *see also infra* (facts relating to H.B. 1399 of 1997). In 1998, Mr. Boykin spoke to Sen. John Siracusa, who sponsored Senate Bill ("S.B.") 166, a bill to create a sixth 32nd JDC judgeship elected at-large, to oppose the bill and advocate for a majority-Black subdistrict. *Id.* at 67:16-68:1, 68:6-69:4; *see also infra* (facts relating to S.B. 166 of 1998). Between 1999 and 2001, Mr. Boykin also engaged in advocacy with Sen. Michael Robichaux, Sen. Butch Gautreaux, and Rep. Carla Dartez, each of whom agreed to sponsor a bill to create a majority-Black subdistrict for the 32nd JDC. 3/13/17 Tr. at 69:6-25; *see also infra* (facts relating to S.B. 1052 of 1999, S.B. 968 of 2001, and H.B. 1723 of 2001). In 2003 and 2004, after Judge Timothy C. Ellender of the 32nd JDC appeared in public at the 1921 Seafood Restaurant in blackface, an afro wig, a prison jumpsuit, and handcuffs for a Halloween party, with his wife dressed as a correctional officer, Terrebonne NAACP filed a complaint against Judge Ellender with the Judiciary Commission of Louisiana, and Mr. Boykin testified before that commission in connection with the complaint. 3/13/17 Tr. at 59:9-60:17; *see also infra* note __. In 2010 and 2011, Mr. Boykin engaged in advocacy with Reps. Joe Harrison, Dalton Honoré, and Damon Baldone, parish officials, and local media to create a majority-Black subdistrict for the 32nd JDC. 3/13/17 Tr. at 70:1-73:22; *see also infra* (facts relating to H.B. 582 of 2011). In 2011, Mr. Boykin testified in the Legislature in support of H.B. 582 of 2011, co-sponsored by Reps. Honoré and Baldone, to create a majority-Black subdistrict for the 32nd JDC. D19-A at 42:20 to 46:16; 3/13/17 Tr. at 73:23-74:17, 115:8-15, 116:4-10. In mid-June 2011, following the failure of H.B. 582, and having exhausted all legislative avenues for relief, Terrebonne NAACP began to publicize its intent, including in the local media, to file a lawsuit to challenge at-large voting for the 32nd JDC. P66; 3/13/17 Tr. at 75:25-77:25.

Desmond Shelby, Jr., is a Black registered voter and resident of Terrebonne.[3] Stip. Nos. 2-5; 3/14/17 Tr. at 7:3-4, 13:24-14:3 (Rev. Fusilier); D47 at 20:20-21:9, 31:19-32:1 (Mr. Myers); 3/14/17 Tr. at 182:2-6, 185:17-186:1 (Mr. Turner); 3/17/17 Tr. at 58:9-10, 75:17-76:15 (Mr. Shelby). At-large voting denies each individual Plaintiff of the equal opportunity to elect his candidate of choice to the 32nd JDC. 3/14/17 Tr. at 14:24-17:3, 17:20-22, 18:15-19:24 (Rev. Fusilier); D47 at 20:20-21:9, 31:11-32:1 (Mr. Myers); 3/14/17 Tr. at 186:5-20, 188:25-190:7, 191:19-192:6, 192:15-193:12, 199:16-22, 200:1-6 (Mr. Turner); 3/17/17 Tr. at 76:25-78:13, 79:15-81:25, 83:14-84:1, 85:17-86:19 (Mr. Shelby); *see also infra*. All individual Plaintiffs reside in District 1 of Plaintiffs' *Illustrative Plan*—an area that could constitute a single-member district ("SMD") containing a majority-Black voting-age population ("VAP"). D47 at 35:20-36:21; 3/13/17 Tr. at 106:7-21; 3/14/17 Tr. at 22:20-25, 110:7-14; *see also infra*.

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[3] Rev. Fusilier was born in 1957 in Lafayette and has lived in Terrebonne for about 50 years. 3/14/17 Tr. at 6:24-7:2, 7:5-8. He joined the ministry more than 20 years ago and has been a pastor in Houma for at least 15 years. *Id.* at 7:9-18, 8:3-5, 8:8-14. He has been a member of Terrebonne NAACP and the Southern Christian Leadership Conference ("SCLC"). *Id.* at 9:22-10:17.

Mr. Myers was born in 1939 and grew up in Port Allen. D47 at 7:17-18, 8:19-9:6. After high school, he enrolled in Southern University, served in the U.S. Army as a military police officer, and after being honorably discharged, completed his bachelor's degree at Southern. *Id.* at 9:1-11:22. In 1976, Mr. Myers joined the Louisiana State Police and moved to Terrebonne, where he has resided ever since. *Id.* at 5:22-6:2, 11:23-12:7, 16:11-25. Mr. Myers retired from the State Police in 2000, after serving for nearly 25 years, due to his age. *Id.* at 13:12-17, 14:11-16. He has been a member of Terrebonne NAACP and its Executive Committee. *Id.* at 19:22-20:19, 30:5-9, 58:12-21.

Mr. Turner was born in New Orleans and grew up in Houma. 3/14/17 Tr. at 181:14-182:1, 184:20-185:16. He worked for the Houma Fire Department from 1968 to 2001. *Id.* at 182:13-183:15. He is the first Black professional firefighter and Assistant Fire Chief in Terrebonne and served as Acting Fire Chief on three occasions. *Id.* at 183:16-184:5. Mr. Turner was hired by the department after he made a civil rights complaint; prior to that, multiple white applicants, who, unlike Mr. Turner, had not taken the requisite exam, were offered employment. *Id.* at 182:13-183:15. Mr. Turner has been a member of Terrebonne NAACP and its Executive Committee. *Id.* at 196:6-8.

Mr. Shelby was born in 1993 and grew up in Houma. 3/17/17 Tr. at 58:7-59:11. In 2011, he graduated from Terrebonne High School with the highest number of credits ever received by a high school student in Louisiana. *Id.* at 59:12-60:1, 88:4-9. Between 2011 and 2016, Mr. Shelby studied at Louisiana State University, becoming the first member of his immediate family to attend college. *Id.* at 59:3-60:24, 62:4-24. While there, he also worked for Louisiana's Disaster Recovery Unit to support himself financially. *Id.* at 62:25-63:24, 88:23-89:4. In the second half of 2016, he worked as a volunteer in North Carolina to help register and educate voters for the upcoming election. *Id.* at 62:4-24. Other than his time at LSU and in North Carolina, Mr. Shelby has resided in Houma. *Id.* at 58:11-22, 62:4-24. He intends to re-enroll in courses at LSU, attend law school, and return to Terrebonne to practice law, and he aspires to become a judge. *Id.* at 58:23-59:2, 60:5-24, 63:25-65:7, 83:14-84:1. He has been a member of Terrebonne NAACP since he was 13 and has served in various leadership roles. *Id.* at 66:11-67:11. He testified in support of H.B. 582 of 2011, alongside other members of Terrebonne NAACP. *Id.* at 82:2-83:13; *see also* D19-A at 2:06:55 to 2:08:48.

4. The Governor of Louisiana ("Governor") is a defendant in his official capacity. Doc. 1 ¶ 17. The Governor is the chief executive officer of Louisiana and has the duty to support the U.S. Constitution and the Voting Rights Act of 1965 ("VRA"). Stip. No. 15; 4 U.S.C. § 101; La. Const. art. IV, § 5(A). The Governor is empowered to (1) appoint a task force to study the electoral method for the 32nd JDC, *see* D48 at 106:2-107:8, 111:13-112:5[4]; (2) recommend that the Legislature enact legislation to change that method, *see* La. Const. art. IV, § 5(B); (3) call an extraordinary session of the Legislature to enact legislation to alter that method, *see id.* art. III, § 2(B)[5]; (4) draft legislation to alter that method, *see* D48 at 34:25-35:13; (5) review all legislation filed in the Legislature, *id.* at 86:19-87:3; (6) publicly record his position on legislation regarding the electoral method for the 32nd JDC, *see id.* at 29:10-31:15, 59:1-18; and (7) use his veto power to force the Legislature to enact legislation to change that method and ultimately sign[6] or veto[7]

[4] For example, in 1988, the Governor appointed a task force to study the electoral method for judges. P10; *Terrebonne Parish NAACP v. Jindal*, 154 F. Supp. 3d 354, 362-63 (M.D. La. 2015) (citing Doc. 168 at 7 & n.12). In 1966, the Governor also "appointed a committee to study reapportionment of the legislature and to make appropriate recommendations." *Bannister v. Davis*, 263 F. Supp. 202, 209 (E.D. La. 1966) (three-judge court).

[5] For example, the Governor called extraordinary sessions to address judgeships and/or legislative redistricting in 1996, 1998, 2001, 2002, and 2006. *See Terrebonne Parish NAACP*, 154 F. Supp. 3d at 362-63 (citing Doc. 168 and 7 n.13 (collecting gubernatorial proclamations calling extraordinary sessions)).

[6] The Governor has signed dozens of bills regarding judgeships and judicial redistricting or allowed them to become law without his signature, including: Act 513 of 1992 (Third Circuit Court of Appeal), *see* 1992 La. Sess. Law Serv. Act 513 (S.B. 1266) (West); Act 1069 of 1992 (Second Circuit Court of Appeal and 23rd and 27th JDCs), *see* 1992 La. Sess. Law Serv. Act 1069 (S.B. 1161) (West); Act 214 of 1993 (16th JDC), *see* 1993 La. Sess. Law Serv. Act 214 (S.B. 232) (West); Act 609 of 1993 (Baton Rouge City Court), *see* 1993 La. Sess. Law Serv. Act 609 (S.B. 1126) (West); Act 644 of 1993 (Monroe City Court), *see* 1993 La. Sess. Law Serv. Act 644 (H.B. 2068) (West); Act 145 of 1994 (1st and 19th JDCs and East Baton Rouge Parish and Caddo Parish Juvenile Courts), *see* 1994 La. Sess. Law Serv. 3rd Ex. Sess. Act 145 (H.B. 105) (West); Act 184 of 1995 (East Baton Rouge Parish Family Court), *see* 1995 La. Sess. Law Serv. Act 184 (H.B. 1900) (West); Act 377 of 1995 (4th JDC), *see* 1995 La. Sess. Law Serv. Act 377 (H.B. 2198) (West); Act 240 of 1997 (Shreveport City Court), *see* 1997 La. Sess. Law Serv. Act 240 (H.B. 1406) (West); Act 99 of 1998 (15th JDC), *see* 1998 La. Sess. Law Serv. 1st Ex. Sess. Act 99 (H.B. 55) (West); Act 403 of 1999 (14th JDC), *see* 1999 La. Sess. Law Serv. Act 403 (S.B. 65) (West); Act 416 of 2007 (11th and 42nd JDCs), *see* 2007 La. Sess. Law Serv. Act 416 (H.B. 846) (West); Act 369 of 2008 (First Circuit Court of Appeal), *see* 2008 La. Sess. Law Serv. Act 369 (H.B. 854) (West); Act 133 of 2009 (Second Circuit Court of Appeal), *see* 2009 La. Sess. Law Serv. Act 133 (H.B. 309) (West); Act 457 of 2012 (24th JDC), *see* 2012 La. Sess. Law Serv. Act 457 (H.B. 767) (West); Act 474 of 2012, (41st JDC), *see* 2012 La. Sess. Law Serv. Act 474 (S.B. 625) (West); and Act 374 of 2015 (Baton Rouge City Court), *see* 2015 La. Sess. Law Serv. Act 374 (H.B. 76) (West).

[7] Excluding line-item vetoes, since 1975, the Governor has vetoed 876 bills passed by the Legislature, including S.B. 908 in 1997, which would have created an additional judgeship for the 15th JDC, and S.B. 429 in 2008, which would have allowed the next vacancy on the 24th JDC to be elected from an existing majority-Black subdistrict. *See*

legislation that would do so, *see* Stip. Nos. 10-13; La. Const. art. III, §§ 17, 18(A), 18(C); D48 at 29:3-9, 54:1-12, 54:21-55:2.

5. The Attorney Governor of Louisiana ("AG") is a defendant in his official capacity. Doc. 1 ¶ 18. The AG is the chief legal officer of Louisiana and has the duty to support the U.S. Constitution and the VRA. Stip. No. 16; 4 U.S.C. § 101; La. Const. art. IV, § 8. The AG: (1) reviews and monitors all bills filed in the Legislature, D46 at 64:12-65:21, 66:10-69:13; (2) offers legal advice on pending legislation and appears before the Legislature, *see* La. Rev. Stat. Ann. § 49:253; D46 at 55:20-56:17, 57:1-16, 59:18-61:14, 108:12-109:15; (3) issues formal legal opinions to state and local officials, including on matters of federal and state election law, *see* La. Rev. Stat. Ann. § 49:251; D46 at 41:12-43:25, 59:9-16[8]; and (4) is responsible for obtaining preclearance for voting changes under the VRA, 52 U.S.C. § 10304(a) (providing that "the chief legal officer" of a state is to submit proposed voting changes for preclearance); D46 at 36:16-37:12, 39:19-25; *see also* La. Att'y Gen. Op. No. 13-0124, 2013 WL 5588151, at *2 (2013).

6. The Governor and/or the AG have been defendants in numerous voting rights cases in Louisiana, including the landmark cases of *Chisom v. Roemer*, 501 U.S. 380 (1991),[9] *Clark v.*

Terrebonne Parish NAACP, 154 F. Supp. 3d at 362-63 (citing Doc. 168 at 6 & n.10); D55. Since 1975, the Legislature has overridden only two vetoes. *See id.* at 362-63 (citing Doc. 168 at 6 & n.10).

[8] For example, the AG has issued opinions on: the obligation of Louisiana and its political subdivisions to obtain preclearance under the VRA following *Shelby County v. Holder*, 133 S. Ct. 2262 (2013), La. Att'y Gen. Op. No. 13-0124, 2013 WL 5588151 (2013); the use of lockouts for judicial elections, La. Att'y Gen. Op. No. 02-189, 2002 WL 1483936 (2002); the application of the remedial order in *Clark v. Roemer*, La. Att'y Gen. Op. No. 00-274, 2000 WL 1132731 (2000); electoral methods for judges, such as cumulative voting, plurality voting, and single-member subdistricts, La. Att'y Gen. Op. No. 99-30, 1999 WL 372514 (1999); redistricting for the Terrebonne Parish Council, La. Att'y. Gen. Op. No. 94-237, 1994 WL 518977 (1994); the electoral method for the Monroe City Court, La. Att'y Gen. Op. No. 92-685, 1993 WL 185085 (1993); redistricting for the city of Marksville, La. Att'y Gen. Op. No. 93-529, 1993 WL 438548 (1993); the electoral method for the Board of Aldermen of Amite City, La. Att'y Gen. Op. No. 82-454, 1982 WL 186342 (1982); and the electoral method for the Board of Aldermen of Lake Arthur, La. Att'y Gen. Op. No. 82-367, 1982 WL 186338 (1982).

[9] In *Chisom v. Edwards/Roemer*, the plaintiffs challenged a multimember district for the Louisiana Supreme Court under Section 2 and the Fourteenth and Fifteenth Amendments. 659 F. Supp. 183, 183-84 (E.D. La. 1987). The plaintiffs sought a majority-Black district to elect a Supreme Court Justice. *Id.* The district court preliminarily enjoined the Governor and other defendants from conducting any election in the district at issue. *Chisom v. Edwards*, 690 F.

Roemer, 501 U.S. 1246 (1991),[10] and others. *See, e.g.*, *Foster v. Love*, 522 U.S. 67, 70 (1997)

Supp. 1524, 1539 (E.D. La. 1988). The U.S. Supreme Court, in holding that Section 2 applies to judicial elections, noted that the case was "against the Governor and other state officials." *Chisom*, 501 U.S. at 384.

In June 1992, on remand from the U.S. Supreme Court, the Legislature and the Governor enacted legislation creating a new judgeship elected from a majority-Black district to be assigned to the Louisiana Supreme Court. *See* Act 512 of 1992, 1992 La. Sess. Law Serv. Act 512 (S.B. 1255) (West); *Chisom v. Jindal*, 890 F. Supp. 2d 96, 702-05 (E.D. La. 2012); *Perschall v. State*, 697 So. 2d 240, 247 (La. 1997). In August 1992, the Governor entered into a consent decree memorializing that legislation ("Consent Judgment"). *Chisom*, 890 F. Supp. 2d at 702-05; *Perschall*, 697 So. 2d at 247. The Consent Judgment provided for the creation of a court of appeal judgeship elected from a majority-Black district and assigned to the state supreme court. P167-a at 18; *Chisom*, 890 F. Supp. 2d at 702-05.

In November 1994, Bernette Johnson was elected to the *Chisom* seat and began serving on the Louisiana Supreme Court. P167-a at 18; *Chisom*, 890 F. Supp. at 707 & n.27. In July 1997, the Legislature and the Governor enacted legislation reapportioning the state supreme court districts to include one majority-Black SMD. *See* Act 776, 1997 La. Sess. Law Serv. Act 776 (H.B. 581) (West); *Chisom*, 890 F. Supp. 2d at 705-06. In 2000, the court in *Chisom* granted a request by "the State through the Governor and the AG" to incorporate that legislation into the consent decree. *Chisom*, 890 F. Supp. 2d at 706 & n.22, 714. Justice Johnson was elected in the new supreme court district in 2000 and reelected in 2010. P167-a at 18; *Chisom*, 890 F. Supp. 2d at 707.

In January 2013, upon the retirement of Chief Justice Catherine Kimball, Justice Johnson was slated to become the new Chief Justice, following the requirement that the longest serving Justice becomes Chief Justice upon a vacancy. La. Const. art. V, § 6; P167-a at 19; 3/14/17 Tr. at 228:10-229:15. However, the white Louisiana Supreme Court Justices sought to block Justice Johnson's ascension on the ground that her tenure as the *Chisom* Justice does not count toward seniority, even though the Consent Judgment explicitly states that the new justice "shall participate and share equally in the cases, duties, and powers of the Louisiana Supreme Court." P167-a at 19; 3/14/17 Tr. at 228:10-229:15; *see also Chisom*, 890 F. Supp. 2d at 713.

A federal court ultimately determined that, under the terms of the Consent Judgment, *all* of Justice Johnson's service counted toward her seniority. P167-a at 19; 3/14/17 Tr. at 228:10-229:15; *see also Chisom*, 890 F. Supp. 2d at 728. The court noted that the 1997 legislation reapportioning the state supreme court explicitly provided that "[a]ny tenure on the supreme court gained by [the *Chisom* judge] while so assigned to the supreme court shall be credited to such judge." *Chisom*, 890 F. Supp. 2d at 715. By incorporating this legislation, "the terms of the Consent Judgment with regard to the issue of tenure is clear and unambiguous." *Id.* Following this ruling, Justice Johnson, in 2013, became the first Black Chief Justice of the Louisiana Supreme Court. P167-a at 19-20; 3/14/17 Tr. at 228:10-229:15.

[10] In *Clark v. Edwards/Roemer*, the plaintiffs challenged at-large and multimember districts for electing court of appeal, district court, and family court judges in Louisiana, under Section 2 and the Fourteenth and Fifteenth Amendments. *See* 725 F. Supp. 285, 287 (M.D. La. 1988). The plaintiffs sought majority-Black subdistricts and named the Governor and AG as defendants. *See Clark v. Roemer*, 777 F. Supp. 471, 473 (M.D. La. 1991); *Clark v. Roemer*, 777 F. Supp. 445, 467 (M.D. La. 1990); *Clark*, 725 F. Supp. at 287.

In August 1988, following trial, this Court found that the statewide use of at-large and multimember districts violated Section 2; it permanently enjoined any "family court, district court, and court of appeal elections"; and it "called upon the Governor and the Legislature to fashion a remedy." *Clark*, 725 F. Supp. at 302, 303, 306. This Court stated that "[t]here are many alternatives which may be considered" and that "[t]his court has no preconceived notion as to what changes the Governor and the Legislature ought to make." *Id.* at 303.

In October 1988, the Governor appointed a task force to study the method of electing state court judges. *See supra* note 4; *see also* P10. In June 1989, the Legislature and the Governor adopted a package of measures to change the electoral method for judges, *Clark*, 777 F. Supp. 451, which included the use of subdistricts to elect district judges. *See, e.g.*, Act 839 of 1989, § 2, 1989 La. Sess. Law Serv. 837 (West) (providing for subdistricts for the 1st, 2nd, 4th, 6th, 9th, 14th, 15th, 16th, 18th, 19th, 20th, 21st, 23rd, 24th, 26th, 27th, and 40th JDCs). In November 1989, the voters rejected the proposed revisions. *Clark*, 777 F. Supp. at 451.

In June 1990, this Court reaffirmed its finding of Section 2 violations as to 11 judicial districts: the 1st, 4th, 9th, 14th, 15th, 18th, 19th, 24th, and 40th JDCs; the First Circuit Court of Appeal, Second District; and the East Baton Rouge Family Court. *Id.* at 469. This Court reinstated its permanent injunction barring elections for the 11 judicial districts. *Id.* This Court also held that the creation of subdistricts was the appropriate remedy and ordered the parties, including the Governor and AG, to confer on the configuration of the subdistricts. *Id.* at 468-69.

(challenge to election date for congressional elections); *Prejean*, 227 F.3d at 504, 508 (challenge to electoral method for the 23rd JDC)[11]; *Hall v. Louisiana*, 983 F. Supp. 2d 820, 824-26 (M.D. La. 2015) (challenge to electoral method for the Baton Rouge City Court); *Williams v. McKeithen*, No. 05-1180 (E.D. La. 2005) (challenge to at-large voting for the Fifth Circuit Court of Appeal, First District)[12]; *Hays v. Louisiana*, 936 F. Supp. 360, 362 (W.D. La. 1996) (challenge to congressional redistricting after 1990 Census); *Major v. Treen*, 574 F. Supp. 325, 325 (E.D. La. 1983) (challenge to congressional redistricting after 1980 Census); *Bussie v. Governor of La.*, 333 F. Supp. 452, 454, 463 (E.D. La. 1971) (challenge to state legislative redistricting after 1970 Census); *Bannister v. Davis*, 263 F. Supp. 202, 202, 205 (E.D. La. 1966) (challenge to state legislative apportionment after *Reynolds v. Sims*, 377 U.S. 533 (1964)).

7. In 1968, Louisiana established the 32nd JDC with territorial jurisdiction over Terrebonne. P167-a at 15; Stip. No. 26. The 32nd JDC was retained under the Louisiana Constitution of 1974. Stip. No. 20; s*ee also* La. Const. art. V, § 15(A)-(B); *id.* art. XIV, § 16(5) (continuing Article VII, Section 31 of the Louisiana Constitution of 1921 as statute); La. Rev. Stat. Ann. § 13:477(32). The 32nd JDC has five judges who are elected concurrently and serve non-staggered terms of six years.

In August 1991, on remand from the U.S. Supreme Court, *Clark v. Roemer*, 501 U.S. at 1246, this Court reaffirmed its finding of Section 2 violations as to the 11 judicial districts and delineated the remedial subdistricts for those districts. *See Clark*, 777 F. Supp. at 473, 478-83. In 1992, the Governor and AG entered into a consent decree pursuant to which majority-Black subdistricts were created in the 11 districts in which this Court found a Section 2 violation, as well as in four additional districts: the 23rd and 27th JDCs and the Second Circuit Court of Appeal, First and Third Districts. *See Clark v. Edwards*, 958 F.2d 614 (5th Cir. 1992) (dismissing appeals); *see also Prejean v. Foster*, 227 F.3d 504, 507-08 (5th Cir. 2000) (discussing settlement); P167-a at 17-18; 3/14/17 Tr. at 224:21-225:23, 226:23-227:3.

[11] The Governor and AG were defendants in *Prejean*, a challenge to Act 780 of 1993, which created the remedial subdistrict for the 23rd JDC pursuant to *Clark*. 227 F.3d at 504, 508. Following trial, this Court upheld the legislation, and the Fifth Circuit affirmed, holding that "race was not a predominant factor in the creation of a black majority subdistrict under Act 780." *Prejean v. Foster*, 83 F. App'x 5, 11 (5th Cir. 2003).

[12] *See* Complaint, *Williams v. McKeithen*, No. 05-1180, ¶¶ 1, 13, 38 (E.D. La. Mar. 29, 2005), ECF No. 1; P167-a at 19; 3/14/17 Tr. at 230:4-230:20. In July 2007, the Legislature and the Governor enacted Act 261 of 2007, which created a majority-Black subdistrict. *See* Act 261 of 2007, 2007 La. Sess. Law Serv. Act 261 (S.B. 162) (West). In October 2007, the Governor entered into a consent judgment memorializing that legislation. *See* Consent Judgment, *Williams v. McKeithen*, No. 05-1180 (E.D. La. Oct. 31, 2007), ECF No. 47 (referencing Act 261 of 2007).

Stip. Nos. 21, 27, 36; La. Const. art. V, § 15(C); La. Rev. Stat. Ann. § 13:621.32. Since the establishment of the 32nd JDC, all elections have been conducted at-large. Stip. Nos. 28, 35; *see also Clark v. Roemer*, 751 F. Supp. 586, 588 (M.D. La. 1990) ("Both prior to and subsequent to the [VRA], district judges were elected . . . at-large.").

8. For the purpose of nominating and electing judges, the 32nd JDC is divided into five divisions (A through E) with one judge elected to each. Stip. Nos. 29, 30; La. Rev. Stat. Ann. §§ 13:582, 13:583. A candidate for the 32nd JDC must designate one division for which she is a candidate. Stip. No. 31; La. Rev. Stat. Ann. § 13:584.

9. A voter in a primary or general election may vote for only one candidate for each division of the 32nd JDC. Stip. No. 33; La. Rev. Stat. Ann. § 18:522(B).[13] A candidate for a division of the 32nd JDC who receives a majority of the votes cast in the primary election is elected. Stip. No. 34; La. Rev. Stat. Ann. § 18:511(A). If no candidate receives a majority of the votes cast in the primary election, then the two candidates who receive the two highest numbers of votes qualify for the general election. *See* La. Rev. Stat. Ann. §§ 481, 482. The candidate for a division of the 32nd JDC who receives the most votes cast in the general election is elected to that division. Stip. No. 34; La. Rev. Stat. Ann. § 18:512(A).

10. Following an election for the 32nd JDC, the Secretary of State ("SOS") certifies the name of the elected candidate to the Governor. *See* La. Rev. Stat. Ann. § 18:513(A)(5), (B). Within 30 days, the Governor issues a commission to the elected candidate, which must be signed by the Governor and countersigned by SOS. *See id.* § 18:513(A)(5), (B); *id.* § 49:211. The elected candidate must take the oath of office within 30 dates after receipt of the commission, and failure

[13] All qualified voters may vote in the primary and general elections without regard to their party affiliation, and all candidates who qualify for a primary or general election may be voted on without regard to their party affiliation. La. Rev. Stat. Ann. § 18:401(B).

to do so creates a vacancy in the office. *Id.* § 42:141.

11. A newly created judgeship or a vacancy on the 32nd JDC is filled by special election called by the Governor and held within one year of the creation of the new judgeship or of the vacancy. La. Const. art. V, § 22(B). The Governor determines the date on which the primary and general elections are to be held for the special election and issues a proclamation ordering the elections on those dates. La. Rev. Stat. Ann. § 18:621(A).

12. In the past 20 years, during which Terrebonne NAACP and Black voters have advocated for a majority-Black subdistrict, two members of the 32nd JDC—Judge Paul Wimbish[14] and Judge Ellender[15]—have been disciplined by the state supreme court. Despite being disciplined in 2004,

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[14] Judge Paul Wimbish began serving as a judge of the 32nd JDC in 1980. *In re Wimbish*, 733 So. 2d 1183, 1185 (La. 1999). In May 1990, a complaint was filed against Judge Wimbish with the Judiciary Commission, alleging a delay of more than 30 days in the adjudication of a case. *Id.* at 1185. The complaint alleged that "it is very common knowledge in Terrebonne that Judge Wimbish's decisions are delayed far in excess of what would be considered normal." *Id.* In October 1996, another complaint was filed against Judge Wimbish with the Judiciary Commission, alleging that Judge Wimbish had "failed to accurately report to the Judicial Administrator cases taken under advisement" as required by the Louisiana Supreme Court. *Id.* The complaint alleged that "[i]t is well known in [Terrebonne] Parish that Judge Wimbish holds matters under advisement for extraordinary periods of time." *Id.*

Following an investigation, the Judiciary Commission found that, during his 18 years on the bench, "Judge Wimbish failed to decide [56] cases in a timely manner, . . . inaccurately and/or delinquently reported [34] cases taken under advisement and their respective status to the Judicial Administrator, and completely failed to report the undecided status of seven cases." *Id.* at 1186. In April 1999, the Louisiana Supreme Court publicly censured Judge Wimbish for his misconduct. *Id.* at 1188. The court determined that Judge Wimbish's misconduct was "prejudicial to the administration of justice [and brought] the judicial office into disrepute." *Id.* Three Justices would have imposed a more severe sanction. *Id.* at 1188 (Knoll, Traylor, and Johnson, JJ., dissenting).

[15] Judge Ellender began serving as a judge of the 32nd JDC in 1983. *In re Ellender*, 889 So. 2d 225, 226 (La. 2004); *see also* D28. In October 2003, Judge Ellender and his wife attended a Halloween party at a restaurant at which "Judge Ellender was dressed as a prisoner, wearing an orange prison jumpsuit and handcuffs he borrowed from the Sheriff of Terrebonne, as well as a black afro wig. Mrs. Ellender was dressed as a police officer. . . . [After arriving at the restaurant, b]oth Judge Ellender and Mrs. Ellender applied . . . black makeup to their faces." *In re Ellender*, 889 So. 2d at 227. During that time, "[t]he restaurant remained open to the public to purchase seafood for takeout. Staff of the restaurant, including a [Black] employee, were also present." *Id.*

The Judiciary Commission found that "by wearing his 'black face prisoner costume' in public on Halloween, Judge Ellender portrayed [Black people] in a racially stereotypical manner that perpetuated the notion of [Black] men as both inferior and as criminals." *Id.* at 229. The Judiciary Commission also found that "Judge Ellender's conduct called into question his ability to be fair and impartial towards [Black people] who appear before his court as defendants in criminal proceedings, as well as towards any [Black] litigant or attorney in any proceeding before him, thereby creating the appearance of impropriety." *Id.* In December 2004, the Louisiana Supreme Court suspended Judge Ellender for one year and one day without pay, with six months deferred, for his misconduct. *Id.* at 234.

"In February 2008, Judge Ellender received a letter of admonishment from the [Judiciary] Commission . . . for engaging in impermissible *ex parte* communications and for conducting a constructive contempt proceeding without having afforded the defendant adequate legal notice." *In re Ellender*, 16 So. 3d 351, 356 (La. 2009). In

Judge Ellender was reelected without opposition in 2008 to a six-year term on the 32nd JDC. D4-B at 109; 3/13/17 Tr. at 60:13-17, 219:21-23; 3/14/17 Tr. at 13:14-16; 3/17/17 Tr. at 74:2-75:11.

13. Terrebonne is also served by the Houma City Court, which has one judge and, like the 32nd JDC, exercises parish-wide jurisdiction. La. Rev. Stat. Ann. § 13:1872(A), (E).

14. Terrebonne is located in southern Louisiana. P165-a ¶ 11. Houma (pop. 33,727) is the parish seat, the largest community by population, and the only incorporated municipality. *Id.* ¶ 11, ¶ 18 n.3; 3/14/17 Tr. at 57:15-58:11. The Census identifies nine other communities as Census-designated places ("CDPs"), including Gray (pop. 5,584) and Schriever (pop. 6,853). P165-a ¶ 18 & n.3; 3/14/17 Tr. at 57:15-58:11, 58:15-59:2.

15. The decennial Census makes available several different categories of race, including the: (1) non-Hispanic single-race Black category, which is the narrowest category of "Black"; (2) non-Hispanic Department of Justice ("DOJ") Black category, which counts as "Black" individuals who self-identify as Black alone or as Black and white; and (3) Any-Part Black category, which counts as "Black" any person who self-identifies as Black alone or Black in combination with any other race or ethnicity, including those who also self-identify as Hispanic. 3/14/17 Tr. at 51:12-52:19;

September 2008, the Judiciary Commission charged Judge Ellender with "exhibiting improper temperament and demeanor and failing to act with patience, dignity, and courtesy" to a woman who appeared *pro se* before him who sought a temporary restraining order against her husband in a domestic abuse case. *Id.* at 352-54.

In July 2009, the Louisiana Supreme Court suspended Judge Ellender for 30 days without pay for his conduct in that domestic abuse case. *Id.* at 360. The court observed that "[t]here was a potential risk of serious harm stemming from this judicial misconduct in that the complainant was seeking protective relief from threatened violence in a domestic matter. . . . The record is clear that Judge Ellender not only failed to treat this matter seriously, but he also acted in a condescending and demeaning manner toward [the petitioner] and treated her with a lack of patience." *Id.* at 359. The court noted that "the impact [of such behavior] on domestic abuse litigants, and others who allege a need for the court's protection, can be devastating." *Id.* The court observed that its decision "represents Judge Ellender's *third disciplinary action*" and found it "most troubling that Judge Ellender is again before the Judiciary Commission and this court." *Id.* (emphasis added).

In May 2016, the Louisiana Supreme Court granted a new trial in a case previously presided over by Judge Ellender after finding that his "actions resulted in a miscarriage of justice." *Logan v. Schwab*, 193 So. 3d 118, 118 (La. 2016). Chief Justice Johnson concurred, noting that Judge Ellender "engaged in bizarre and disturbing behavior during the jury trial," including by "greet[ing] the defense medical expert . . . with a handshake and embrace in front of the jury" and by "leaving the bench, wandering around the courtroom, looking out of the windows, eating candy [while sitting in the jury box during witness testimony] and otherwise failing to pay attention to the proceedings." *Logan*, 193 So. 3d at 119 (Johnson, C.J., concurring).

see also P165-a ¶ 12 n.1. The Census began using the Any-Part Black category in 2000. 3/14/17 Tr. at 52:20-53:3.

16. According to the 2010 Census, Terrebonne has a total population of 111,860; a single-race Black total population of 21,139 (18.90%); an Any-Part Black total population of 22,072 (19.73%); and a non-Hispanic white total population of 76,789 (68.65%). P165-a ¶ 12; 3/14/17 Tr. at 55:4-12. According to the 2010 Census, Terrebonne has a total VAP of 82,737; a single-race Black VAP of 14,409 (17.42%); an Any-Part Black VAP of 14,647 (17.70%); and a non-Hispanic white VAP of 59,361 (71.75%). P165-a ¶ 13; 3/14/17 Tr. at 55:15-23.

17. Between 1980 and 2010, the single-race Black proportion of the total population in Terrebonne grew by 44.8% from 14,598 (15.47%) to 21,139 (18.90%). P165-a fig. 2; 3/14/17 Tr. at 55:24-56:16. By contrast, between 1980 and 2010, the non-Hispanic white proportion of the total population grew by 2.6% from 74,811 (79.25%) to 76,789 (68.65%). P165-a fig. 2; 3/14/17 Tr. at 56:17-57:14. Between 1980 and 2010, the non-Hispanic white proportion of the total population fell by more than 10 percentage points. P165-a fig. 2; 3/14/17 Tr. at 56:17-57:14.

18. According to the 2010 Census, Houma, Gray, and Schriever are the CDPs with the three highest percentages of Black residents, with an Any-Part Black total population of 25.26%, 39.29%, and 26.53%, respectively. P165-a ¶ 19 & fig. 4; 3/14/17 Tr. at 58:12-14, 59:3-14. Houma, Gray, and Schriever account for 56.78% of the parish-wide Black population. P165-a ¶ 19.

19. Following the 2010 Census, the nine-member Terrebonne Parish Council adopted a nine-district electoral plan, which includes two majority-Black districts (Districts 1 and 2). *Id.* ¶¶ 32-35, 41, Ex. D; 3/14/17 Tr. at 59:15-60:2, 60:7-61:10. Parish Council District 1 includes parts of Houma and rural areas to the south of the municipal boundaries. P165-a ¶ 33, Ex. D; 3/14/17 Tr. at 59:15-60:2, 60:7-61:10. Parish Council District 2 includes parts of Houma, Gray, and Schriever.

P165-a ¶ 33, Ex. D; P169 ¶ 13; 3/14/17 Tr. at 59:15-60:2, 60:7-61:10.

20. Following the 2010 Census, the nine-member Terrebonne School Board adopted a nine-district electoral plan, which also includes two majority-Black districts (Districts 1 and 2). P165-a ¶¶ 32-36, 41; 3/13/17 Tr. at 228:10-12, 230:8-10; 3/14/17 Tr. at 59:19-60:6, 61:11-24. School Board Districts 1 and 2 are identical to Parish Council Districts 1 and 2. P165-a ¶¶ 32-36, 41; 3/13/17 Tr. at 207:15-20, 228:17-24; 3/14/17 Tr. at 59:19-60:6, 61:11-24.

21. Black residents of Terrebonne are concentrated in Parish Council and School Board Districts 1 and 2. 3/13/17 Tr. at 32:16-23, 208:4-6.

22. The Louisiana State House Plan divides Terrebonne among three districts: House Districts 51, 52, and 53. P165-a ¶ 37 & fig. 8; P172 Ex. A; 3/14/17 Tr. at 62:10-64:3. House District 51 includes parts of Houma, Gray, and Schriever. P165-a ¶ 37 & fig. 8; P169 ¶ 13; P172 Ex. A; 3/14/17 Tr. at 62:10-64:3. House District 52 includes parts of Houma and Gray. P165-a ¶ 37 & fig. 8; P169 ¶ 13; P172 Ex. A; 3/14/17 Tr. at 62:10-64:3.

23. The Louisiana State Senate Plan divides Terrebonne between two districts: Senate Districts 20 and 21. P165-a ¶ 38 & fig. 9; 3/14/17 Tr. at 64:4-66:1. Senate District 21 includes parts of Houma, Gray, and Schriever. P165-a ¶ 37 & fig. 9; P169 ¶ 13; 3/14/17 Tr. at 64:4-66:1.

***GINGLES* ONE**

Plaintiffs' *Illustrative Plan*

24. Plaintiffs' expert, William S. Cooper,[16] developed an *Illustrative Plan* to assess whether a

[16] Mr. Cooper is qualified to serve as an expert witness in redistricting and demographics. P165-a ¶¶ 1-8; 3/14/17 Tr. at 47:2-6, 47:15-18, 48:7-8; *see generally* P165-b;. Since 1986, Mr. Cooper has prepared redistricting maps for approximately 700 jurisdictions for Section 2 litigation, comment letters under Section 5 of the VRA ("Section 5"), and other efforts to comply with the VRA. P165-a ¶ 4; P165-b at 1. Since the release of the 2010 Census, Mr. Cooper has developed statewide redistricting plans in seven states, as well as over 150 local redistricting plans in approximately 30 states. P165-a ¶ 4; P165-b at 1; 3/14/17 Tr. at 132:18-23.

Mr. Cooper has testified at trial in federal court as an expert witness on redistricting and demographics in about 35 voting rights cases, including three arising in Louisiana. P165-a ¶ 2; P165-b at 4-5. Mr. Cooper also has filed

majority-Black SMD can be developed within a five-district plan for the 32nd JDC. P165-a ¶ 40; 3/14/17 Tr. at 49:22-51:11, 71:2-4. Mr. Cooper also reviewed current and historical demographics of the parish, including the socioeconomic characteristics of the Black and non-Hispanic white populations. P165-a ¶ 9; 3/14/17 Tr. at 49:22-50:12.

25. To develop the *Illustrative Plan*, Mr. Cooper used (1) geographic boundary files created from the U.S. Census 2010 TIGER files and (2) population data from the 2010 PL 94-171 data file. P165-a ¶ 26; 3/14/17 Tr. at 51:12-52:19, 71:13-72:15, 127:11-128:4, 175:25-176:2. He used *Maptitude for Redistricting*, a geographic information system ("GIS") software that many local and state bodies employ for redistricting. P165-a ¶ 25; 3/14/17 Tr. at 71:5-12.[17]

26. Consistent with his standard practice working on local-level redistricting plans, Mr. Cooper developed the *Illustrative Plan* at the census block level. P165-a ¶ 28; 3/14/17 Tr. at 75:21-76:1, 126:18-22. A census block is the smallest geographic tabulation area from the decennial Census; may be as small as a regular city block bounded by four streets or as large as several square miles in a rural area; a census block is generally bounded on all sides by visible features such as streets, rivers, and railroad tracks. P165-a ¶ 28; 3/14/17 Tr. at 75:21-76:1.

27. To develop the *Illustrative Plan*, Mr. Cooper obtained from the South Central Planning and

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declarations or been deposed as an expert witness on redistricting and demographics in federal court in about 36 other cases, including four arising in Louisiana and two cases where federal courts in 2014 granted summary judgment on *Gingles* one based in part on Mr. Cooper's testimony. *See Pope v. County of Albany*, No. 11-736, 2014 WL 316703, at *13 (N.D.N.Y. Jan. 28, 2014); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1392-93, 1401 (E.D. Wash. 2014); P165-a ¶ 7; P165-b at 5-7.

Approximately 28 cases in which Mr. Cooper testified at trial as an expert witness resulted in changes to statewide or local election plans, including for St. Francisville in West Feliciana Parish and, recently, the Ferguson-Florissant School District in Missouri. P165-a ¶ 2; P165-b at 4-5; *Mo. State Conference of NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1030 (E.D. Mo. 2016). Mr. Cooper's work in Section 2 cases in Louisiana that did not require trial testimony led to changes in election plans for the East Carroll, West Carroll, Madison, and West Feliciana Parish Councils and the St. Landry Parish School Board. P165-a ¶ 3.

[17] The PL 94-171 dataset is the complete count population designed by the Census for redistricting and contains basic race and ethnicity data on the total population and VAP found in units of census geography. P165-a ¶ 26; 3/14/17 Tr. at 51:12-52:19. *Maptitude* processes the TIGER files to produce a map for display on a computer screen and merges the demographic data from the PL 94-171 files to match the relevant census geography. P165-a ¶ 27; 3/14/17 Tr. at 72:16-73:1, 75:16-20.

Development Commission the electronic GIS shapefiles depicting the boundaries for (1) the then-current precincts, (2) the current Parish Council plan, and (3) the current School Board plan, as well as a shapefile identifying the polling places in Terrebonne. P165-a ¶ 29; 3/14/17 Tr. at 71:13-72:15; *see also id.* at 74:2-9 (Mr. Cooper explaining that local plans are "indicative of where people think neighborhoods belong, whether neighborhoods should be in one district or another"), 75:12-15; 4/28/17 Tr. at 279:5-11. Mr. Cooper also obtained from the Legislature the shapefiles for the current Louisiana: (1) State House, (2) State Senate, and (3) congressional plans. P165-a ¶ 30; 3/14/17 Tr. at 73:6-15; *see also id.* at 75:2-15 (Mr. Cooper explaining that state legislative redistricting plans reflect "input from local legislators in Terrebonne" and "how decisions had been made" in redistricting). Mr. Cooper also reviewed data from the 2011-2013 American Community Survey ("ACS") and the 2008-2012 ACS, both conducted by the Census. P165-a ¶ 31; 3/14/17 Tr. at 66:2-67:5, 73:16-22, 128:20-23. Finally, Mr. Cooper obtained the addresses of incumbent 32nd JDC judges. 3/14/17 Tr. at 73:23-74:1.

28. Mr. Cooper developed the *Illustrative Plan* in accordance with traditional redistricting principles ("TRPs"), including compactness; contiguity; one person, one vote; communities of interest; traditional boundaries; and non-dilution of minority voting strength. P165-a ¶ 45; P169 ¶ 17; P172 ¶ 22; 3/14/17 Tr. at 50:13-51:11, 77:1-78:13, 123:21-124:9; 125:15-21.

29. TRPs can conflict with one another. 3/14/17 Tr. at 77:14-78:7, 78:14-79:25, 83:24-84:23, 111:18-24, 114:12-115:8, 170:18-171:15. Thus, the development of a redistricting plan "is a constant balancing act across all . . . [TRPs]," and "the remedy could take on a different shape." *Id.* at 78:14-79:25 (Mr. Cooper explaining that "there are many different possible configurations" for a plan including a majority-Black subdistrict for the 32nd JDC); *see also id.* at 83:24-84:23, 125:22-126:3, 179:12-15; 4/28/17 Tr. at 264:22-25.

30. Race did not predominate in the development of the *Illustrative Plan*. P165-a ¶ 45; P169 ¶ 17; P172 ¶ 22; 3/14/17 Tr. at 124:21-125:21; 4/28/17 at 263:6-264:5; *see also* 3/14/17 Tr. at 77:14-78:7 (Mr. Cooper explaining that he included a majority-*white* area in District 1 to make that majority-*Black* district in the *Illustrative Plan* "more regularly shaped"), 83:24-84:23 (same).

31. The inclusion of two majority-Black districts in a nine-district plan for the Parish Council and School Board indicates that the Black population in Terrebonne is sufficiently numerous and geographically compact to allow for a majority-Black district in a five-district plan. P165-a ¶ 41; 3/14/17 Tr. at 74:10-75:1. The ideal district size for one district under a five-district plan is 22,372 (111,860 divided by 5) compared to an ideal size of 12,429 under a nine-district plan, which when multiplied by two equals 24,856. P165-a ¶ 41.

Numerosity of the Black Population in Terrebonne

32. District 1 has an Any-Part Black VAP of 50.81% based on the 2010 Census and a non-Hispanic Black citizen VAP of 53.33% based on the 2010-14 ACS estimates. P165-a ¶ 42; P172 ¶ 6 n.4; 3/14/17 Tr. at 80:1-82:21, 127:11-129:4.[18] The Black VAP in Terrebonne is sufficiently numerous to constitute the majority of the VAP in a SMD for the 32nd JDC. P165-a ¶ 46; 3/14/17 Tr. at 50:13-51:11, 53:10-18; 85:1-15; 124:21-125:21.

Compactness of the Black Population in Terrebonne

Geographical Compactness/Shape

[18] ACS data can be used to estimate the non-Hispanic Black citizen VAP in a given electoral district. 3/14/17 Tr. at 66:8-67:5, 73:16-22, 127:11-129:4. Mr. Cooper commonly estimates this in cases involving Latino voters and did so in this case. *See* P172 ¶ 6 n.4; 3/14/17 Tr. at 127:11-129:4. Courts have recognized that ACS data can be used to estimate citizen VAP. *See, e.g.*, *Patino v. City of Pasadena*, No. 14-3241, ___ F. Supp. 3d ____, 2017 WL 68467, at *13-16 (S.D. Tex. Jan. 6, 2017); *Montes*, 40 F. Supp. 3d at 1392; *Benavidez v. City of Irving, Tex.*, 638 F. Supp. 2d 709, 721, 729-30 (N.D. Tex. 2009). Indeed, "the sole source of citizenship data published by the Census . . . now comes from the [ACS]." *Patino*, 2017 WL 68467, at *14; *see also Westwego Citizens for Better Gov't v. City of Westwego*, 906 F.2d 1042, 1045 n.3 (5th Cir. 1990) (where data from the decennial Census is not available, "other probative evidence may be considered").

33. The districts in the *Illustrative Plan*, including District 1, are geographically compact and regular in shape. P165-a ¶¶ 45-46; P169 ¶¶ 2-8; P172 ¶¶ 4-11; 3/14/17 Tr. at 99:5-21.

34. Compactness can be evaluated by using statistical measures of compactness, such as the Reock and Polsby-Popper scores,[19] and a visual examination of the districts at issue. P169 ¶ 2; P172 ¶ 7; 3/14/17 Tr. at 86:6-87:6, 139:1-10. No single statistical measure of compactness is dispositive. P172 ¶ 8; 3/14/17 Tr. at 87:9-15. Further, "quantitative scores should be used to make comparisons, not to eliminate plans or districts that fail to meet a predetermined level. There is no score for any one measure . . . that on the face of it indicates unsatisfactory compactness." P172 ¶ 9; D37-a at 145:4-146:4; P196 at 6; 3/14/17 Tr. at 124:10-20.

35. District 1 has a Reock score of .39. P169 ¶ 3; 3/14/17 Tr. at 88:20-22. This compares favorably to the Reock scores of current State House districts, P169 ¶ 3; 3/14/17 Tr. at 89:4-90:6,[20] and Louisiana Congressional districts. P169 ¶ 4; 3/14/17 Tr. at 90:11-16.[21] District 1 has a Polsby-Popper score of .13. P169 ¶ 5; 3/14/17 Tr. at 90:24-91:1. This also compares favorably to the Polsby-Popper scores of current State House districts, P169 ¶ 5; 3/14/17 Tr. at 91:17-92:9,[22] and Louisiana Congressional districts. P169 ¶ 6; 3/14/17 Tr. at 92:10-93:5.[23]

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[19] The Reock and Polsby-Popper scores both compare a district to a circle, which is considered the most compact shape. The Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle. The Polsby-Popper test computes the ratio of the district to the area of a circle with the same perimeter. Both measures are between 0 and 1, with 1 being the most compact. P169 ¶ 3 n.2, ¶ 5 n.3; P172 ¶ 7 n.5; 3/14/17 Tr. at 86:19-87:3.

[20] Fifty-seven of the State House districts (54.3%) have a Reock score less than or equal to .39. P169 ¶ 3; 3/14/17 Tr. at 89:4-19. The mean Reock score of State House districts is .38, with the lowest Reock score at .11. P169 ¶ 3. State House District 52, which includes parts of Terrebonne, has a Reock score of .28. P169 ¶ 3; 3/14/17 Tr. at 89:20-90:6.

[21] The mean Reock score for Louisiana Congressional districts is .36. P169 ¶ 4. Four of the six congressional districts have a Reock score less than .39: Congressional District 2 (.18), Congressional District 4 (.34), Congressional District 5 (.37), and Congressional District 6 (.38), which contains parts of Terrebonne. P169 ¶ 4; 3/14/17 Tr. at 90:11-23.

[22] Eleven of the State House districts (10.5%) have a Polsby-Popper score less than or equal to .13. P169 ¶ 5; 3/14/17 Tr. at 91:17-21. The mean Polsby-Popper score of State House districts is .26, with the lowest Polsby-Popper score at .05. P169 ¶ 5; 3/14/17 Tr. at 91:22-92:5. State House District 52, which includes parts of Terrebonne, has a Polsby-Popper score of .14. P169 ¶ 5; 3/14/17 Tr. at 92:6-9.

[23] The mean Polsby-Popper score for Louisiana Congressional districts is .15. P169 ¶ 6. Three of the six congressional districts have a Polsby-Popper score of less than .13: Congressional District 2 (.06), Congressional District 5 (.10), and Congressional District 6 (.07). P169 ¶ 6; 3/14/17 Tr. at 92:16-93:3.

36. A visual comparison of District 1 to other districts in Louisiana, such as State House Districts 51 and 52, Congressional Districts 2 and 6, Judicial Subdistrict E for the 23rd JDC, as well as the parish council districts in West Feliciana and St. Martin parishes, further confirms that the shape and geographical compactness of District 1 comfortably fall within the norm. *Compare* P165-a fig. 12 *with* P165-a fig. 8 *and* P169 ¶¶ 7-8, Exs. A through F-3; 3/14/17 Tr. at 93:8-24, 98:22-99:16. District 1 has a crescent shape similar to that of other districts, such as State House District 51, which, within Terrebonne, extends from Houma to the west and to Schriever. 3/14/17 Tr. at 62:17-63:6, 82:22-83:6, 98:22-99:16; *compare also* P165-a fig. 8 *with* P165-a fig. 12.

37. The compactness and shape of a district can be affected by the shape of precincts in a given jurisdiction because demographers take the shape of precincts as a given. 3/14/17 Tr. at 111:8-17; 4/28/17 Tr. at 265:18-266:1. In Terrebonne, some of the precincts in place at the time that Mr. Cooper developed the *Illustrative Plan* were irregular in shape. 3/14/17 Tr. at 91:2-11, 118:6-12; 4/28/17 Tr. at 265:18-266:1; *see also* P165-a Ex. E (second map). Even so, the districts in the *Illustrative Plan*, including District 1, are geographically compact and regular in shape. P165-a ¶¶ 45-46; P169 ¶ 2; 3/14/17 Tr. at 99:5-21.

Contiguity

38. The districts in the *Illustrative Plan*, including District 1, are contiguous. P165-a ¶¶ 45-46; P169 ¶¶ 9-10; 3/14/17 Tr. at 99:22-100:22.

Population Equality

39. The *Illustrative Plan* has an overall deviation from population equality of 5.2% and respects the principle of one person, one vote. P165-a ¶ 43; 3/14/17 Tr. at 101:16-102:4.

Communities of Interest

40. The districts in the *Illustrative Plan*, including District 1, respect communities of interest.

P165-a ¶¶ 45-46; P169 ¶¶ 11-13; P172 ¶¶ 16-22; 3/14/17 Tr. 109:22-110:6.

41. District 1 encompasses neighborhoods with large Black populations in Houma, Gray, and Schriever. P165-a ¶ 42. Parts of Houma, Gray, and Schriever are already joined to form various districts in or around Terrebonne, including Parish Council and School Board Districts 2, State House District 51, and State Senate District 21. P165-a ¶¶ 32-33, 36, 37 & figs. 8-9, Ex. D (second map); P169 ¶ 13; P172 ¶ 18, Ex. A; 3/13/17 Tr. at 207:15-20, 228:10-12, 230:8-10; 3/14/17 Tr. at 59:15-66:1, 102:5-103:1, 109:22-110:6; *see also id.* at 99:5-16 (Mr. Cooper explaining that the *Illustrative Plan* "follow[s] a pattern which is evident in the House plan, the Senate plan, [and other plans] . . . [in] combining . . . parts of Houma, with Schriever and Gray"). The inclusion of parts of Houma, Gray, and Schriever into various districts, particularly the majority-Black Parish Council and School Board districts, shows that there is a "community of interest in using those three places in a single district." 3/14/17 Tr. at 102:5-103:1.

42. District 1 substantially corresponds to Parish Council and School Board Districts 1 and 2. Approximately 84% of the population (18,239) currently in Parish Council and School Board Districts 1 and 2 reside in District 1. P165-a ¶ 44; 3/14/17 Tr. at 103:2-10. Approximately 94% of the Black population (11,718) in District 1 reside in Parish Council and School Board Districts 1 and 2. P165-a ¶ 44; 3/14/17 Tr. at 103:11-14.

43. It is appropriate to maintain municipal boundaries; however, due to the size of Houma, which accounts for almost one-third of Terrebonne's population, it is necessary in a five-district plan to split Houma. P165-a ¶¶ 11-12; 3/14/17 Tr. at 77:7-13. The current Parish Council plan splits Houma into six different districts, Gray into three different districts, and Schriever into two districts. P165-a Ex. D (second map). The current State House plan splits Houma into three different districts and Gray into two different districts. P165-a fig. 8; P172 Ex. A. The current State

Senate plan splits Houma into two different districts. P165-a fig. 9; 3/14/17 Tr. at 64:4-66:1.

44. Black residents in Houma, Gray, and Schriever, included in District 1, form a "close-knit community." 3/13/17 Tr. at 32:24-33:7; *see also* 3/17/17 Tr. at 70:13-71:23 (Mr. Shelby explaining that the Black community in Terrebonne is "tight-knit"); 3/14/17 Tr. at 141:8-17 (Mr. Cooper explaining his understanding "that the minority community in Terrebonne," which lives in Houma, Gray, and Schriever, "considers [itself to be] unified").[24]

45. Black residents in Houma, Gray, and Schriever (1) share places of worship, 3/13/17 Tr. at 33:8-10, 33:14-20, 35:7-11, 208:7-10, 208:14-20; 3/14/17 Tr. at 7:11-18, 7:23-8:2; 3/17/17 Tr. at 65:14-66:10; (2) share libraries, 3/13/17 Tr. at 34:12-23, 35:7-11; (3) share places of recreation, 3/13/17 Tr. at 33:21-34:11, 35:7-11; (4) have access to the same television channels and newspapers, 3/13/17 Tr. at 37:19-38:9; (5) attend common events such as Terrebonne NAACP's Freedom Fund Banquet, Martin Luther King, Jr. Day Celebration, and Black History Month Celebration, 3/13/17 Tr. at 39:5-19, 209:16-210:6; 3/17/17 Tr. at 70:2-12; (6) belong to the same civic organizations, such as Terrebonne NAACP and SCLC, 3/13/17 Tr. at 36:13-37:11, 208:21-209:15; 3/14/17 Tr. at 9:22-10:7, 10:18-23; (7) shop together, 3/13/17 Tr. at 35:12-23; (8) share representation on the Parish Council and School Board through Districts 1 and 2, *see supra*; and (9) are bound by decades of efforts to obtain district-based voting for the 32nd JDC, *see id.*

46. ACS data confirms that Black residents in Houma, Gray, and Schriever share similar socioeconomic characteristics, particularly as compared to non-Hispanic white residents in those areas. P169 ¶ 12 & Ex. G; 3/14/17 Tr. at 102:5-103:1, 107:4-109:21. For example, Black residents in Houma, Gray, and Schriever (1) live below poverty at a rate at least three times that of non-

[24] *See also* 3/13/17 Tr. at 37:19-38:9, 38:19-39:4 (Mr. Boykin explaining that he has friends and family in Gray and Schriever, they visit each other, and consider themselves to be part of the Terrebonne community); 3/14/17 Tr. at 10:24-11:7 (Rev. Fusilier explaining the same); 3/17/17 Tr. at 69:18-70:1 (Mr. Shelby explaining the same);

Hispanic white residents, (2) have an average per capita income that is no more than two-thirds of their non-Hispanic white peers, and (3) rely on food stamps at a rate that is at least double that of non-Hispanic white residents. P169 ¶ 12 & Ex. G; 3/14/17 Tr. at 109:5-21.

Precinct Splits

47. The districts in the *Illustrative Plan* respect precinct lines and adequately minimize split precincts. P165-a ¶ 43; P169 ¶¶ 14-16; P172 ¶¶ 12-15; 3/14/17 Tr. at 122:19-23.

48. Under Louisiana law, parish governing authorities have the authority to establish election precincts, La. Rev. Stat. Ann. § 18:532(A), and to "change the[ir] configuration, boundaries, or designation." *id.* § 18:532.1(A). Parish governing authorities may also merge "all or part of a precinct with adjacent precincts" so long as "the parts that are [to be] joined are in the same legislative, Public Service Commission, State Board of Elementary and Secondary Education, state, federal, and local governing authority voting district[s]." *Id.* § 18:532.1(B)(2)(a). This statute does not require precincts to be in the same judicial subdistrict to be merged into one. *See id.* Louisiana law also allows precincts to be split to comply with legal requirements, such as the non-dilution of minority voting strength, and other TRPs. P172 ¶ 14; 3/14/17 Tr. at 112:19-113:1.[25] No provision of Louisiana law prohibits precinct splits for judicial subdistricts. P172 ¶ 13; 3/14/17 Tr. at 113:2-13; 4/28/17 Tr. at 266:7-9.

49. A lockout is a mechanism in a split precinct that ensures that "persons who are allowed to vote at the polling place, but who do not live within the [electoral district at issue, such as a] judicial subdistrict" cast their votes only in the election(s) in which they may participate. La. Att'y

[25] Indeed, parish governing authorities may divide precincts in their redistricting plans if they are "unable to comply with applicable law regarding redistricting and reapportionment, including adherence to [TRPs], in the creation of [their] redistricting or reapportionment plan using the whole precincts." La. Rev. Stat. Ann. § 18:532.1(D)(2)(a); 3/14/17 Tr. at 112:19-113:1, 165:1-8; 4/27/17 Tr. at 144:25-145:5. Similar provisions apply to redistricting for school board authorities, boards of aldermen, and municipal governing authorities. La. Rev. Stat. Ann. § 17:71.3(E)(2)(a); *id.* § 33:382(G)(2); *id.* § 33:1371(C)(2); 4/27/17 Tr. at 144:25-145:5.

Gen. Op. No. 02-189, 2002 WL 1483936, at *3 (2002); 3/14/17 Tr. at 113:14-114:7; 3/20/17 Tr. at 100:17-101:2. Lockouts are common in Terrebonne, specifically, and Louisiana, generally. P169 ¶¶ 14-15; P172 ¶ 12; 3/14/17 Tr. at 118:13-122:4, 168:13-17; 3/20/17 Tr. at 91:18-92:2, 100:3-13, 100:17-101:2, 105:21-106:11 (Linda Rodrigue, who worked in the Terrebonne Voter Registrar's Office for 25½ years, testifying that Terrebonne has split precincts for "different taxing districts, [justices of the peace], constables, and some school board offices," and that she has administered elections using lockouts).[26] Further, lockouts are used for judicial elections. *See* La. Att'y Gen. Op. No. 02-189, 2002 WL 1483936, at *3 (2002).[27] For example, in November 2014, 15 lockouts were used for the 19th JDC (East Baton Rouge), and five lockouts were used for the 9th JDC (Rapides). P172 ¶ 13; D37-a at 150:16-151:7; 3/14/17 Tr. at 121:5-21.

50. Because precincts can be merged and split, the number of precincts in any given jurisdiction, such as Terrebonne, changes from time to time. 3/14/17 Tr. at 110:15-111:7; 3/20/17 Tr. at 100:3-13, 104:12-15, 106:22-107:5 (Ms. Rodrigue confirming that the number of precincts "absolutely" changes from time to time); 4/27/17 Tr. at 139:20-140:2.[28] Following the 2020 Census, the Terrebonne Parish Council will likely redistrict to account for population shifts and, in the process, split and realign precincts. 3/20/17 Tr. at 97:18-98:1, 100:3-13, 106:22-107:5; 4/28/17 Tr. at 267:3-5, 267:17-22. Accordingly, by the time a remedy is created in this case, the

[26] For example, in elections held in November 2013 and November 2014, Terrebonne had 10 precinct lockouts. P169 ¶ 14; 3/14/17 Tr. at 119:11-24; 3/20/17 Tr. at 105:21-106:7; 4/27/17 Tr. at 155:6-17. Likewise, in November 2014, there were 19 lockouts of 75 precincts (23.5%) in St. Landry Parish, 127 lockouts of 200 precincts (63.5%) in East Baton Rouge Parish, 6 lockouts of 19 precincts (31.6%) in East Feliciana Parish, and 13 lockouts of 31 precincts (41.9%) in Iberville Parish. P169 ¶ 15; 3/14/17 Tr. at 119:25-121:4.

[27] For example, the AG has advised that in judicial subdistricts "where the precinct designations . . . have [subsequently] been altered," elections must be conducted based "on [the] boundaries as designated in state law, with the use of lockouts on the voting machines for those persons who are allowed to vote at the polling place, but who do not live within the judicial subdistrict." La. Att'y Gen. Op. No. 02-189, 2002 WL 1483936, at *3 (2002).

[28] Terrebonne had approximately 120 precincts in 2000, 77 precincts in 2010, 87 precincts in 2013, 86 precincts in 2014, 86 precincts in 2015, and 82 precincts in 2016. *See* P169 ¶ 16; D1 at 8; 3/14/17 Tr. at 110:15-111:7, 164:13-25; 3/20/17 Tr. at 104:16-105:20; 4/27/17 Tr. at 139:2-19; 4/28/17 Tr. at 267:23-25; *see also* 3/14/17 Tr. at 165:1-8 (Mr. Cooper explaining that the number of precincts increased following the 2010 Census because the Parish Council split precincts in redistricting); 3/20/17 Tr. at 104:12-15; 4/27/17 Tr. at 139:20-140:2; 4/28/17 Tr. at 266:10-19.

precincts in Terrebonne could be different. 4/28/17 Tr. at 266:13-19 (Mr. Cooper explaining that "[i]t would be a moving target to try to put together a plan that is based on whole precincts because precinct lines can change in Terrebonne from year to year as we have seen").

51. To address TRPs such as geographical compactness, the *Illustrative Plan*, disclosed to Defendants in January 2015, splits 12 of the 86 precincts (14%) that were in place for the November 2014 elections in Terrebonne. P169 ¶ 14; P172 ¶ 12; 3/14/17 Tr. at 77:14-78:7, 78:14-79:25, 83:24-84:23, 111:18-24, 114:12-115:15, 120:6-17, 166:3-6, 170:18-171:15; 4/28/17 Tr. at 266:2-6, 266:20-24. The majority of split precincts (11/12) are in District 1. P169 ¶ 14; P172 ¶ 12; 3/14/17 Tr. at 115:12-15; 4/28/17 Tr. 270:1-17. No split contains more than two districts. P165-a ¶ 43; P169 ¶ 14; P172 ¶ 12; 3/14/17 Tr. at 115:16-18; 166:7-15. The percentage of precincts split under the *Illustrative Plan* (14%) is comparable to the percentage of precinct splits in other parishes. *See supra* note 26; 3/14/17 Tr. at 119:25-121:4; *see also id.* at 114:12-115:8 (Mr. Cooper explaining that there is no bright-line rule to determine whether a plan sufficiently minimizes the number of split precincts).

52. As in other parts of Louisiana, the precinct splits in the *Illustrative Plan* can be accommodated using lockouts. P169 ¶ 14; P172 ¶ 12; 3/14/17 Tr. at 113:2-13, 118:13-119:1, 167:2-8. Elections for the 32nd JDC take place every six years, and the next regularly scheduled election will occur in 2020. P172 ¶ 12; 3/20/17 Tr. at 106:12-21; 4/28/17 Tr. at 266:25-267:2. Thus, prior to the release of the 2020 Census results in early 2021, there is only one more regularly scheduled election for the 32nd JDC that would require split precincts. P169 ¶ 14; P172 ¶ 12; 3/14/17 Tr. at 118:13-119:1, 174:18-175:1; 4/28/17 Tr. at 270:1-17. Lockouts involving 12 additional precincts for one election this decade is feasible. P169 ¶ 14; 3/14/17 Tr. at 118:13-119:10; 3/20/17 Tr. at 105:21-106:11; 4/28/17 Tr. at 270:1-17. Indeed, Ms. Rodrigue confirms that

while lockouts require "extra training for [election] commissioners," "to tell you the truth, [given] the technology we have today, it's not difficult" to administer elections using lockouts in split precincts. 3/20/17 Tr. at 101:11-17; 4/28/17 Tr. at 270:1-13. Election administrators in Terrebonne are already handling a comparable situation. In early 2014, there were 55 polling places for a total of 86 precincts. 4/28/17 Tr. at 267:23-268:4. Thus, in consolidated polling places that served multiple precincts, voters received different ballot styles. *Id.* at 269:6-25.

53. Following the 2020 Census when the Parish Council is likely to redistrict and change precinct boundaries, the precinct splits in the *Illustrative Plan* can be eliminated. P169 ¶ 14; P172 ¶ 12; 3/14/17 Tr. at 114:8-11, 119:2-10, 168:18-169:9; 3/20/17 Tr. at 100:3-13, 106:22-107:5; 4/28/17 Tr. at 267:3-5, 267:17-22.

Incumbent Protection

54. Mr. Cooper took into account incumbent protection in developing the *Illustrative Plan*. 3/14/17 Tr. at 73:23-74:1, 111:18-24, 122:24-123:20, 157:15-18. The five current 32nd JDC judges live in close proximity to one another, and one or more judges reside in the same district under the *Illustrative Plan*. *Id.* at 73:23-74:1, 122:24-123:12, 159:9-161:4. However, two of the five judges are due to mandatorily retire in 2020. 3/17/17 Tr. at 180:15-20. Further, an incumbent conflict would arise only if the three remaining judges were required to reside in the subdistrict in which they run for office. 3/14/17 Tr. at 122:24-123:20. However, "Louisiana law does not require a candidate for a division of a district court to be domiciled within the precinct boundaries or any other geographic boundaries of that division." *Snyder v. Perilloux*, 198 So. 3d 237, 241 (La. Ct. App. 5th Cir. 2016) (en banc) (holding that a candidate who did not reside in the subdistrict for Division B of the 40th JDC was qualified to run for that seat), *aff'd in relevant part and rev'd in part on other grounds*, 197 So. 3d 692 (La. 2016).

Non-Dilution of Minority Voting Strength

55. The *Illustrative Plan* provides one, but not the only, potential remedy for vote dilution under at-large voting by including a majority-Black district, District 1, that would provide Black voters with the equal opportunity to elect the candidate of their choice to the 32nd JDC. P165-a ¶¶ 40, 45; 3/14/17 Tr. at 79:8-25, 122:5-18, 123:21-124:9, 125:22-126:3, 142:4-11, 143:3-8, 179:12-15, 4/28/17 Tr. at 264:22-25.

Michael Hefner's Opinion on *Gingles* One

56. Defendants' expert, Mr. Hefner,[29] did not attempt to draw a plan that would include at least one majority-Black SMD; instead, Mr. Hefner analyzed the *Illustrative Plan*. D1 at 2-3; 4/27/17 Tr. at 106:25-107:10. Based on his review, Mr. Hefner opines that the Black population in Terrebonne is not geographically compact to form the majority in a SMD. D1 at 22-23; D2 at 20-21; D3 at 4-5; 4/27/17 Tr. at 14:11-23, 102:4-16, 108:13-109:2. For the reasons set forth below, Mr. Hefner's opinion is not credible.[30]

Numerosity of the Black population in Terrebonne

57. Mr. Hefner does not dispute that the Black population in Terrebonne is sufficiently numerous. 4/27/17 Tr. at 14:11-23, 102:4-13, 108:13-109:2. To evaluate numerosity, however, Mr. Hefner uses only the non-Hispanic DOJ Black category. *See* D3 at 2, 5; P165-a Ex. E

[29] Prior to this litigation, Mr. Hefner served as an expert witness in only two Section 2 cases. 4/27/17 Tr. at 106:4-24. Neither involved judicial districts, and Mr. Hefner did not work on behalf of minority individuals or groups representing minority individuals. *Id.*

[30] As a threshold matter, Defendants' Exhibits 11.12, 11.17, 11.19, and 11.39 do not correspond to the *Illustrative Plan*. Accordingly, the Court declines to consider them. As shown by Mr. Cooper's report, Precinct 33 is wholly encompassed in District 1 in the *Illustrative Plan*. *See* P165-a Ex. E (last map zooming in on Houma showing Precinct 33 shaded in yellow as part of District 1). The maps of the *Illustrative Plan* in Mr. Hefner's initial report show the same. *See, e.g.*, D1 at 6 (map 1), 12 (map 3), 13 (map 4), 16 (map 5). Defendants' Exhibits 11.12, 11.17, 11.19, and 11.39 are different and do not show precinct 33 as encompassed within District 1. In fact, Defendants' exhibit 11.12 does not correspond to map 1 of Mr. Hefner's initial report, *compare* D1 at 6 *with* D11.12; Defendants' exhibit 11.17 does not correspond to map 3 of Mr. Hefner's initial report, *compare* D1 at 12 *with* D11.17; Defendants' Exhibit 11.19 does not correspond to map 5 of Mr. Hefner's initial report, *compare* D1 at 16 (map 5) *with* D11.19; and Defendants' Exhibit 11.39 does not correspond to the *Illustrative Plan* as depicted in the initial reports of Mr. Hefner and Mr. Cooper, *compare, e.g.*, D1 at 6 *and* P165-a Ex. E *with* D11.39.

(reporting the Non-Hispanic DOJ Black VAP of District 1 as 50.22%); 4/27/17 Tr. at 19:19-25, 20:22-25, 111:9-25. As noted above, that category is narrower than the Any-Part Black category. *See supra* (facts on racial categories under the Census).

58. Mr. Hefner attempts to justify his exclusive focus on the non-Hispanic DOJ Black category on the ground that it is required under Section 5, and that the Any-Part Black category is not used in Louisiana. 4/27/17 Tr. at 19:19-25, 20:22-25, 111:9-14. The Supreme Court has held, however, that in a case such as this, in which Black voters are the only minority group whose exercise of the franchise is at issue, "it is proper to look at *all* individuals who identify themselves as black." *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003) (emphasis in the original), *superseded by statute on other grounds as recognized by Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1273 (2015). Consistent with this ruling, Mr. Cooper has used the Any-Part Black category in his work in Louisiana. 3/14/17 Tr. at 53:19-54:12 (Mr. Cooper explaining that he has used the Any-Part Black category "in almost every case [he has] been involved in since the release of the 2010 Census"); 4/28/17 Tr. at 264:6-12.[31]

59. Mr. Hefner also opines that based on his experience "in redistricting and working within Section 5 reviews," there is "a threshold of 56% of the minority [VAP] to be a viable majority-minority district." D3 at 5; *see also id.* at 9; 4/27/17 Tr. at 64:20-23, 98:10-20, 112:7-12. But Mr. Hefner does not identify any case law to suggest that the BVAP in a district used to satisfy *Gingles* one in a Section 2 case must be at least 56%. D3 at 5, 9; 4/27/17 Tr. at 112:13-113:3. Indeed, the Supreme Court held in *Bartlett v. Strickland* that a bright-line 50% plus one rule applies to

[31] At trial, Mr. Hefner claimed that the Supreme Court in *Georgia v. Ashcroft* determined that "in *special circumstances* . . . it is appropriate to use something other than" the non-Hispanic DOJ Black category. 4/27/17 Tr. at 110:3-111:2. That is incorrect. In fact, there, the Supreme Court recognized that in a "case [that] involves an examination of only one minority group's effective exercise of the electoral franchise, . . . it is proper to look at *all* individuals who identify themselves as black." *Georgia*, 539 U.S. at 473 n.1. The Court observed that the non-Hispanic DOJ Black category "may have more relevance if the case involves a comparison of different minority groups." *Id.*

determining numerosity. 556 U.S. 1, 18 (2009); *see also Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999). Consistent with this precedent, Mr. Hefner concedes that "the *Gingles 1* test specifies that the Plaintiffs must show that there are enough voting age Black population to exceed 50%." D3 at 5; 4/27/17 Tr. at 43:24-45:9, 113:4-8.

Geographical Compactness/Shape

60. Mr. Hefner opines that the Black VAP in Terrebonne is not compact because a majority-Black subdistrict cannot be drawn using TRPs, including geographical compactness.[32] 4/27/17 Tr. at 14:11-23, 22:15-24, 43:24-45:9, 82:22-83:16, 102:4-16, 108:13-109:2. Mr. Hefner's opinion that District 1 is not geographically compact, D1 at 14-15; D2 at 3-11, is not credible.

61. Mr. Hefner agrees that Mr. Cooper "properly uses two of the 32 possible measures of compactness," the Reock and Polsby-Popper scores, and he does not dispute the Reock and Polsby-Popper scores calculated by Mr. Cooper. D2 at 3; 4/27/17 Tr. at 48:20-49:20, 116:9-11. Nonetheless, Mr. Hefner criticizes Mr. Cooper's analysis of compactness scores on the ground that "compactness is more than just a mathematical calculation." D2 at 3; 4/27/17 Tr. at 82:22-83:16, 116:12-15. However, Mr. Cooper did not suggest that compactness scores are dispositive in assessing geographical compactness; instead, as Mr. Hefner acknowledges, Mr. Cooper also visually compared the shape of District 1 to those of other districts in Louisiana. P172 ¶ 7; P169 ¶¶ 7-8; 4/27/17 Tr. at 116:16-20.

62. Mr. Hefner criticizes Mr. Cooper's comparison of the geographical compactness of District 1 to those of other congressional, legislative, judicial, and local election districts in Louisiana. D2 at 3; 4/27/17 Tr. at 66:8-68:2, 69:5-24, 70:9-75:25. Mr. Hefner opines that Mr. Cooper is "comparing apples to oranges" because the districts to which Mr. Cooper compared District 1 were

[32] Mr. Hefner does not dispute that the *Illustrative Plan* meets the TRPs of contiguity; one person, one vote; and incumbent protection. *See generally* D1; D2; D3; *see also* 4/27/17 Tr. at 127:24-128:9.

drawn when Section 5 applied to Louisiana, and Section 5 no longer operates in the state. D2 at 3-4; 4/27/17 Tr. at 66:8-68:2, 69:5-24, 70:9-75:25, 118:16-119:2. According to Mr. Hefner, under Section 5, jurisdictions "necessarily [had] to compromise compactness for the more important element of maintaining historical minority voting strength where possible." D2 at 4; 4/27/17 Tr. at 66:8-67:8, 69:5-24, 119:3-11.

63. However, in none of Mr. Hefner's reports does he cite any authority to support his opinion that Section 5 requires a plan drawer to disregard TRPs. *See* D2 at 4; *see also generally* D1 & D3. Moreover, as Mr. Cooper explains, and Mr. Hefner acknowledges, while Section 5 prohibits retrogression, it does not compel plan drawers to violate TRPs, such as geographical compactness. P172 ¶ 11; 3/14/17 Tr. at 93:25-94:8, 179:7-11; 4/28/17 Tr. at 265:1-17; *see also* 4/27/17 Tr. at 121:4-19 (Mr. Hefner conceding that "[i]f the question is that they command that you abandon traditional redistricting criteria . . . under a Section 5 submission, the answer is no.").[33] Ultimately, Mr. Hefner agrees with Mr. Cooper that under both Sections 2 and 5, a plan drawer must adhere to TRPs, such as geographical compactness, and the legal requirement of non-dilution of minority voting strength. P172 ¶ 11; 3/14/17 Tr. at 93:25-94:8, 179:7-11; 4/27/17 Tr. at 121:21-122:2; 4/28/17 Tr. at 265:11-17.[34] Accordingly, there is no basis for this Court to assume that the districts to which Mr. Cooper compared District 1 disregarded TRPs, such as geographical compactness. P172 ¶ 11; 3/14/17 Tr. at 93:25-94:8, 179:7-11; 4/28/17 Tr. at 265:1-17.

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[33] *See also, e.g.*, *Hays v. Louisiana*, 839 F. Supp. 1188, 1196 n.21 (W.D. La. 1993) (three-judge court) (noting that "neither Section 2 nor Section 5 of the [VRA] requires that geographically dispersed [B]lack voters be lumped together to maximize the efficacy of their vote"), *vacated and remanded on other grounds*, 512 U.S. 1230 (1994); *see also* 28 C.F.R. § 51.59(a)(6)-(7) (providing that in reviewing plans under Section 5, DOJ examines "[t]he extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or . . . . is inconsistent with the jurisdiction's stated redistricting standards").

[34] Mr. Hefner does not opine that the Louisiana (1) state house and (2) congressional districts—to which Mr. Cooper compared the compactness scores of the *Illustrative Plan*—do not adhere to TRPs. 4/27/17 Tr. at 121:21-123:1. Similarly, Mr. Hefner declines to opine that the various districts to which Mr. Cooper compared the shape of the *Illustrative Plan* are racial gerrymanders. *Id.* at 123:18-124:2, 124:14-126:3.

64. Further, Mr. Hefner concedes that there is "no bright line" and "no cutoff" for statistical measures of compactness such as the Reock and Polsby-Popper scores. 4/27/17 Tr. at 126:4-11. However, Mr. Hefner did not determine the compactness scores for any other Louisiana district. *Id.* at 126:12-15. Mr. Hefner thus provides no objective benchmark for any opinion that the Reock or Polsby-Popper scores of District 1 demonstrate a lack of compactness. *See supra*.

65. Mr. Hefner states that he visually assesses a plan to see if it has compact districts. 4/27/17 Tr. at 48:20-49:20, 116:21-117:3. Mr. Hefner claims, based upon his observation of "the general shape" of District 1, that it is "unusual and irregular." D1 at 14; 4/27/17 Tr. at 117:15-118:1, 126:16-18. But Mr. Hefner made his determination only by "look[ing] at [District 1] on the face of itself." 4/27/17 Tr. at 126:19-127:11 (Mr. Hefner "didn't think it was pertinent" to consider the shape of the Parish Council or School Board districts). Mr. Hefner thus fails to provide any objective benchmark for his opinion that the shape of District 1 is "unusual and irregular."

Communities of Interest

66. Mr. Hefner concedes that there is no bright-line measure or "mathematical formula" for assessing whether communities of interest are maintained. *Id.* at 128:10-18.[35] Mr. Hefner emphasizes that with respect to this TRP, CDPs are "one of the first things" that he examines. *Id.* at 129:22-130:2. Mr. Hefner contends that Gray and Schriever are different from Houma, and that the three areas should not be included in a single district. D1 at 15-23; D2 at 11-15; 4/27/17 Tr. at 64:25-65:4, 78:7-79:10, 130:6-11. Mr. Hefner believes that Schriever is more closely aligned with

[35] Mr. Hefner acknowledges that unlike some other states, Louisiana does not have a statutory definition of communities of interest, and he instead references the statutory definition of Alabama, which identifies shared racial, ethnic, social, cultural, and historical interests, and commonality of communications as indicators of communities of interest. D2 at 12; 4/27/17 Tr. at 76:1-77:7, 128:19-129:21. As set forth above, Black residents in District 1 share many of these in common. *See supra*. Mr. Hefner also cites another definition of communities of interest that identifies "shared economic interests" as another consideration. D2 at 12; 4/27/17 Tr. at 76:1-77:7. Yet, Mr. Hefner did not review any socioeconomic data from the Census to prepare any of his reports in this case. 4/27/17 Tr. at 107:11-18. As set forth above, Black residents in District 1 are situated similarly in terms of their socioeconomic status. *See supra*.

Thibodeaux (in Lafourche Parish) than Houma (in Terrebonne) and should not be included in District 1. D2 at 13; 4/27/17 Tr. at 56:2-19, 130:12-16.

67. To support his opinion, Mr. Hefner draws attention to various districts in or around Terrebonne that separate Gray and Schriever, on the one hand, from Houma, on the other. D2 at 13-14; 4/27/17 Tr. at 77:8-78:6. However, as Mr. Hefner acknowledges, numerous other existing districts in or around Terrebonne join parts of Houma, Gray, and Schriever to form a single district, including Parish Council and School Board Districts 2, State House District 51, and State Senate District 21. P169 ¶¶ 11-14; P172 ¶ 18 & Ex. A; 4/27/17 Tr. at 130:17-132:13. There is nothing improper about the *Illustrative Plan* insofar as it includes parts of Houma, Gray, and Schriever into one district.

68. Mr. Hefner also claims that local elections demonstrate that the Schriever/Bayou Blue/Gray areas in the northern part of the parish do not share the same interests as Houma. D1 at 17-21; D2 at 14-15; 4/27/17 Tr. at 56:20-57:17, 58:7-59:12, 78:7-79:10, 133:25-134:17.[36] But Mr. Hefner fails to mention the racial composition of the voters who turned out to vote in those precincts in those elections. P172 ¶ 20; *see generally* D1; D2; D3. Those figures[37] show that the disparity in election outcomes that Mr. Hefner identifies is not a reflection of differences between Schriever, Gray, and Bayou Blue, on the one hand, and Houma, on the other, but a function of racially

[36] Mr. Hefner states that in the November 2014 Houma City Court election, Cheryl Carter, the Black candidate, lost precinct 1, which is located in Schriever, and precinct 8, which he says is located in Bayou Blue, but won several precincts in Houma. D1 at 17; D2 at 14; 4/27/17 Tr. at 134:5-11. Mr. Hefner also states that in the October 2011 Tax Assessor election, Clarence Williams, the Black candidate, lost precincts 1 and 5, both in Schriever, and precinct 8, which he says is in Bayou Blue, but won several precincts in Houma. D1 at 19; D2 at 14; 4/27/17 Tr. at 134:12-17.

[37] As reported by Mr. Cooper, in the 2014 Houma City Court election, white voters comprised the majority of voters who turned out to vote in precincts 1 and 8, which Ms. Carter lost, while, for example, Black voters comprised the majority of voters who turned out to vote in precincts 23 and 34 in Houma, which Ms. Carter won. P172 ¶¶ 19-20. Likewise, as reported by Mr. Cooper, in the 2011 Tax Assessor election, white voters comprised the majority of voters who turned out to vote in precincts 1, 5, and 8, which Mr. Williams lost, while, for example, Black voters comprised the majority of voters who turned out to vote in precincts 23 and 34 in Houma, which Mr. Williams won. *Id.* ¶¶ 19-20. Mr. Hefner does not dispute these statistics. 4/27/17 Tr. at 134:18-135:9.

polarized voting ("RPV") between Black voters, on the one hand, and non-Black voters, on the other, as found by Dr. Engstrom. P172 ¶ 20; *see infra* (facts regarding *Gingles* two and three).[38]

69. Mr. Hefner also criticizes the *Illustrative Plan* for splitting Gray and Schriever. D1 at 21; D2 at 15; 4/27/17 Tr. at 60:19-62:7, 137:9-11. However, Mr. Hefner concedes that a plan drawer "can . . . split a [CDP]." 4/27/17 Tr. at 130:3-5. Moreover, Mr. Hefner acknowledges that other existing districts in or around Terrebonne also split Houma, Gray, and/or Schriever, including State House Districts 51 and 52 and Parish Council and School Board Districts 2. *See supra*; 4/27/17 Tr. at 130:17-132:13, 138:3-139:1.

Precinct Splits

70. Mr. Hefner agrees that District 1 splits 11 precincts that were in place for the November 2014 elections in Terrebonne. D1 tbl. 2; P172 ¶ 12; 4/27/17 Tr. at 140:3-21. With respect to nine of these precincts, Mr. Hefner categorizes them as having "1 split." D1 tbl. 2; 4/27/17 Tr. at 142:22-143:1.[39] Mr. Hefner agrees that "one split" is "very common" in Louisiana. 4/27/17 Tr. at 143:2-5. In fact, Mr. Hefner states that "it's rare" to redistrict without splitting any precincts and still follow TRPs. *Id.* at 145:6-11. With respect to the other two precincts, Mr. Hefner categorizes them as having "2 splits" and "3 splits," respectively. D1 at 7. However, Mr. Hefner agrees that these precincts are each split *only* between two districts (*i.e.*, Districts 1 and 3) under the *Illustrative Plan* and would each require only one lockout. D3 at 3 & map 1; *id.* at 4 & map 2; 3/14/17 Tr. at 117:13-118:5; 4/27/17 Tr. at 143:6-144:24.

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[38] At trial, Mr. Hefner disagreed that these numbers show RPV. 4/27/17 Tr. at 135:12-19. But Mr. Hefner is not an expert on RPV. *Id.* at 12:8-9. And, as set forth *infra* (facts regarding *Gingles* two and three), even Dr. Weber agrees that, for example, the 2014 Houma City Court election is characterized by RPV.

[39] At trial, Mr. Hefner clarified that by "1 split" he means that the precinct split would result in one additional precinct being established. 4/27/17 Tr. at 141:14-142:21. Thus, according to Mr. Hefner, the 11 precincts split by District 1 would result in 14 new precincts. *See* D1 at 7; *see also* 4/27/17 Tr. at 35:15-36:18. However, Mr. Hefner acknowledges that a parish governing authority need not create any new precinct out of a split precinct for a judicial election; instead, lockouts can be used to accommodate such splits. *Id.* at 39:3-19; *see also id.* at 152:21-24 (Mr. Hefner acknowledging that lockouts are used in judicial elections in Louisiana).

71. Mr. Hefner faults the *Illustrative Plan* for starting out with split precincts because "the original enabling legislation that created the judicial districts in Louisiana [following *Clark*], including the apportioned judicial districts used only whole precincts." D1 at 7-8; D2 at 15-19; D3 at 6; 4/27/17 Tr. at 35:15-37:21, 125:16-126:3, 145:12-16, 152:14-24, 168:18-169:2. However, the enabling legislation for other judicial subdistricts in Louisiana have split precincts. *See, e.g.*, Act 240 of 1997, § 1, 1997 La. Sess. Law Serv. Act 240 (H.B. 1406) (West) (codified at La. Rev. Stat. Ann. § 13:1952(21)(b)) (splitting Precinct 51 in Caddo Parish to create two subdistricts for the Shreveport City Court); *see also Hall v. Louisiana*, 108 F. Supp. 3d 419, 427-29 (M.D. La. 2015) (accepting an illustrative plan that split a precinct for the Baton Rouge City Court for *Gingles* one). Indeed, as noted above, Louisiana law does not prohibit splitting precincts for judicial elections, and Mr. Hefner declines to suggest otherwise. 4/27/17 Tr. at 145:17-146:1.

72. Moreover, the enabling legislation creating judicial subdistricts using whole precincts contemplate that those precincts would eventually be split and nonetheless require elections to "be [held] under the [same] geographic boundaries . . . without regard to later changes in local precincts." La. Att'y Gen. Op. No. 02-189, 2002 WL 1483936, at *2 (2002). Mr. Hefner concedes that "it is not uncommon to have a precinct split into multiple parts by judicial districts." D2 at 17; 4/27/17 Tr. at 147:21-24; *see also id.* at 70:5-8, 145:17-21, 152:14-24, 153:15-25. Consistent with this reality, Mr. Hefner acknowledges that even if a plan were created for the 32nd JDC using whole precincts, the precinct boundaries will change and eventually create precinct splits, requiring the use of lockouts. 4/27/17 Tr. at 154:6-155:5.[40]

73. Finally, Mr. Hefner concedes that, as set forth above, Louisiana law authorizes parish and

[40] Louisiana law also contemplates precinct splits for judicial elections by not requiring precincts to be in the same judicial subdistrict to be merged. As noted above, two precincts may be merged into one, even if the resulting precinct spans two different judicial subdistricts, thus creating a split precinct and requiring a lockout. *See* La. Rev. Stat. Ann. § 18:532.1(B)(2)(a).

other governing authorities to split precincts in redistricting if they are unable to comply with applicable laws and TRPs by using whole precincts. *See supra* note 25; *see also* 4/27/17 Tr. at 144:25-145:5. This demonstrates that precincts can be split to comply with legal requirements, such as the non-dilution of minority voting strength, and TRPs. P172 ¶ 14; *see* D1 at 8 (Mr. Hefner acknowledging that "[p]recincts can be split . . . if using whole precincts alone cannot meet the traditional redistricting criteria"). Mr. Hefner cites no authority to indicate that this principle would not apply to judicial elections. *See generally* D1; D2; D3. As set forth above, Mr. Cooper split precincts to address TRPs, such as geographical compactness. *See supra*.

74. Mr. Hefner further contends that the number of precincts split by the *Illustrative Plan* is "large," "unusual," and "excessive." D3 at 3 n.3; 4/27/17 Tr. at 35:15-36:18, 85:12-19, 149:15-17. However, Mr. Hefner concedes that there is "no bright line" for determining the number of precincts that can be split. 4/27/17 Tr. at 149:18-25. Mr. Hefner emphasizes that in his own experience with parish redistricting plans, he seeks to split under five precincts. *Id.* at 150:1-9. However, Mr. Hefner admits that he is "very particular" about this topic, and that there is no case law that adopts his standard. *Id.* As set forth above, the percentage of precincts that are split under the *Illustrative Plan* is comparable to the percentage of precincts splits in other parishes. *See supra*; 4/27/17 Tr. at 149:5-14.[41]

75. Mr. Hefner emphasizes that the number of precinct splits will likely increase over the time and expresses concern about the cost of such splits and voter frustration. D1 at 9; D2 at 16, 18; 4/27/17 Tr. at 39:3-19, 80:3-82:4, 152:14-20, 153:15-25, 156:2-8. However, precinct splits have

[41] Mr. Hefner dismisses these statistics on the ground that the November 2014 cycle included municipal elections. According to Mr. Hefner, "[b]y necessity, [municipal elections] are going to have lockouts." D2 at 17-18; 4/27/17 Tr. at 150:10-151:2, 151:13-152:13. However, Mr. Hefner admits that precincts splits are "unavoidable" for judicial elections. 4/27/17 Tr. at 152:14-24. Mr. Hefner acknowledges that at one point, an election for the 16th JDC involved "90-something lockouts." *Id.* at 153:6-14.

increased over time in other judicial districts in Louisiana, and the Legislature has not mandated the use of whole precincts for judicial elections, as the aforementioned statutes show. *See supra*. Moreover, Mr. Hefner offers no actual estimate of costs associated with precinct splits for Terrebonne. *See generally* D1; D2; D3. In fact, he concedes that the cost "depends on the parish" and can be as low as $700 per precinct. 4/27/17 Tr. at 82:5-17; *see also* 3/14/17 Tr. 167:9-22 (Mr. Cooper stating that lockouts would be "dirt-cheap"). Ms. Rodrigue was unable to corroborate Mr. Hefner's concern about cost or voter frustration. 3/20/17 Tr. at 100:14-16, 101:11-17; 4/28/17 Tr. 270:1-13. Further, as noted above, election administrators in Terrebonne are already handling a comparable situation because some polling places serve multiple precincts and voters from different precincts receive different ballot styles at the same polling place. *See supra*.

76. More importantly, Mr. Hefner cannot recall a Section 2 case where precinct splits (and the consequent use of lockouts) led a court to reject a redistricting plan. 4/27/17 Tr. at 154:1-5, 156:19-157:13, 169:5-15. Likewise, since the 1990s, Mr. Cooper has served as an expert for developing at least five local-level redistricting plans in Louisiana; in every instance, precincts were split; and in no instance did a court take issue with those splits. P172 ¶ 14 n.33; 4/28/17 Tr. at 270:25-271:4. Further, since the 1980s, Mr. Cooper has testified in approximately 35 local-level Section 2 cases in 20 states; every case involved split precincts, and in no instance did a court find that the plan that Mr. Cooper presented did not meet *Gingles* one or otherwise rejected a plan that Mr. Cooper developed because it split precincts. P172 ¶ 14 n.33; 4/28/17 Tr. at 270:25-271:4.[42]

[42] To the extent that avoiding precinct splits is a concern at the remedial phase, Mr. Cooper has demonstrated, using precincts that were in place for the November 2014 election, that a redistricting plan for the 32nd JDC that (1) is configured with whole precincts, (2) features a majority-Black district, and (3) otherwise complies with TRPs can be drawn. P172 ¶ 15; 3/14/17 Tr. at 79:8-25, 114:12-115:8, 122:5-18, 147:3-17; 4/28/17 Tr. at 271:17-25 (Mr. Cooper explaining that he did not develop this plan because the *Illustrative Plan* fails *Gingles* one). For example, a majority-Black district in a five-district plan can be created by combining all but one of the precincts that comprise Parish Council Districts 1 and 2. P172 ¶ 15; 3/14/17 Tr. at 79:8-25, 114:12-115:8, 122:5-122:18, 147:3-17; 4/28/17 Tr. at

Racial Gerrymander

77. Mr. Hefner agrees that compliance with Section 2 requires a plan drawer to be conscious of race. 4/27/17 Tr. at 45:23-46:7, 69:5-24, 104:23-105:21, 106:1-3, 161:16-19. Notwithstanding, Mr. Hefner opines that the *Illustrative Plan* "was drawn using race as a sole criteria [sic] and thereby subordinating [TRPs]" and, accordingly, is a racial gerrymander. D1 at 22; 4/27/17 Tr. at 41:18-42:14, 43:7-23, 49:21-50:2, 52:8-53:4, 62:8-17, 63:19-64:6, 78:13-79:10, 82:22-83:16, 103:7-13, 156:19-157:13, 169:23-170:21.

272:14-25. Such a district would have a total population of 21,562 (for an acceptable population deviation of -3.62%), an Any-Part Black VAP of 50.35%, and an estimated non-Hispanic Black citizen VAP of 53.90%. P172 ¶ 15.

Mr. Hefner acknowledges that a five-district plan can be developed using whole precincts, but criticizes such a plan for being insufficiently compact. D3 at 7-8; 4/27/17 Tr. at 87:20-89:5, 102:4-13, 157:15-158:9. Mr. Hefner emphasizes that the Reock score for District 1 decreases from .39 to .20, and the Polsby-Popper score decreases from .13 to .09. D3 at 8; 4/27/17 Tr. at 88:17-89:5, 158:2-9. But, as indicated above, "[t]here is no score for any one measure . . . that on the face of it indicates unsatisfactory compactness." P172 ¶¶ 8-9; D37-a at 145:4-146:4. Mr. Hefner concedes that there is "no bright line" for determining geographic compactness using statistical measures. *See supra*.

Moreover, Mr. Hefner does not dispute that the Reock score of .20 in the plan that uses whole precincts is higher than the Reock score of Louisiana's Congressional District 2, which is .18. P169 ¶ 4; 4/27/17 Tr. at 158:18-23. Nor does Mr. Hefner dispute that the Reock score of .20 is also within the range of Reock scores for State House districts, the lowest of which is .11. P169 ¶ 3; 4/27/17 Tr. at 158:23-159:2; 4/28/17 Tr. at 272:1-13. Likewise, Mr. Hefner does not dispute that the Polsby-Popper score of .09 is higher than the Polsby-Popper score of Congressional District 2, which is .06, and Congressional District 6, which is .07, and nearly identical to the Polsby-Popper score of Congressional District 5, which is .10. P169 ¶ 6; 4/27/17 Tr. at 159:3-16. Nor does Mr. Hefner dispute that the Polsby-Popper score of .09 is also within the range of Polsby-Popper scores for State House districts, the lowest of which is .05. P169 ¶ 5; 4/27/17 Tr. at 159:17-19; 4/28/17 Tr. at 272:1-13. Thus, these compactness scores do not demonstrate that the plan using the whole precincts is out of the norm in terms of its geographical compactness. 4/28/17 Tr. at 272:1-13. As set forth above, some precincts in Terrebonne are irregularly shaped, and as a result, using whole precincts to draw districts inevitably results in a less compact district. *See supra*. Mr. Hefner acknowledges that a district may be less compact to address other TRPs. 4/27/17 Tr. at 115:14-116:8.

At trial, Mr. Hefner also asserted that that the plan does not respect communities of interest. 4/27/17 Tr. at 88:2-10. This argument is not credible because the majority-Black district combines Parish Council and School Board Districts 1 and 2, with the exception of one precinct. The Court has no reason to believe that the Parish Council and School Board districts do not respect communities of interest. *See supra*.

Mr. Hefner also opines that the plan using the whole precincts does not satisfy numerosity. D3 at 9-10; 4/27/17 Tr. 85:22-86:15, 87:13-19, 102:4-13, 159:20-25. But Mr. Hefner does not dispute that, as reported by Mr. Cooper, the majority-Black district in that plan includes an Any-Part Black VAP of 50.35%, and an estimated non-Hispanic Black citizen VAP of 53.90%. P172 ¶ 15; D3 at 9-10 & Ex. 1; 4/27/17 Tr. at 160:1-4. Mr. Hefner asserts that the non-Hispanic DOJ Black VAP of the district at issue is 49.7%. D3 at 9-10 & Ex. 1; 4/27/17 Tr. at 159:20-25. 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. *See supra*. Mr. Hefner contends that it is improper to use ACS data to estimate citizen VAP. 4/27/17 Tr. at 85:22-86:15, 87:13-19. Mr. Hefner's opinion on this issue also runs counter to numerous cases. *See supra* note 18 (collecting cases). Finally, as set forth above, Mr. Hefner opines that based on his past experience "in redistricting and working within Section 5 reviews," there is "a threshold of 56% of the minority [VAP] to be a viable majority-minority district." D3 at 5. However, as discussed above, Mr. Hefner, consistent with *Bartlett*, concedes that the standard for numerosity under *Gingles* is 50% plus one. *See supra*.

78. As an initial matter, Mr. Hefner's opinion that the *Illustrative Plan* constitutes a racial gerrymander conflicts with Fifth Circuit precedent holding that an equal protection inquiry should not be used to assess *Gingles* one. *Clark v. Calhoun County*, 88 F.3d 1393,1406-07 (5th Cir. 1996) (holding that "*Miller* [*v. Johnson*, 515 U.S. 900 (1995)] and its progeny [did not] work a change in the first *Gingles* inquiry" and rejecting the argument that "a proposed district that violates *Miller* does not satisfy the first *Gingles* factor per se"); *see also infra* (conclusions of law).[43]

79. Further, race did not predominate in the development of the *Illustrative Plan* because, as set forth above, Mr. Cooper adhered to TRPs in preparing the *Illustrative Plan*. *See supra*.

80. To support his opinion that the *Illustrative Plan* is a racial gerrymander, Mr. Hefner contends that Mr. Cooper improperly used census blocks and "cherry-pick[ed]" them to "maximize" the Black population in District 1. D1 at 9-14; D2 at 20; D3 at 3; *see also, e.g.*, 4/27/17 Tr. at 41:18-42:1, 78:13-79:6, 82:22-83:16, 103:7-18, 156:19-157:13, 169:23-170:21. However, it is not improper to use census blocks to develop redistricting plans. *Houston v. Lafayette County*, 56 F.3d 606, 611 & n.4 (5th Cir. 1995) (noting with approval plaintiffs' explanation that they used "existing census block lines" for their illustrative plan and reversing the district court's ruling that plaintiffs did not satisfy *Gingles* one). Indeed, Mr. Cooper explains that it is his standard practice to use census blocks to develop local-level plans. P165-a ¶ 28; 3/14/17 Tr. at 75:21-76:1, 126:18-22. Mr. Hefner concedes that census blocks are "a basic building block" of census geography, and that he also uses census blocks in his own work. 4/27/17 Tr. at 103:22-104:10. Further, Mr. Cooper

[43] Mr. Hefner's opinion that a plan drawer "can't" use race as "the primary or the sole consideration," 4/27/17 Tr. at 104:23-105:21, ignores Supreme Court precedent holding that a plan in which race predominates is not automatically invalid, but is instead subject to strict scrutiny. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 801 (2017) (affirming finding that the "predominant use of race . . . was narrowly tailored to achieve compliance with § 5" of the VRA); *see also infra* (conclusions of law). Mr. Hefner concedes that compliance with Section 2 is a compelling governmental interest, 4/27/17 Tr. at 105:23-25, and offers no opinion on whether the *Illustrative Plan* is narrowly tailored to achieve a compelling governmental interest. *See generally* D1; D2; D3.

did not "cherry-pick" census blocks to "maximize" the Black population in District 1. 4/28/17 Tr. at 263:6-264:5. Indeed, Mr. Cooper explained how he deliberately included a majority-*white* area in District 1 to make the district "more regularly shaped" and thus address the TRP of geographical compactness. 3/14/17 Tr. at 77:14-78:7, 83:24-84:23.[44]

Dr. Ronald E. Weber's Opinion on *Gingles* One

81. Defendants' expert, Dr. Weber,[45] assessed whether the *Illustrative Plan* comports with *Gingles* one. D6 ¶ 17; 4/28/17 Tr. at 9:18-11:15, 25:19-26:10. Dr. Weber opines that the Black population is sufficiently numerous, but not geographically compact. D6 at 64; 4/28/17 Tr. at 9:18-11:15, 25:19-26:10, 35:25-36:13, 102:11-103:2. For the reasons set forth below, Dr. Weber's opinion that the Black population is not geographically compact is not credible.[46]

Geographical compactness/shape

82. Dr. Weber acknowledges that the Reock and Polsby-Popper scores calculated by Mr. Cooper are "the two best geographic compactness scores." 4/28/17 Tr. at 37:9-38:12. But in preparing his initial report, Dr. Weber did not calculate either of these scores for District 1 or any

[44] Mr. Hefner further contends that (1) the lack of compactness of District 1; (2) the inclusion of parts of Houma, Gray, and Schriever into District 1; and (3) the existence of split precincts all demonstrate that race predominated in the *Illustrative Plan*. 4/27/17 Tr. at 41:18-42:14, 43:7-23, 49:21-50:2, 52:8-53:4, 63:19-64:6, 78:13-79:10, 82:22-83:16, 156:19-157:13, 169:23-170:21. However, as set forth above, Mr. Hefner provides no objective benchmark for his opinion that District 1 is not geographically compact. Indeed, District 1 falls within the norm in terms of its compactness scores and has a crescent shape similar to that of other Louisiana districts, such as State House District 51, which, within Terrebonne, extends from Houma to the western part of the parish to Schriever. *See supra*.

Mr. Hefner's contention that Mr. Cooper included Schriever, along with Houma and Gray, in District 1 to ensure that District 1 is majority-Black also is not credible. As Mr. Cooper explains, it is not necessary to include Schriever in District 1 to make that district a majority-Black district. 3/14/17 Tr. at 141:8-17, 142:4-11; 4/28/17 Tr. at 39:24-40:14. Further, Mr. Cooper included Schriever to respect the community of interest that is shared by Black residents in Houma, Gray, and Schriever, consistent with numerous existing districts, including State House District 51 and Parish Council and School Board Districts 2. *See supra*.

Finally, the existence of precinct splits does not demonstrate that race predominated in the development of the *Illustrative Plan*. As set forth above, Louisiana has split precincts in creating some judicial subdistricts, and Mr. Hefner concedes that precincts can be split to address various TRPs. Mr. Cooper split precincts for this purpose, including to ensure geographical compactness. *See supra*.

[45] Out of approximately 60 cases in which he has testified as an expert witness, Dr. Weber has worked on behalf of minority voters in only two. 4/28/17 Tr. at 158:25-159:18.

[46] Dr. Weber does not dispute Mr. Cooper's findings that the *Illustrative Plan* meets the TRPs of contiguity; one person, one vote; and incumbent protection. D6 ¶ 17; D7 ¶¶ 5-10.

other existing district in Terrebonne, specifically, or in Louisiana, generally. 4/28/17 Tr. at 103:14-17; *see generally* D6. As a consequence, Dr. Weber did not compare the compactness scores of District 1 to those of any other district. 4/28/17 Tr. at 103:14-17; *see generally* D6. Likewise, in preparing his supplemental report, Dr. Weber did not calculate the Reock or Polsby-Popper scores for any other district. 4/28/17 Tr. at 104:5-7; *see generally* D7. Accordingly, in his supplemental report, Dr. Weber did not compare the compactness scores of District 1 to those of any other districts. 4/28/17 Tr. at 104:5-7; *see generally* D7.

83. Dr. Weber suggests in his supplemental report that Reock scores are irrelevant because "there seems to be a scholarly consensus that perimeter measures [*e.g.*, Polsby-Popper] are superior to dispersion measures [*e.g.*, Reock]." D7 ¶ 7; 4/28/17 Tr. at 104:8-13. Mr. Cooper, who has engaged in redistricting work for more than 30 years, has never heard of such a consensus. P172 ¶ 8. To support his assertion, Dr. Weber cites only one article, but that article contradicts Dr. Weber's opinion. D7 ¶ 7; P172 ¶ 8; 4/28/17 Tr. at 104:14-105:7. The authors state that "perimeter length, is by itself insufficient for measuring compactness," that "dispersion must be considered," and that both types of compactness scores (dispersion and perimeter) should be analyzed. P172 ¶ 8; 4/28/17 Tr. at 104:22-105:7. As set forth above, Mr. Cooper calculated both the Reock and Polsby-Popper scores for District 1 and compared those scores to those of other districts. *See supra*.

84. Dr. Weber opines that the Reock and Polsby-Popper scores of .39 and .13, respectively, of District 1 are "below the 50[%] level and therefore show that District 1 is "not compact." D7 ¶¶ 6-7; 4/28/17 Tr. at 30:6-8, 37:6-38:12, 105:8-13. But, like Mr. Hefner, Dr. Weber declines to state that there is a "bright line cutoff point to distinguish between an uncompact and compact district." D7 ¶ 7; 4/28/17 Tr. at 105:14-20. In fact, the authors of the article cited by Dr. Weber in his supplemental report, discussed *supra*, emphatically reject the notion that there is a bright-line test,

stating that "quantitative scores should be used to make comparisons, not to eliminate plans or districts that fail to meet a predetermined level. There is no score for any one measure, much less for all of them, that on the face of it indicates unsatisfactory compactness." P172 ¶ 9.[47] As set forth *supra*, the Reock and Polsby-Popper scores of District 1 compare favorably to the scores of other existing districts in Louisiana. *See supra*.

85. In his supplemental report, Dr. Weber, like Mr. Hefner, criticizes Mr. Cooper for comparing the compactness scores and shape of District 1 with those of other districts in Louisiana. D7 ¶ 9. Dr. Weber opines that this comparison is "not useful" because other plans were drawn while Section 5 was in force. *Id.* As set forth above, however, under both Sections 2 and 5, a map-drawer must adhere to TRPs, such as geographical compactness, and non-dilution of minority voting strength. Section 5 does not require a map-drawer to disregard TRPs, and the Court will not assume that the districts to which Mr. Cooper compared District 1—including the state legislative, congressional, and judicial election districts drawn by the Legislature—did so. *See supra*.

86. Dr. Weber opines that the shape of District 1 is "odd." D6 ¶ 17; 4/28/17 Tr. at 28:3-22, 29:7-30:8, 105:21-24, 106:13-23. Like Mr. Hefner, however, Dr. Weber arrived at this visual determination only by looking at District 1 and without comparing it to the shape of any other district in Louisiana. 4/28/17 Tr. at 105:25-106:3. Dr. Weber thus fails to provide an objective benchmark for his opinion that the shape of District is "odd." *See id.*

87. Dr. Weber takes issue with District 1 for running from Schriever and Gray to the western part of Terrebonne before entering Houma. D6 ¶ 17; 4/28/17 Tr. at 28:3-22, 29:7-30:8, 106:13-23. But Dr. Weber acknowledges that State House District 51 also encompasses parts of Schriever and Gray, "then go[es] west, then . . . go[es] "south," before "com[ing] back up into the southern part

[47] Moreover, as Mr. Cooper explains, it is "highly unusual" for a district to have a Reock score of .5 or more "because only a perfect circle would score one. And you never see districts that are perfect circles." 4/28/17 Tr. at 272:1-13.

of Houma." 4/28/17 Tr. at 107:9-108:8; *id.* at 111:8-20 (Dr. Weber conceding that Parish Council and School Board Districts 2 also extend from Houma "into Gray and then up to Schriever").

88. Dr. Weber calls the existing majority-Black Parish Council districts "severely underpopulated" and even suggests that they violate the principle of one person, one vote and thus are "unconstitutional." *Id.* at 21:2-23:25. However, aside from Dr. Weber's single remark, the record is devoid of any evidence suggesting that the Parish Council districts violate the law. *See Harris v. Ariz. Indep. Redistricting Comm'n*, 136 S. Ct. 1301, 1306-07 (2016) (holding that "the Constitution permits [population] deviation[s] when [they are] justified by legitimate considerations," such as TRPs and compliance with Section 5).

89. Dr. Weber also points to the underpopulation of Parish Council Districts 1 and 2 as evidence that the Parish Council must have found it difficult to draw two majority-Black districts out of nine and that the Black population is therefore too dispersed to form the majority in one of five SMDs.[48] 4/28/17 Tr. at 21:2-23:25, 29:7-30:5, 32:4-34:16. But Mr. Cooper explained that "two [Parish Council] districts could have been drawn that [are] more compact with [lower population] deviation[s]." *Id.* at 279:18-280:17; *see also* 3/14/17 Tr. at 150:17-151:5. And as set forth above, notwithstanding the alleged dispersion of the Black population in Terrebonne, District 1 falls within the norm in terms of its geographic compactness and shape. *See supra*.[49]

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[48] In his initial report, Dr. Weber also states that "[a]ny deviation in the proposed illustrative sub-district 1 lines to create a more compact district is likely to reduce the [Black VAP] majority for the sub-district . . . to less than 50[%]." D6 ¶ 17. This opinion is wholly speculative because, in preparing either his initial or supplemental report, Dr. Weber did not attempt to draw a majority-Black district in Terrebonne to see whether doing so would cause that district to become non-majority-minority. 4/28/17 Tr. at 109:8-11. Further, Dr. Weber's claim that the Black population is too dispersed is undermined by his own statement that Black residents are "pretty much going to be in the same places . . . in the 2010" as they were in the 1990s, when the Parish Council and School Board created two majority-Black districts out of nine for each body. 4/28/17 Tr. at 21:2-23:25.

[49] With respect to communities of interest, Dr. Weber opines in his supplemental report that based upon maps prepared by Mr. Hefner, the *Illustrative Plan* "does not comport with" the boundaries of CDPs—*i.e.*, Houma, Gray, and Schriever. D7 ¶ 10. However, as set forth above, other existing districts encompass parts of—and in the process, split—Houma, Gray, and/or Schriever, including State House District 51 and Parish Council and School Board Districts 2. *See supra*. Dr. Weber acknowledges this as much. D6 ¶ 16; 4/28/17 Tr. at 111:8-20.

Racial gerrymander

90. Like Mr. Hefner, Dr. Weber concedes that race can be a factor in developing a plan to satisfy Section 2, but emphasizes that "race was elevated to the primary criterion for creating [District] 1." D7 ¶ 10; 4/28/17 Tr. at 29:7-30:5, 34:17-36:13, 41:6-22, 116:14-19, 117:7-118:8. As with Mr. Hefner, Dr. Weber's opinion that the *Illustrative Plan* is a racial gerrymander ignores binding precedent holding that an equal protection inquiry should not be used to assess *Gingles* one. *See Clark*, 88 F.3d at 1406-07; *see also infra* (conclusions of law).[50] Moreover, as set forth above, race did not predominate in the development of the *Illustrative Plan*. *See supra*.

Overall Conclusion

91. The Black population is sufficiently numerous and geographically compact to comprise a majority of the VAP in one SMD in a five-district plan for the 32nd JDC.

***GINGLES* TWO AND THREE**

Dr. Richard L. Engstrom's RPV Analysis

Dr. Weber criticizes Mr. Cooper for considering socioeconomic commonalities between Black residents of Houma, Gray, and Schriever in determining whether District 1 respects communities of interest. 4/28/17 Tr. at 38:13-39:18. But Dr. Weber acknowledges that communities of interest is a "multi-faceted concept" that includes socioeconomic characteristics. *Id.* at 110:6-22.

In his supplemental report, Dr. Weber also states that "Mr. Cooper clearly ignored the requirement of Louisiana state law to follow precinct boundaries in creating his judicial sub-district." D7 ¶ 10; *see also* 4/28/17 Tr. at 35:25-36:13. However, as set forth *supra*, no provision of Louisiana law prohibits precinct splits in the context of judicial elections; in fact, some judicial subdistricts split precincts when they were created by the Legislature; and in *Hall*, this Court accepted an illustrative plan that split a precinct for the Baton Rouge City Court as satisfying *Gingles* one. 108 F. Supp. 3d at 427-29; 4/28/17 Tr. at 113:6-114:6, 166:24-25 (Dr. Weber agreeing that the precinct split was not a "problem" in *Hall*, a case in which he was an expert witness for the defense); *see also supra*.

Like Mr. Hefner, Dr. Weber opines that the plan Mr. Cooper developed using whole precincts that were in place for the November 2014 election is not geographically compact "based upon the [compactness] scores." 4/28/17 Tr. at 24:1-19, 37:6-38:12, 40:21-41:5. However, as set forth above, the compactness scores of that plan fall within the norm as compared to other districts. *See supra* note 42. Moreover, the relative lower level of compactness is attributable to the shapes of precincts in Terrebonne. *See supra*; *see also* 4/28/17 Tr. at 103:10-13 (Dr. Weber agreeing that "quite often" TRPs, such as geographical compactness and minimizing precinct splits, conflict with one another).

[50] At trial, Dr. Weber claimed that he "follow[s] the jurisprudence on . . . these issues," but professed his lack of awareness of precedent on this issue. 4/28/17 Tr. at 36:2-37:1. Further, like Mr. Hefner, Dr. Weber opines that a plan in which race predominates is "not legal plan." *Id.* at 172:5-17. This is contrary to Supreme Court precedent holding that such a plan is valid if it satisfies strict scrutiny. *See supra*; *see also infra* (conclusions of law).

92. Plaintiffs' expert, Dr. Engstrom,[51] analyzed the extent to which, if any, the candidate preferences of Black and non-Black voters in Terrebonne have differed in elections when they have been presented with a choice between or among Black and non-Black candidates. P166 ¶ 5; 3/13/17 Tr. at 147:15-148:4. Elections with this type of candidate pool (*i.e.*, biracial elections) are generally considered the most probative for assessing RPV. P166 ¶ 6; 3/13/17 Tr. at 148:5-10, 184:4-23. In addition, an endogenous election, one that is conducted for the office that is at issue in a case, is considered more probative than an exogenous election, one that is conducted for an office other than the one that is at issue in the litigation. 3/13/17 Tr. at 150:18-151:4. Finally, in a case challenging a judicial election system, judicial elections are generally considered more probative than non-judicial elections. P166 ¶ 6; 3/13/17 Tr. at 151:5-20, 152:9-153:7. Neither case

[51] Dr. Engstrom is qualified to serve as an expert witness in political science and on RPV and election systems and their impact on minority voters. P166 ¶¶ 1-4; 3/13/17 Tr. at 145:20-146:15. Dr. Engstrom is a political scientist and a Research Associate at the Center for the Study of Race, Ethnicity, and Gender in the Social Sciences, a Visiting Professor in the Department of Political Science, and a member of the Graduate Faculty in political science at Duke University. P166 ¶ 1; 3/13/17 Tr. at 140:8-19, 141:12-19. Dr. Engstrom was Research Professor of Political Science and Endowed Professor of Africana Studies at the University of New Orleans, where he was employed from August 1971 to May 2006. P166 ¶ 1; 3/13/17 Tr. at 141:2-6.

Dr. Engstrom has conducted extensive research into the relationship between election systems and minority political participation. P166 ¶ 2; 3/13/17 Tr. at 140:20-141:1. Articles authored or co-authored by Dr. Engstrom were cited with approval in *Thornburg v. Gingles*, *see* 478 U.S. 30, 46 n.11, 49 n.15, 53 n.20, 55, 71 (1986) (Brennan, J.); *Karcher v. Daggett*, 462 U.S. 725 (1983), *see id.* at 750 n.8, 752 n.10, 753 n.11, 756 n.16 (Stevens, J., concurring); *id.* at 776 n.12 (White, J., dissenting); and *Holder v. Hall*, 412 U.S. 874 (1994), *see id.* at 910 (Thomas, J., concurring in the judgment). P166 ¶ 2; 3/13/17 Tr. at 143:5-15.

Dr. Engstrom has testified as an expert witness at trial or by deposition in more than 100 voting rights cases in federal and state courts on topics such as RPV, enhancing factors (*i.e.*, features of election systems that enhance the ability of the quantitative majority to control election outcomes, such as majority-vote requirements, division posts, and large election districts), and alternative remedies. P166 ¶ 2; 3/13/17 Tr. at 143:16-144:10. In Louisiana, Dr. Engstrom has testified as an expert witness in *Clark v. Roemer*, *Chisom v. Roemer*, *Major v. Treen*, and other cases. 3/13/17 Tr. at 145:9-19. Since 2009, Dr. Engstrom has testified as an expert witness in cases such as: *Benavidez*, 638 F. Supp. 2d at 723-26 (citing Dr. Engstrom's testimony and finding that at-large voting for city council was dilutive); *Fabela v. City of Farmers Branch, Tex.*, No. 10-1425, 2012 WL 3135545, at *8-13 (N.D. Tex. 2012) (citing Dr. Engstrom's testimony and finding that at-large voting for city council was dilutive); *Montes*, 40 F. Supp. 3d at 1401-07 (granting summary judgment to plaintiffs on *Gingles* two and three based on Dr. Engstrom's testimony and finding that at-large voting for city council was dilutive); *Benavidez v. Irving Indep. Sch. Dist.*, No. 13-87, 2014 WL 4055366, at *1, 11-13 (N.D. Tex. 2014) (citing Dr. Engstrom's testimony and finding hybrid redistricting plan that featured some at-large elected seats for school board was dilutive); *Mo. State Conference of NAACP*, 201 F. Supp. 3d at 1045 (citing Dr. Engstrom's testimony and finding at-large voting for school district was dilutive); and *Patino*, 2017 WL 68467, at *8-9, 20 (citing Dr. Engstrom's testimony and finding that hybrid redistricting plan that featured some at-large elected seats for city council was dilutive). P166 ¶ 2; 3/13/17 Tr. at 144:11-17.

law nor social science specifies a minimum number of elections for analyzing RPV, though the Supreme Court in *Gingles* found elections from three election cycles sufficient to establish RPV. *See* 478 U.S. at 57 n.25, 61; 3/13/17 Tr. at 153:22-154:12.

93. Between 1993 and 2014, the following seven biracial elections were held at-large or parish-wide in Terrebonne: (1) 2014 Houma City Court election; (2) 1994 32nd JDC election; (3) 1993 First Circuit Court of Appeal election; (4) 2014 Houma City Marshal election; (5) 2012 U.S. Presidential election; (6) 2011 Tax Assessor; and (7) 2008 U.S. Presidential election. P166 ¶¶ 16-29; 3/13/17 Tr. at 148:19-149:24. Three of these elections were judicial elections, and four were non-judicial elections. *See also* P166 ¶ 7; 3/13/17 Tr. at 153:8-21 (Dr. Engstrom explaining that he analyzed non-judicial elections for several reasons, including that "[t]here are not generally a lot of biracial judicial elections" and "that is true of Louisiana"). Aside from a 1995 election for Sheriff in which the Black candidate was a minor candidate, these seven elections were the most recent at-large or parish-wide biracial elections to have taken place in Terrebonne when Dr. Engstrom prepared his report in 2015. P166 ¶ 7 n.5; 3/13/17 Tr. at 149:25-150:17.[52] Dr. Engstrom analyzed each of these seven biracial elections to determine the extent of RPV. P166 ¶¶ 6-7;

[52] For each of the seven elections, Dr. Engstrom used the number of votes cast for the various candidates in the precincts used in the election ("votes cast") and the number of such people within each group (*i.e.*, Black and non-Black) in each respective precinct who received ballots containing the election contest ("turnout"). P166 ¶ 10; 3/13/17 Tr. at 154:13-155:12. Both the votes cast and the turnout data are available at the website of SOS. P166 ¶ 10; 3/13/17 Tr. at 154:13-155:12. Dr. Engstrom typically uses this type of data to analyze RPV. 3/13/17 Tr. at 155:13-16.

Dr. Engstrom employed a statistical method known as King's ecological inference ("EI") and software known as R software to estimate the candidate preferences of Black and non-Black voters in each of the seven elections. P166 ¶ 13; 3/13/17 Tr. at 155:17-25. The independent variable in the RPV analysis is the racial composition of the groups of voters that turned out to vote, and the dependent variable is the votes cast for the candidates. 3/13/17 Tr. at 156:19-157:17. King's EI provides a specific, or point, estimate of a group's support for a candidate, as well as a confidence interval, which identifies the range of estimates within which one can be 95% confident statistically that the actual value of the group's support for a candidate lies. P166 ¶ 13; 3/13/17 Tr. at 157:25-159:10. If there is no overlap between the confidence interval for the point estimate of Black voter support for a candidate and the confidence interval for the point estimate of non-Black voter support for that same candidate, then one can be confident that there is a statistically significant difference between the two point estimates. 3/13/17 Tr. at 159:11-24. King's EI is widely recognized as a superior procedure to estimate candidate preferences of different groups. P166 ¶ 13 n.7; 3/13/17 Tr. at 156:1-156:18.

3/13/17 Tr. at 147:23-149:24, 199:19-23.

94. An election for the Houma City Court was held on November 4, 2014. P166 ¶ 16. Three Republican candidates ran in this election, including Ms. Carter, the Black candidate, and two non-Black candidates. P166 ¶¶ 16-17. In this election, 85.1% of Black voters supported Ms. Carter, and she was the candidate of choice of Black voters. P166 ¶¶ 16-17; 3/13/17 Tr. at 162:10-17. Only 8.3% of non-Black voters supported Ms. Carter, and she was defeated. P166 ¶¶ 16-17; 3/13/17 Tr. at 162:18-20, 163:5-6. Voting in this election was racially polarized. P166 ¶¶ 17, 22; 3/13/17 Tr. at 162:21-163:4, 172:6-13.

95. An election for Division B on the 32nd JDC was held in October 1994. P166 ¶ 18. Six candidates ran in this election, including Mr. Lewis, the Black candidate, and five non-Black candidates. P166 ¶ 18. In this election, 72.8% of Black voters supported Mr. Lewis, and he was the candidate of choice of Black voters. P166 ¶¶ 18-19; 3/13/17 Tr. at 163:14-22. Only 1.1% of non-Black voters supported Mr. Lewis, and he was defeated. P166 ¶¶ 18-19; 3/13/17 Tr. at 163:23-25, 164:6-7. Voting was racially polarized. P166 ¶¶ 19, 22; 3/13/17 Tr. at 164:1-5, 172:6-13.

96. An election for the 1st District, Division C on the First Circuit Court of Appeal was held in April 1993, involving voters in eight parishes, including Terrebonne. P166 ¶ 20. Two candidates ran in this election, both of whom were Democrats: one Black candidate, Mr. Lewis, and one non-Black candidate. P166 ¶ 20. In this election, 99.2% of Black voters in Terrebonne supported Mr. Lewis, and he was the candidate of choice of Black voters. P166 ¶¶ 20-21; 3/13/17 Tr. at 164:15-21. Only 10.5% of non-Black voters in Terrebonne supported Mr. Lewis, and he was defeated. P166 ¶¶ 20-21; 3/13/17 Tr. at 164:22-24, 165:5-7. Voting was racially polarized. P166 ¶¶ 21, 22; 3/13/17 Tr. at 164:25-165:4, 172:6-13.

97. An election for City Marshal was held in November 2014. P166 ¶ 24. Six candidates ran in

this election, including David Mosely, the Black candidate, and five non-Black candidates. P166 ¶ 24. In this election, 81.8% of Black voters supported Mr. Mosely, and he was the candidate of choice of Black voters. P166 ¶¶ 24-25; 3/13/17 Tr. at 165:16-22. Only 5.5% of non-Black voters supported Mr. Mosely, and he was defeated. P166 ¶¶ 24-25; 3/13/17 Tr. at 165:23-25, 166:6-7. Voting was racially polarized. P166 ¶¶ 25, 33; 3/13/17 Tr. at 166:1-5, 172:6-13.

98. An election for Tax Assessor was held in October 2011. P166 ¶ 26. Four candidates ran in this election, including Mr. Williams, the Black candidate, and three non-Black candidates. P166 ¶ 26. In this election, 71.4% of Black voters supported Mr. Williams, and he was the candidate of choice of Black voters. P166 ¶ 26; 3/13/17 Tr. at 167:18-168:2. Only 2.6% of non-Black voters supported Mr. Williams, and he was defeated. P166 ¶ 26; 3/13/17 Tr. at 168:3-6, 168:13-14. Voting was racially polarized. P166 ¶¶ 26, 33; 3/13/17 Tr. at 168:7-12, 172:6-13.

99. An election for U.S. President was held in November 2012. P166 ¶ 27. Barack Obama, a Black candidate, and Mitt Romney, a white candidate, competed in Louisiana in this election. P166 ¶ 27. In this election, 99.8% of Black voters in Terrebonne supported Barack Obama, and he was the candidate of choice of Black voters. P166 ¶ 27; 3/13/17 Tr. at 169:5-14. Only 12.8% of non-Black voters in Terrebonne supported Barack Obama, and he was defeated in Terrebonne. P166 ¶ 27; 3/13/17 Tr. at 169:15-17, 169:23-25. Voting was racially polarized. P166 ¶¶ 27, 33; 3/13/17 Tr. at 169:18-22, 172:6-13.

100. An election for U.S. President was held in November 2008. P166 ¶ 28. Barack Obama, a Black candidate, and John McCain, a white candidate competed in Louisiana in this election. P166 ¶ 28. In this election, 99.6% of Black voters in Terrebonne supported Barack Obama, and he was the candidate of choice of Black voters. P166 ¶ 28; 3/13/17 Tr. at 170:8-14. Only 13.7% of non-Black voters in Terrebonne supported Barack Obama, and he was defeated in Terrebonne. P166 ¶

28; 3/13/17 Tr. at 170:15-17, 170:23-25. Voting was racially polarized. P166 ¶¶ 28, 33; 3/13/17 Tr. at 170:18-22, 172:6-13.

101. Across the seven elections, Black voters' support for the Black candidates ranged from 71.4% to 99.8% with a mean of 87.1%. P166 ¶¶ 16-29; 3/13/17 Tr. at 171:1-10. Across the seven elections, non-Black voter support for the Black candidates ranged from 1.1% to 13.7% with a mean of 7.8%. P166 ¶¶ 16-29; 3/13/17 Tr. at 171:17-23. In each election, the candidate of choice of Black voters was defeated regardless of whether the candidate ran: (a) as a Democrat, Republican, or otherwise; (b) for a judicial or non-judicial office; or (c) for a local, state, or federal office. P166 ¶¶ 16-29; 3/13/17 Tr. at 173:14-174:7. Voting in each of the seven elections was racially polarized. P166 ¶ 16-29, 33; 3/13/17 Tr. at 172:6-13; *see also id.* (Dr. Engstrom testifying that "the magnitude of polarization [in this case] . . . would certainly be among the most polarized context or environment that I have . . . studied. It's among them, if not the most").

102. Dr. Engstrom's analysis demonstrates that Black voters vote cohesively in elections in Terrebonne, and non-Black voters vote as a bloc to usually defeat the preferred candidates of Black voters. P166 ¶ 16-29, 33; 3/13/17 Tr. at 171:11-16, 171:24-172:5.

Dr. Ronald E. Weber's RPV Analysis

103. Defendants' expert, Dr. Weber, conducted an analysis of RPV with respect to the same seven elections as Dr. Engstrom. D6 ¶¶ 30-43; 4/28/17 Tr. at 9:11-17, 118:10-14; *see also* P170 at 7 & n.3.[53] Dr. Weber's estimates of candidate preferences among Black and non-Black voters in those elections are virtually the same as those of Dr. Engstrom. 4/28/17 Tr. at 118:19-119:7; *see also* P170 at 7 n.4. Dr. Weber estimates that: (a) in the 1994 32nd JDC election, Mr. Lewis, the Black candidate, received 71.2% of Black voter support, but only 1.2% of non-Black voter support,

[53] Dr. Weber also used King's EI to analyze the elections. D6 ¶ 9; 4/28/17 Tr. at 54:25-55:2, 118:15-18.

D6 tbl. 9; (b) in the 1993 First Circuit Court of Appeal election, Mr. Lewis, the Black candidate, received 98.8% of Black voter support in Terrebonne, but only 9.9% of non-Black voter support in Terrebonne, D6 tbl. 10-1; (c) in the 2014 Houma City Court election, Ms. Carter, the Black candidate, received 84.5% of Black voter support, but only 6.1% of non-Black voter support, D6 tbl. 10-2; (d) in the 2008 U.S. Presidential election, Barack Obama, the Black candidate, received 98.8% of Black voter support in Terrebonne, but only 13.0% of non-Black voter support in Terrebonne, D6 tbl. 11-1; (e) in the 2011 Tax Assessor election, Mr. Williams, the Black candidate, received 67.3% of Black voter support, but only 1.6% of non-Black voter support, D6 tbl. 11-2; (f) in the 2012 U.S. Presidential election, Barack Obama, the Black candidate, received 98.1% of Black voter support in Terrebonne, but only 12.3% of non-Black voter support in Terrebonne, D6 tbl. 11-3; and (g) in the 2014 City Marshal election, Mr. Mosely, the Black candidate, received 82.0% of Black voter support, but only 5.3% of non-Black voter support. D6 tbl. 11-4.

104. Thus, according to Dr. Weber, across the seven elections, Black voter support for the Black candidates ranged from 67.3% to 98.8% (as compared to 71.4% to 99.8% estimated by Dr. Engstrom), with a mean of 85.8% (as compared of 87.1% estimated by Dr. Engstrom).[54] *See* D6 ¶¶ 30-43, tbls. 9 to 11-4; P170 at 7. Similarly, according to Dr. Weber, across the seven elections, non-Black voter support for the Black candidates ranged from 1.2% to 13.0% (as compared to 1.1% to 13.7% estimated by Dr. Engstrom), with a mean of 7.1% (as compared to 7.8% estimated by Dr. Engstrom). *See* D6 ¶¶ 30-43, tbls. 9 to 11-4; P170 at 7. Based on Dr. Weber's estimates, across the seven elections, the gap between mean Black and non-Black voter support for Black candidates was approximately 79 percentage points. P170 at 7. Further, Dr. Weber does not dispute that in each of the seven elections, the Black candidate was defeated. D6 ¶¶ 33, 36, 37, 40-43.

[54] It is a standard practice in statistics to analyze means; the use of means does not preclude consideration of individual elections, but only adds essential information. P173 at 5, 8-9; 4/28/17 Tr. at 195:7-197:25.

105. The nearly identical findings of both Drs. Engstrom and Weber demonstrate a consistent and stark pattern of RPV across more than two decades in Terrebonne. P170 at 7, 13; P173 at 9; 3/14/17 Tr. at 234:10-236:3 (Dr. Lichtman noting that the pattern of RPV in elections "over more than two decades" is "very consistent"; "the minimal, almost token, white vote for Black candidates of choice of Black voters" is "truly striking"; and under these conditions of RPV, "no Black candidate . . . has ever cracked one-third of the overall vote in Terrebonne").

106. This pattern of extreme RPV, as shown by Dr. Weber's own estimates, applies across: judicial elections (the 1993 First Circuit Court of Appeal, 1994 32nd JDC election, and 2014 Houma City Court elections); other low-visibility, non-judicial elections (the 2011 Tax Assessor and 2014 City Marshal elections); and high-visibility presidential elections (the 2008 and 2012 U.S. Presidential elections). P170 at 13.

107. Based on his own estimates, Dr. Weber found that Black voters were cohesive in each of the seven elections that he examined. D6 ¶¶ 30, 36-38, 40-43, tbl. 12; 4/28/17 Tr. at 9:18-11:15, 55:3-56:21 (1994 32nd JDC election), 57:14-58:1 (1993 First Circuit Court of Appeal election), 58:4-23 (2014 Houma City Court election), 59:6-60:17 (2008 U.S. Presidential election), 61:7-62:2 (2011 Tax Assessor election), 62:3-20 (2012 U.S. Presidential election), 62:21-63:16 (2014 City Marshal election), 64:5-13, 119:8-11.

108. Further, based on his own estimates, Dr. Weber found RPV in five of the seven elections: the (1) 1994 32nd JDC, (2) 1993 First Circuit Court of Appeal, (3) 2008 U.S. Presidential, (4) 2012 U.S. Presidential, and (5) 2014 Houma City Court elections. *See* D6 ¶¶ 6, 36, 37, 40, 42; 4/28/17 Tr. at 9:18-11:15 (1994 32nd JDC election), 57:14-58:1 (1993 First Circuit Court of Appeal election), 58:4-23 (2014 Houma City Court election), 59:6-60:17 (2008 U.S. Presidential election),

62:3-20 (2012 U.S. Presidential election), 64:14-65:3 (overall summary).[55] Dr. Weber's finding of RPV in five of seven elections shows "a usual pattern" of RPV. 4/28/17 Tr. at 190:5-192:24.

109. Dr. Weber emphasizes that the 1994 32nd JDC election is the only endogenous election of the seven elections that he analyzed. 4/28/17 Tr. at 119:12-17. However, Dr. Weber declines to opine that this is insufficient to satisfy *Gingles* two and three, and he acknowledges that this Court in *Clark v. Roemer* analyzed "a lot of exogenous elections . . . because there weren't a lot of contested judicial elections." 4/28/17 Tr. at 66:20-67:14, 162:4-14; *see also id.* at 129:8-12 (Dr. Weber agreeing that he is not aware of any other contested, biracial election for the 32nd JDC).

110. Dr. Weber also downplays the 2008 and 2012 presidential elections on the ground that "presidential elections are not very predictive about local elections." *Id.* at 60:18-61:6. However, in *Hall*, Dr. Weber chose to analyze the 2008 and 2012 presidential elections for RPV. *Id.* at 128:9-19; *see also* 108 F. Supp. 3d at 432, 434. Dr. Weber also dismisses the significance of the 2008 and 2012 presidential elections on the theory that "every presidential election . . . has been polarized." 4/28/17 Tr. at 59:6-60:17. However, Dr. Weber presents no substantiating evidence, *see generally* D6; D7, and Dr. Engstrom disagrees with this premise, *see* 3/13/17 Tr. at 198:11-15. More importantly, the presence of RPV in other presidential elections does not eliminate RPV in these two elections in Terrebonne. *See supra*.

111. Dr. Weber also opines that the 1994 32nd JDC and the 1993 First Circuit Court of Appeal elections are stale and should not be considered. D6 ¶ 34; D7 ¶ 19; 4/28/17 Tr. at 87:18-88:18, 128:20-24. However, even if this Court were to eliminate these two elections, the pattern of RPV

[55] Dr. Weber's initial report was not clear as to whether he found the 1994 32nd JDC election to be polarized. *Compare* D6 at ¶ 6 ("I found a usual pattern of racial polarization in voting in the one 1994 endogenous primary election" for the 32nd JDC), *with id.* ¶ 34 (finding "no racial polarization in voting" in that election). At trial, Dr. Weber clarified that "even though there was some question about the non-Black community and its split of the vote" in the 1994 32nd JDC election, he "concluded . . . that the 1994 [election] was polarized," and that accordingly, "five of the seven elections are polarized." 4/28/17 Tr. at 64:14-65:3; *see also id.* at 9:18-11:15.

in the remaining five elections would be the same. *See supra*; P173 at 9; 3/13/17 Tr. at 200:5-15; 3/17/17 Tr. at 17:25-18:21, 31:20-32:6 (Dr. Lichtman explaining that the pattern of RPV is "absolutely consistent over a 24-year period. As I said, no matter how you slice this pie, it comes out the same"). Indeed, based on Dr. Weber's own estimates, the mean level of Black voter support for Black candidates for the 1993 and 1994 elections was 85% (as compared to a mean of 86.1% for the five other elections), and the mean level of non-Black voter support for these candidates was 5.6% (as compared to a mean of 7.7% for the five other elections). P173 at 8-9.[56]

112. Dr. Weber refuses to find in RPV in two of the seven elections that he analyzed: the (1) 2011 Tax Assessor and (2) 2014 City Marshal elections. *See* D6 ¶¶ 41, 43; 4/28/17 Tr. at 61:7-62:2, 62:21-63:16, 122:19-123:1. Dr. Weber found no RPV in these two elections, even though: Black voters cohesively supported Black candidates at levels of 67.3% and 82.0%, respectively; non-Black voters overwhelmingly refused to support Black candidates, with levels of non-Black voter support at 1.6% and 5.3%, respectively; and the mean Black vote for the Black candidate in these elections was 74.7%, compared to the mean non-Black vote of just 3.5%, for a difference of 71.2 percentage points. D6 tbls. 11-2 & 11-4.

113. Dr. Weber's finding of no RPV in these elections reflects the application of a classification or decision rule of his own making that Dr. Weber uses to determine voter cohesion and

[56] Judicial elections were even more polarized in 2014 than in 1994. P170 at 13. According to Dr. Weber's estimates, in the 1994 32nd JDC election, 71.2% of Black voters voted for the Black candidate compared to 1.2% of non-Black voters, for a gap of 70 percentage points. *Id.* at 13. In the 2014 Houma City Court election, 84.5% of Black voters voted for the Black candidate compared to 6.1% of non-Black voters, for a gap of 78.4 percentage points. *Id.* at 13. The 2014 Houma City Court election is particularly probative because "it involves a comparable position for a parish-wide judicial position." 3/17/17 Tr. at 19:23-20:5 (Dr. Lichtman explaining that while it is technically an exogenous election, "in the sense it's not the same position, . . . it is very close to being endogenous").

Defendants' experts, Michael Beychok and Angele Romig, also claim that elections in 1993 and 1994 are stale. D4 ¶¶ 33-34, 39-40; D8 at 3; 3/20/17 Tr. at 11:7-12:13, 52:3-53:3, 57:7-18; 4/26/17 (p.m.) Tr. at 99:23-101:10. However, neither Mr. Beychok nor Ms. Romig provides this opinion as a political scientist, and both agree that their opinion does not address whether elections in 1993 and 1994 are probative for a RPV analysis. D9 at 4; D153 at 98:21-99:3; 3/20/17 Tr. at 80:3-10; 4/26/17 (p.m.) Tr. at 112:13-113:9.

polarization and that features bright-line numerical cutoffs. *See* D6 ¶ 32; 4/28/17 Tr. at 124:4-11. Specifically, Dr. Weber finds a group to be cohesive only if "a group's percentage of support for a candidate . . . is at least 60[%] of the total vote for the top two candidates [preferred by the group] and at least 50[%] of the total vote among all candidates." D6 ¶ 32. Thus, in a two-person contest, Dr. Weber finds a group to be cohesive only if a candidate has at least 60% of the group's support. *Id.* In an election with three or more candidates, Dr. Weber finds a group to be cohesive only if a candidate has (1) at least 50% of the group's overall support and (2) at least 60% of the votes cast by the group for the top two candidates. *Id.*

114. According to Dr. Weber, for there to be RPV, both minority voters and non-minority voters must meet this test for cohesion; thus, even if *minority* voters are cohesive, Dr. Weber will not find RPV *if non-minority* voters do not meet this test for cohesion. D6 ¶ 32; 4/28/17 Tr. at 124:7-11, 19-21. Accordingly, under Dr. Weber's classification rule, the levels of voter support received by each *non-minority* candidate is relevant. 4/28/17 Tr. at 55:3-56:21. And Dr. Weber found no RPV in the 2011 Tax Assessor and 2014 City Marshal elections essentially because non-Black voters did not sufficiently cohere behind a single, white candidate. *See* D6 ¶¶ 34, 41, 43; 4/28/17 Tr. at 61:9-62:2 ("no discernible outcome for the non-[Black] side" in the 2011 Tax Assessor election), 62:21-63:16 (the "non-[Black], is really divided" in the 2014 City Marshal election), 122:19-123:1 ("The non-[Black] community was so divided and so split up."), 124:22-125:4.

115. Dr. Weber's focus on whether non-Black voters cohere behind a single white candidate conflicts with *Gingles*. *See* P170 at 9. In *Gingles*, the district court found that, on average, about four-fifths and two-thirds of white voters did not vote for Black candidates in primary and general elections, respectively. 478 U.S. at 59. Accordingly, the district court determined that voting was racially polarized because "a high percentage of black voters regularly supported black candidates

and . . . most white voters were extremely reluctant to vote for black candidates." *Id.* at 54. The Supreme Court held that this analysis, which "revealed that blacks strongly support black candidates, while, to the blacks candidates' usual detriment, whites rarely did, [reflects] the proper legal standard" for determining RPV. *Id.* at 61.

116. Significantly, neither the Supreme Court nor the district court in *Gingles* examined the degree to which white voters cohered behind a white candidate; instead the courts focused on the extent to which white voters voted for the Black candidates supported by Black voters. *See id.* at 58-61, 80-81. Indeed, the Supreme Court's opinion in *Gingles* reports only the "Percentages of Votes Cast by Black and White Voters *for Black Candidates* in the Five Contested Districts." *Id.* at 80-81 (emphasis added); *see also* 4/28/17 Tr. at 126:6-127:10 (Dr. Weber conceding that the Court considered only the levels of Black and white voter support for the Black candidates in the elections that it reviewed, and not the levels of voter support for white candidates).

117. To assess RPV, the Fifth Circuit has likewise focused on the level of white crossover voting for minority voters' candidates of choice, and not on the degree to which white voters coalesce behind a particular white candidate. *See, e.g.*, *Teague v. Attala County,* 92 F.3d 283, 291-92 (5th Cir. 1996); *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1118-20 (5th Cir. 1991); *Campos v. City of Baytown*, 840 F.2d 1240, 1249 (5th Cir. 1988).

118. Accordingly, the salient RPV inquiry is not whether white voters cohere behind a single, white candidate, but whether white voters support (or refuse to support) the preferred candidate of Black voters. *See Gingles*, 478 U.S. at 56; *see also Cooper v. Harris*, ___ S. Ct. ___, 2017 WL 2216930, at *12-13 (U.S. May 22, 2017) (holding that there was no white bloc-voting in parts of North Carolina because over two decades, "a meaningful number of white voters joined a politically cohesive black community to elect that group's favored candidate" and there was thus

"a longtime pattern of white crossover voting").

119. Numerous courts, including this Court in *Hall*, have rejected Dr. Weber's classification rule because it erroneously focuses on whether white voters sufficiently cohere behind a single, white candidate, instead of the degree of white crossover voting that is received by the candidates of choice of Black voters. *See, e.g.*, *Hall*, 108 F. Supp. 3d at 435 (this Court "reject[ing] Dr. Weber's classification rule" because "[i]t is of no import . . . whether [Black electoral] defeat is due to less or more than 60% of non-[Black] voters supporting a single candidate, when the ultimate result is a defeat of the preferred candidate of [Black] voters"); *United States v. Village of Port Chester*, 704 F. Supp. 2d 411, 430 (S.D.N.Y. 2010) ("It is not necessarily important that the non-Hispanic voters coalesce behind a particular candidate or that a particular percentage of non-Hispanic voters vote for any one candidate—what matters most is that those voters do not cast votes for the Hispanic candidate of choice, and those votes usually result in the defeat of the minority preferred candidates."); *Barnett v. City of Chicago*, 969 F. Supp. 1359, 1443 (N.D. Ill. 1997) (noting that Dr. Weber erroneously "limited the cohesiveness requirement to cohesiveness behind a single candidate," that "[b]y failing to look . . . [at] the combined level of white support for white candidates, Professor Weber provided an inaccurate view of [RPV]," and that "[t]here is virtually no support for [Dr. Weber's] interpretation of cohesiveness in the case law . . . ."), *aff'd in part and vacated in part on other grounds*, 141 F.3d 699 (7th Cir. 1998).[57]

120. At trial, the conflict between Dr. Weber's classification rule and *Gingles* was laid bare when Dr. Weber expressly disagreed with the Supreme Court's decision. 4/28/17 Tr. at 170:2-171:6 ("I have really rejected the notion that people bloc vote to defeat candidates of choice . . . .

[57] By contrast, in cases where Dr. Engstrom has analyzed RPV in elections for single-member offices, as here, Dr. Engstrom has not reported estimates of minority and non-minority voter support for non-minority candidates. 3/13/17 Tr. at 174:8-175:18. Dr. Engstrom considers such numbers to be "superfluous," and he has not been criticized by any court for not reporting such information. *Id.*

That's part of the error I think that *Thornburg* made, the *Gingles* Court made way back when . . . [Dr.] Bernard Grofman kind of . . . bamboozled the Court into believing that there's something called bloc voting. . . .").

121. Dr. Weber's use of bright-line numerical thresholds to assess cohesion and polarization also conflicts with binding precedent. "*Gingles* [itself] rejected a blanket numerical threshold for [finding] white bloc voting." *United States v. Blaine County*, 363 F.3d 897, 911 (9th Cir. 2004); *see also id.* at 911 (rejecting the argument, based on Dr. Weber's classification rule, that "white voter cohesion levels [must] surpass 60[%]" because "[t]his contention flatly ignores the test laid out in *Gingles* for white bloc voting"); D6-B at 7 (identifying *Blaine County* as a case in which Dr. Weber served as an expert witness).

122. Significantly, and critically, "*Gingles* would have come out differently if the Supreme Court had used Dr. Weber's [classification rule] because several of the elections in which the Court found polarization to be present did not meet Dr. Weber's standard" for cohesion and polarization. *Large v. Fremont County*, 709 F. Supp. 2d 1176, 1214-15 (D. Wyo. 2010); *see also id.* (rejecting Dr. Weber's classification rule because "Dr. Weber's approach to [RPV] is inconsistent with *Gingles*"). In each of the districts where the Supreme Court in *Gingles* affirmed the finding of RPV, there were elections in which Black candidates received more than 40% of white voter support. *See* 478 U.S. at 80-81. "Under Dr. Weber's definition, however, [these] elections would not have been considered polarized." *Large*, 709 F. Supp. 2d at 1215; *see also* 4/28/17 Tr. at 190:5-192:24 (Dr. Lichtman noting that "if you were to use Dr. Weber's standards, you'd have to overrule a good part of the *Gingles* decision because some of those . . . districts [where the Supreme Court found] racial polarization would not have fit Dr. Weber's standards").

123. Dr. Weber's standards for cohesion and polarization also find no support in social science.

P170 at 9; 4/28/17 Tr. at 128:1-8. Indeed, Dr. Weber identifies no social scientist who has used his classification rule. *See generally* D6; D7; P173 at 10; 4/28/17 Tr. at 128:1-8 (Dr. Weber conceding that he does not identify a social scientist in his initial or supplemental report); *id.* at 190:5-192:24 (Dr. Lichtman noting that over two decades, he has "never heard" Dr. Weber cite a social scientist who accepts Dr. Weber's classification rule, and that Dr. Lichtman himself is unaware of any such social scientist).[58]

124. Numerous courts have recognized that Dr. Weber's classification rule, including its, numerical cutoffs, find no support in social science and are wholly arbitrary. *See, e.g.*, *Hall*, 108 F. Supp. 3d at 435 (this Court observing that Dr. Weber is "unaware of any [other] expert witness who has employed [his] classification rule"); *Village of Port Chester*, 704 F. Supp. 2d at 430 (declining to "endorse a cut-off without any scientific or statistical basis other than it is simply a number at which Dr. Weber feels comfortable"); *Barnett*, 969 F. Supp. at 1443 ("There is virtually no support for [Dr. Weber's] interpretation of cohesiveness . . . in the scholarly literature"); *see also Large*, 709 F. Supp. 2d at 1215 (finding Dr. Weber's "threshold approach" to be "arbitrary").

125. Accordingly, Dr. Weber's finding of no RPV in the 2011 Tax Assessor and 2014 City Marshal elections, which reflects his classification rule, is not credible. *See* D6 ¶¶ 41, 43.[59]

Overall Conclusion

[58] Dr. Weber claims that his classification rule reflects the theory that "voters usually vote positively for the candidate they prefer." D7 ¶ 21; 4/28/17 Tr. at 170:2-16. But he does not name any social scientist or identify any social science articles that support his purported theory of positive voting. D7 ¶ 21; P173 at 9. Moreover, contrary to Dr. Weber's suggestion, negative advertising plays a significant role in Louisiana politics. D7 ¶ 21; P173 at 9-10. During the 2015 multicandidate open primary for Governor, the *Advocate* headlined that "[t]hough voters say they hate them, negative ads appear to be shaping Louisiana's governor's race." P173 at 10. Louisiana politician Jim Brown, who won statewide races as SOS and Insurance Commissioner, but lost the 1987 Governor's race, said: "[c]ampaigns use negative ads because they work." *Id.*

[59] Any suggestion in Dr. Weber's initial report that the 1994 32nd JDC election is not characterized by RPV, which Dr. Weber abandoned at trial, *see supra* note 55, is also not credible, given the multiple, fatal flaws with his classification rule.

126. Terrebonne elections are characterized by stark patterns of RPV, *i.e.,* Black voters are politically cohesive (*Gingles* two), and non-Black voters vote sufficiently as a bloc to enable them usually to defeat the minority's preferred candidate (*Gingles* three).

TOTALITY OF CIRCUMSTANCES

127. Drawing upon his expertise in political history, political analysis, and historical and statistical methodology, Plaintiffs' expert, Dr. Allan J. Lichtman,[60] analyzed the factors identified in the Senate Report accompanying the 1982 amendments to Section 2 (*i.e.*, "Senate Factors"), which include: (1) the history of voting discrimination in the state or political subdivision, (2) the extent of RPV, (3) enhancing factors, (4) access to candidate slating, (5) discrimination in education, employment, health, and other areas of life that hinder participation in the political process, (6) racial campaign appeals, (7) minority electoral success in the jurisdiction, (8) the responsiveness of elected officials, and (9) the tenuousness of the justification for the voting practice. *Gingles*, 478 U.S. at 36-37, 44-45; P167-a at 4-5; 3/14/17 Tr. at 214:15-215:16, 215:25-216:19. Dr. Lichtman considered whether at-large voting for the 32nd JDC interacts with social

[60] Dr. Lichtman is qualified to serve as an expert in political history, political analysis, and historical and statistical methodology. P167-a at 5-7; P167-b; 3/14/17 Tr. at 211:20-212:10. Dr. Lichtman is a Distinguished Professor of History at American University in Washington, D.C., where he has worked for more than 40 years. P167-a at 5; P167-b; 3/14/17 Tr. at 208:21-209:18. Dr. Lichtman has extensive experience in voting rights litigation and expertise in political history, political analysis, electoral analysis, and historical and statistical methodology. P167-a at 5; P167-b; 3/14/17 Tr. at 209:19-25.

Dr. Lichtman has worked as a consultant or expert witness for both plaintiffs and defendants in more than 80 voting and civil rights cases, including in Louisiana. P167-a at 6-7; P167-b. Dr. Lichtman's recent cases include *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399, 427, 439 (2006) (citing Dr. Lichtman's work in finding a Section 2 violation with respect to Texas congressional redistricting); *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 215, 233 (4th Cir. 2016) (finding consistent with Dr. Lichtman's opinion that a voting law passed by North Carolina in the wake of *Shelby County* was intentionally discriminatory), *rev'g* 182 F. Supp. 3d 320, 494 (M.D.N.C. 2016), *cert. denied*, 137 S. Ct. 1399 (2017); *Texas v. United States*, 887 F. Supp. 2d 133, 163-166 (D.D.C. 2012) (citing Dr. Lichtman's work in finding that a Texas state senate redistricting plan was intentionally discriminatory), *vacated on other grounds*, 133 S. Ct. 2885 (2013); and *Veasey v. Perry*, 71 F. Supp. 3d 627, 658-59, 700 (S.D. Tex. 2014) (citing Dr. Lichtman's work in finding that a Texas photo identification law was intentionally discriminatory), *rev'd and remanded sub nom.*, *Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc), *readopted on remand*, ___F. Supp. 3d ___, 2017 WL 1315593, at *1 (S.D. Tex. Apr. 10, 2017). *See* P167-a at 7.

and historical factors to have the effect of causing an inequality in the political process for Black voters. P167-a at 4-5; 3/14/17 Tr. at 214:15-215:16, 215:25-216:19.

128. Dr. Lichtman drew upon sources standard in historical and social scientific analysis, including: scholarly books, articles, and reports; newspaper and other articles; demographic information; election returns; court opinions, briefs, and expert reports; government documents; legislative transcripts; letters; and scientific surveys. P167-a at 4; 3/14/17 Tr. at 218:5-220:3.[61]

Senate Factor 1: History of Voting Discrimination in Louisiana and Terrebonne

129. Louisiana has a long and extensive history of racial discrimination that has touched upon the right of minority voters, including Black voters, to register, to vote, or otherwise participate in the political process. P167-a at 12-21, 60-61; P170 at 1-2; 3/14/17 Tr. at 220:21-233:9.

130. Prior to 1965,[62] disfranchisement of Black voters was so complete that by the time the VRA was enacted, nearly a century after the Fifteenth Amendment extended the right to vote to Black voters, only about a third of Louisiana's Black VAP was registered to vote, compared with the overwhelming majority of the white VAP. P167-a at 14; 3/14/17 Tr. at 220:21-233:9. This history of discrimination led to Louisiana's coverage under Section 5 from 1965 to 2013. P167-a at 14; 3/14/17 Tr. at 220:21-233:9; *see also* 52 U.S.C. §§ 10303(b), 10304(a); 28 C.F.R. pt. 51, app.; *Shelby County*, 133 S. Ct. at 2631.

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[61] Separately, Dr. Engstrom was also asked to explain how, in the at-large (parish-wide) elections for the 32nd JDC, the use of a place system and a majority-vote requirement increases the ability of majority-group voters to dilute the votes of Black voters in elections to that multi-seat court. P166 ¶ 8; 3/13/17 Tr. at 147:17-22, 176:12-178:20.

[62] In 1898, Louisiana established the so-called Grandfather Clause, which imposed education and property requirements uniquely on state residents whose fathers or grandfathers had not been registered to vote before January 1, 1867. P167-a at 13. In justifying such restrictions, the president of the Constitutional Convention said, "Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?" *Id.* at 13-14. After the U.S. Supreme Court struck down the Grandfather Clause in 1915, state officials adopted other measures to disfranchise Black people, including the all-white primary, the poll tax, and the "interpretative" literacy test. *Id.* at 14; 3/14/17 Tr. at 220:21-233:9. Significantly, such measures were "not explicitly on their face racial," but were discriminatory in purpose and, "because of the extreme socioeconomic disparities in the state between Blacks and whites . . . ha[d] a discriminatory effect." 3/14/17 Tr. at 220:21-233:9; *see also* 3/17/17 Tr. at 16:4-15.

131. Voting discrimination in Louisiana has not ended with the enactment of the VRA or Louisiana's coverage under Section 5. P167-a at 13-20; 3/14/17 Tr. at 222:4-223:5, 224:1-233:9. A centerpiece of the effort to thwart Black political participation since 1965 has been the adoption and/or maintenance of at-large voting in Louisiana, in conjunction with other voting practices such as numbered posts and majority-vote requirements. *See* P167-a at 14-21; 3/14/17 Tr. at 222:4-223:5, 224:1-233:9. In total, between 1965 and 2013, DOJ interposed nearly 150 objections to proposed discriminatory voting changes in Louisiana, many of which blocked the use of at-large voting. P167-a at 14-16; 3/14/17 Tr. at 224:13-20; 3/17/17 Tr. at 111:18-23 (this Court taking "judicial notice of the fact that . . . [DOJ] has interposed objections under the [VRA] to various, sundry laws or acts of the Louisiana Legislature and/or of a subdivision"). For example, prior to 1968, Louisiana prohibited at-large elections for police juries (*i.e.*, parish councils) and school boards. P167-a at 14; 3/14/17 Tr. at 222:4-223:5. In July 1968, and in response to the increased Black registration and voting made possible by the VRA, Louisiana authorized the use of at-large elections for these bodies. P167-a at 15; 3/14/17 Tr. at 222:4-223:5. In 1969, DOJ interposed statewide objections to these proposed changes, finding that at-large voting, "if widely implemented, will have the effect of discriminating against Negro voters." P167-a at 15-16; 3/14/17 Tr. at 222:4-223:5, 224:1-8.

132. Federal courts have likewise found at-large voting discriminatory for numerous legislative bodies in Louisiana. *See, e.g.*, *Westwego Citizens for Better Gov't*, 946 F.2d at 1124; *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 504 (5th Cir. 1987); *Zimmer v. McKeithen*, 485 F.2d 1297, 1307 (5th Cir. 1973), *aff'd sub nom.*, *E. Carroll Parish Sch. Bd. v. Marshall*, 424 U.S. 636 (1976); *Perry v. City of Opelousas*, 515 F.2d 639, 641 (5th Cir. 1975); *Wallace v. House*, 538 F.2d 1138, 1141 (5th Cir. 1976); *Ausberry v. City of Monroe*, 456 F. Supp. 460, 467 (W.D. La.

1978); *c.f., e.g.*, *E. Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 691 F. Supp. 991 (E.D. La. 1988), *aff'd*, 926 F.2d 487 (5th Cir. 1991) (redistricting plan for Jefferson Parish Council); *Major*, 574 F. Supp. at 355 (Louisiana's congressional plan following the 1980 Census).

133. The history of voting discrimination in Louisiana has extended to the election of state court judges, including the use of at-large voting. *See* P167-a at 12-13; P170 at 1-2; 3/14/17 Tr. at 224:21-230:20. Delegates to the Louisiana Constitutional Convention in 1973 voted by an overwhelming margin to maintain at-large voting for judges. P167-a at 16; *Clark*, 751 F. Supp. at 588. Thereafter, DOJ objected to the creation of numerous at-large elected judgeships in areas with sufficient Black populations to create at least one majority-Black subdistrict. P167-a at 14 n.13, 16-17; 3/14/17 Tr. at 224:13-225:23.[63]

134. Louisiana also repeatedly failed to seek preclearance for voting changes related to judgeships. P167-a at 16-17; 3/14/17 Tr. at 225:24-226:22. In 1990, this Court rebuked Louisiana for not seeking preclearance for changes related to 15 judgeships on 11 of the 40 JDCs (27.5%), noting that "Louisiana has absolutely no excuse for its failure, whether negligent or intentional, to obtain preclearance of legislation when such preclearance is required by the [VRA]." P167-a at 16-17; *see also Clark*, 751 F. Supp. at 589 n.10, 600. On appeal, the U.S. Supreme Court noted

[63] The DOJ objections to additional at-large elected judgeships cited by Dr. Lichtman, *see* P167-a at 14 n.13, include the following: (a) an objection on September 23, 1988 with respect to judgeships for the 1st, 4th, 6th, 9th, 14th, 15th, 16th, 18th, 20th, 21st, 23rd, 24th, 27th, and 29th JDCs, and the First Circuit, Second Circuit, and Third Circuit Courts of Appeal, among other proposed changes, *see* DOJ Section 5 Objection, Sept. 23, 1988, https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1660.pdf; (b) an objection on May 12, 1989, with respect to judgeships for the 4th, 16th, and 21st JDCs, among other proposed changes, *see* DOJ Section 5 Objection, May 12, 1989, https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1670.pdf; (c) an objection on October 23, 1990, with respect to judgeships for the Monroe City Court, *see* DOJ Section 5 Objection, Oct. 23, 1990, https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1700.pdf; (d) an objection on November 20, 1990 with respect to a judgeship for the 22nd JDC, *see* DOJ Section 5 Objection, Nov. 20, 1990, https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1710.pdf; (e) an objection on September 20, 1991 with respect to a judgeship for the 4th JDC, *see* DOJ Section 5 Objection, Sept. 20, 1991 https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1740.pdf; and (f) an objection on March 17, 1992 with respect to a judgeship for the Third Circuit Court of Appeal, *see* DOJ Section 5 Objection, Mar. 17, 1992 https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1910.pdf.

that "Louisiana had with consistency ignored the mandate of § 5" and further held that Louisiana also had failed to obtain preclearance for changes related to 26 other judgeships on 15 JDCs, including the 32nd JDC. *Clark*, 500 U.S. at 654-59; *see also Clark*, 751 F. Supp. at 599.

135. The use of at-large voting and other dilutive devices for Louisiana judicial elections has also been challenged under Section 2 and the Constitution. As set forth above, at-large voting for numerous JDCs was found to violate Section 2 in *Clark*. P167-a at 17; *see supra* note 10. A dilutive multimember district for the Louisiana Supreme Court was altered because of *Chisom*. P167-a at 18; *see supra* note 9. In 2007, at-large voting for the Fifth Circuit Court of Appeal, First District, was changed as a result of *Williams*. P167-a at 19; *see supra* note 12. In 2012, Justice Johnson had to seek relief in federal court to become the first Black Chief Justice of the state supreme court in accordance with the *Chisom* Consent Judgment. P167-a at 18; *see supra* note 9.

136. Terrebonne also has a history of voting discrimination. P167-a at 15-16; 3/14/17 Tr. at 230:21-232:17. In the 1970s, litigation was brought to provide Black voters with the equal opportunity to elect their preferred candidates to the Parish Council and School Board and resulted in majority-Black SMDs for those two bodies. P167-a at 16. In 1992, DOJ interposed an objection to the 1991 redistricting plan for the Parish Council, which failed to create a third majority-Black SMD. *Id.* In rejecting the plan, DOJ noted that the plan fragmented the Black community, and white-majority parish officials failed to heed the urgings of Black residents to establish a "readily achievable" additional district. *Id.*; 3/14/17 Tr. at 230:21-232:17.[64]

137. In this context, the use of at-large voting for the 32nd JDC is deeply rooted in, and cannot

[64] In 1969, in a case arising out of Terrebonne, the U.S. Supreme Court struck down as unconstitutional a Louisiana law that allowed only "property taxpayers" to vote in elections held on the issuance of revenue bonds by a municipal utility system. P167-a at 15-16; *Cipriano v. City of Houma*, 395 U.S. 701 (1969). Although racially neutral on its face, the law disproportionately burdened Black residents because of their lower socioeconomic status, including much lower rates of home ownership. P167-a at 15-16; *see also* 3/17/17 Tr. at 16:20-17:5.

be separated from, the history of voting discrimination in Louisiana and Terrebonne. P167-a at 13; 3/14/17 Tr. at 232:18-233:9 (Dr. Lichtman noting that "much of [the] official discrimination" in Louisiana since 1965 has "focused on the use of at-large elections as a means of impeding Black opportunities to participate in the political process and elect candidates of their choice"). Indeed, the creation of the 32nd JDC, including the use of at-large voting for its judges, occurred in 1968, the same year in which, as noted above, in response to increased Black registration and voting made possible by the VRA, the Legislature authorized at-large elections for police juries and school boards. *See supra*; 3/14/17 Tr. at 222:4-223:5.[65]

[65] Dr. Weber asserts that "Terrebonne is in the heart of Acadian Louisiana and that this unique region and culture has a longer history of racial tolerance for differing groups than other parts of the Deep South." D7 ¶ 20. However, Dr. Weber provides no source or citation for this contention. *See id.*; P173 at 7; 4/28/17 Tr. at 198:1-199:2 (Dr. Lichtman noting that such support is "absolutely standard in social science if you are going to make a factual claim like that"). Moreover, historical traditions in Louisiana in general and Acadiana in particular disclose an unfortunate history of some of the most virulent forms of discrimination against Black people, including during the antebellum period and even following *Brown v. Board of Education*. P173 at 7; 4/28/17 Tr. at 198:1-199:2.

Further, from 1965 to 2013, when Louisiana was subject to preclearance under Section 5, DOJ interposed 44 objections to proposed discriminatory voting changes in various parishes in Acadiana, including in Terrebonne. P167-a at 16; P173 at 8; 4/28/17 Tr. at 198:1-199:2. These objections account for approximately 34.9% (44 out of 126) of all DOJ objections to voting changes proposed at the local level in Louisiana (*i.e.*, excluding DOJ objections to voting changes proposed by the state). This is in proportion to the share of Acadiana parishes of all parishes in Louisiana (22 parishes out of 64 or 34.4%). P173 at 8; 4/28/17 Tr. at 198:1-199:2.

In the 1990s, this Court in *Clark* ruled that several of the JDCs in Acadiana must use subdistricts to cure illegal vote dilution under Section 2, including the 14th JDC (Calcasieu Parish), the 15th JDC (Acadia, Lafayette, and Vermilion parishes), the 18th JDC (Iberville, West Baton Rouge, and Point Coupee parishes), and the 40th JDC (St. John the Baptist Parish). P167-a at 17-18; P173 at 8; 4/28/17 Tr. at 150:8-20, 151:5-152:14, 198:1-199:2; *see supra* note 10. As part of *Clark*, Louisiana also agreed to create subdistricts for the 23rd JDC (Ascension, Assumption, and St. James parishes), and the 27th JDC (St. Landry Parish). *See supra* note 10. The state also created subdistricts for the 16th JDC (St. Mary, Iberia, and St. Martin parishes). *See infra* (facts regarding linkage). Thus, 15 of the 22 parishes in Acadiana have JDCs that use subdistricts. P167-a at 17-18; P173 at 8; 4/28/17 Tr. at 150:8-20, 151:5-152:14, 198:1-199:2.

Dr. Weber emphasizes that in *Clark*, the Court did not find a Section 2 violation with respect to the 32nd JDC. D7 ¶ 29. However, he acknowledges that this reflects a stipulation that the demographics of Terrebonne *at the time* did not permit the creation of a majority-Black subdistrict. *Id.*; P173 at 12; 4/28/17 Tr. at 132:24-133:10; *see also Clark*, 725 F. Supp. at 289. As set forth above, the demographics of Terrebonne have changed since then. P173 at 12; 4/28/17 Tr. at 133:11-13; *see also* D6 ¶¶ 11-12.

Dr. Weber also notes that after the ruling in *Hall*, which involved the Baton Rouge City Court, the Legislature enacted legislation to alter the electoral method for that court. D7 ¶ 26; 4/28/17 Tr. at 91:14-92:9. By contrast, however, the Legislature has had occasion to consider at least six legislative proposals to create a majority-Black subdistrict for the 32nd JDC, yet every piece of legislation has failed. *See infra* (discriminatory purpose); P173 at 12.

Dr. Weber notes that, in the subsequent election for the at-large seat on the Baton Rouge City Court, voters elected a Black candidate. D7 ¶ 26; 4/28/17 Tr. at 133:14-19. However, the demographics of Baton Rouge are different from the demographics of Terrebonne: while the City of Baton Rouge has a majority-Black VAP, Terrebonne does

Senate Factor 2: RPV

138. As set forth *supra*, Terrebonne elections are characterized by stark patterns of RPV.

139. Dr. Weber suggests that party affiliation is a factor in Terrebonne elections, and that "Republican candidates show increasing levels of electoral success . . . ." D6 ¶ 46; D7 ¶ 28; 4/28/17 Tr. at 90:17-91:13. However, Dr. Weber did not perform a statistical analysis regarding the impact of party affiliation on the outcomes of the seven elections that he analyzed in this case. *See generally* D6; D7; 4/28/17 Tr. at 91:4-13.

140. More importantly, as discussed above, Black candidates in Terrebonne are consistently defeated in at-large elections regardless of their party affiliation. *See supra*. Dr. Weber concedes that the 1993 First Circuit Court of Appeal, 1994 32nd JDC, and 2014 Houma City Court elections are characterized by RPV, and that the Black candidates in all three elections lost to candidates of the same party affiliation. D6 ¶¶ 34, 36, 37; 4/28/17 Tr. at 9:18-11:15, 64:14-65:3, 130:16-132:23. As Dr. Lichtman observes, the consistent and pronounced pattern of white opposition to Black candidates in election after election cannot be explained by party affiliation alone. P167-a at 10; P170 at 13; P173 at 11; 3/14/17 Tr. at 236:4-10; 3/17/17 Tr. at 14:12-15:4.[66]

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not. *Hall*, 108 F. Supp. 3d at 424; P167-a at 20; 4/28/17 Tr. at 133:19-134:4 (stipulation). Further, while some Black candidates won exogenous elections in Baton Rouge, as found by Dr. Weber in *Hall*, the Black candidates in all seven elections in Terrebonne analyzed by Dr. Weber were defeated. 4/28/17 Tr. at 134:6-18.

Mr. Beychok too draws attention to the election of a Black judge at-large to the Baton Rouge City Court following the *Hall* litigation. 4/26/17 (p.m.) Tr. at 107:2-16. But Mr. Beychok himself acknowledges that the demographics of Baton Rouge are different from those of Terrebonne. *Id.* at 112:5-12.

[66] Ms. Romig reports data about the party affiliation of candidates and voters in Terrebonne, which indicate a transition in party affiliation toward the Republican Party. D4 ¶¶ 15-22; 3/20/17 Tr. at 11:7-12:13, 37:11-17. Like Dr. Weber, however, Ms. Romig concedes that in all three Terrebonne judicial elections that she looked at, the Black candidate lost to candidates of the same party. D4 ¶¶ 24, 31, 35-37; 3/20/17 Tr. at 61:18-62:19. Moreover, Ms. Romig acknowledges that race is a factor in Louisiana elections, and she did not conduct any analysis to determine how race as a factor compares to party affiliation in explaining election outcomes. 3/20/17 Tr. at 62:20-23, 73:17-19.

Mr. Beychok too suggests that Terrebonne is "a parish that has trended to vote Republican in nearly all parish-wide elections," and that Judge Pickett's switch of party affiliation to Republican on the eve of the 2014 32nd JDC election "allowed him to expand his possible pool of persuadable voters." D8 at 7; 4/26/17 (p.m.) Tr. at 59:14-60:14, 160:17-161:2; *see also infra* (facts regarding Judge Pickett). However, Mr. Beychok does not dispute that the 2014 Houma City Court and 1993 First Circuit Court of Appeal elections are characterized by RPV, as found by both Drs.

Senate Factor 3: Enhancing Factors

141. The electoral system for the 32nd JDC features a majority-vote requirement. P166 ¶¶ 30-32; P167-a at 10, 63; D6 ¶ 8; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 234:12-236:3, 237:23-239:17; *see also supra* (collecting statutory provisions). This ensures that a Black candidate cannot win by a plurality of votes but must instead compete in a runoff election. P166 at ¶¶ 30-32; P167-a at 10-11, 63; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 234:12-236:3, 237:23-239:17; 4/28/17 Tr. at 190:5-192:24. As Dr. Lichtman explains: "it doesn't matter . . . if whites fragment their vote among different white candidates, because there's a majority-vote requirement. So no Black can get elected by slipping in because the white block vote against them is fragmented among different white candidates. They're still going to have to go one-on-one against a white candidate, and with white [support] ranging from 1 percent to 14 percent, they have absolutely no chance to win." 3/14/17 Tr. at 234:10-236:3, 236:11-21. The majority-vote requirement thus enhances the opportunity for discrimination against Black voters. P166 ¶¶ 30-32; P167-a at 10-11, 63; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 234:12-236:3, 237:23-239:17; 4/28/17 Tr. at 190:5-192:24.

142. The electoral system for the 32nd JDC features a designated division requirement. P166 ¶¶ 30-32; P167-a at 10, 63; D6 ¶ 8; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 237:23-239:17; *see also supra* (collecting statutory provisions). This precludes Black voters from engaging in single-shot voting. P166 ¶¶ 30-32; P167-a at 10, 63; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 237:23-239:17. In a pure-at large system without numbered posts, all candidates compete against one another for the seats at issue; all voters may cast as many votes as there are seats; and the five candidates with the most votes win in a five-seat election. P166 ¶ 31; 3/13/17 Tr. at 176:12-178:20;

Engstrom and Weber, and that the Black candidates in those elections lost to opponents of the same party. *See supra*; 4/26/17 (p.m.) Tr. at 161:3-162:7. Finally, Mr. Beychok also did not conduct any statistical or systematic analysis to assess the role of partisanship as opposed to race in Terrebonne elections. *See* 4/26/17 (p.m.) Tr. at 163:4-9.

3/14/17 Tr. at 237:23-239:17. In such a system, Black voters may engage in single-shot voting, in which they cast one vote for their candidate of choice and withhold their remaining votes. P166 ¶ 31; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 237:23-239:17. By concentrating their vote on one candidate and withholding the rest of their votes, Black voters can give their preferred candidate a better chance of coming in among the top five vote recipients. P166 ¶ 31; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 237:23-239:17. Single-shot voting thus provides Black voters with a better opportunity, but by no means a certainty, to elect their candidate of choice. P166 ¶ 31; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 237:23-239:17. By precluding single-shot voting, numbered posts enhance the opportunity for discrimination against Black voters. P166 ¶¶ 30-32; P167-a at 10, 63; 3/13/17 Tr. at 176:12-178:20; 3/14/17 Tr. at 237:23-239:17.

143. Candidates for the 32nd JDC must bear the expense of running parish-wide across all of Terrebonne, a parish that spans 1,232 square miles in land area and includes a population of about 112,000, as compared to competing in individual subdistricts. P167-a at 63; P165-a ¶ 12; 3/14/17 Tr. at 237:23-239:17; 3/13/17 Tr. at 216:2-15 (Mr. Harding testifying that a parish-wide contest requires "more money to run" than a district race). A larger election district imposes a greater burden on Black candidates to run their campaigns and to fundraise because of the significant socioeconomic disparities that exist between white and Black residents in Terrebonne. 3/14/17 Tr. at 237:23-239:17, 248:7-249:8; 4/28/17 Tr. at 182:10-183:15 (Dr. Lichtman also testifying that "it's much easier to run a low budget kind of operation in a district as opposed to parish-wide"); *see also infra* (facts regarding Senate Factor 5).[67]

Senate Factor 5: Discrimination in Areas of Life that Hinder Political Participation

[67] Dr. Weber does not analyze any enhancing factors. *See generally* D6; D7. Meanwhile, Mr. Beychok agrees that a large election district requires "more resources across the board." 4/26/17 (p.m.) Tr. at 87:20-88:5 (Mr. Beychok noting that "more voters means. . . you need more time to talk to them or you need more money to communicate with them" and that a larger election district "amplifies everything—all the factors that are in a smaller race . . . by . . . many factors").

144. Louisiana's history of *de jure* and *de facto* discrimination against Black people extends beyond voting to virtually every aspect of economic and social life. P167-a at 64-70; 3/14/17 Tr. at 241:1-249:8. Following *Brown v. Board of Education*, 347 U.S. 483 (1954),[68] many K-12 school districts in Louisiana, including that of Terrebonne, long delayed the submission of desegregation plans, and segregation persisted in many districts aided and abetted by the state policy of providing aid to segregated private schools attended by white Louisiana students. P167-a at 65; 3/14/17 Tr. at 242:1-243:17; *see also* 3/13/17 Tr. at 28:9-31:8 (Mr. Boykin testifying to his experience integrating West Park Elementary School in Terrebonne in 1967, 13 years after *Brown*, and the racial hostility that he experienced as a child in that process); *id.* at 203:11-20 (Mr. Harding testifying that he attended a segregated elementary school).

145. In 1975, a federal court ruled that Louisiana violated the Constitution by financially supporting "racially segregated private schools [that] serve[d] as a haven to those leaving racially integrated public schools." *Brumfield v. Dodd*, 405 F. Supp. 338, 348 (E.D. La. 1975); P167-a at 65-66; 3/14/17 Tr. at 242:1-243:17. Flowing from that legacy, today, some 34 school districts in Louisiana—including that of Terrebonne—remain subject to federal oversight because of continuing segregation. P167-a at 66; 3/14/17 Tr. at 242:1-243:17; *see also* 3/13/17 Tr. at 219:6-11 (Mr. Harding, a Terrebonne School Board member, confirming the continuing federal supervision).

146. Louisiana has been no less resistant to efforts to desegregate its system of higher public

[68] With the end of Reconstruction in the late 19th century, white supremacist governments in Louisiana established a rigid system of Jim Crow discrimination against Black people in all realms of life. P167-a at 64-65; 3/14/17 Tr. at 241:1-25. In *Brown*, the Supreme Court outlawed legalized segregation in schools, and in the Civil Rights Act of 1964, Congress prohibited all forms of legalized segregation, *de facto* segregation in public accommodations, and racial discrimination in employment. P167-a at 65; 3/14/17 Tr. at 241:1-25. Yet the dominant white majority in Louisiana still sought to preserve Jim Crow. P167-a at 65-66; 3/14/17 Tr. at 242:1-245:14.

education. P167-a at 67; 3/14/17 Tr. at 243:18-245:14. LSU allowed a Black student to enroll as a law student only after being ordered by federal court to do so. *Wilson v. Bd. of Supervisors of La. State Univ. & Agr. & Mech. Coll.*, 92 F. Supp. 986, 986-89 (E.D. La. 1950), *aff'd*, 340 U.S. 909 (1951). Previously, Louisiana maintained the law departments of LSU and Southern as separate law schools for white and Black students. *Id.* Louisiana established a law department at LSU in 1906, but did not do so at Southern until 1947. *Id.* at 987. From 1965 to 1998, Louisiana was ordered—on at least ten occasions—to integrate segregated universities and professional schools or compensate the state's historically black colleges and universities for generations of neglect. P167-a at 67; 3/14/17 Tr. at 243:18-245:14.

147. Substantial *de facto* racial segregation remains in housing and education in Louisiana. *Id.* For example, according to a 2012 study, Louisiana ranks 10th from the bottom among all states in the percentage of white students that attend public secondary and elementary schools attended by the typical Black student in the state (29.0%). In Louisiana, 73.9% of all Black public secondary and elementary school students attend majority-minority schools; only 13 other states have higher percentages of Black students in such schools. P167-a at 67; 3/14/17 Tr. at 242:1-243:17.[69]

148. Racial discrimination continues to exist in employment. P167-a at 67-68; 3/14/17 Tr. at 243:18-245:14. According to the U.S. Equal Employment Opportunity Commission, for the 2011 fiscal year, Louisiana accounted for 3% of all U.S. race-based employment discrimination charges filed in the United States and 6.1% of all charges based on color, even though according to the 2010 U.S. Census, Louisiana comprises only 1.5% of the U.S. population and 1.6% of the U.S. minority population. P167-a at 68; 3/14/17 Tr. at 243:18-245:14. Within the state, 55.5% of all

[69] A 2010 study of the 50 metropolitan areas in America with the largest Black populations reported that New Orleans-Metairie-Kenner ranked 8th in its degree of black/white racial isolation and Baton Rouge ranked 12th. *Id.* Racial isolation equals the percentage of a Black population in the neighborhood where the average Black group member lives. P167-a at 67; 3/14/17 Tr. at 243:18-245:14.

state employment discrimination charges were based on race or color, placing Louisiana first in the nation. P167-a at 68; 3/14/17 Tr. at 243:18-245:14.

149. Racial discrimination also exists in the criminal justice system in Louisiana. *See* P173 at 6. A recent study found that "Blacks are systematically disenfranchised from participating in the administration of justice" and that "these processes drive substantively unequal outcomes"; in other words, "race continues to matter in Louisiana's criminal justice system." *Id.* (quoting Robert J. Smith & Bidish J. Sarma, "How and Why Race Continues to Influence the Administration of Criminal Justice in Louisiana," 72 *La. Law Rev.* 361, 363, 369 (2012)).

150. Numerous witnesses testified at trial to the past and present racial discrimination in myriad aspects of life in Terrebonne. *See, e.g.*, 3/20/17 Tr. at 80:16-81:25 (Mr. Shelby explaining that "the harsh reality is that racism is prevalent inside of our parish").[70]

151. Stark disparities between Black and white residents in Terrebonne—on a broad range of

[70] *See also, e.g.*, 3/13/17 Tr. at 50:18-51:9, 56:9-21 (Mr. Boykin testifying to the use of offensive and derogatory terms to refer to Black people by a Terrebonne parish president and a member of the Terrebonne School Board in the 1990s); *id.* at 51:10-52:25 (Mr. Boykin testifying to racial discrimination in promotion and in police practices in the Terrebonne Sheriff's Office while working there in the early 1980s); *id.* at 53:2-24, 54:21-25 (Mr. Boykin testifying to Terrebonne NAACP investigating barriers to employment for Black residents in doctor's offices, car dealerships, and banks, and segregation in Mardi Gras Krewes in the parish in the late 1990s); *id.* at 55:1-56:8 (Mr. Boykin testifying to Terrebonne NAACP investigating the discriminatory change in election date for prom king at Terrebonne High School, which subsequently elected the first Black prom king in Terrebonne in the 1990s); *id.* at 56:22-58:11 (Mr. Boykin testifying to the first hate crime in Terrebonne that was committed against a Black man and Terrebonne NAACP protesting the initial decision of the DA to drop charges in the 2000s); *id.* at 59:9-61:10 (Mr. Boykin testifying to incidents of misconduct by 32nd JDC Judge Ellender and the advocacy of Terrebonne NAACP with respect to the incident in which Judge Ellender wore blackface, a wig, and an orange prison jumpsuit as part of a Halloween costume); 3/14/17 Tr. at 11:8-13:23 (Rev. Fusilier testifying to: a police officer forcing him and his mother off the sidewalk so that a white couple could pass by; a police officer using force against him for drinking from the water fountain reserved for white people; white children throwing eggs at him when schools were first integrated in Terrebonne; him participating in a protest over the refusal of the parish president to let Mr. Turner become the first Black fire chief in Terrebonne; and the incident involving Judge Ellender wearing blackface); *id*. at 184:6-19, 194:15-195:3 (Mr. Turner testifying to incidents of discrimination in his tenure as the first Black professional firefighter, noting that he was "target practice" during his time at the Houma Fire Department); 3/17/17 Tr. at 70:13-75:16 (Mr. Shelby testifying to: the expectation of low achievements for Black students in the Terrebonne public schools that he attended; a white paraprofessional's statement to him while in middle school to "get your cotton-picking hands off of me"; the reduction of his work hours while working as the only Black employee at a clothing company while those of his white classmates increased; the tone set by Judge Ellender for young Black people in Terrebonne when he dressed up as a Black prisoner for Halloween, an incident that took place when Mr. Shelby was in the fifth grade).

socioeconomic measures—reflect the impact of historical and ongoing racial discrimination in Louisiana and Terrebonne. P165-a ¶ 24; P167-a at 68-70 & tbls. 3, 4; 3/14/17 Tr. at 50:13-51:11, 66:2-70:23 (Mr. Cooper explaining that "in almost every instance, Blacks lag behind whites in terms of socioeconomic status."); *see also id.* at 245:16-249:8.

152. For example, according to ACS data, in Terrebonne, (a) of persons 25 years or older, 7.4% of Black people have a bachelor's degree or higher, as compared to 15.2% of white people; (b) over one-third of Black households (39.1%) rent their residences, as compared to about one-fifth (21.7%) of white households; (c) Black median household income is $31,438 – about 55% of the $56,271 median income of white households; (d) the poverty rate for Black people (34.0%) is about three times the poverty rate for white people (10.5%); (e) nearly half of Black children (44.8%) live in poverty as compared to about one in eight white children (13.0%); (f) about three times as many Black households (33.8%) rely on food stamps as white households (9.9%); (g) about twice as many working-age Black people (8.5%) are unemployed, as compared to white people (4.9%); (h) almost four times as many Black people (17.1%) lack a vehicle in their household, as compared to white people (4.2%); and (i) according to the Louisiana Public Health Institute, Black infant mortality rate in Terrebonne (10.2 per 1,000 live birth) is nearly twice that of white infant mortality (5.8 per 1,000 live birth). *See* P165-a ¶ 24(a)-(d); P167-a at 69-70; 3/14/17 Tr. at 68:7-68:25, 69:6-70:12, 246:23-248:6; 3/16/17 Tr. at 230:15-25.

153. These profound disadvantages in socioeconomic well-being and health adversely impact Black people's ability to participate in the political process and the ability of Black candidates to compete effectively in at-large-elections across a geographically expansive parish. P167-a at 68; 3/14/17 Tr. at 248:7-249:8 (Dr. Lichtman explaining that lower levels of income and education, challenges with health and poverty, "create barriers to turnout, difficulty in finding candidates to

run, difficulty in funding candidates, and difficulty in running campaigns, particularly over a large parishwide jurisdiction as opposed to individual subdistricts").[71]

154. As set forth below, post-election statistics confirm that Black voter turnout lags white voter turnout in Terrebonne. Accordingly, Black people in Terrebonne bear the effects of discrimination in education, employment, and health, and other areas of life, which hinder their ability to participate effectively in the political process. P167-a at 64-70; 3/14/17 Tr. at 241:1-249:8.

155. Dr. Weber acknowledges the stark racial disparities reflected in the Census data reported by Mr. Cooper. D6 ¶ 29. Yet, Dr. Weber insists that "there are no lingering effects of discrimination on Black political participation in Terrebonne." *Id.*; *see also* 4/28/17 Tr. at 9:18-11:15.[72] Dr. Weber's own data, however, demonstrate that in the vast majority of elections in Terrebonne, Black voters do *not* register or turn out to vote at the same rate as white voters. *See* 4/28/17 Tr. at 194:19-195:6 (Dr. Lichtman noting that Dr. Weber's "own data when properly analyzed and presented . . . decisively refutes [Dr. Weber's] claim").

156. *First*, in Table 4 of his supplemental report, Dr. Weber analyzes voter turnout *as percentages of registered voters* in nine elections from 2000 to 2015 in Terrebonne. *See* D6 tbl. 4; D7 tbl. 4. Dr. Weber's results show that in seven of nine (78%) of these elections, white voter turnout exceeded Black voter turnout. D7 tbl. 4; P170 at 3-4; P173 at 3. The only two elections that displayed higher Black voter turnout were the presidential elections in 2008 and 2012 in which Barack Obama competed, but nonetheless lost in Terrebonne. D7 tbl. 4; D6 tbl. 4, ¶¶ 40, 42; P173

[71] The dilutive effect of at-large voting also discourages Black voters from turning out to vote. *See* 3/13/17 Tr. at 61:12-21, 62:9-23 (Mr. Boykin testifying to participating in get-out-the-vote efforts and learning about voters who do not participate because of their belief that "we can never elect a candidate of our choice anyway"); *id.* at 218:13-219:5 (Mr. Harding testifying similarly); 3/14/17 Tr. at 17:23-18:14 (Rev. Fusilier testifying similarly); 3/17/17 Tr. at 67:2-69:16 (Mr. Shelby testifying similarly).

[72] Notably, Dr. Weber did not analyze the impact of socioeconomic disparities on Black *candidates'* ability to raise campaign funds, obtain volunteers, purchase newspaper and television ads, engage in direct mail campaigns, and hire professional consultants. *See generally* D6; D7. Neither did Dr. Weber analyze the impact of socioeconomic disparities on Black *voters'* ability to make campaign contributions or serve as campaign volunteers. *See generally* D6; D7.

at 3, 5. In those two elections, white turnout was slightly below Black turnout (by, at most, one percentage point). D7 tbl. 4; P173 at 3, 5. Across the nine elections that Dr. Weber reported, the mean white voter turnout was 49.6%, and the mean Black voter turnout was 42.5%, for a significant gap of 7.1 percentage points. *See* D7 tbl. 4; P173 at 3; 4/28/17 Tr. at 195:7-197:25. In the three most recent elections, in 2014 and 2015, white turnout exceeded Black turnout in all three elections, with a nearly comparable mean difference of 6.8 percentage points. D7 tbl. 4; P173 at 3, 5; 4/28/17 Tr. at 195:7-197:25. Thus, whether one looks at all nine elections or the three most recent elections, there is a similar racial disparity. 4/28/17 Tr. at 195:7-197:25 (Dr. Lichtman explaining that regardless of the time period examined there is "quite a large scale difference").

157. *Second*, in Table 5 of his supplemental report, Dr. Weber also calculates voter registration and turnout rates *as percentages of the estimated VAP* in seven elections from 2000 to 2015. *See* D6 tbl. 5; D7 tbl. 5; P173 at 3-4. For voter registration, in six of seven elections (86%), the white registration rate exceeded the Black registration rate. D7 tbl. 5; P173 at 3; 4/28/17 Tr. at 140:9-23. The only exception was the election in 2000, where the Black registration rate exceeded the white rate by less than one percentage point. D7 tbl. 5; P173 at 3. Across the seven elections, the mean white registration rate was 79.8%, and the mean Black registration rate was 77.6%, for a gap of 2.2 percentage points. D7 tbl. 5; P173 at 3; 4/28/17 Tr. at 195:7-197:25. In the three most recent elections, in 2014 and 2015, the white registration rate exceeded the Black registration rate in all three elections, by an identical mean difference of 2.2 percentage points. D7 tbl. 5; P173 at 3-4; 4/28/17 Tr. at 195:7-197:25. Again, whether one looks at all seven elections or the three most recent elections, there is a similar racial disparity. 4/28/17 Tr. at 195:7-197:25.

158. For voter turnout as a percentage of estimated VAP,[73] *in all seven (100%) elections*, white

[73] According to Dr. Weber, social scientists prefer to calculate voter turnout rate based on estimated VAP (as in Dr. Weber's Table 5) rather than registered voters (as in Dr. Weber's Table 4). 4/28/17 Tr. at 46:24-49:6, 134:22-135:14.

voter turnout exceeded Black voter turnout. D6 tbl. 5; D7 tbl. 5; P173 at 4; 4/28/17 Tr. at 135:15-136:7, 137:11-138:14. Across the seven elections, the mean white voter turnout was 45.8%, and the mean Black voter turnout was 40.3%, for a gap of 5.5 percentage points. D7 tbl. 5; P173 at 4; 4/28/17 Tr. at 195:7-197:25. In the three most recent elections, in 2014 and 2015, white turnout exceeded Black turnout in all three elections, with a mean difference of 6.0 percentage points. D7 tbl. 5; P173 at 4; 4/28/17 Tr. at 195:7-197:25. Again, whether one looks at all seven elections or the three most recent elections, there is a similar racial disparity. 4/28/17 Tr. at 195:7-197:25.[74]

159. Dr. Weber's own data demonstrates depressed Black political participation and, further, that even when Black voters (barely) participate at a higher level than white voters, they are unable to elect the candidates of their choice. P170 at 4-6; P173 at 3-5; 4/28/17 Tr. at 195:7-197:25.[75]

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[74] In Table 6 of his supplemental report, Dr. Weber examines data on voter registration and the number of persons who go to the polls to vote (sign-ins) in seven elections from 2000 to 2015 to determine what percentage of the electorate in Terrebonne at the time of each election is white and Black. D6 tbl. 6; D7 tbl. 6. Overall, in five out of seven elections (71%) that Dr. Weber examines, there was a drop in Black political participation from the registration phase to the turnout phase. D7 tbl. 6; P173 at 5.

In Tables 7 and 8 of his initial report, Dr. Weber analyzes the participation rates of Black and non-Black voters in seven elections, defined as the percentage of voters who signed in on Election Day and also voted in a particular contest on the ballot. D6 tbls. 7 & 8. On average, 92.6% of Black voters who showed up at the polls voted in the seven contests studied, compared to an average rate of 96.8% for non-Black voters, for a gap of 4.2 percentage points. P170 at 6; P173 at 6.

[75] Dr. Weber claims that the focus should not be on any averages, but rather on more recent elections, including the presidential elections. D7 ¶ 17. However, as set forth above, the three most recent elections analyzed by Dr. Weber in 2014 and 2015 show lagging Black political participation. P173 at 5; 4/28/17 Tr. at 195:7-197:25. Further, the presidential elections in 2008 and 2012 are consistent with the overall pattern of depressed Black political participation. P173 at 5. In both elections, white registration and turnout rates *as percentages of the estimated VAP* exceeded Black registration and turnout rates. D7 tbl. 5; P173 at 5. Although Black turnout rates *as percentages of registered voters* were slightly higher than white turnout rates, they were higher by at most one percentage point, and Dr. Weber emphasizes that political scientists prefer to calculate voter turnout as a percentage of *estimated VAP* rather than as a percentage of registered voters. D7 tbl. 4; P173 at 5-6; *see supra* note 73.

Dr. Weber suggests that racial differences in participation could be the result of differences in age distribution and incarceration rates. D7 ¶ 20; P173 at 6; 4/28/17 Tr. at 137:23-138:14. Dr. Weber presents no data or analysis with respect to these factors in Terrebonne and their implications for registration or turnout differences. *See generally* D6; *see also* D7 ¶ 20; P173 at 6; 4/28/17 Tr. at 138:22-25, 174:3-7, 174:17-19. Moreover, a wealth of research demonstrates that racial differences in incarceration rates and felony disfranchisement are linked to racial bias against Black people. *See* P173 at 6. Dr. Weber does not dispute any of this research. *See generally* D6; *see also* D7 ¶ 20; P173 at 6; 4/28/17 Tr. at 139:1-4, 139:20-140:7 (Dr. Weber stating that he "do[es] not know why the incarceration rates are different"). Finally, Dr. Weber's calculation of voter turnout as percentages of registered voters in Table 4 of his supplemental report is not affected by age distribution and incarceration rates because it is based on *registered voters*—those who *are already* registered to vote. 4/28/17 Tr. at 195:7-197:25. As set forth above, those numbers indicate a meaningful difference in voter turnout between Black and white registered voters. *See supra*.

Senate Factor 7: Lack of Black Electoral Success

160. Minority officials have been substantially underrepresented in elected public office—particularly parish-wide, at-large elected offices—in Terrebonne. P167-a at 71; 3/14/17 Tr. at 250:14-251:5 (Dr. Lichtman testifying that "no Black candidate has been elected at[-]large to a position in Terrebonne . . . They are nowhere close to getting the votes needed to win an election").

161. Between 1968 when the 32nd JDC was established and the filing of this litigation in February 2014 (*i.e.*, nearly 50 years), *no* Black candidate had ever been elected at-large to that court. P167-a at 71; 3/13/17 Tr. at 65:16-19, 66:19-21, 218:4-6; 3/14/17 Tr. at 19:22-24, 250:14-251:5; 3/17/17 Tr. at 170:3-5, 210:17-20, 234:24-235:8; 4/26/17 (a.m.) Tr. at 56:16-18; 4/28/17 Tr. at 142:20-23, 147:24-148:4. Prior to the filing of this litigation, the 32nd JDC was an all-white body. P167-a at 11; 4/28/17 Tr. at 148:6-8.

162. *No* Black candidate has ever been elected to any other parish-wide, at-large elected position (*i.e.*, Parish President, District Attorney, Sheriff, Coroner, Clerk of Court, Tax Assessor, City Marshal, and Houma City Court Judge). P167-a at 71; 3/13/17 Tr. at 65:20-66:15, 217:4-25; 3/14/17 Tr. at 19:4-21; 3/17/17 Tr. at 34:20-35:9, 160:3-22, 179:18-21, 234:24-235:8; 3/20/17 Tr. at 191:3-15; 4/26/17 (a.m.) at 24:17-22 (Parish President and former Rep. Gordon Dove, reaching back to the era of Reconstruction in the late 1800s to identify "two or three" Black mayors in Terrebonne); *see also id*. at 56:3-15, 56:25-57:10; 4/28/17 Tr. at 142:24-143:4, 201:1-16.

163. To date, *no* Black candidate *who has faced opposition* has ever been elected to a parish-wide, at-large position. 3/13/17 Tr. at 65:20-23, 217:4-6; 3/14/17 Tr. at 19:4-6; 3/17/17 Tr. at 34:20-35:9, 160:3-22, 179:18-21.

164. By contrast, Black representatives on the Parish Council and School Board have been elected from majority-Black SMDs. P167-a at 71; 3/13/17 Tr. at 67:9-11; 3/14/17 Tr. at 250:14-

251:5; 3/16/17 Tr. at 95:6-16; 3/17/17 Tr. at 235:19-24; 3/20/17 Tr. at 191:16-192:4; 4/28/17 Tr. at 177:16-183:15.

165. Minority officials have also been substantially underrepresented in elected public office—particularly statewide offices—in Louisiana. P167-a at 71-72; 3/14/17 Tr. at 251:6-252:19. According to the American Bar Association, as of 2010, Black people comprised approximately 18% of judges in Louisiana's general jurisdiction trial courts and appellate courts, which is 43% lower than the percentage of the Any-Part Black VAP in Louisiana (31%), for a gap of 13.0 percentage points, equivalent to 38 judgeships (.13 * 291 judgeships = 37.8). P167-a at 71-72; P189 at 2; 3/14/17 Tr. at 251:6-252:19; 3/16/17 Tr. at 150:2-152:14; 3/17/17 Tr. at 55:5-19.[76]

166. A racial disparity also exists with respect to the Louisiana Legislature. As of January 2015, Black representatives held 22.2% of the legislative seats, 27% lower than the percentage of the Black VAP, for a gap of 8.3 percentage points, equivalent to 12 legislative seats (.08*144 seats = 12.0). P167-a at 72; 3/14/17 Tr. at 256:1-252:19. All current Black members in Congress and in the state legislature are elected from majority-Black districts. P167-a at 72; 3/14/17 Tr. at 252:6-252:9; 3/17/17 Tr. at 113:6-9, 113:18-22 (this Court taking judicial notice of the fact that Louisiana "ha[s] one [Black] Congressman . . . elected from a majority-minority district").

167. This Court takes judicial notice of the fact that Louisiana "ha[s had] no [minority] elected officials since Reconstruction that have been elected state-wide." 3/17/17 Tr. at 113:2-5, 113:18-22; *see also* P167-a at 72; 3/14/17 Tr. at 251:6-252:9.

Uncontested, Post-Litigation Election of Juan Pickett

168. Following the defeat of H.B. 582 and having exhausted all legislative avenues for relief,

[76] Although the proportion of state court judges who are minority individuals in Louisiana may be higher than in other states, as Dr. Lichtman explains, that is in part attributable to litigation such as *Chisom* and *Clark*. Moreover, it is not instructive because other states have different demographics. 3/16/17 Tr. at 150:2-152:14; 3/17/17 Tr. at 55:5-19.

see supra (facts regarding Terrebonne NAACP); *see also infra* (facts relating to H.B. 582), Terrebonne NAACP publicized in the local media as early as June 2011 its intention to file a lawsuit to challenge at-large voting for the 32nd JDC. P66; 3/13/17 Tr. at 75:25-77:25. On February 3, 2014, this lawsuit was filed. *See* Doc. 1.

169. In November 2014, Juan Pickett, a first-time judicial candidate who is Black, was elected without opposition to an open seat on the 32nd JDC. P167-a at 46; P170 at 11; 3/13/17 Tr. at 85:1-9, 134:16-19, 221:21-22:2; 3/14/17 Tr. at 21:2-7; 3/17/17 Tr. at 84:8-13, 117:17-22, 120:5-121:2, 141:15-19; 4/26/17 (p.m.) Tr. at 60:15-17; 4/28/17 Tr. at 141:13-22, 201:1-16. For the first time in the history of the 32nd JDC, *no* white attorney competed for a seat on the court. P167-a at 46; P173 at 18; 3/13/17 Tr. at 135:22-136:4, 222:3-6; 3/14/17 Tr. at 21:12-19, 252:24-256:16; 3/17/17 Tr. at 84:21-24; 4/28/17 Tr. at 141:23-142:13. Judge Pickett faced no opposition from any of the approximately 162 white attorneys in Terrebonne. D7 ¶ 26; P167-a at 46; P173 at 18; 3/13/17 Tr. at 134:16-19, 135:22-136:4; 3/14/17 Tr. at 252:24-256:16; 4/28/17 Tr. at 78:1-10, 142:2-13, 217:16-19. Judge Pickett attributes this unprecedented lack of opposition to being "blessed." 3/17/17 Tr. at 134:5-23, 168:23-169:23, 170:3-11.

170. As Dr. Lichtman explains, and as multiple witnesses attest, the lack of opposition to Judge Pickett's candidacy is extremely unusual. P167-a at 46; 3/14/17 Tr. at 252:24-256:16; 3/17/17 Tr. at 22:1-23:4; 4/28/17 Tr. at 183:16-185:14.[77] Indeed, Dr. Weber, Defendants' own expert, acknowledges that "as a candidate running for the first time for judge, it is more common to be

[77] *See also* 3/13/17 Tr. at 135:22-136:4 (Mr. Boykin noting that Judge Pickett was elected "under suspicious circumstance[s]" because "with almost 200 white attorneys in Terrebonne and not one r[a]n against him. That [has] never happened from my knowledge in Terrebonne for any open seat for judge and you only have one candidate apply); *id.* at 222:7-10 (Mr. Harding testifying that it was "very surprising" that "you didn't have any other candidate to run against Judge Pickett"); 3/14/17 Tr. at 21:12-19 (Rev. Fusilier testifying that he had "never seen before in my life . . . that a judge[ship] would go uncontested"); *id.* at 190:22-191:3 (Mr. Turner observing that it was "unusual" that Judge Pickett "ran for office and no one ran against him"); 3/17/17 Tr. at 84:21-24 (Mr. Shelby testifying that he was not aware of any other occasion in which a Black candidate ran unopposed in a parish-wide or at-large election).

opposed. . . . [Y]ou would have expected that when there's an open seat, all of the lawyers in town are going to be running for that open seat because that's what you saw in 1994, with that open seat, there were six candidates." 4/28/17 Tr. at 79:14-80:2.[78] As Dr. Lichtman observes, "Juan Pickett stands out as an exception," given "the history of elections in Terrebonne, and from all the angles . . . looked at," including "no Black ever getting elected, extreme racial polarization, [and] token votes from whites for Blacks. . . . And as a social scientist, you never analyze the implications of a system from outliers or exceptions." 3/14/17 Tr. at 252:24-256:16, 267:21-268:12; 3/17/17 Tr. at 22:1-23:10, 40:5-14, 42:22-43:7; 4/28/17 Tr. at 183:16-185:14, 201:1-16.

171. Because Judge Pickett faced no opposition, his name did not appear on the ballot in November 2014, as confirmed by Ms. Rodrigue. *See* La. Rev. Stat. Ann. § 18:511(B); 3/20/17 Tr. at 104:6-11. Thus, Black voters in Terrebonne were not able to vote for or against him. *See* 3/13/17 Tr. at 88:20-22, 222:11-12; 3/14/17 Tr. at 21:23-25, 190:22-25; 3/17/17 Tr. at 84:18-20.

172. Further, because Judge Pickett's election was not contested, it is not possible to conduct a RPV analysis of that election. 3/13/17 Tr. at 148:11-18 (Dr. Engstrom explaining that "[t]here are no votes recorded" and "[t]he voters didn't have a choice between anybody"). Accordingly, Drs. Engstrom and Weber did not perform a RPV analysis of the election of Judge Pickett. *See generally* P166; D6; *see also* 3/13/17 Tr. at 196:1-5. The evidence does not demonstrate that Judge Pickett was the candidate of choice of Black voters in Terrebonne. *See supra*.[79]

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[78] All white judges who testified at trial faced opposition in their first candidacy. *See* 3/17/17 Tr. at 208:2-12 (Judge Hagen agreeing that he competed against two candidates, including Ms. Carter, for an open seat in his first campaign for City Court Judge); *id*. at 216:11-12, 219:8-10, 234:7-12 (Judge Arceneaux explaining that he was opposed by three candidates when he first ran for an open seat on the 32nd JDC); 3/20/17 Tr. at 111:3-113:21 (Judge Larke describing how he faced opposition from at least one white candidate in his initial candidacy); *id*. at 161:18-162:3, 165:9-15, 189:17-24 (Judge Walker describing how he faced opposition from five candidates, including Mr. Lewis, the only Black candidate, when he was first elected to an open seat); 4/26/17 (a.m.) Tr. at 68:17-19, 71:7-17, 72:7-9 (Judge Bethancourt acknowledging that he faced two opponents in his initial run for an open seat on the 32nd JDC).

[79] Indeed, multiple Black voters declined to indicate that Judge Pickett was necessarily their candidate of choice or that of the Black community as a whole. 3/13/17 Tr. at 88:23-89:5 (Mr. Boykin explaining that whether he would

173. Multiple aspects of Judge Pickett's background weigh against a finding that he would have been the candidate of choice of Black voters.

a. Judge Pickett is not from Terrebonne and does not live in a majority-Black neighborhood. 3/13/17 Tr. at 85:10-11; 3/17/17 Tr. at 118:13-19; 4/26/17 (p.m.) Tr. at 145:21-24; *see also* 3/14/17 Tr. at 22:1-11 (Rev. Fusilier testifying that "Judge Pickett is not one from Terrebonne that lived what we had to live through. . . Judge Pickett, in the position that he's in, is like a stranger in a strange land. He doesn't understand our people because he has never lived like we have lived. In the communities that we live in, no one knew him."); *id.* at 161:9-14 (Mr. Cooper explaining that Judge Pickett "lives [in] an overwhelmingly white area that's about 98[%] white").

b. For 21 years from 1993 (when he first arrived in Terrebonne) to 2014 (when he ran unopposed for the 32nd JDC), Judge Pickett worked as an assistant DA, assigned to Judge Ellender's court. D9 at 5; 3/13/17 Tr. at 85:12-14; 3/17/17 Tr. at 120:5-121:5, 121:21-122:10, 159:25-160:2, 175:15-17; 4/26/17 (p.m.) Tr. at 177:21-178:9, 182:11-20.[80]

c. Judge Pickett did not sign the April 7, 1997 letter from Black lawyers in support of a majority-Black subdistrict for the 32nd JDC. *See infra* (facts relating to H.B. 1399); D127-J1 at 6-7; 3/16/17 Tr. at 23:13-25:1; 3/17/17 Tr. at 27:17-28:4.[81]

d. In 2004, Judge Pickett testified before the Judiciary Commission on behalf of Judge

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have voted for Judge Pickett had it been a contested election "depend[s] on what candidates would have been in the race"); *id.* at 234:4-6 (Mr. Harding noting that he "couldn't support [Judge Pickett's] campaign for judge" because "nobody ran against him"); 3/14/17 Tr. at 21:20-22, 26:17-19, 30:19-21, 35:14-17 (Rev. Fusilier indicating that Judge Pickett was not his candidate of choice and not the "people's choice of the minorities"); *id.* at 191:4-18 (Mr. Turner testifying that "[i]n that particular election, we didn't have a choice 'cause he's the only one that ran"); 3/17/17 Tr. at 84:14-17, 84:25-85:16 (Mr. Shelby explaining that "there weren't any other candidates" to choose from and "to have a choice, you have to have . . . more than one person to choose from"); D47 at 52:10-16 (Mr. Myers stating that "there was no decision for [him] to make"); *see also* 4/28/17 Tr. at 201:1-16 (Dr. Lichtman noting that "we don't know anything about the choice that voters may or may not have made with respect to Mr. Pickett").

[80] To distance himself from Judge Ellender, Judge Pickett testified at trial that he does not consider Judge Ellender a "good friend," despite having worked in his courtroom for 21 years. 3/17/17 Tr. at 174:25-175:25.

[81] Judge Pickett did not explain his failure to sign the April 7, 1997 letter at trial. *See* 3/17/17 Tr. at 117:5-158:5, 181:18-184:25.

Ellender in connection with the incident in which Judge Ellender wore blackface in public, and Judge Pickett told the Judiciary Commission that he "didn't find [Judge Ellender's] conduct to be offensive." 3/13/17 Tr. at 129:19-130:2; 3/17/17 Tr. at 177:2-20; *see supra* note 15.[82]

e. In 2014, in his campaign for the open seat being vacated by Judge Ellender, Judge Pickett advertised that he worked as an assistant DA in Judge Ellender's court. 4/26/17 (p.m.) Tr. at 182:11-182:20; *see also* 3/17/17 Tr. at 141:15-142:4. By contrast, Judge Pickett could not recall whether he identified his affiliation with Terrebonne NAACP or any other Black organization on his campaign materials, claiming that his campaign in 2014, which took place only three years ago, "was so many years ago." *Id.* at 162:3-16, 162:24-164:2.

f. Judge Pickett did not start attending Terrebonne NAACP meetings until *after* he qualified for the 32nd JDC seat in August 2014. 3/13/17 Tr. at 85:1-25.[83] Similarly, despite living in Terrebonne for almost 25 years as of 2017, Judge Pickett did not donate money to Terrebonne NAACP until *after* he became a candidate for judge in 2014. 3/13/17 Tr. at 86:1-5; 3/17/17 Tr. at 117:15-16.

g. Judge Pickett registered to vote as a Democrat in June 1994, but changed his party affiliation to Independent in July 2014, Republican in August 2014, and back to Democrat in December 2014. P195; 3/13/17 Tr. at 86:6-88:17; 3/17/17 Tr. at 138:14-19, 164:22-165:13, 166:11-18; 4/26/17 (p.m.) Tr. at 59:9-13. Thus, Judge Pickett chose to qualify as a Republican candidate even while he believed that "the party of choice for Blacks in the parish is the

[82] When asked at trial about his testimony before the Judiciary Commission that he "didn't find [Judge Ellender's] conduct to be offensive," Judge Pickett emphasized that he only knew that Judge Ellender had worn blackface and was not aware of the rest of the facts. 3/17/17 Tr. at 177:5-17. However, the incident was extremely well-publicized in Terrebonne and nationally. *In re Ellender*, 889 So. 2d at 231; 3/13/17 Tr. at 127:5-13 (Mr. Boykin noting that the incident "made CNN" and "made national news"). Further, at trial, despite knowing all of the facts regarding Judge Ellender's conduct, Judge Pickett hedged on whether he views it to be offensive. *Compare* 3/17/17 Tr. at 143:3-11 ("it was very insensitive") *and id.* at 177:16-20 ("it's offensive) *with id.* at 176:12-18 ("It definitely *can* be offensive").

[83] At trial, Judge Pickett stated that he had been a member of the NAACP "on and off for years" but could not recall when he first became a member of the NAACP. 3/17/17 Tr. at 161:20-162:2.

Democratic Party." 3/17/17 Tr. at 167:5-8; 4/26/17 (p.m.) Tr. at 59:9-13. Judge Pickett claims that his decision to change his party affiliation three times over a six-month period was "just a choice." 3/17/17 Tr. at 165:7-165:13, 166:8-10, 166:24-167:4, 168:16-22.

174. Most importantly, as demonstrated by Judge Pickett's campaign finance, his candidacy was sponsored by the white community. P170 at 12; P173 at 18; 3/14/17 Tr. at 252:24-256:16; *see also, e.g.*, 3/17/17 Tr. at 22:1-13, 26:24-27:9, 44:16-45:3, 51:22-52:6; 4/28/17 Tr. at 183:16-185:14. According to Dr. Lichtman, who has "been watching elections for 50 years, studied them, written about them, analyzed them . . . one thing I've learned is . . . [m]oney talks. If you want to see who is supporting a candidate, look for the money. And the money tells the tale here for Juan Pickett. He received an extraordinary number of large checks, out of line with, you know, what you would expect for a Black candidate, way out of line with the two other Black candidates running at the same time: Ms. Carter for the City Court and Mr. Mosely for City Marshal. And where did these checks come from? They came from white individuals and white businesses." 3/14/17 Tr. at 252:24-256:16; *see also, e.g.*, 3/17/17 Tr. at 40:5-14, 40:24-41:9.

175. Analysis of all 18 contributors of $1,000 or more to Judge Pickett's campaign discloses that they are all white individuals or business enterprises operated by white people. P170 at 12; P173 at 18; 3/14/17 Tr. at 252:24-256:16; 3/17/17 Tr. at 44:4-9.

a. Judge Pickett's largest contributor with a donation of $2,500 (tied with three others)—"an extraordinary contribution for this kind of election"—was white then-Rep. Dove, a leading opponent of a majority-Black subdistrict, who voted against H.B. 582 of 2011. P167-a at 41, 51-52; P170 at 12; P173 at 18; 3/14/17 Tr. at 252:24-256:16.

b. Another staunch opponent of the creation of a majority-Black subdistrict, who "intervened in the political process earlier to oppose" it, former 32nd JDC Judge Edward J. Gaidry,

contributed $1,000 to Judge Pickett. P167-a at 34-35, 53; P170 at 12; 3/14/17 Tr. at 252:24-256:16.

c. Mr. Dove's and Judge Gaidry's contribution records indicate that they had not contributed to any other Black candidate in Terrebonne. P170 at 12. Indeed, Mr. Dove candidly acknowledged at trial that Judge Pickett is "the only Black judicial candidate that [he has] *ever* given money to," even though he has "give[n] to the Congressional Senate races, the House of Representatives . . . , to state senators, to the state reps, to governors, to DAs, to a lot of people running." 4/26/17 (a.m.) Tr. at 26:16-21, 56:19-24 (emphasis added).

176. Judge Ellender, an opponent of a majority-Black subdistrict, who also "intervened in the political process earlier to oppose" it and who had been twice disciplined by the Louisiana Supreme Court by then, contributed $500 to Judge Pickett's campaign. *See* P167-a at 31, 34-35, 55-57; P170 at 12; 3/14/17 Tr. at 252:24-256:16; *see supra* note 15. Neither Judge Gaidry nor Judge Ellender contributed in 2014 to the campaigns of Mr. Mosely or Ms. Carter. P173 at 18.

177. The level of white support for Judge Pickett runs counter to the history of Black candidates running for parish-wide office in Terrebonne, each of whom faced white opposition and was defeated under extreme conditions of RPV. 3/17/17 Tr. at 40:24-41:9 (Dr. Lichtman explaining that "[Judge Pickett] had the kind of money from the white community that no Black [candidate] has ever come close to having, including money from those who were in the forefront of opposing a [majority-Black SMD]"); *see also id.* at 24:19-25; 3/14/17 Tr. at 252:24-256:16.

178. It is a well-established tactic for the white community to support or not contest a minority candidate during the pendency of a lawsuit; the objective is to moot the lawsuit by showing that a minority candidate can be elected in the challenged electoral system. P167-a at 46; 3/14/17 Tr. at 252:24-256:16; 3/17/17 Tr. at 26:24-27:9; 4/28/17 Tr. at 183:16-185:14. The evidence in this case shows that "the majority citizens [sought to] evade § 2 by manipulating the election of a 'safe'

minority candidate," and that, at the very least, "the pendency of this very litigation . . . worked a one-time advantage for [Judge Pickett] in the form of unusual organized political support by white leaders concerned to forestall single member districting." *Gingles*, 478 U.S. at 75, 76.[84]

179. Such an approach is neither responsive to the dilutive nature of the at-large method of election here, nor does it empower voters of color to elect *their* candidates of choice, as opposed to those sponsored by the white majority, in election after election. P167-a at 46; 3/14/17 Tr. at 252:20-256:16. As Dr. Lichtman explains, in his "judgement as a political analyst, as an historian, as an expert in voting rights, . . . you cannot assess the 32nd [JDC] from this single exceptional situation that is not likely to be repeated and will simply freeze into place an otherwise clearly discriminatory system. Judge Pickett is not going to serve on the 32nd [JDC] forever, and at some point when he steps down, you're going right back to the same . . . system of at-large elections, numbered posts, majority-vote requirement." 3/14/17 Tr. at 252:24-256:16.[85]

180. Mr. Beychok attempts to explain the unprecedented lack of opposition to Judge Pickett by asserting that he deterred all candidates by beginning his campaign early and raising substantial funds. D8 at 7; P170 at 11; 4/26/17 (p.m.) Tr. at 60:18-61:15, 63:1-21, 163:22-164:1. However,

[84] *See also* 3/14/17 Tr. at 21:12-19, 42:10-43:6 (Rev. Fusilier testifying that he "believe[s] in [his] heart [that Judge Pickett's election] was set up . . . to deter . . . the reason we are here"); D47 at 52:17-53:5, 57:9-21 (Mr. Myers testifying that Judge Pickett was a "favorite" who was allowed to run unopposed to "quiet" the lawsuit).

[85] Multiple Black voters affirmed that Judge Pickett's election to the 32nd JDC does not affect their desire for systemic change. *See* 3/13/17 Tr. at 138:12-18 (Mr. Boykin explaining that "we've been fighting since 1997 to create this minority district in Terrebonne. We are fighting for thousands of Blacks who have been disenfranchised. Our fight is not about one individual for judge. We are trying to create a district."); *see also, e.g.*, *id.* at 222:13-24 (Mr. Harding testifying that "what we are trying to do today is bigger than Judge Pickett. . . . . It's the judgeship that we are trying to get, the district itself."); 3/14/17 Tr. at 18:18-19:3, 22:1-11 (Rev. Fusilier testifying that the goal is "to make a minority district so that the people would have an opportunity to vote for someone of their choice"); 3/17/17 Tr. at 84:25-85:16 (Mr. Shelby testifying that "Judge Pickett's position on the court does not alleviate the issue at hand. . . . [*i.e.*,] actually having the candidate of our choice, and . . . to have a choice, you have to have more than one …person to choose from"). Mr. Turner, who acknowledges that he would have voted for Judge Pickett had he faced opposition, explains that this case "is not about one individual" but about "the [Black] community at large." *Id.* at 180:15-23, 190:17-21, 191:4-18; *see also id*. at 192:7-10 (Mr. Turner noting that this case "is bigger than Juan Pickett"). "Judge Pickett right now is judge, but if something happens, if he retires or moves on to the next level, what would Black -- what would minorities do? You would go back to the same system we have in place now . . ." *Id.* at 191:19-192:6.

Mr. Beychok concedes that the absence of a white candidate for a judgeship has "never happened before." 4/26/17 (p.m.) Tr. at 164:11-14; *see also* P170 at 11; D9 at 4-5.

181. More importantly, Mr. Beychok's own analysis shows that the attributes that he cites for Judge Pickett's electoral success are not unique to him and do not explain how he alone was able to face no opposition from any white candidate. P170 at 11; 4/28/17 Tr. at 183:16-185:14. For example, Mr. Beychok found that Judge Pickett had raised over $15,000 for his campaign by May 1, 2014 and over $60,000 by the first day of qualifying. D8 at 7; P170 at 11; 4/26/17 (p.m.) Tr. at 164:20-24. Yet, Mr. Beychok also found that Matt Hagen, a white candidate for Houma City Court Judge in the same election cycle in the fall of 2014, had raised the much more substantial sum of $25,000 by June 1, 2014, and ultimately raised over $55,000. D8 at 4-5; P170 at 11-12; 4/26/17 (p.m.) Tr. at 44:23-45:3, 49:16-50:1, 51:11-13, 164:25-165:6; 4/28/17 Tr. at 183:16-185:14. This fundraising lead did not deter two other candidates from competing against him, one white and one Black. P170 at 12; 4/26/17 (p.m.) Tr. at 165:7-10; 4/28/17 Tr. at 183:16-185:14.[86]

182. Mr. Beychok suggests that comparing the 2014 32nd JDC election to these other elections is not appropriate because "not all campaigns are created equal and . . . multiple factors . . . contribute to the winning or losing of campaigns and candidates for office." D9 at 5; *see also* 4/26/17 (p.m.) Tr. at 165:7-10. Taking Mr. Beychok's claim at face value, it would indicate that *no* reliable conclusions can be drawn from any of the examples that he presents. P173 at 18-19.

183. Betraying his lack of confidence in his own deterrence theory, Mr. Beychok concedes that "it's just speculation to say, you know, whether it deterred or whether it didn't deter." 4/26/17

[86] Similarly, in the 2011 Tax Assessor election, Mr. Beychok found that a white candidate, "Mr. Grabert[,] began his campaign almost a year before the election and six months before any other candidate began their campaigns." D8 at 13; 4/26/17 (p.m.) Tr. at 165:11-16; 4/28/17 Tr. at 183:16-185:14. Yet, this long lead did not deter three other candidates from entering the election, including two other white candidates. P170 at 12; 4/26/17 (p.m.) Tr. at 165:17-166:12; 4/28/17 Tr. at 183:16-185:14.

(p.m.) Tr. at 165:17-166:12. Mr. Beychok admits that no one told him that they chose not to run because Judge Pickett had a lead in time, money, or endorsements. *Id.* at 169:19-170:4.[87] While Mr. Beychok speculates that "maybe there was a candidate" who was deterred, he ultimately concedes that "we don't know" of any such candidates. *Id.* at 165:17-167:12. Mr. Beychok fails to cite in either of his reports a single example other than Judge Pickett of any candidate in any election in Terrebonne where the candidate's early start or fund-raising process deterred other candidates from competing in the election. P173 at 19; *see generally* D8; D9.

184. Mr. Beychok disagrees that the white community sponsored the campaign of Judge Pickett during the pendency of the lawsuit to avoid the creation of a majority-Black district and preserve the dilutive at-large system. D8 at 8; P170 at 12; 4/26/17 (p.m.) Tr. at 62:11-25, 168:10-16. However, as set forth above, Mr. Beychok has no basis to dispute that a white candidate has always competed in an election for an open seat on the 32nd JDC. *See supra*. Mr. Beychok has no basis to dispute that all but one of Judge Pickett's campaign contributions came *after* the filing of this case in February 2014. P173 at 18; 4/26/17 (p.m.) Tr. at 172:6-24; *see generally* D111-1. Mr. Beychok has no basis to dispute Dr. Lichtman's finding that *all 18 contributors of $1,000 or more* to Judge Pickett's campaign were from the white community in Terrebonne. *See supra*; P170 at 12; P173 at 18; 4/26/17 (p.m.) Tr. at 170:16-171:3; 4/28/17 Tr. at 183:16-185:14. And Mr. Beychok does not dispute that, despite making contributions to Judge Pickett's campaign, Judges Gaidry and Ellender failed to contribute to the campaigns of Ms. Carter or Mr. Mosely. D9 at 5-6; 4/26/17 (p.m.) Tr. at 171:4-10. Mr. Beychok fails to cite in either of his reports *any* other Black candidate in Terrebonne's history who received even a small fraction of Judge Pickett's white

[87] Indeed, Mr. Beychok acknowledges that Judge Pickett did not file his first campaign finance report until October 2014, which is more than a month after the August 2014 deadline to qualify, and too late to have deterred anyone from challenging him. 4/26/17 (p.m.) Tr. at 164:2-10; *see also* D111-1 at 1.

support. P173 at 18; *see generally* D8; D9.[88] Mr. Beychok's attempt to dismiss the special circumstances of Judge Pickett's election is not credible.

Miscellaneous Ward-Level Elections

185. To buttress his opinion that Black candidates can win in contested, at-large elections in Terrebonne, Mr. Beychok cites in his supplemental report ward-level elections in three of 10 wards: Melvin Johnson in Justice of the Peace Ward 7,[89] Horace Johnson in Justice of the Peace Ward 8,[90] and Cleveland "Coke" Verdine in Constable Ward 1.[91] D9 at 2-4; 4/26/17 (p.m.) Tr. at 30:5-12, 103:15-20, 104:11-105:18, 134:23-135:13, 149:25-150:4, 151:5-9, 153:8-12, 155:7-10,

[88] Mr. Beychok asserts that Judge Pickett "was not aware of any backroom deal," and that he "had decided to run for judge many, many years ago" and made an early start in his campaign in January 2014. D8 at 7; D9 at 5; 4/26/17 (p.m.) Tr. at 57:23-58:12, 62:11-25, 171:11-15. However, residents of Terrebonne, including local white officials, were aware as early as June 2011, after H.B. 582 failed, of plans by Terrebonne NAACP to challenge at-large voting in court. *See supra* note 2. Further, that Judge Pickett may not have known of any deal or may have sought to become a judge long before the case was filed does not mean that the white community did not decide to sponsor him as a candidate to forestall a change to the at-large electoral system. *See supra*.

[89] Mr. Beychok cites Mr. Johnson's 1977 Ward 7 election, but does not identify in his supplemental report the race of Mr. Johnson's opponent. D9 at 2; P173 at 13; 4/26/17 (p.m.) Tr. at 104:11-105:12, 151:5-9; 4/28/17 Tr. at 185:16-190:4. While, in his reelection in 1983, Mr. Johnson defeated a white challenger, Aljean Ledet, Mr. Johnson was an incumbent by that point. *See* D9 at 2; P173 at 13; 4/26/17 (p.m.) Tr. at 152:7-14. When, in 1987, Mr. Johnson tried to move up to the parish-wide position of Sheriff, he was defeated by white opponents, garnering only 5.3% of the vote and finishing sixth in a field of nine. P173 at 13; 4/28/17 Tr. at 185:16-190:4 (Dr. Lichtman testifying that "we have an absolute test of whether ward level elections could be translated into parish level elections and resoundingly, they cannot. [Mr. Johnson] didn't make a dent in the parish level election."). In 1990, Mr. Johnson was reelected without opposition. P173 at 13 n.23; D4-B at 12. Finally, in 1996, despite being in office for nearly 20 years and an incumbent, Mr. Johnson was defeated by a white candidate. D9 at 2; D4-B at 38; P173 at 13; 4/26/17 (p.m.) Tr. at 153:3-7.

[90] Mr. Beychok cites Mr. Johnson's 1988 Ward 8 election, but Mr. Johnson's opponent, Oliver Matthews, was Black. D9 at 3; P173 at 13; 4/26/17 (p.m.) Tr. at 153:8-23, 154:21-25; 4/28/17 Tr. at 185:16-190:4. In 1990, Mr. Johnson defeated a white opponent Aaron "Boo" Cantrelle, but Mr. Johnson was an incumbent then. D9 at 3; D4-B at 12; P173 at 14; 4/28/17 Tr. at 185:16-190:4. Mr. Johnson's 1996 reelection did not involve a biracial contest as his opponent, Lionel Diggs, was a Black challenger. *See* D9 at 3; *see also* D4-B at 38; P173 at 14; 4/26/17 (p.m.) Tr. at 155:23-156:1, 157:9-17; 4/28/17 Tr. at 185:16-190:4. In 2002, Mr. Johnson was reelected without opposition. D9 at 3; D4-B at 73; P173 at 14 n.28. In 2008, Mr. Johnson's opponent was again a Black challenger, Mr. Mosely. *See* D9 at 3; D4-B at 98; P173 at 14; 4/26/17 (p.m.) Tr. at 157:24-158:4, 158:10-159:7; 4/28/17 Tr. at 185:16-190:4. In 2014, Mr. Johnson defeated another Black challenger. D9 at 3; D4-B at 117; P173 at 14 n.28. Thus, Mr. Johnson competed against a white candidate only once, in 1990, and he did so as an incumbent.

[91] Mr. Beychok cites the 2004 special election of Mr. Verdine in Ward 1, the only candidate for whom Mr. Beychok in his supplemental report verifies the race of the candidate's first opponent as white. D9 at 3; P173 at 14; 4/26/17 (p.m.) Tr. at 159:18-160:1; 4/28/17 Tr. at 185:16-190:4. However, this special election featured an extremely low voter turnout of approximately 9%. D9 at 3; P173 at 14; 4/28/17 Tr. at 185:16-190:4. Black voters turned out at nearly quadruple the rate of white voters and accounted for 46.8% of the votes cast (407 out of 869). P173 at 14; 4/28/17 Tr. at 185:16-190:4. Mr. Verdine served one term and chose not to run for reelection in 2008. P173 at 14; 4/26/17 (p.m.) Tr. at 160:2-6; 4/28/17 Tr. at 185:16-190:4. In the 2008 election, white candidate, David LeBoeuf, defeated the Black candidate, Roussell Redmond. P173 at 14; 4/26/17 (p.m.) Tr. at 160:7-16; 4/28/17 Tr. at 185:16-190:4.

157:24-158:1.

186. Mr. Beychok admits that none of these elections were conducted parish-wide, and that the pool of voters in ward-level elections is smaller than in parish-wide elections. 4/26/17 (p.m.) Tr. at 150:5-10; *see also, e.g.*, *id.* at 104:11:105:12 (conceding that Mr. Johnson's 1977 election was "a small election" involving "a few thousand voters, not a whole parish"); *id.* at 151:16-19, 155:4-6, 155:20-22, 157:21-23, 159:8-14; *see also* P173 at 4; 4/28/17 Tr. at 185:16-190:4.

187. In addition, Mr. Beychok acknowledges that "the elections that were analyzed in [his] supplemental report are stale," just as he views the 1993 and 1994 parish-wide elections analyzed by Drs. Engstrom and Weber. 4/26/17 (p.m.) Tr. at 179:13-16; *see also* D8 at 3; P173 at 15; 4/26/17 Tr. (p.m.) at 99:23-101:10, 112:13-113:5 (1993 and 1994 elections); *id.* at 151:10-15 (1977 election); *id.* at 152:7-153:2 (1983 election); *id.* at 153:8-12, 155:1-3 (1988 election); *id.* at 155:7-10, 155:14-19 (1990 election); *id.* at 157:9-20 (1996 election); 4/28/17 Tr. at 185:16-190:4.

188. Finally, Mr. Beychok admits that he did not identify the race of *all* of the candidates in the ward-level elections that he cites; thus, these elections do not demonstrate that a Black candidate can prevail over a white candidate in a parish-wide election. 4/26/17 (p.m.) Tr. at 135:14-136:1; *see also, e.g.*, *id.* at 153:8-23, 157:9-17, 158:10-159:7; 4/28/17 Tr. at 185:16-190:4.[92]

189. As Dr. Lichtman notes, across approximately 40 years in Terrebonne, Mr. Beychok cites *just three examples* of Black candidates who have defeated white candidates in majority-white wards. P173 at 14; *see also* 4/28/17 Tr. at 185:16-190:4 (Dr. Lichtman testifying that "you cannot

[92] Mr. Beychok identifies only three biracial elections in which the Black candidates won. *See supra* notes 89-91. Two of these (the 1983 Ward 7 and the 1990 Ward 8 elections) involved Black incumbents. *See id.* The third (the 2004 Ward 1 election) was a special election with low turnout among voters generally, but unusually high Black voter turnout, which has not been seen and is unlikely to be replicated in parish-wide elections, as confirmed by the trends documented by Dr. Weber. P173 at 15; *see also supra* (facts regarding Senate Factor 5).

Mr. Beychok provides no estimates of RPV for any of the ward-level elections that he cites in his supplemental report. D9 at 2-3; P173 at 15. Moreover, Mr. Beychok did not analyze the role of race in *any* of these ward-level elections. *See* D9 at 2-4; 4/26/17 (p.m.) Tr. at 135:2-13.

make the leap from the fact that you had a handful of Black candidates over a forty-year period winning in a few wards to the fact that they could win parish-wide. There are hundreds of ward elections being held during this period and there are always going to be exceptions."). Mr. Beychok ignores that, in the much more relevant context of contested *parish-wide* elections in Terrebonne, the pattern of Black electoral defeat has been "universal." 4/28/17 Tr. at 185:16-190:4. Including the (1) seven Black candidacies analyzed by Drs. Engstrom and Weber between 1993 and 2014, (2) the three Black candidates for Sheriff (in 1983, 1987 and 1995),[93] and (3) the six Black candidacies for statewide office in 2015 (not including the two minor candidates for Governor), the record of Black electoral success in contested parish-wide elections over 32 years (1983 to 2015) in Terrebonne is *zero for sixteen*. P173 at 15-17; 4/28/17 Tr. at 185:16-190:4.[94]

Mr. Beychok's Opinion on "Non-Racial" Factors

[93] In reaching back to the 1970s for examples of ward-level Black electoral success, Mr. Beychok fails to mention numerous other examples of defeated Black candidates, including: (1) Curtis Willis – for mayor of Houma in 1978; (2) James Bonvillain – for Sheriff in 1983; (3) Curtis Willis – for Parish Council in 1983; (4) Melvin Johnson – for Sheriff in 1987; and (5) James Bonvillain – for Sheriff in 1995. P173 at 15-16; 4/28/17 Tr. at 185:16-190:4.

[94] Dr. Weber also raises a number of examples of elected Black officials in Terrebonne to suggest that at-large voting does not present a barrier to the ability of Black voters to elect their candidates of choice. D7 ¶ 31. For example, Dr. Weber emphasizes in his supplemental report that Black officials in Terrebonne hold two of nine seats on the Parish Council and School Board, but he fails to note that these officials are not elected at-large, but rather in majority-Black districts. D7 ¶ 31; P173 at 11.

Dr. Weber also cites the elections of Black candidates in Justice of the Peace Wards, such as the 1977 election of Melvin Johnson in Ward 7 and the 1996 election of Horace Johnson in Ward 8. D7 ¶ 31; P173 at 11. Like Mr. Beychok, however, Dr. Weber concedes that none of these elections were parish-wide contests. 4/28/17 Tr. at 143:9-13. It is also striking that Dr. Weber dismisses as "stale" the parish-wide elections from 1993 and 1994, but then relies upon ward-level elections from 1977 and 1996 with no analysis of RPV. *Compare* D6 ¶ 34 *and* D7 ¶ 19 *with* D7 ¶ 31; *see* P173 at 11; 4/28/17 Tr. at 143:14-144:7 (1977 election is stale); *id.* at 145:23-146:2, 146:15-17 (1996 election took place 21 years ago); *id.* at 185:16-190:4 (Dr. Lichtman testifying that "neither Mr. Beychok nor . . . Dr. Weber has explained how ward elections from forty, thirty years ago indicate that [Black candidates] can prevail at the parish level today particularly when they attack parish level elections from the 1990s"). Further, Dr. Weber concedes that in Ward 7, Melvin Johnson was defeated by a white candidate in his bid for reelection in 1996. D7 ¶ 31; 4/28/17 Tr. at 144:8-17. Dr. Weber also acknowledges that in Ward 8, Black voters constitute approximately 39% of registered voters, which is more than double the percentage of Black registered voters parish-wide. 4/28/17 Tr. at 146:18-25.

Finally, in a desperate attempt to suggest that Black candidates can get elected parish-wide in Terrebonne, Dr. Weber points to the election of Governor Bobby Jindal in 2007 and 2011 and claims that he "might be considered as categorized as part Black under the census categories." D7 ¶ 31; 4/28/17 Tr. at 147:1-16. However, Dr. Weber cites no sources for this claim and concedes that Governor Jindal's parents immigrated to the United States from India. D7 ¶ 31; P173 at 11-12; 4/28/17 Tr. at 147:17-20.

190. Mr. Beychok[95] also examined the campaigns of candidates in five of seven contested elections studied by Drs. Engstrom and Weber: the (1) 2014 Houma City Court election, (2) 2014 Houma City Marshal election, (3) 2011 Tax Assessor election, (4) 1994 32nd JDC election, and (5) 1993 First Circuit Court of Appeal election. *See generally* D8; P170 at 10; 4/26/17 (p.m.) Tr. at 29:19-30:4, 43:10-25, 65:4-8, 78:12-23, 86:14-19, 94:8-20, 113:24-114:3.[96]

191. Mr. Beychok claims that three primary factors, (1) differences in campaign fundraising, being the most important of the three, (2) timing of the campaigns, and (3) recruitment of volunteers, account for the defeat of Black candidates in those elections and, by contrast, the success of white candidates. D8 at 2, 20; P170 at 10; *see also* 4/26/17 (p.m.) Tr. at 30:13-31:1, 57:2-6, 78:6-11, 86:7-13, 93:11-15, 98:18-99:3, 102:14-103:14, 117:6-118:1, 121:13-20.[97]

192. Mr. Beychok's attempt to suggest that Black candidates in contested elections lost for reasons other than race is not credible because: (1) Mr. Beychok concedes that race is a factor in Terrebonne elections, and yet he does not analyze race in any of the elections; (2) the factors of "money, time, and people" are affected by race; and (3) these and other "across-the-board" factors do not—and cannot—account for the sharply polarized response of Black and white voters to the candidates in the five elections. *See infra*.

193. *First*, as Dr. Lichtman explains, Mr. Beychok's opinion does not undermine the showing of "extreme patterns of RPV because it doesn't include race as a factor in the analysis." 4/28/17 Tr. at 177:16-182:8. Mr. Beychok acknowledges that there are other factors besides money, time,

[95] Mr. Beychok has testified as an expert in only one other Section 2 case. D8 at 1; 4/26/17 (p.m.) Tr. at 111:22-112:4.
[96] In conducting his analysis of these five contested elections, Mr. Beychok did not (a) observe firsthand any of the campaigns, (b) speak with any of the candidates or campaign volunteers, (c) poll or speak with any voters, *or* (d) compile lists of endorsements for any of the candidates. 4/26/17 (p.m.) Tr. at 116:9-117:5.
[97] Mr. Beychok opines that incumbency is a factor in elections. 4/26/17 (p.m.) Tr. at 31:19-21. However, Mr. Beychok acknowledges that four of the five contested elections that he examined, including the three judicial elections, featured open seats. *See id.* at 79:7-10 (2011 Tax Assessor); *id.* at 125:23-126:4 (2014 Houma City Court); *id.* at 133:3-7 (1994 32nd JDC); *id.* at 134:17-19 (1993 First Circuit Court of Appeal). In the only election that featured an incumbent, the 2014 City Marshal election, the incumbent was defeated. *Id.* at 65:22-66:14, 69:4-9, 71:21-23.

and people that affect election outcomes, such as name recognition, and that there are elections in which other factors are more important. 4/26/17 (p.m.) Tr. at 31:15-32:4, 35:17-19, 118:2-5; *see also id.* at 32:16-19 (Mr. Beychok acknowledging that it is "absolutely true" that sometimes the candidate with the most money does not always win).

194. Perhaps most importantly, Mr. Beychok admits that race is a factor in Terrebonne elections. *Id.* at 118:6-9 (Mr. Beychok acknowledging that "[r]ace is a factor in everything in Louisiana, including the Terrebonne elections"). This concession comports with Mr. Beychok's experience working in Louisiana. *Id.* at 118:10-120:2 (Mr. Beychok acknowledging that "race is something that you look at and take into account when you're advising candidates").[98] It also comports with the RPV analysis of Dr. Engstrom, which Mr. Beychok reviewed prior to preparing his initial report in this case, and which he concedes that he has no standing "whatsoever" to dispute. D9 at 4; 4/26/17 (p.m.) Tr. at 113:3-23; *see supra* (*Gingles* two and three).

195. Mr. Beychok's initial report and trial testimony also reveal his tacit recognition that voting is inherently polarized along racial lines in Terrebonne. Specifically, he attempts to explain why Black candidates failed to persuade most white voters to back their candidacies. *See generally* D8; P170 at 10-11. Yet Mr. Beychok does not mention the need for Black candidates to persuade Black voters to back their candidacies or the need for white candidates to persuade white voters to back their candidacies. *See generally* D8. For example, with respect to the 2014 City Marshal election, Mr. Beychok opines that Mr. Mosely was supported by only "5.5 percent of white voters," which shows "that he needed to spend more time and more money communicating with those folks." 4/26/17 (p.m.) Tr. at 127:19-128:8; *see also* D8 at 12. But Mr. Beychok does not discuss how,

[98] 4/26/17 (p.m.) Tr. at 118:21-24 (Mr. Beychok admitting that he advises candidates about "the racial demographics that they will be running in"); *id*. at 119:19-120:2 (Mr. Beychok confirming that he assesses whether the candidates "ha[ve] different levels of support among different racial groups").

despite spending less money and time on the campaign than his opponents, Mr. Mosely received 81.8% of Black voter support. *See* D8 at 8-12. Nor does Mr. Beychok discuss how, despite spending more money and time on their campaign, the top two white candidates, who advanced to the runoff, together received only 9% of Black voter support, as estimated by Dr. Weber. *See id.* at 8-12; D6 tbl. 11-4. In fact, Mr. Beychok admits that in the 2014 City Marshal election, Mr. Mosely was at a "racial disadvantage" because "numbers are numbers," and "there are less Blacks in Terrebonne." 4/26/17 (p.m.) Tr. at 129:23-131:5.[99]

196. Even though Mr. Beychok acknowledges that race is a factor in Terrebonne elections, does not dispute Dr. Engstrom's RPV findings, and implicitly concedes that voting in Terrebonne is polarized along racial lines, he did not conduct *any* statistical, systematic, or specific analysis of the impact of race in the elections that he examined, nor did he factor into his analysis the existence of RPV. *Id.* at 122:2-11. As Dr. Lichtman explains, it is possible to conduct a systematic analysis that takes into account, and eliminates, race as a factor. 4/28/17 Tr. at 177:16-182:8 (Dr. Lichtman explaining that "you could set up an equation in which you include race and these other factors [*e.g.*, money, time, and people] and see if race remains as the predominant factor. That is not done obviously by Mr. Beychok, and that is not done by Dr. Weber, even though that is standard practice within political science"). Mr. Beychok emphasizes that his experience working as a consultant shows that "money, time, and people," in general, are the most important factors. 4/26/17 (p.m.) Tr. at 29:19-30:4, 30:13-31:1. But this does not excuse his failure to analyze race as a factor, given

[99] At trial, Mr. Beychok "cast[] doubt on whether a [Black] candidate could prevail in a 50.81[%] Black district." 4/28/17 Tr. at 177:16-182:8; *see also* 4/26/17 (p.m.) Tr. at 174:25-175:11 (Mr. Beychok opining that it "would not be easy" for a candidate of choice of the Black community to win in such a district). This position is not credible given that, as Dr. Lichtman observes, Mr. Beychok is also "claiming that Black candidates can prevail in an 18[%] Black district at-large." 4/28/17 Tr. at 177:16-182:8.

his above-referenced concessions. *See supra*.[100]

197. *Second*, Mr. Beychok ignores the impact of race on the three primary factors that he identifies: "money, time, and people." As detailed above, as a result of historical and ongoing racial discrimination in myriad aspects of life, Black residents in Terrebonne suffer from stark socioeconomic disadvantages on multiple measures, including income, poverty rate, reliance on food stamps, and unemployment rate. *See supra* (facts regarding Senate Factor 5). Mr. Beychok does not dispute any of this data. 4/26/17 (p.m.) Tr. at 139:8-25 (conceding that he did not examine any Census data); 4/28/17 Tr. at 199:16-200:25.

198. As Dr. Lichtman explains, these disparities create "difficulty in funding candidates." 3/14/17 Tr. at 248:7-249:8; *see also id.* ("When you got educational, health, income, poverty, vehicle disparities . . . it affects the ability for candidates to fundraise because of their raising primarily from the [Black] community, it's a community with high rates of poverty, low income rates."); 4/28/17 Tr. at 182:10-183:15 ("[T]he disparities of wealth, poverty, employment are extreme in Terrebonne Parish which fundamentally affects the ability of [Black] candidates to dip into significant sources of campaign funds as opposed to white candidates."). Mr. Harding further explains: "[w]hen you look at the makeup of the community in Terrebonne Parish, you don't have . . . a lot of [Black] businesses that's out there that can actually fund [a parish-wide] campaign compared to white candidates." 3/13/17 Tr. at 216:2-15. Thus, the disparities in fundraising among the Black and white candidates identified by Mr. Beychok reflect the handicaps that Black candidates face as a result of discrimination in employment, education, and other areas of life.

[100] Mr. Beychok's supplemental report also does not analyze the role of race in the elections that he examined in his initial report, nor does it otherwise seek to explain or justify, in any way, his failure to consider race as a factor in those elections. *See generally* D9. Mr. Beychok's supplemental report also does not analyze the role of race in the ward-level elections that he identifies. *See generally* D9; *see also* 4/26/17 (p.m.) Tr. at 134:23-135:13.

P170 at 10-12; P173 at 19; 3/14/17 Tr. at 248:7-249:8; 4/28/17 Tr. at 182:10-183:15. Mr. Beychok himself concedes that a voter's economic circumstance can affect her ability to make a campaign contribution. 4/26/17 (p.m.) Tr. at 141:13-18.[101]

199. In turn, Mr. Beychok acknowledges that a candidate's ability to raise campaign funds affects the timing of the candidate's entry into a campaign and the amount of communication that a candidate can have with voters. *Id.* at 140:10-141:7. Further, as Dr. Lichtman explains, "when you don't have vehicles available to the same extent as whites; you're operating from paycheck to paycheck and don't necessarily have time off on Election Day; you have lower levels of education, lower levels of income; and if you have more health challenges," that creates "difficulty [for candidates] in running campaigns, particularly over a large parishwide jurisdiction as opposed to individual subdistricts." 3/14/17 Tr. at 248:7-249:8. For example, disparity in access to vehicles affect candidates' "ability to . . . get volunteers to travel around the parish, which is exacerbated by the fact that you have parish-wide elections as opposed to district elections." 3/16/17 Tr. at 227:21-228:10. Thus, the racial disparities also affect the factors of "time" and "people." *See id.*

200. *Third*, even assuming that the factors of "money, time, and people" are not affected by race, these factors cannot account for the sharply polarized response of Terrebonne voters to the candidates in the five contested elections that Mr. Beychok examines. As Dr. Lichtman explains, "you cannot explain this pattern of voting, this sharp extreme polarized voting by citing across-the-board factors like money, or name recognition. Those factors, if at play, would be at play both for whites and blacks. It might explain why a candidate gets a very small number of votes from

[101] Even assuming that the Black community could match the financing of white candidates supported by the white community, Mr. Beychok also acknowledges that a perception needs to exist that a candidate is going to win to increase the motivation to give. 4/26/17 (p.m.) Tr. at 137:4-17. That perception does not exist in an electoral environment characterized by stark patterns of RPV, which Mr. Beychok does not dispute, where no Black candidate has ever won a contested at-large or parish-wide election. *See supra*.

both communities. It cannot explain extreme patterns of [RPV] . . . ." 4/28/17 Tr. at 177:16-182:8; *see also* 3/17/17 Tr. at 21:11-25, 34:2-16, 36:18-37:4, 39:8-20; 4/28/17 Tr. at 208:8-12.

201. Indeed, despite the alleged campaign deficiencies of Black candidates, Mr. Beychok does not dispute Dr. Engstrom's findings that they garnered between 71.4% and 99.2% of support from Black voters, while winning between 1.1% and 10.5% of the non-Black vote. *See supra* (facts regarding *Gingles* two and three). Neither does Mr. Beychok dispute that, despite the significant fundraising, the early campaigning, and other supposed advantages, the top white candidates in those contested elections garnered no more than approximately one-fifth of Black voter support, as estimated Dr. Weber.[102] *See also* 4/28/17 Tr. at 204:2-6 (Dr. Lichtman noting that candidates who raised the most money "did not come close to winning in the [Black] community"). Mr. Beychok acknowledges that despite the Black candidates' supposedly inadequate campaigning, Black voters "must have [had] a reason for voting for" their preferred candidates, even though he does not know them because he did not speak to any voter in Terrebonne. 4/26/17 (p.m.) Tr. at 144:22-145:7; *see also supra*.[103]

202. Mr. Harding, a longtime Black elected official from a majority-Black SMD, testified that he does not believe that he would win a seat on the School Board if that position was elected at-

[102] *See* D6 tbl. 9 (11.8% and 10.1% support for Mr. Walker and Mr. Dagate, respectively); *id.* tbl. 10-1 (1.2% support for Mr. Parro); *id.* tbl. 10-2 (7.8% support for Mr. Hagen); *id.* tbl. 11-2 (12.3% and 21.3% support for Mr. Chauvin and Mr. Grabert, respectively); *id.* tbl. 11-4 (9.2% and 0% support for Mr. Callahan and Mr. LeBlanc, respectively); Mr. Beychok has no reason to dispute Dr. Weber's analysis. 4/26/17 (p.m.) Tr. at 113:18-23.

[103] At trial, multiple Black voters testified that the amount of money that the candidate spent on their campaigns; the timing of the candidate's entry into the election; the number of campaign volunteers that the candidate had for their campaigns; and whether the candidate hired a professional consultant to run his or her campaign were not factors in their decisions to vote for their candidates of choice. 3/13/17 Tr. at 44:2-46:3 (Mr. Boykin); *id.* at 212:7-24 (Mr. Harding); 3/14/17 Tr. at 17:4-19 (Rev. Fusilier); *id.* at 186:21-187:12, 187:19-23 (Mr. Turner); 3/17/17 Tr. at 78:14-79:14 (Mr. Shelby). Instead, these voters explained that it is important from their perspective for a candidate to be engaged with the Black community, and they otherwise described their reasons, unrelated to "money, time, and people," for voting for their candidates of choice. 3/13/17 Tr. 41:7-44:1, 47:5-10 (Mr. Boykin); *id.* at 210:7-212:6, 213:4-15 (Mr. Harding explaining that it is important for a candidate to be able to "identify with the impulse of the [Black] community"); 3/14/17 Tr. at 14:6-11, 14:24-17:3 (Rev. Fusilier); *id.* at 186:5-20 (Mr. Turner); 3/17/17 Tr. at 77:7-78:13, 78:14-79:14 (Mr. Shelby explaining "what matter[s] to me . . . is experience and the manner in which I felt that those people actually represent the betterment of my community").

large—*even if* he were to have more money than his opponents, to be the first candidate to enter a race, or to have more volunteers than his opponents. 3/13/17 Tr. at 207:1-4, 206:11-12, 214:8-10, 215:7-16. Consistent with Dr. Engstrom's findings, Mr. Harding has seen election results that show that "white voters vote for white candidates." *Id.* at 214:8-215:4, 215:7-16. Accordingly, he has not sought to run for parish-wide office and would run for a higher office *only if* it were elected from a majority-minority district. *Id.* at 215:17-216:1.

Ms. Romig's Opinion on "Non-Racial" Factors

203. Based on the data that she compiled on judicial candidacies in Louisiana between 1990 and 2014, Ms. Romig[104] opines that "judicial incumbency is relevant and a significant factor when studying and forecasting judicial election outcomes." D4 ¶¶ 12-14; 3/20/17 Tr. at 11:7-12:13, 28:13-22. However, Ms. Romig acknowledges that the three biracial Terrebonne judicial elections that she looked at (the 2014 Houma City Court, 1994 32nd JDC, and 1993 First Circuit Court of Appeal elections) all featured open seats—and thus, *no* incumbents—and in all three such elections, the Black candidates were defeated. 3/20/17 Tr. at 41:10-42:4, 59:22-60:13. By definition, therefore, incumbency was a non-factor in these elections, all of which are characterized by RPV and resulted in Black electoral loss. *See supra*.[105]

204. Ms. Romig also opines that other "factors like turnout, campaign organization [*i.e.*, defined as the timing of the filing of the statement of organization], experience, and financing should be examined to determine their impacts on election outcomes." D4 ¶ 30; 3/20/17 Tr. at 63:11-16. However, Ms. Romig declines to conclude that these factors, either alone or in combination, and

[104] Ms. Romig has never previously testified as an expert in any case in federal court. D4 ¶ 5; D153 at 97:22-98:7.
[105] Moreover, Ms. Romig acknowledges that between 1990 and 2014, *all* of the judges on the 32nd JDC were white, and thus, no Black candidate received the benefit of incumbency. 3/20/17 Tr. at 60:14-22. As Dr. Lichtman explains, over that 24-year period, the advantage of incumbency has accrued only to white candidates. P167-a at 11-12; P173 at 10; 3/16/17 Tr. at 178:14-22.

instead of race, explain Black electoral defeat in the three biracial Terrebonne judicial elections that she considers. 3/20/17 Tr. at 66:24-67:2.[106]

205. Specifically, with respect to the 1993 First Circuit Court of Appeal and 1994 32nd JDC elections, Ms. Romig summarized data regarding voter turnout. D4 ¶¶ 31-32, 35-38; 3/20/17 Tr. at 55:3-17, 68:10-12. However, Ms. Romig does not have an opinion as to whether Mr. Lewis, the only Black candidate in those elections, lost because of voter turnout. *See generally* D4; *see also* 3/20/17 Tr. at 67:22-25, 68:17-20. In fact, Ms. Romig agrees that Mr. Lewis "did a very good job of pushing the turnout in his district" in 1993. 3/20/17 Tr. at 55:3-17. Further, with respect to these elections, Ms. Romig did not analyze any of the other "key factors to [a] successful outcome" that she identifies, namely, campaign organization, campaign financing, and candidates' background and experiences. *See generally* D4; *see also* 3/20/17 Tr. at 64:11-22, 67:4-12, 68:1-9.

206. With respect to the 2014 Houma City Court election, Ms. Romig summarized various data regarding voter turnout. D4 ¶¶ 24-26; 3/20/17 Tr. at 49:12-50:5, 68:21-24. At trial, Ms. Romig suggested that Ms. Carter, the only Black candidate, did not adequately work on voter turnout. *See* 3/20/17 Tr. at 49:12-50:5. However, Ms. Romig declines to opine that voter turnout played a greater role than race in that election. *See generally* D4; *see also* 3/20/17 Tr. at 68:25-69:3. With respect to this election, Ms. Romig also summarized data regarding campaign organization, campaign finance, and the candidates' background and experiences. D4 ¶¶ 27-29; 3/20/17 Tr. at 45:2-10, 46:4-47:16. But Ms. Romig does not opine that Ms. Carter lost this election because of these factors. 3/20/17 Tr. at 69:8-15, 70:4-7, 70:17-21. Moreover, Ms. Romig did not conduct an analysis to determine whether race was a more important factor than these factors in determining

[106] Like Mr. Beychok, Ms. Romig was not retained by any of the candidates, did not observe any of the campaign activities, and did not interview any of the campaign staff or any voters or residents about the three biracial Terrebonne judicial elections. 3/20/17 Tr. at 58:17-59:16.

the outcome of this election. 3/20/17 Tr. at 69:16-20, 70:8-12, 70:22-25.

207. Moreover, any suggestion by Ms. Romig that the Black candidates lost their elections for reasons other than race is not credible because she concedes that: (1) the purported non-racial factors that she identifies are not outcome-determinative,[107] (2) race is a factor in Louisiana elections,[108] (3) she did *not* analyze race as a factor in the three biracial Terrebonne judicial elections that she looked at, *see* 3/20/17 Tr. at 71:1-17, and (4) as noted above, she did not analyze how race compared to the other factors that she identifies in those elections. *See supra*.

Dr. Weber's Opinion on "Non-Racial" Factors

208. Relying in part upon Ms. Romig's report, Dr. Weber notes the significant advantages that judicial incumbents have in elections. D7 ¶¶ 23-24; 4/28/17 Tr. at 66:7-69:3. As Dr. Lichtman explains, however, and Dr. Weber acknowledges, this means that prior to 2014, at-large voting for the 32nd JDC allowed the advantage of incumbency to accrue to only white incumbents. P167-a at 11-12; P173 at 10; 3/16/17 Tr. at 178:14-22; 4/28/17 Tr. at 148:6-8. Moreover, the three judicial elections that Drs. Engstrom and Weber studied featured no incumbents, and Black candidates were defeated in each of those elections. D6 ¶ 33; 4/28/17 Tr. at 148:9-149:6.

209. In sum, none of Defendants' experts—Mr. Beychok, Ms. Romig, or Dr. Weber—rebut the stark patterns of RPV or otherwise establish the absence of racial bias in Terrebonne elections.

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[107] For example, Ms. Romig agrees that a candidate can lose an election despite: working her core constituency more effectively than her competitors, 3/20/17 Tr. at 69:4-7, 71:18-72:1; raising a lot of money, *id.* at 72:8-10; being very well organized, *id.* at 72:2-4; having an excellent set of experiences and background, *id.* at 72:5-7; and that "you can work and work and work and be very disappointed," *id.* at 72:11-13.

[108] Ms. Romig agrees that: race is a factor in Louisiana elections, 3/20/17 Tr. at 73:17-19; race is one of a candidate's defining attributes, *id.* at 73:20-22; voters "do look at race" when they look at a candidate's background and experiences, *id.* at 77:6-16; a particular racial group can be a candidate's core constituency, *id.* at 67:13-21, 68:13-16, 73:23-25; in her consulting work, she always looked at the racial composition of the registered voters in each precinct, *id.* at 74:1-7; the race of voters was part of her analysis with respect to who turned out to vote and who is predicted to vote, *id.* at 74:8-11; "depending upon the candidacy and their constituency," the race of the voters was used to help develop the candidate's strategy, *id.* at 74:12-16; and race is a factor when it comes to "the candidacy's ability to raise money," *id.*at 76:7-13. Further, like Mr. Beychok, Ms. Romig reviewed the report of Dr. Engstrom and "accepted the facts that were presented in his report" regarding RPV. D4 ¶ 9; 3/20/17 Tr. at 77:17-80:1.

Lack of Black Candidates

210. In Terrebonne, minority candidates are discouraged from running for at-large elected seats because of stark patterns of RPV and enhancing factors; that a Black candidate has never won a contested at-large or parish-wide election has a chilling effect on the willingness of Black candidates to run for office. P167-a at 63-64; 3/17/17 Tr. at 17:25-18:21; *id.* at 34:20-36:5 (Dr. Lichtman explaining that the pattern of RPV over a 24-year period in Terrebonne elections "explains why you've had this severe deterrent effect from [Black candidates] knocking their heads against a brick wall and trying to run within a system that's not only at large, that's not only overwhelmingly white, but that has numbered posts so you can't single shot and get a candidate and has a majority-vote requirement. So even if candidates, even if the white voters fragment their votes among different white candidates, it's still futile for [a Black] candidate because you still got to go one-on-one eventually"); 3/14/17 Tr. at 239:22-240:10 (Dr. Lichtman explaining the "deterrent factor" and noting that "[c]andidates are smart. They're not going to waste their time, energy, and money in a futile effort"). Numerous witnesses at trial confirmed Dr. Lichtman's observations.[109]

Senate Factor 9: Tenuousness

211. Louisiana has adopted district-based voting at all levels of its judiciary, including its

[109] 3/13/17 Tr. at 207:1-4, 214:8-216:1, 228:10-12, 230:8-10 (Mr. Harding testifying that he "just can't see it happening" that if school board positions were elected at-large parish-wide, he would win a seat today given that "mostly white voters vote for white candidates and Black voters vote for Black candidates"; he has not run for a parish-wide position because "I don't think I could win"); *id.* at 128:9-15 (Mr. Boykin testifying that "many" Black attorneys in Terrebonne "feel that they are not going to win because of the [RPV] that exist[s] in Terrebonne Parish in the current at-large system"); 3/14/17 Tr. at 27:1-25, 30:1-11, 39:5-21 (Rev. Fusilier identifying attorneys who were discouraged from running against Judge Pickett, a candidate sponsored by the white community, because they did not believe that they had the chance to win an at-large election); *id.* at 199:9-15 (Mr. Turner identifying one Black attorney as having considered running and explaining that many Black attorneys believe "that they can't run and win").

supreme court, courts of appeal, and district, family, juvenile, and city courts.[110]

212. The Louisiana Constitution does not mandate that trial court judges, including district, judges, be elected at-large, but instead allows the Legislature, with the Governor's consent, to determine the method of election. *See* La. Const. art. V, § 22(A) ("Except as otherwise provided in this Section, all judges shall be elected."); *id.* art. XI, § 1 ("The legislature shall adopt an election code which shall provide . . . for the conduct of all elections."); *id.* art. III, § 18 (Governor's veto power over bills passed by the Legislature); Lee Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 La. L. Rev. 765, 776 (1977) ("By its silence . . . , the constitution allows the legislature discretion to regulate the system of electing district judges.").

213. Following the initial statewide finding of Section 2 liability in *Clark*, this Court "called upon the Governor and the Legislature to fashion a remedy," 725 F. Supp. at 306, and the state proposed changes that included subdistricts for JDCs, *see supra* note 10. Subsequently, in *Clark*, this Court rejected the argument that Louisiana had a linkage interest or that any such interest outweighed the vote dilution that it found. 777 F. Supp. at 479 (holding that "no such vital state interest precludes a finding of Section 2 violations"); *id.* at 483-84 ("[T]he court rejects the notion

[110] The Louisiana Supreme Court has statewide jurisdiction, but the Louisiana Constitution requires the state to be divided into at least six supreme court districts, with at least one judge elected from each. La. Const. art. V, §§ 4, 5. Similarly, while each court of appeal has circuit-wide jurisdiction, the Louisiana Constitution requires that each circuit be divided into at least three districts, with at least one court of appeal judge elected from each. *Id.* art. V, §§ 9, 10. In addition, a single member of the Louisiana Supreme Court and a court of appeal "may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the [court's] jurisdiction." *Id.* art. V, § 2. Thus, members of these courts decide matters arising outside of their electoral districts. *See supra.*

Louisiana has adopted numerous other mechanisms that result in judges deciding cases arising outside of their electoral districts. For example, under the Louisiana Constitution, the state supreme court "may assign a sitting or retired judge to any court." La. Const. art. V, § 5(A). In addition, under the state constitution, in the event of a newly created judgeship or vacancy, the state supreme court can appoint a person to serve as a district judge who has not previously been elected as a judge and is not domiciled in the judicial district at issue. La. Const. art. V, § 22(B); *State v. Bell*, 392 So. 2d 442, 442-43 & n.1 (La. 1981). Other provisions of Louisiana law establish mechanisms by which parties must litigate cases before judges that they did not elect. *See, e.g.*, La. Rev. Stat. Ann. § 13:586 (where district judges are absent or unable to act, "any district judge of an adjoining district may grant any orders the absent or incapacitated judges could grant"); La. Code Civ. Proc. Ann. art. 156-158 (ad hoc judges or judges from adjoining districts may be appointed to preside over civil cases in the event of recusal); La. Code Crim. Proc. Ann. art. 675-678 (similar provision for criminal cases).

that the State has a greater interest in linking election districts and geographical jurisdiction in judicial election districts than in ridding judicial elections of minority vote dilution which violates federal law."); *id.* at 485 ("The record before this court does not support any 'linkage' argument as to either 'liability' or remedy. . . . This court . . . is firmly convinced that there is no basis for using the 'linkage' argument to impede this court's findings on either liability or remedy.").

214. Louisiana ultimately resolved *Clark* and agreed to create majority-Black subdistricts for ten trial courts with respect to which this Court found a Section 2 violation, as well as in two additional trial courts: the 23rd and 27th JDCs. P167-a at 17-18; *see also supra* note 10. Thus, Louisiana chose not to maintain any linkage interest, unlike Texas did in *League of United Latin American Citizens, Council No. 4434 v. Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc); *see also Prejean*, 227 F.3d at 512 (noting that during the pendency of *Clements*, "the state [of Louisiana] stifled its policy arguments" regarding linkage by agreeing to create judicial subdistricts).

215. Louisiana also has created judicial subdistricts for trial courts outside of litigation. For example, in 1993, Louisiana created two subdistricts for the 16th JDC (encompassing St. Mary, Iberia, and St. Martin parishes), two subdistricts for the Baton Rouge City Court, and two subdistricts for the Monroe City Court. *See* Act 214 of 1993, 1993 La. Sess. Law Serv. Act 214 (S.B. 232) (West) (codified at La. Rev. Stat. Ann. 13:477(16)); Act 609 of 1993, 1993 La. Sess. Law Serv. Act 609 (S.B. 1126) (West) (codified at La. Rev. Stat. Ann. § 13:1952(4)); Act 644 of 1993, 1993 La. Sess. Law Serv. Act 644 (H.B. 2068) (West) (codified at La. Rev. Stat. Ann. § 13:1952(15)); *see also* P167-a at 20. In 1994, Louisiana created two subdistricts for the East Baton Rouge Parish Juvenile Court and three subdistricts for the Caddo Parish Juvenile Court. *See* Act 145 of 1994, 1994 La. Sess. Law Serv. 3rd Ex. Sess. Act 145 (H.B. 105) (West) (codified at La. Rev. Stat. Ann. §§ 13:1623, 13:1564). In 1997, Louisiana created two subdistricts for the

Shreveport City Court. *See* Act 240 of 1997, 1997 La. Sess. Law Serv. Act 240 (H.B. 1406) (West) (codified at La. Rev. Stat. Ann. § 13:1952(20). None of these courts were part of the *Clark* settlement reached in 1992. *See* P167-a at 17-18; *Clark*, 777 F. Supp. at 469 (identifying the 11 districts in which this Court found a Section 2 violation, which did not include the 16th JDC).

216. Twelve of the 41 JDCs in Louisiana (excluding Orleans Parish) currently use subdistricts to elect their members: the 1st, 4th, 9th, 14th, 15th, 16th, 18th, 19th, 23rd, 24th, 27th, and 40th JDCs. *See* La. Rev. Stat. Ann. § 13:477 (providing for 41 JDCs); *see also supra* note 10; P167-a at 17; 3/16/17 Tr. at 188:13-19; 4/28/17 Tr. at 150:8-20, 151:5-152:14. Altogether, a total of 106 of the 193 district judges on these courts (55%) are elected from subdistricts. *See* La. Rev. Stat. Ann. §§ 13:621.1-13:621.40, 13.622 (specifying the number of judges on each JDC).[111]

217. As Dr. Lichtman observes, voters in Louisiana have for more than two decades elected judges with district-wide jurisdiction in numerous subdistricts within and across the state. P167-a at 74; 3/14/17 Tr. at 258:2-259:5 (Dr. Lichtman noting that subdistricts are "commonplace in Louisiana"); 4/28/17 Tr. at 199:3-15. Majority-Black subdistricts have provided the avenue of opportunity for Black voters to elect their judicial candidates of choice and Black lawyers to ascend to state courts. P167-a at 74. Indeed, in 1996, the Louisiana Task Force on Racial and Ethnic Fairness, created by the Louisiana Supreme Court, concluded that the establishment of "sub-districts, where appropriate, [is] the only feasible means of ensuring diversity and ethnic heterogeneity in our judicial system." P76 at 89; P167-a at 22-23; 3/14/17 Tr. at 259:25-260:16, 265:13-268:12. There is no evidence that judges elected from subdistricts are less accountable, less fair, less independent, or otherwise fail to serve Louisiana residents, as Dr. Lichtman notes

[111] Eight of the 41 JDCs have only one judge each: the 8th, 11th, 28th, 31st, 35th, 37th, 38th, and 39th JDCs. See *id.* §§ 13.621.8 (8th JDC), 13.621.11 (11th JDC), 13.621.28 (28th JDC), 13.621.31 (31st JDC), 13.621.35 (35th JDC), 13.621.37 (37th JDC), 13.621.38 (38th JDC), 13.621.39 (39th JDC). Thus, excluding these JDCs, a total of 185 judges sit on JDCs with multiple judges, of which 106 (or 57%) are elected from subdistricts. *See supra*.

and numerous defense witnesses concede. P167-a at 50-51; 3/14/17 Tr. at 258:2-259:5; 3/17/17 Tr. at 180:21-181:3 (Judge Pickett); *id*. at 214:6-12 (Judge Hagen); 3/20/17 Tr. at 157:14-22 (DA Waitz); *id.* at 193:7-19 (Judge Walker); 4/26/17 (a.m.) Tr. at 62:6-9 (Mr. Dove); *id.* at 92:14-93:7 (Judge Bethancourt); 4/26/17 (p.m.) Tr. at 21:10-22:4 (Mr. Harrison); 4/28/17 Tr. at 199:3-15.

218. The alleged policy underlying the retention of at-large judicial elections for the 32nd JDC based on the district-wide jurisdiction of the judges is tenuous at best and, indeed, pretextual. P167-a at 74-75; 3/14/17 Tr. at 257:23-259:5, 265:13-268:12; 3/16/17 Tr. at 122:24-125:11; 4/28/17 Tr. at 199:3-15. The notion that at-large voting is necessary to ensure accountability on the 32nd JDC rings especially hollow given the circumstances surrounding the reelection of Judge Ellender in 2008. *See supra* note 15; P167-a at 55-57; 3/14/17 Tr. at 269:6-22, 270:4-7, 270:18-272:4. As Dr. Lichtman notes, his actions created "a very negative implication that Blacks were prone to be convicted" and constituted "[a]n extraordinary thing in the 21st century to do," and yet he was later reelected. *See* 3/14/17 Tr. at 269:6-22, 270:18-272:4; 3/16/17 Tr. at 158:17-159:22.[112]

219. Dr. Weber asserts in his report that the Fifth Circuit's decision regarding Texas's linkage interest in *Clements* renders "off limits" challenges to trial court elections under Section 2. D7 ¶ 28. This argument misapprehends the Fifth Circuit's decision, which holds that a state's purported linkage interest defeats a Section 2 claim only if it is substantial and is not outweighed by "substantial proof of racial dilution." *Clements*, 999 F.2d at 868; *see also infra* (conclusions of

[112] At trial, multiple Black voters echoed that a district-based voting system would, in fact, enhance judicial accountability by giving them the opportunity to elect their candidate of choice to one judgeship, as opposed to none under the current at-large system. *See, e.g.*, 3/13/17 Tr. at 104:21-105:10 (Mr. Boykin); 3/14/17 Tr. at 23:21-24:6 (Rev. Fusilier); *id.* at 195:16-24 (Mr. Turner explaining "[t]hat's the purpose of us being in court today"); 3/17/17 Tr. at 80:16-81:25 (Mr. Shelby explaining that a subdistrict would create "more accountability" because "the at-large system allows judges to get elected . . . without even solicitation of the minority vote" and judges "feel no sense of accountability to the minority community"; "the current system does not allow for accountability to this minority community"); *see also id.* at 85:21-86:19 (Mr. Shelby noting that "I would have someone sitting on the bench who is just as fair and as impartial as most judges are"); *id.* at 93:10-96:2 ("[T]he current system there is absolutely no accountability. And so even if you had one judge that does have a specific accountability, you go from none to one.")

law). Dr. Weber opines that judges "are not representatives in the meaning of the word 'representative'" under Section 2. 4/28/17 Tr. at 83:10-19. The Supreme Court directly repudiated this argument in *Chisom* in which it held that Section 2 applies to judicial elections. *See* 501 U.S. at 399-401. Further, Dr. Weber concedes that subdistricts are used to elect judges of numerous courts of appeal and district, family, juvenile, and city courts in Louisiana. 4/28/17 Tr. at 150:8-20, 151:5-152:17; *see also id.* at 152:18-21 (Dr. Weber acknowledging that a majority-minority district is used to elect one Justice of the Louisiana Supreme Court). Dr. Weber also ignores the holding of this Court in *Clark* that "no [linkage] interest precludes a finding of Section 2 violations." P173 at 12; *Clark*, 777 F. Supp. at 479.

220. Aside from linkage, the other rationales offered by the state to maintain at-large voting for the 32nd JDC are, as set forth below, pretextual. *See infra* (facts regarding discriminatory purpose).

Proportionality

Relative to the Black Population in Terrebonne

221. Dr. Weber contends that, by virtue of the election of Judge Pickett, there is already proportional representation on the 32nd JDC for Blacks persons of voting age. D7 ¶ 32; 4/28/17 Tr. at 153:14-24. Dr. Weber's understanding of proportionality conflicts with *Johnson v. De Grandy*, which holds that proportionality under Section 2 "links *the number of majority-minority voting districts* to minority members' share of the relevant population." 512 U.S. 997, 1014 n.11 (1994) (emphasis added). *See infra* (conclusions of law). Currently, there are *no* majority-Black subdistricts for the 32nd JDC, even though, according to the 2010 Census, approximately 17.7% of Terrebonne's VAP is Any-Part Black. *See supra* (background). The number of majority-Black subdistricts (*i.e.*, zero) for the 32nd JDC is not proportional to the share of the Black VAP (*i.e.*, approximately 20%) in Terrebonne. Further, as set forth above, numerous special circumstances

mark the election of Judge Pickett, and the evidence does not demonstrate that he was the candidate of choice of the Black community. *See supra*; 4/28/17 Tr. at 201:1-16.

Relative to the Number of Black Attorneys in Terrebonne

222. Dr. Weber argues that, as of 2015, there are 9 to 10 Black lawyers in Terrebonne eligible to run for a judgeship on the 32nd JDC. D7 ¶¶ 25-27; 4/28/17 Tr. at 74:16-77:22. Dr. Weber contends that, by virtue of the election of Judge Pickett, there is proportional representation on the 32nd JDC for Black attorneys. D7 ¶¶ 25-27, 32; 4/28/17 Tr. at 153:14-24. Again, as noted above, special circumstances mark the election of Judge Pickett, and the record does not demonstrate that he was the candidate of choice of the Black community. *See supra*; 4/28/17 Tr. at 201:1-16.

223. Moreover, as Dr. Lichtman explains, discrimination has resulted in stark educational disparities in Terrebonne, where only 7.4% of Black residents age 25 or older hold a bachelor's degree, as compared to 15.2% of white residents. *See supra*. These disparities help to explain the relatively fewer number of Black attorneys as compared to white attorneys in Terrebonne. P173 at 10-11; 3/14/17 Tr. at 243:18-245:14 (Dr. Lichtman explaining that the persistence of segregation and discrimination in higher education is "particularly important here because, to be eligible to be elected for judge, you have to be a lawyer and you have to have opportunities to participate in higher education, both at the undergraduate and at the professional level"); *see also id.* at 246:23-247:19; 3/17/17 Tr. at 56:6-18; 4/28/17 Tr. at 199:16-200:23.

224. Dr. Weber does not address the impact of discrimination on the number of Black lawyers in Terrebonne. *See generally* D6; D7; *see also* P173 at 11; 4/28/17 Tr. at 155:19-24. Nor does Dr. Weber address the extent to which Black attorneys have left Terrebonne because of barriers to career advancement. Indeed, Dr. Weber concedes that his study of the number of Black attorneys in Terrebonne is a "snapshot" in time, that he has "no knowledge about the movement . . . over

time in or out of Terrebonne by any attorney," and that consequently, he does not know "anything" about whether Black attorneys have left Terrebonne because of career barriers. *See generally* D6; D7; *see also* P173 at 11; 4/28/17 Tr. at 155:25-156:13.

225. More importantly, as set forth below, the right that is protected under Section 2 is not a right to proportional representation, but rather the right to have the equality of opportunity to elect a candidate of choice. *See infra* (conclusions of law). Both Drs. Lichtman and Weber appropriately agree on this point. 4/28/17 Tr. at 199:16-200:23 (Dr. Lichtman stating that what is at issue is "not do *Black lawyers* have an opportunity to be elected judge," but whether "do *Black voters* in Terrebonne have the opportunity to elect a judge of their choice and that is not determined by the number or percentage of Black lawyers in Terrebonne eligible to run") (emphasis added); *id.* at 154:4-12 (Dr. Weber). Plaintiffs' candidate of choice can be of any race, *see infra* (conclusions of law), as multiple Black voters affirmed at trial.[113]

226. Further, as forth above, in Terrebonne, minority candidates are discouraged from running for at-large elected seats because of stark patterns of RPV and enhancing factors, and the fact that a Black candidate has never won a contested at-large or parish-wide election has a chilling effect on the willingness of Black attorneys to run for at-large elected office. *See supra* (Senate Factor 7). Accordingly, the Court finds that the absence of any Black judge elected to the 32nd JDC after facing opposition is better explained by the combination of these factors rather than by the small number of Black lawyers in Terrebonne. *See supra*. As Dr. Lichtman notes, "[i]t is not the fact that

[113] 3/13/17 Tr. at 46:9-18 (Mr. Boykin); *id.* at 213:20-22 (Mr. Harding); 3/14/17 Tr. at 14:12-14 (Rev. Fusilier); *id.* at 187:24-188:13, 189:13-190:7 (Mr. Turner testifying that "I vote for . . . candidate[s] who I feel [are] qualified."); 3/17/17 Tr. at 77:7-78:4, 84-25:85:16 (Mr. Shelby explaining that "when you're casting your choice for a candidate, it is not necessarily as so much as that person's Black or that person's a female or that person's a Democrat" and that "[t]he issue . . . is not actually having a particular person or a particular color. The issue at hand is actually having the candidate of our choice"); *see also id.* at 56:19-57:6 (Dr. Lichtman explaining that the candidate of choice of the Black community "absolutely [does] not" have to be a Black candidate, and that "[t]he Black community can vote for whomever it pleases.").

there are no qualified attorneys in Terrebonne that would prevent Blacks from competing for judgeships or other positions." 3/17/17 Tr. at 43:8-25.

Overall Conclusion

227. Terrebonne's Black electorate has less opportunity than the white electorate to participate in the political process and to elect representatives of its choice. P167-a at 75-77; 3/14/17 Tr. at 272:5-273:18; 4/28/17 Tr. at 201:17-202:22. As Dr. Lichtman testified: "what you have here . . . is the perfect storm that sweeps across this parish for African-American voters." 3/14/17 Tr. at 237:23-239:16. "When you put together at-large elections, extreme [RPV], numbered posts, majority-vote requirements," and other factors, "you have this vortex coming together . . . which is greater than any one of these factors taken individually." *Id.*

DISCRIMINATORY PURPOSE

228. Dr. Lichtman analyzed whether Louisiana intentionally discriminated against Black people by maintaining at-large voting and not creating a majority-Black subdistrict for the 32nd JDC. P167-a at 4; 3/14/17 Tr. at 214:15-215:16; 3/16/17 Tr. at 8:22-9:5. Dr. Lichtman followed the guidelines set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), which are similar to procedures followed by historians in making such assessments. P167-a at 4; 3/14/17 Tr. at 216:20-218:4; 3/16/17 Tr. at 9:6-11. In *Arlington Heights*, the Supreme Court identified five non-exhaustive factors relevant to ascertaining intentional discrimination: (1) discriminatory impact, (2) historical background of discrimination, (3) the sequence of events, (4) procedural or substantive deviations from the normal decision-making process, and (5) contemporaneous viewpoints expressed by the decision-maker. *See* 429 U.S. at 266-68; *see also* P167-a at 2; 3/14/17 Tr. at 216:20-218:4; 3/16/17 Tr. at 9:6-10:1. Proof of discriminatory intent does not require a smoking gun because it is "extremely rare" for officials to

admit openly to discrimination on the basis of race; rather, historians use the factors above "as a logical and circumstantial basis . . . for assessing the issue of intent." 3/14/17 Tr. at 216:20-218:4; *see also* 3/16/17 Tr. at 11:7-12:24. Dr. Lichtman considered each of these factors, drawing upon his expertise in political history, political analysis, and historical and statistical methodology. P167-a at 2, 4-5; 3/14/17 Tr. at 216:20-218:4; 3/16/17 Tr. at 8:22-10:1.[114]

229. Defendants have offered no expert to dispute the record that "race clearly was a reason for the decision-making that had the effect of denying electoral opportunities to [Black] voters," evincing intentional discrimination chronicled by Dr. Lichtman. 3/16/17 Tr. at 134:10-21; *see id.* at 139:8-17 (Dr. Lichtman testifying that "[he] looked at all of the expert reports presented by experts for the state, and what struck [him] was none of them addressed the issue of intent"); *see also* 4/28/17 Tr. at 176:10-17, 176:24-177:15, 212:11-18.

Discriminatory Impact

230. As set forth above, at-large voting for the 32nd JDC, in combination with stark patterns of RPV and enhancing factors, preordains the defeat of Black-preferred candidates and, thus, has a discriminatory impact. *See supra*; P167-a at 7-12; 3/16/17 Tr. at 10:4-6.

Historical Background of Discrimination

231. As set forth above, it is undisputed, well-documented, and judicially recognized that Louisiana has a long, intense, and persistent history of *de jure* and *de facto* discrimination against Black voters, including in Terrebonne, which has extended to the use of at-large voting, including

[114] Dr. Lichtman relied upon sources standard in historical and social scientific analysis for assessing discriminatory intent. *See supra*; *see also* 3/16/17 Tr. at 13:11-15:6, 26:19-27:20, 50:20-51:3, 142:23-143:13. Dr. Lichtman "virtually never," including with respect to his scholarly work, interviews "self-interested parties"—in this case, legislators, judges, judicial candidates, voters, or advocates—to prepare his analysis. This is because "after-the-fact explanations and justifications by self-interested parties are . . . really of very little, if any, value. . . . So I prefer, both as an historian and as an expert witness, to rely upon evidence contemporary to the events, not on what people say later on." 3/14/17 Tr. at 219:11-220:3; *see also* 3/16/17 Tr. at 44:19-45:12, 141:9-142:17, 145:12-146:6; 3/17/17 Tr. at 47:12-48:2; 4/28/17 Tr. at 212:19-214:1.

in the context of judicial elections. *See supra*; P167-a at 12-21; 3/16/17 Tr. at 10:7-9.

Sequence of Events Relative to Proposed Legislation

232. Since at least the 1980s, Black voters in Terrebonne have advocated for district-based voting for the 32nd JDC and/or Houma City Court without success. P167-a at 21; 3/16/17 Tr. at 10:10-22, 90:1-24. As Dr. Lichtman observes, Black voters in Terrebonne have engaged in "extended efforts . . . to try to get an opportunity to elect a candidate of their choice." 3/16/17 Tr. at 10:10-22; *see also id.* at 11:11-12:24 (Dr. Lichtman testifying: "what I think is most powerful here is just how persistent the [Black] community has been in Terrebonne and how equally adamant the Legislature and white judges have been in thwarting these efforts"), 133:9-21.

233. As discussed above, the 32nd JDC was part of *Clark*. P167-a at 21; *see also supra* note 65. Although the demographics of Terrebonne at the time of *Clark* did not enable the establishment of a majority-Black subdistrict, Black residents continued to advocate for district-based voting for the 32nd JDC. P167-a at 21-42. In 1996, the Louisiana Task Force on Racial and Ethnic Fairness in the Courts concluded that "the practice of judicial elections by sub-districts, where appropriate, [is] the only feasible means of ensuring diversity and ethnic heterogeneity in our judicial system." P167-a at 22-23; P76 at 89; 3/14/17 Tr. at 265:13-268:12; 3/16/17 Tr. at 11:11-12:24, 15:8-17:14, 155:25-156:6, 157:5-24. Following this, Black voters renewed their advocacy for district-based voting for the 32nd JDC. P167-a at 22-23; 3/13/17 Tr. at 63:3-8; 3/16/17 Tr. at 15:8-17:14.

H.B. 1399 (1997)

234. On December 3, 1996, the 32nd JDC judges requested an additional judgeship to ease their workload. P167-a at 23; P134; 3/16/17 Tr. at 17:15-18:5.

235. The request for a sixth judgeship had significant local support. P167-a at 23; 3/16/17 Tr. at 18:6-7, 19:4-24, 20:22-22:18. On March 3, 1997, DA Waitz wrote to Rep. Downer, both of

whom are white, saying that an additional judgeship would serve "several purposes," among them, getting "cases to court faster," saving money by "convict[ing] criminals faster," and "freeing up jail space." P167-a at 23-24; P158; 3/16/17 Tr. at 18:6-7, 19:4-20:24 (Dr. Lichtman explaining that the request "has to do not just with a relief of workload for the judges but a host of other important public policy matters that the [DA] references"); 3/20/17 Tr. at 148:19-150:9. On the same day, Rep. Downer wrote to the Judicial Council and noted that the 32nd JDC judges unanimously supported the request. D127-A10; 3/16/17 Tr. at 20:9-21. On March 10, 1997, DA Waitz wrote a letter "To Whom It May Concern" confirming that his office "is in agreement with the Judges of the 32nd [JDC] in regard to the need for an additional judgeship," and stating "I am in support of increasing the number of State District Judges in our jurisdiction." P167-a at 24; D127-A12; 3/16/17 Tr. at 20:22-21:7. Other white local officials followed suit.[115]

236. This sequence of events led to the prefiling, on March 28, 1997, in the Louisiana House of Representatives of H.B. 1399 by Rep. Downer to create a sixth judgeship to be elected at-large. P167-a at 24-25; D13 at 2, 26-28.

237. On April 7, 1997, a delegation of Black attorneys and Wayne Thibodeaux, a Black member of the Terrebonne Parish Council, wrote separately to Rep. Downer and other legislators to express their support for the sixth judgeship to be elected from a majority-Black subdistrict—and to urge Rep. Downer to make the necessary amendment. P167-a at 24-25; D127J1 at 6-7; P128; 3/16/17 Tr. at 23:13-25:1, 29:6-18. The letter from the Black attorneys included a signature line for Juan Pickett, but Mr. Pickett did not sign the letter, suggesting that "either the other [Black] attorneys

[115] On March 11, 1997, Jerry L. Larpenter, the Sheriff, who is white, stated in an open "To Whom This May Concern" letter, "I fully support increasing the number of State District Judges in our Jurisdiction," and pledged that "my office will work toward staffing the additional court room with adequate personnel." P167-a at 24; D127-A13; 3/16/17 Tr. at 21:8-22. On March 19, 1997, L. Robert Boudreaux, the Clerk of Court, who is white, also wrote that "this office will supply the support personnel for which we are responsible." P167-a at 24; D127-A14; 3/16/17 Tr. at 21:24-22:8. On March 20, 1997, Barry P. Bonvillain, the Parish President, who also is white, affirmed his office's support and said that "we will provide adequate office space." P167-a at 24; D127-A16; 3/16/17 Tr. at 22:9-22:18.

didn't trust him enough to show him the document or he saw the document and didn't sign it." D127-J1 at 6-7; 3/16/17 Tr. at 180:20-181:8; 3/17/17 Tr. at 28:11-19.

238. Following a site visit, the Judicial Council recommended the additional judgeship for the 32nd JDC. P167-a at 23; D127-A31 at 3; D127-B8 at 1; 3/16/17 Tr. at 29:19-33:11 (Dr. Lichtman testifying that the Judicial Council also acknowledged "the willingness of the appropriate local officials to support a sixth judge"); 3/20/17 Tr. at 149:22-150:3.

239. On May 2, 1997, the House Judiciary Committee held a hearing on H.B. 1399. D127-J1 at 16; 3/16/17 Tr. at 33:12-34:4. The committee rejected by a vote of 5 to 6 an amendment supported by Terrebonne NAACP, a delegation of Black attorneys, and a Black Terrebonne Parish Council member that would have made the sixth judgeship elected from a majority-Black subdistrict. P167-a at 24-25; D127-J1 at 16; 3/13/17 Tr. at 106:25-107:12; 3/16/17 Tr. at 33:12-34:4, 164:14-21. Instead, the committee approved by a vote of 9 to 2 the bill as introduced by Rep. Downer, which would preserve the existing at-large system that had consistently resulted in an all-white judiciary. P167-a at 24-25; D127-J1 at 16.

240. With staff assistance, Mr. Lewis and Mr. Boykin drew a contiguous majority-Black subdistrict for the proposed sixth judge and included that as part of a potential amendment to the bill on the House floor. P167-a at 24-25; P17 at 4-5; 3/13/17 Tr. at 63:9-65:2. Rep. Downer chose to table the bill. P167-a at 24-25; P17 at 2-3; 3/13/17 Tr. at 65:4-15; 3/16/17 Tr. at 40:6-20; 3/20/17 Tr. at 150:4-20 (DA Waitz describing how H.B. 1399 failed after "there was some talk about . . . making a subdistrict out of it"); *id*. at 151:6-10 (DA Waitz testifying that "I know the Black Caucus got involved and they wanted a subdistrict, and it was killed"). Rep. Downer stated that he was concerned about "the need for preclearance." P167-a at 25; D127-J1 at 16; P17 at 2-3; 3/16/17 Tr. at 34:5-40:5. In a letter dated June 3, 1997 to Mr. Lewis and Mr. Boykin, Rep. Downer said of the

sub-district: "As you can readily see, it appears to fly in the face of recent court cases dealing with 'gerrymandering' and staff has further advised that because of the alignment . . . it would be subject to the 'strictness of scrutiny' by [DOJ] and clearly subject to attack." P167-a at 25; P17 at 2; 3/16/17 Tr. at 34:5-40:5. However, this argument is pretextual for several reasons. P167-a at 25-30; 3/16/17 Tr. at 34:5-40:5, 122:24-125:11.

241. *First*, the proposed district was more compact than the Fourth Congressional District in Louisiana, which ran from Shreveport to Lafayette and led to the "gerrymandering" claim in the *Hays* litigation. P167-a at 25-28; P17 at 6; 3/16/17 Tr. at 34:5-40:5, 40:21-23, 168:11-169:9.

242. *Second*, and more importantly, prior to *Shelby County*, DOJ was not authorized to object to a redistricting plan under Section 5 on the grounds of "gerrymandering." DOJ was authorized to interpose an objection only when an electoral change had the effect or the intent of producing retrogression. P167-a at 26; 3/16/17 Tr. at 34:5-40:5, 166:6-167:7. Moreover, DOJ had clearly put Louisiana on notice that it would object to the creation of additional at-large judgeships. P167-a at 29; *see also supra* (discussing DOJ Section 5 objections); 3/16/17 Tr. at 34:5-40:5. By contrast, Louisiana had created numerous majority-Black judicial subdistricts without DOJ objection. P167-a at 29; *see also supra* (facts regarding linkage); 3/16/17 Tr. at 34:5-40:5. Likewise, the proposed subdistrict for the 32nd JDC would likely not have been blocked by DOJ because it would provide Black electoral opportunity where *none* had previously existed. P167-a at 26, 29-30; 3/16/17 Tr. at 34:5-40:5, 122:24-125:11, 166:6-167, 192:13-193:3. Instead, DOJ was likely to have objected to the addition of a sixth at-large judgeship. P167-a at 29-30; 3/16/17 Tr. at 34:5-40:5.

S.B. 166 (1998)

243. On April 1, 1998, Sen. Siracusa, a white legislator, introduced S.B. 166. D14 at 7; 3/16/17 Tr. at 41:1-42:3. Sen. Siracusa's bill initially provided for two additional judges for the 15th JDC.

P167-a at 30; *see also* D14 at 15-21; 3/16/17 Tr. at 41:1-42:3. At the request of DA Waitz, and consistent with the then-recommendation of the Judicial Council to expand the 32nd JDC, Sen. Siracusa amended the bill to include the addition of an at-large judgeship for the 32nd JDC. P167-a at 30; *see also* D14 at 22-29; 3/16/17 Tr. at 41:1-42:3. Ironically, legislators did not raise an objection to S.B. 166 on the grounds of a potential DOJ objection. P167-a at 30; D14 at 3; 3/16/17 Tr. at 41:1-42:3 (Dr. Lichtman testifying that "what's interesting about this bill is that it passed the Senate with this at-large provision . . . [with] no corresponding concern that this legislation would spark [DOJ] objection, even though it was vastly more likely that an at-large election system would spur such an objection and virtually impossible that a [Black] opportunity district would do so"). On April 5, 1998, S.B. 166, as amended, was passed by the Senate by a vote of 35 to 1. P167-a at 31; *see also* D14 at 7; 3/16/17 Tr. at 42:4-7.

244. Black residents of Terrebonne, including through Terrebonne NAACP, expressed strong opposition to S.B. 166 because it would have created another at-large judicial seat despite their efforts to create a majority-Black subdistrict. P167-a at 31; 3/13/17 Tr. at 68:6-69:4. The bill ultimately did not come up for a vote in the House. P167-a at 31; *see also* D14 at 7, 14; 3/16/17 Tr. at 42:4-7. The Legislature rejected the advocacy of Black voters, even as the 32nd JDC judges requested, and the Judicial Council approved, an additional judgeship. *See supra*.

S.B. 1052 (1999)

245. On August 20, 1998, 32nd JDC judges—for the second time—requested an additional judgeship. D127-B1; 3/16/17 Tr. at 42:20-43:7. However, on November 15, 1998, less than three months later, the judges abruptly withdrew their request, citing a reduced workload as a result of a transfer of cases to the Houma City Court. P167-a at 31; D127-B05; 3/16/17 Tr. at 43:8-24, 61:2-21. Specifically, the judges stated that felony juvenile cases "have been handed over to the

[Houma] city court, which lowers our workload substantially." P167-a at 31; D127-B05; 3/16/17 Tr. at 43:8-24, 61:2-21.

246. In withdrawing their request, the judges were undoubtedly aware of the advocacy by the Black community in Terrebonne for any additional judge to be elected from a majority-Black subdistrict. *See* P167-a at 23-30; *see supra*. Indeed, on January 27, 1999, at the urging of Mr. Lewis, the Terrebonne Parish Council unanimously adopted a resolution backing the drawing of a majority-Black subdistrict for an additional judgeship on the 32nd JDC. P167-a at 32; P1 at 5; 3/16/17 Tr. at 45:13-47:3.

247. On April 22, 1999, Sen. Robichaux, a white legislator, introduced S.B. 1052, to create a sixth judgeship for the 32nd JDC to be elected from a majority-Black subdistrict. P167-a at 31; *see also* D15 at 17, 20-24; 3/16/17 Tr. at 47:4-16.

248. In response, on May 17, 1999, Judge Ellender wrote to Senator J. Chris Ullo, chair of the Senate Judiciary Committee to which S.B. 1052 had been referred, copying all of the 32nd JDC judges: (1) indicating that the 32nd JDC judges had withdrawn their request for a sixth judgeship in November 1998, and (2) urging him to "Please vote against Senate Bill 1052," claiming that "[i]t would be waste of taxpayers' money to create a new district where it is not needed." P167-a at 31; D127-C1; 3/16/17 Tr. at 51:14-53:1 (Dr. Lichtman explaining that "here is one of the sitting white judges in a judicial district that has been all white throughout its history talking about taxpayers' money and specifically intervening in the political process in an attempt to thwart the opportunity for [Black voters] to elect a candidate of their choice, even though . . . having a sixth judge would be to their benefit because it would ease their workload."); *see also id.* at 161:5-162:1, 175:23-176:8. S.B. 1052 died in committee. P167-a at 31-32; D15 at 13-14; 3/16/17 Tr. at 53:2-4.

249. By November 1999, in response to the 32nd JDC judges' withdrawal of their request for

an additional judgeship, the Judicial Council also voted to withdraw its recommendation for a sixth judgeship. P167-a at 32; P135 at 7; 3/16/17 Tr. at 53:5-55:1. However, prior to the vote, some members of the Judicial Council "expressed their discomfort about voting to confirm the 32nd JDC's request for a withdrawal," with some suggesting sending "a site visit team to the 32nd JDC to review the situation." P135 at 7; 3/16/17 Tr. at 53:5-55:1.

S.B. 968 (2001)

250. On March 26, 2001, S.B. 968, authored by Sen. Gautreaux, a white legislator, was introduced to add a new judge to the 32nd JDC to be elected from a majority-Black subdistrict. P167-a at 32; D16 at 13, 16-20; 3/16/17 Tr. at 55:15-18. By then, 2000 Census data demonstrated that the white VAP in Terrebonne was declining while the Black VAP was rising. P167-a at 32; 3/16/17 Tr. at 55:19-56:21. By then, one of six judges or even one of five judges would translate into rough proportionality for Black voters. P167-a at 32; 3/16/17 Tr. at 55:19-56:21.

251. On May 15, 2001, however, the bill died in committee. P167-a at 32; D16 at 14; 3/16/17 Tr. at 56:22-57:3. The committee chair, Sen. Gautreaux, later explained, "The committee always goes along with the recommendations of the Judicial Council." P167-a at 33; 3/16/17 Tr. at 57:4-58:7. As noted above, by that point, the Judicial Council had withdrawn its recommendation for an additional judgeship after the 32nd JDC judges said that their workload had decreased and no longer justified an additional judge. P167-a at 33; 3/16/17 Tr. at 57:4-58:7.

252. Sen. Gautreaux's explanation was pretextual and underscores the shifting rationales and catch 22-reality that Black voters, seeking a majority-Black subdistrict to elect an additional judge for the 32nd JDC, found themselves in: legislation failed in 1997 and 1998 to establish a sixth judgeship *despite* the Judicial Council recommendation for such a judgeship; and legislation failed in 2001 to establish a sixth judgeship *because* the Judicial Council did not recommend it. P167-a

at 33; 3/16/17 Tr. at 190:24-191:16 (Dr. Lichtman explaining that "[t]hey didn't go along with the Judicial Council when it didn't suit their needs, and they did go along with the Judicial Council when it did suit their needs"); *see also id*. at 57:4-58:7, 104:14-106:8, 122:24-125:11, 192:3-12.

H.B. 1723 (2001)

253. On March 26, 2001, H.B. 1723, by Rep. Dartez, a white legislator, was introduced to add a new judge to the 32nd JDC to be elected from a majority-Black subdistrict. P167-a at 32-34; D17 at 2, 5-9; 3/16/17 Tr. at 55:5-14.

254. Just as Judge Ellender did with respect to S.B. 1052 in 1999, on April 17, 2001, Judge Gaidry of the 32nd JDC wrote to Rep. Dartez, requesting that she withdraw her bill "to avoid unnecessary consumption of time of the Legislature." P167-a at 34-35; D127-D01 at 2; 3/16/17 Tr. at 58:18-60:7 (Dr. Lichtman noting that Judge Gaidry's action was "part of a pattern of these judges, these all white judges within the 32nd Judicial District, intervening in the political process"). Judge Gaidry emphasized that the workload of the 32nd JDC had decreased. D127-D01 at 1; 3/16/17 Tr. at 59:21-60:7. In reality, however, the workload decreased only because cases were transferred to an already overburdened Houma City Court. P167-a at 35-36; D127-D01 at 1; 3/16/17 Tr. at 59:21-60:7, 61:2-21. After Judge Gaidry's intervention, H.B. 1723 died in committee. P167-a at 35; 3/16/17 Tr. at 60:8-10; *see generally* D17.

Houma City Court

255. The transfer of cases from the 32nd JDC to the Houma City Court did not "reduce the total number of cases in the 32nd Judicial District [*i.e.*, in Terrebonne]. It simply greatly expand[ed] the workload of the City Court." 3/16/17 Tr. at 43:8-44:14. In response, local white officials, over at least six years, requested additional support for the City Court, but withdrew those requests once the Black community voiced its desire for representation on that court. *See* P167-a at 35-39. Thus,

the advocacy of Black voters for a majority-Black subdistrict for the City Court met the same fate as their efforts for a majority-Black subdistrict for the 32nd JDC. In the context of the City Court, the refusal of white officials to proceed with a second judgeship was to the detriment of the lone City Court Judge, who handled the caseload of two judgeships. *See supra*; *see also* 3/16/17 Tr. at 61:2-21, 62:3-64:12, 75:17-23; 3/17/17 Tr. at 20:6-17 (Dr. Lichtman noting that "the agitation for another judge in a [Black] opportunity district in the City Court is very relevant . . . because the judge has the same jurisdiction, they are the same players, the same lineup, the same result").[116]

[116] In April 2001, City Court Judge Fanguy spoke with the Judicial Council about the court's workload. P167-a at 36; P24 at 1; 3/16/17 Tr. at 62:3-64:12. As a long-term solution, he requested the Legislature's assistance in gaining a new facility, which would enable the addition of a second judge commensurate with the City Court's workload. P167-a at 36; P24 at 1-2; 3/16/17 Tr. at 62:3-64:12, 70:1-12. As a short-term solution, in August 2002, he asked the Judicial Council to recommend a part-time magistrate or hearing officer to assist him. P167-a at 36; P92; P24 at 2; 3/16/17 Tr. at 62:3-64:12, 65:5-16. Parish President Bergeron offered $5,000 to support this request. P167-a at 36; P86; 3/16/17 Tr. at 65:17-66:6. In January 2003, Sen. Reggie Dupre prefiled S.B. 12 to create an office of commissioner for the City Court. P167-a at 36; P114.

In February 2003, Alvin Tillman and Mr. Thibodeaux, the Parish Council members elected from the majority-Black Districts 1 and 2, wrote to Sen. Dupre, copying other members of the Legislature such as Reps. Downer and Dartez, opposing S.B. 12 and advocating for an additional City Court judgeship elected by a majority-Black subdistrict. P89 at 6-7; 3/16/17 Tr. at 66:7-68:10. Mr. Tillman and Mr. Thibodeaux noted that the creation of a judgeship would better serve the purpose of S.B. 12—"curbing the overworked one-judge Houma City Court"—because a ruling by a commissioner can be appealed to the City Court Judge "who must then hear the case all over again," thus potentially "creat[ing] more inefficiency and an outright waste of tax dollars." P167-a at 36; P89 at 6; 3/16/17 Tr. at 66:7-68:10. Less than two weeks later, Judge Fanguy withdrew his request for Judicial Council recommendation of a part-time commissioner and asked Sen. Dupre to withdraw S.B. 12. P167-a at 36; P87; P95; 3/16/17 Tr. at 68:11-69:14. In the interim, a judge pro tempore was appointed to the City Court, and in May 2003, the Parish Council adopted a resolution to cover the expense of that appointment. P167-a at 36-37; P2 at 2-3; P98 at 2; 3/16/17 Tr. at 71:11-72:7.

In June 2003, the Legislature and the Governor authorized a building fund for the City Court. P167-a at 37; Act 518 of 2003, 2003 La. Sess. Law Serv. Act 518 (S.B. 1016) (West); 3/16/17 Tr. at 69:15-18. That same month, the Parish Council adopted a resolution requesting the Judicial Council to review the caseload "handled by the judges in Terrebonne and make a determination as to the need for an additional judgeship." D127-E1 at 2; 3/16/17 Tr. at 74:13-16, 75:2-16 (Dr. Lichtman explaining that "[t]his [resolution] is suggesting that because of the shared workload . . . you could have an additional judge either in the 32nd Judicial District or the City of Houma City Court"). Later that month, the five 32nd JDC judges, copying the Parish Council, wrote to the Judicial Council opposing an additional 32nd JDC judgeship and asserting that it "would be a waste of the state and parish's money." P167-a at 37; D127-E3; 3/16/17 Tr. at 75:24-76:21. The 32nd JDC judges took no position on an additional judgeship for the City Court, but requested that they be "consulted and informed regarding the additional city judgeship." D127-E3; 3/16/17 Tr. at 75:24-76:21.

In September 2003, Judge Fanguy also wrote to express his view that it would be "premature to be requesting a new judgeship" for the City Court, citing, among other things, the lack of an appropriate facility and the appointment of the judge pro tempore to assist him until March 2004. P167-a at 36-37; P98 at 2; 3/16/17 Tr. at 76:22-77:13. In December 2003, the Parish Council withdrew its request for a Judicial Council study of an additional judgeship. P167-a at 37; D127-E5; 3/16/17 Tr. at 77:14-19.

H.B. 582 (2011)

256. In October 2010, following advocacy by Terrebonne NAACP, white Rep. Harrison, representing Terrebonne, wrote to the Louisiana Supreme Court to "request consideration of a new minority judgeship for the 32nd JDC." P167-a at 39; D127-F2 at 3; 3/13/17 Tr. at 70:1-71:3; 3/16/17 Tr. at 84:19-85:11. In response, a court official wrote to all five sitting 32nd JDC judges stating that the "Judicial Council will only address the need for an additional judgeship in a judicial district," and that the "creation of a minority judgeship does not fall within [its purview]." Rather, "[s]uch action would fall within the [purview of the] Louisiana Legislature and ultimately [DOJ]." The Judicial Council thus made it clear that it would not opine on the method of election for judges on the 32nd JDC. P167-a at 39; D127-F2 at 1; 3/16/17 Tr. at 85:17-86:16.

257. On March 14, 2011, the Judicial Council agreed to send a site visit team to study the workload of the 32nd JDC. D127-G1 at 2; D127-J2 at 63; 3/16/17 Tr. at 86:17-89:5. Black residents continued to urge the Judicial Council to recommend an additional judgeship on the 32nd JDC elected from a majority-Black subdistrict. P167-a at 41; P80 at 5. In anticipation of the legislative session, the team conducted its site visit on March 30, 2011 and met with Mr. Boykin,

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Two years later, in 2005, the Parish Council passed a resolution supporting a second judgeship for the City Court conditioned on a review and evaluation of the need, location, funding, and consultation with the City Court judge. P167-a at 37; P5 at 3; 3/16/17 Tr. at 77:20-78:13. However, no legislation was ever introduced. P167-a at 37; 3/16/17 Tr. at 78:14-18. By that point, the Judicial Council had changed its criteria for new judgeships, requiring that a city court have a full-time judge before being eligible for a new judgeship. P167-a at 37-38. Although Judge Fanguy worked more than 40 hours per week, his position was deemed part-time because he had authorization to practice law privately. P167-a at 37-38; 3/16/17 Tr. at 78:19-25. In 2006, Judge Fanguy requested, and the Governor and Legislature enacted, legislation to make his position full-time. P167-a at 38; P121; 3/16/17 Tr. at 79:1-5; Act 286 of 2006, 2006 La. Sess. Law Serv. Act 286 (H.B. 876) (West).

In April 2007, the City Court moved to its new facility. P167-a at 37-38; 3/16/17 Tr. at 70:1-12, 79:6-12. And with his position full-time, Judge Fanguy again asked the Parish Council to consider his request for an additional judgeship, and the Parish Council began exploring possibilities for changes in the court system to create a majority-Black subdistrict, including a consolidation of the City Court and 32nd JDC into a single court or a second judgeship to the City Court that would be elected from a majority-Black subdistrict. P167-a at 38; 3/16/17 Tr. at 79:13-80:20.

But in June 2007, Judge Fanguy again reversed course, stating that new workload criteria no longer authorized another judge. P167-a at 38; 3/16/17 Tr. at 80:21-81:11. In March 2009, the Judicial Council issued a report indicating that 2.05 judges were needed at the City Court. P167-a at 38-39; P75 at 25; 3/16/17 Tr. at 80:21-81:11, 82:1-83:2, 197:18-198:3. Despite this finding, the Legislature took no action to create a second judgeship for the City Court. P167-a at 39.

among others. P80 at 1-2; 3/16/17 Tr. at 87:21-88:5, 89:3-8. Ultimately, the team found that the workload of the 32nd JDC did not warrant a new judgeship. P80 at 6; 3/16/17 Tr. at 87:21-88:7, 89:3-8. The team also reiterated that the method for electing any judges was beyond the purview of the Judicial Council. P80 at 6; 3/16/17 Tr. at 87:21-88:5, 89:3-8.

258. On April 25, 2011, at the urging of Terrebonne NAACP and others, H.B. 582, co-authored by Rep. Honoré and Rep. Baldone, was introduced to create a majority-Black subdistrict to elect the Division C seat to be vacated by Judge Ellender in 2014. P167-a at 39-40; D19 at 2-3, 14, 17-24; D4-B at 109 (Judge Ellender was elected to the Division C in 2008); 3/13/17 Tr. at 71:4-72:25; 3/16/17 Tr. at 90:1-24; *see also id*. at 204:12-205:4 (Dr. Lichtman noting that Rep. Baldone is from Terrebonne). This approach would not jeopardize any incumbent. P167-a at 40; 3/16/17 Tr. at 90:1-24, 161:5-162:1. By then, the 2010 Census also demonstrated that a majority-Black subdistrict could be drawn, as the white share of the VAP continued to decrease, and the Black share of the VAP continued to increase. P167-a at 44-45; 3/16/17 Tr. at 91:2-92:2.[117]

259. On May 17, 2011, the majority-white Terrebonne School Board voted 8 to 1 to support diversity in the judiciary. P167-a at 49; P8 at 1; 3/13/17 Tr. at 73:2-22, 119:23-121:3; 3/16/17 Tr. at 92:10-95:16. Though the resolution did not explicitly mention H.B. 582, Mr. Harding, a Black School Board member, understood his vote to indicate support for H.B. 582 based on the discussion of the Board. 3/13/17 Tr. at 220:13-221:20; *see also id*. 119:20-121:3 (Mr. Boykin noting that "[t]hey didn't just decide one day out of the blue we are going to do a resolution for

[117] In addition, at this point, Terrebonne residents would have been aware that: (a) since the late 1970s, the only Black members of the Parish Council and School Board were elected from majority-Black districts; and (b) Black voters had been unsuccessful in electing Black candidates competing against white candidates in at-large positions, including in the 1994 32nd JDC election. *See supra* (Senate Factor 7). Indeed, then-Rep. Dove, former Rep. Downer, Judges Arceneaux, Bethancourt, Hagen, Larke, and Walker, and DA Waitz have spent almost all of their lives in Terrebonne. 3/17/17 Tr. at 186:2-3, 207:23-25 (Judge Hagen); 215:24-25 (Judge Arceneaux); 3/20/17 Tr. at 108:20-21 (Judge Larke); *id*. at 147:25-148:3, 157:23-25 (DA Waitz); *id.* at 161:8-9 (Judge Walker); 4/26/17 (a.m.) Tr. at 10:7-11 (Mr. Dove); *id*. at 68:1-4, 96:14-18 (Judge Bethancourt); 4/28/17 Tr. at 215:3-13 (Mr. Downer).

diversity. We spoke with them. We told them exactly what we [were] trying to . . . ."). On May 23, 2011, the majority-white Terrebonne Parish Council by vote of 8 to 1 also passed a resolution encouraging increased local diversity in government. P167-a at 49; P9 at 3-4; 3/13/17 Tr. at 73:2-22, 119:23-121:3; 3/16/17 Tr. at 95:17-96:18.

260. Shortly after these demonstrations of local support, however, local white officials began to push back. On May 26, 2011, five of the nine members of the Parish Council—all white—wrote to the local delegation, including Reps. Dove and Harrison, clarifying that the Parish Council resolution "is not meant to be an expression of support for, nor an endorsement of any legislation being considered," namely H.B. 582. P27 at 2; 3/16/17 Tr. at 96:19-98:4.

261. The same day, Judge Gaidry, who formerly sat on the 32nd JDC, wrote to state senators, copying, among others, the then-sitting 32nd JDC judges, requesting that they oppose H.B. 582. Among other things, Judge Gaidry stated that "[i]f a Black candidate is better qualified than a white candidate, [he] would vote for the best qualified and [is] sure a majority of white voters would so also." P29; 3/16/17 Tr. at 98:5-103:14 (Dr. Lichtman testifying that this letter reflected "a sitting white judge intervening in the political process in the legislature"). As Dr. Lichtman observes, it "is an old, old argument designed to keep [Black people] and other [minorities] from having equal opportunities" by contending that the "[i]ssue is not race," but "qualifications." 3/16/17 Tr. at 98:5-103:14. Yet, "there's no such thing as an objective standard of qualification. . . . That's why we have elections. It's the voters who decide who's qualified." *Id*. The extreme patterns of RPV in Terrebonne show that Black and white voters have "very, very different view[s]" of who is and is not qualified. *Id*.; *see also id*. at 122:24-125:11; 3/17/17 Tr. at 36:18-37:14.

262. On June 1, 2011, the House Committee on House and Governmental Affairs held a more-

than-two-hour hearing on H.B. 582. D19 at 12-15; D19-A at 10:45 to 2:18:25; 3/16/17 Tr. at 103:15-22. Multiple individuals testified in favor of the bill, including Mr. Boykin and Mr. Shelby, and *none* testified against it. *See* D19 at 14; D19-A at 42:40 to 46:15 and 2:06:56 to 2:08:45; 3/13/17 Tr. at 73:23-74:17; 3/17/17 Tr. at 82:2-83:13. During the hearing, a representative of the Judicial Council also informed legislators that the Judicial Council does not weigh in on the method of election, but only assesses the number of judgeships needed based on workload criteria. D19 at 14; D19-A at 22:45 to 24:00.

263. At the end of the hearing, white legislators attempted to defeat H.B. 582 by rerouting the bill to a different House committee (*i.e.*, the Judiciary Committee). P167-a at 48; D19 at 15; D19-A at 2:14:30 to 2:16:40; 3/16/17 Tr. at 104:14-106:8. Each Black and other members of the committee opposed the maneuver because it would have effectively killed the bill, and the House and Governmental Affairs Committee was the appropriate committee to consider the bill. P167-a at 48; D19 at 15; D19-A at 2:14:30 to 2:16:40; 3/16/17 Tr. at 104:14-106:8. The maneuver was unsuccessful, and the committee approved H.B. 582 by a vote of 11 to 4. P167-a at 42, 48; D19 at 15; D19-A at 2:14:30 to 2:18:25; 3/16/17 Tr. at 103:20-21, 104:15-106:8.

264. The following day, June 2, 2011, on the House floor, white legislators again attempted to defeat H.B. 582 by seeking to recommit the bill to the House Judiciary Committee. Each Black and other members of the committee voted against the motion to recommit. P167-a at 48.

265. The following day, on June 3, 2011, the five sitting white judges of the 32nd JDC, including Judge Ellender, who was set to retire in 2014, wrote a letter to all members of the House urging them to oppose H.B. 582, "even though it [did not] threaten any of their incumbencies." P167-a at 49; P28; 3/16/17 Tr. at 106:9-108:15.

266. Even though (1) the public committee hearing on the bill lasted more than two hours, (2)

the House conducted additional floor proceedings, and (3) the judges were aware of nearly 15 years of advocacy for district-based voting, they claimed that "there ha[d] not been an adequate opportunity for public comment or analysis." P28; 3/16/17 Tr. at 106:9-108:15 (Dr. Lichtman explaining that the judges' suggestion that the Legislature "don't rush into this" is "[a]nother argument . . . that [he has] encountered over the decades . . . . But [for] the people affected the time is always now, it's not then," and the judges' argument is pretextual because "there's been no rush" and "there's been no lack of consideration"); *id*. at 122:24-125:11; 3/17/17 Tr. at 55:20-56:5.[118]

267. Moreover, despite the Judicial Council's *repeated* and unambiguous indications that it did not opine on the electoral method for judges, the judges also claimed that the adoption of the bill "would be contrary to the legislature's own directive which calls for the prior review of judicial district changes by the Judicial Council." P28; 3/16/17 Tr. at 106:9-108:15 (Dr. Lichtman explaining that this argument was also pretextual "because the Judicial Council ha[d] made it very clear [that] it does not opine upon the method of election").[119]

268. On June 7, 2011, the House voted against the bill by a vote of 51 to 41, with *every* Black legislator voting for the bill, and the overwhelming proportion of white legislators opposing it, even though the bill was not about "expanding the judiciary at all or endangering any incumbent to give [Black people] an opportunity to elect candidates of their choice." P167-a at 41-42; D19-B at 2:43:05 to 2:43:38; D19 at 11; 3/13/17 Tr. at 74:21-22; 3/16/17 Tr. at 103:23-104:13. While Rep. Baldone voted in favor of H.B. 582, the other members of the local delegation, Reps. Harrison

[118] *See also* 3/17/17 Tr. at 243:17-244:1 (Judge Arceneaux acknowledging that Black voters have campaigned for a majority-Black subdistrict the 32nd JDC for "as long as [he has] been a judge" since 1999); 4/26/17 (a.m.) Tr. at 93:16-94:4 (Judge Bethancourt testifying that he was aware that Terrebonne NAACP had been advocating for a majority-minority district since 1997 "in as much as [it] being in the paper and so forth")

[119] *See also* 3/17/17 Tr. at 242:12-243:3 (Judge Arceneaux agreeing that the Judicial Council "had made that clear on several occasions" that it played no role in the creation of majority-minority subdistricts, though he was a signatory to the June 3, 2011 letter); 4/26/17 (a.m.) Tr. at 94:23-96:13 (Judge Bethancourt).

and Dove, voted against the bill. P167-a at 41; D19-B at 2:43:05 to 2:43:38; D19 at 11; 3/16/17 Tr. at 103:23-104:13, 204:12-205:4. Less than a year earlier, as discussed above, Rep. Harrison had requested consideration of a majority-minority subdistrict. *See supra*.[120]

269. Thus, Louisiana officials rejected district-based voting for the 32nd JDC on at least *six* occasions between 1997 and 2011, even as: (a) *Clark* established precedent for judicial redistricting in Louisiana; (b) Louisiana created judicial subdistricts outside of *Clark*; (c) a Louisiana Supreme Court task force recognized that the creation of subdistricts is necessary to ensure diversity; (d) no Black candidate had *ever* been elected to the 32nd JDC or any other at-large elected position in Terrebonne; and (e) the demographics of Terrebonne made it feasible, as early as the mid-1990s, to draw a majority-Black subdistrict for the 32nd JDC. *See supra*.

270. Since the defeat of H.B. 582, no other legislation has been introduced to create a majority-Black subdistrict for the 32nd JDC. 3/16/17 Tr. at 122:18-23.

Procedural or Substantive Deviations

271. The Legislature had more than enough votes to defeat bills for a majority-Black subdistrict for the 32nd JDC, and thus, procedural or substantive deviations from standard practice were not necessary. P167-a at 48. Nonetheless, the sequence of events featured several deviations as set forth above. *See supra*; *see also* P167-a at 48-49; 3/16/17 Tr. at 104:14-106:8.

Contemporaneous Viewpoints

272. Opponents of a majority-Black subdistrict for the 32nd JDC have made several arguments

[120] A year later, in October 2012, Rep. Patricia Smith, the head of the Legislative Black Caucus, requested the Judicial Council to recommend the creation of a new judgeship to be elected from a *majority-minority* subdistrict for the 32nd JDC. P167-a at 43; D127-H2 at 2; 3/16/17 Tr. at 113:16-20. That same month, in response to Rep. Smith's request, Judge Bethancourt wrote to the Judicial Council, stating that: "funds are not available for additional personnel," the court did not have support from the parish government for facilities and personnel, and the judges were "handling their dockets efficiently and without undue delay." P167-a at 43; D127-F3; 3/16/17 Tr. at 109:17-113:15, 118:14-121:3. On March 7, 2013, the Judicial Council declined to recommend the creation of a new judgeship elected from a majority-Black subdistrict in part because it did not consider the method of election to be within its purview. P167-a at 43; D127-H1 at 2; D127-H3 at 1; D127-H2 at 2, 5.

in their opposition to district-based voting, all of which are pretextual. P167-a at 50; 3/16/17 Tr. at 122:24-125:11. *First*, opponents have claimed that judges should be elected by voters from the entire district over whom they have jurisdiction. P167-a at 50; 3/16/17 Tr. at 122:24-125:11; *see also supra*. This justification is pretextual for multiple reasons. *See supra* (facts regarding linkage).

273. *Second*, opponents have claimed that judicial redistricting should be done in a statewide or comprehensive fashion. For example, in opposing H.B. 582, Rep. Nancy Landry said, "We should not be doing redistricting piecemeal." P167-a at 50-51, 54; D19-A at 15:49 to 19:44, 58:10-1:00:30; 3/16/17 Tr. at 122:24-125:11. Yet, Louisiana has created subdistricts for other judicial districts without engaging in a comprehensive redistricting of the state, with no harmful effects. P167-a at 54; 3/16/17 Tr. at 122:24-125:11; *see also supra* (facts regarding linkage). Moreover, Louisiana has made no effort to engage in any comprehensive *judicial* redistricting, even though it could have done so, including following the 2000 and the 2010 Censuses, when the state engaged in statewide legislative redistricting. P167-a at 54; 3/16/17 Tr. at 122:24-125:11.

274. *Third*, opponents have argued that there should be more time to consider changes. For example, in the June 7, 2011 House Floor debate on H.B. 582, Rep. Dove argued that "We can't rush into this." P167-a at 51; D19-B at 2:20:24 to 2:25:00; 3/16/17 Tr. at 122:24-125:11; *see also supra*. As noted above, white officials have long used such familiar delaying tactics to block measures that would expand Black voting opportunities, including following the passage of the first federal civil rights laws (aimed primarily at voting) in the 1950s. P167-a at 51; 3/16/17 Tr. at 106:9-108:15; *see also supra*. Moreover, state and local officials, including Rep. Dove, knew full well that Black residents of Terrebonne had sought to create a majority-Black subdistrict for least 15 years. P167-a at 51-52; *see also supra*. Illustrating the pretextual nature of the argument, in response to a question by Rep. Honoré, a co-sponsor of H.B. 582, "When is right?" Rep. Dove

stated: "Who knows when it's right for anything?" D19-B at 2:24:36 to 2:24:48.

275. *Fourth*, opponents have argued that legislation should await a recommendation from the Judicial Council. For example, Rep. Harrison said that the legislature should not act without awaiting such a recommendation. "That has not been done," he said. P167-a at 52; D19-B at 2:15:06 to 2:20:00; 3/16/17 Tr. at 122:24-125:11. As noted above, this argument is pretextual because the Judicial Council has repeatedly disclaimed any authority over the method of election for judges, including during the June 2011 committee hearing for H.B. 582. P167-a at 52; *see also supra*. Moreover, as detailed above, in 1997 and 1998, the Legislature chose not to add a judgeship to the 32nd JDC even though (1) the 32nd JDC judges requested one to ease their workload, (2) an additional judgeship would not have jeopardized any incumbents, and (3) the Judicial Council recommended an expansion of the 32nd JDC. P167-a at 52-53; *see also supra*.

276. *Fifth*, opponents have claimed that a *qualified* Black candidate could win an election even in the white-dominated at-large system with designated posts and a majority-vote requirement. P167-a at 53; P29; 3/16/17 Tr. at 122:24-125:11; *see also supra*. As noted above, this is yet another longstanding pretextual argument by white officials in Louisiana to maintain control over the election of judges. P167-a at 53; *see also supra*. This argument ignores the history of white opposition to Black candidates regardless of their qualifications (including partisan affiliation), as shown by the stark patterns of RPV. P167-a at 53; *see also supra*.

277. Even worse, this argument presumes that Black lawyers are less qualified than white lawyers, suggests that white officials and voters have the exclusive right to determine who is qualified, and in circular fashion attributes white bloc voting to the lack of qualifications of Black candidates. P167-a at 53; *see also supra*. Black lawyers have demonstrated themselves qualified to serve as judges on all levels of the Louisiana judiciary. P167-a at 55. This argument also rings

hollow given the disciplinary record of several 32nd JDC judges, including Judge Wimbish and Judge Ellender. P167-a at 55-57; *see also supra* notes 14-15.

Overall Conclusion

278. Together, (1) the discriminatory impact of at-large voting, (2) the history of discrimination in Louisiana and Terrebonne, (3) the sequence of events leading to the rejection of multiple efforts to create a majority-Black subdistrict, (4) the procedural and substantive deviations in that process, and (5) the pretextual arguments made by opponents of a majority-Black subdistrict demonstrate discriminatory intent as a motivating factor in the maintenance of the at-large electoral scheme for the 32nd JDC. P167-a at 76-77; 3/16/17 Tr. at 125:22-126:13. The evidence does not show that at-large voting would have been maintained in the absence of discriminatory purpose.

CONCLUSIONS OF LAW

JURISDICTION

279. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a), and 1357; 52 U.S.C. §§ 10301 and 10308(f); and 42 U.S.C. §§ 1983 and 1988. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.[121]

[121] In accordance with its prior ruling, the Court rejects Defendants' contention that sovereign immunity under the Eleventh Amendment deprives the Court of subject matter jurisdiction. *See Terrebonne Parish NAACP*, 154 F. Supp. 3d at 359-61. Congress has abrogated any such immunity with respect to claims brought under Section 2. *See id.* at 359; *see also Hall*, 983 F. Supp. 2d at 830. Further, based upon the foregoing findings of fact regarding Defendants' powers and duties under Louisiana law and their roles in previous voting rights litigation, the Court holds, again, that Defendants have "some connection" with the challenged system, *K.P. v. LeBlanc*, 627 F.3d 115, 124 (5th Cir. 2010), such that the *Ex Parte Young*, 209 U.S. 213 (1908), exception to sovereign immunity applies. *See Terrebonne Parish NAACP*, 154 F. Supp. 3d at 359-61, 362-63.

"Standing under Article III of the Constitution requires that [1] an injury be concrete, particularized, and actual or imminent; [2] fairly traceable to the challenged action; and [3] redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). Each Plaintiff satisfies this requirement. Thus, this Court will reach the merits of this case. *See Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 192 (5th Cir. 2012) ("Standing may be satisfied by the presence of at least one individual plaintiff who has demonstrated standing to assert the[ ] [contested] rights as his own.").

The Court also adheres to its prior ruling that complete relief may be accorded among the existing parties and that SOS is not an indispensable party. *See Terrebonne Parish NAACP*, 154 F. Supp. 3d at 363. There is no evidence to demonstrate that SOS will refuse to implement a remedial plan adopted by the Legislature or otherwise ordered by this Court. SOS has stated that his duties with respect to elections are "purely ministerial," and his office will administer elections in accordance with the method set by the Legislature or this Court. Doc. 18-1 at 13.

OVERALL LEGAL FRAMEWORK

280. At-large voting may "operate to minimize or cancel out the voting strength of racial minorities in the voting population." *Gingles*, 478 U.S. at 47. "The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Id.* at 48.

281. Section 2 prohibits any voting practice with the purpose or the effect of denying or abridging the right to vote on account of race or color. 52 U.S.C.§ 10301. This provision protects minority voters' right to have the equal opportunity to "elect representatives of their choice," *id.* § 10301(b), and applies to judicial elections. *Chisom*, 501 U.S. at 384. "If a State decides to elect its trial judges, . . . those elections must be conducted in compliance with the [VRA]." *Houston Lawyers' Ass'n v. Tex. Att'y Gen.*, 501 U.S. 419, 426 (1991). A violation of Section 2 can "be proved by showing discriminatory effect alone." *Gingles*, 478 U.S. at 35.

DISCRIMINATORY EFFECT

282. A Section 2 claim has two components. *First*, Plaintiffs must show that: (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a [SMD]" (*Gingles* one); (2) the minority group is "politically cohesive" (*Gingles* two); and (3) the "majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate" (*Gingles* three). *Id.* at 50-51. *Second*, Plaintiffs must, under the totality of circumstances, "demonstrat[e] that a challenged election practice has resulted in the denial or abridgment of the right to vote based on color or race." *Chisom*, 501 U.S. at 394; *see* 52 U.S.C. § 10301(b).

***GINGLES* ONE**

283. *Gingles* one requires a plaintiff to show that the minority group is "sufficiently large and

geographically compact to constitute a majority in a [SMD]." *Gingles*, 478 U.S. at 50. "Plaintiffs typically attempt to satisfy [*Gingles* one] by drawing hypothetical majority-minority districts." *Clark*, 88 F.3d at 1406. However, a "plaintiffs' proposed district is not cast in stone"; its purpose is simply "to demonstrate that a majority-[B]lack district is *feasible*." *Clark v. Calhoun County*, 21 F.3d 92, 95 (5th Cir. 1994) (emphasis added); *accord Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) (noting that the "ultimate end of the first *Gingles* precondition is to prove that a solution is possible, and not necessarily to present the final solution to the problem").

Numerosity

284. The Supreme Court in *Bartlett* held that that a bright-line 50% plus one rule applies to numerosity. *See* 556 U.S. at 18; *see also Valdespino*, 168 F.3d at 852-53 (noting that *Gingles* one involves a "bright line test" and a "minority group [must] exceed[] 50% of the relevant population in the demonstration district"). Further, in *Georgia*, the Supreme Court held that in cases in which Black voters are the only minority group whose exercise of the franchise is at issue, "it is proper to look at *all* individuals who identify themselves as black." 539 U.S. at 474 n.1. Based on the foregoing findings of fact, the Court concludes that the Black VAP is sufficiently numerous.

Compactness

285. Section 2 compactness "refers to the compactness of the minority population, not to the compactness of the contested district." *LULAC*, 548 U.S. at 433. "While no precise rule has emerged governing § 2 compactness, the inquiry should take into account [TRPs] such as maintaining communities of interest and traditional boundaries." *Id.*

Geographical compactness/shape

286. *Gingles* one "does not require some aesthetic ideal of compactness." *Clark*, 21 F.3d at 95. "[T]he question is not whether the . . . proposed district [is] oddly shaped, but whether the proposal

demonstrate[s] that a geographically compact district *[can] be* drawn." *Houston*, 56 F.3d at 611 (emphasis in original); *see also id.* (district court erred in focusing "only on the shape of the districts in the plaintiff residents' specific proposals"). "By compactness, *Thornburg* does not mean that a proposed district must meet, or attempt to achieve, some aesthetic absolute, such as symmetry or attractiveness. An aesthetic norm, by itself, would be . . . an unworkable concept, resulting in arbitrary and capricious results, because it offers no guidance as to when it is met." *Dillard v. Baldwin Cty. Bd. of Educ.*, 686 F. Supp. 1459, 1465-66 (M.D. Ala. 1988).

287. Based upon the foregoing findings of fact, the Court concludes that the *Illustrative Plan* comports with the TRP of geographical compactness. *See Houston*, 56 F.3d at 611 (district court "clearly erred in finding that the black population . . . was not sufficiently geographically compact," given "the compactness of the district in the . . . proposed plan resembles that of many districts considered constitutionally acceptable by other courts"); *see also Montes*, 40 F. Supp. 3d at 1393-96 (holding that the illustrative district was geographically compact by "looking at the maps of the proposed districts" and comparing its Reock scores to those of other districts). The failure of Mr. Hefner and Dr. Weber to provide any objective benchmark for their opinion that District 1 is not compact is inconsistent with the Fifth Circuit's instruction that *Gingles* one is not a subjective assessment of the aesthetics of the district. *See Clark*, 21 F.3d at 95.

Contiguity

288. Concentrations of minority voters need not be contiguous. *See Ewing v. Monroe County*, 740 F. Supp. 417, 419 (N.D. Miss. 1990) (rejecting Dr. Weber's opinion that concentrations of Black residents "are noncontiguous and therefore not sufficiently compact to constitute a [SMD] with a majority black [VAP]"). Instead, insofar as contiguity is a TRP, it requires *districts* to be contiguous, meaning that all parts of a district are connected to one another. *See Harris*, 136 S. Ct.

at 1306 (recognizing contiguity as a TRP). Based upon the foregoing findings of fact, the Court concludes that the *Illustrative Plan* comports with the TRP of contiguity.

Population Equality

289. Judicial districts are not required to comply with the principle of one person, one vote as a matter of constitutional law. *See Wells v. Edwards*, 347 F. Supp. 453, 455-56 (M.D. La. 1972), *aff'd*, 409 U.S. 1095 (1973). However, population equality is an equitable consideration. *Clark*, 777 F. Supp. at 453. The Supreme Court's "decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10%" is consistent with the principle of one person, one vote. *Brown v. Thomson*, 462 U.S. 835, 842 (1983); *see also White v. Regester,* 412 U.S. 755, 761-64 (1973). Based upon the foregoing findings of fact, the Court concludes that the *Illustrative Plan* comports with the principle of one person, one vote.

Communities of Interest

290. Courts have recognized that "maintaining communities of interest" is a TRP. *E.g.*, *LULAC*, 548 U.S. at 433. "A State is free to recognize communities that have a particular racial makeup" so long as there is "some common thread of relevant interests." *Miller*, 515 U.S. at 920.

291. In *Theriot v. Parish of Jefferson*, 185 F.3d 477 (5th Cir. 1999), the Fifth Circuit found that a majority-Black district for the Jefferson Parish Council included "low-income residents who are less-educated, more often unemployed, and more poorly-housed" and thus shared "common social and economic needs." *Id.* at 486; *see also id.* at 486 n.20 (noting that political organizations that drew their memberships from "predominantly black neighborhoods" had worked on "issues of housing, education, and poverty" in the majority-Black district, many of which "continued to infect the communities" there). The Fifth Circuit held that, "[g]iven the common thread which binds the black voters within [that district], they are entitled to an effective voice in the electoral process and

to an influence over the outcome of elections." *Id.* at 487. Based upon the foregoing findings of fact, which demonstrate a "common thread which binds" Black voters in District 1, *id.*, the Court concludes that the *Illustrative Plan* respects communities of interest.

Minimizing Split Precincts

292. Maintaining "traditional boundaries" is a TRP. *E.g.*, *LULAC*, 548 U.S. at 433. However, "election precincts are not such important political boundaries that they should negate a districting proposal." *Village of Port Chester*, 704 F. Supp. 2d at 439; *see also, e.g.*, La. Att'y Gen. Op. No. 06-0262, 2006 WL 3898216, at *1 (2006) (noting the order of the U.S. District Court for the Western District of Louisiana directing the redrawing of election districts for the Avoyelles Parish School Board that would allow "the minority population to elect a 'candidate of its choice'" in three districts and that would "requir[e] new lockouts for existing precincts"). In *Hall*, this Court accepted an illustrative plan that split a precinct for the Baton Rouge City Court as satisfying *Gingles* one, 108 F. Supp. 3d at 427-29, and in other contexts, Louisiana has split precincts to create judicial subdistricts. *See supra* (facts regarding *Gingles* one). Based upon the foregoing findings of fact, the Court concludes that the *Illustrative Plan* adequately minimizes precinct splits.

Incumbent Protection

293. Incumbent protection is a TRP. *Theriot*, 185 F.3d at 484 (citing *Bush v. Vera*, 517 U.S. 952, 967 (1995) (plurality opinion)); *see also Prejean*, 83 F. App'x at 9. But "Louisiana law does not require a candidate for a division of a district court to be domiciled within the precinct boundaries or any other geographic boundaries of that division." *Snyder*, 198 So. 3d at 241.[122]

[122] *See also* La. Const. art. V, § 24(A) (providing that "[a] judge of the . . . district court . . . shall have been domiciled in the . . . district . .. for one year preceding election"); Act 214 of 1993, § 6, 1993 La. Sess. Law Serv. Act 214 (S.B. 232) (West) (codified at La. Rev. Stat. Ann. § 13:621.16 historical and statutory notes) (providing that "a candidate for a judgeship in either election section within the Sixteenth Judicial District need only be a resident of the district as a whole"); Act 780 of 1993, § 5, 1993 La. Sess. Law Serv. Act 780 (H.B. 1528) (West) (codified at La. Rev. Stat. Ann. § 13:621.23 historical and statutory notes) (providing that a candidate for a judgeship on the 23rd JDC "shall be domiciled in, a resident of, and a qualified elector of the Twenty-third Judicial District as a whole").

Based upon the foregoing findings of fact, the Court concludes that the *Illustrative Plan* satisfies the principle of incumbent protection.

Overall Conclusion on Gingles one

294. Based upon the foregoing findings of fact, the Court concludes that Plaintiffs have established *Gingles* one.

Racial Gerrymander

295. Defendants' argument that Plaintiffs have failed to establish *Gingles* one because the *Illustrative Plan* is a racial gerrymander is meritless for multiple reasons. *First*, the Supreme Court has held that, under the Equal Protection Clause, a redistricting plan in which "[r]ace was . . . the predominant, overriding factor . . . cannot be upheld unless it satisfies strict scrutiny." *Miller*, 515 U.S. at 920. However, the Supreme Court has held that the equal protection inquiry of whether "race was the predominant factor" is distinct from the *Gingles* one analysis, *LULAC*, 548 U.S. at 432-34, and the Fifth Circuit has held that the equal protection inquiry should not be used to assess *Gingles* one. *See Clark*, 88 F.3d at 1406-07 (holding that "*Miller* and its progeny [did not] work a change in the first *Gingles* inquiry" and rejecting the argument that "a proposed district that violates *Miller* does not satisfy the first *Gingles* factor per se"). Indeed, "*Miller* is [not] relevant to the first *Gingles* factor." *Id.* at 1406.[123]

296. *Second*, as set forth above, the Court finds that the *Illustrative Plan* is not a racial gerrymander. The Court in *Miller* held that the plan was a racial gerrymander because "every objective districting factor that could realistically be subordinated to racial tinkering in fact

[123] *See also Davis v. Chiles*, 139 F.3d 1414, 1425 (11th Cir. 1998) ("The district court's attempt to apply authorities such as *Miller* to this Section Two case . . . is unpersuasive because the *Miller* and *Gingles* . . . lines [of cases] address very different contexts."); *Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1391 (8th Cir. 1995) (en banc) ("*Miller* does not alter our analysis of the *Gingles* factors" because "*Miller* analyzed the equal protection problems involved in drawing voting districts along race-based lines, but did not purport to alter [the] inquiry into [a] vote-dilution claim" under Section 2); *Ga. State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 952 F. Supp. 2d 1360, 1364 (N.D. Ga. 2013) (rejecting that "§ 2 plaintiffs are required under the first prong of *Gingles* to show compliance with *Miller*").

suffered that fate." 515 U.S. at 919. By contrast, the *Illustrative Plan* comports with TRPs. That the *Illustrative Plan* took race into account does not mean that race was the predominant factor. "Redistricting legislatures will . . . almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Id.* at 916. A claim of racial gerrymander requires a showing that "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale." *Id.* at 913. As set forth in the above findings of fact, race did not predominate in the development of the *Illustrative Plan*.

297. Even if the Court were to find that race predominated in the *Illustrative Plan*, it would not automatically render the plan unconstitutional. Instead, the plan would be subject to strict scrutiny. *Theriot*, 185 F.3d at 488 ("Strict scrutiny analysis is required when a plaintiff proves that race is the 'predominant factor' motivating a redistricting decision."). "To satisfy strict scrutiny, the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Miller*, 515 U.S. at 920; *see also Bethune-Hill*, 137 S. Ct. at 801 (holding that the "predominant use of race . . . was narrowly tailored to achieve compliance with § 5" of the VRA).

298. Assuming *arguendo* that the *Illustrative Plan* was a racial gerrymander, the Court would nonetheless conclude that it satisfies strict scrutiny. The Fifth Circuit has recognized that "compliance with § 2 of the [VRA] constitutes a compelling governmental interest." *Clark*, 88 F.3d at 1405. Further, the *Illustrative Plan* would be narrowly tailored to serve the compelling governmental interest in remedying vote dilution under Section 2. Defendants have offered no argument to suggest anything to the contrary. *See also Ga. State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1345 (N.D. Ga. 2015) (rejecting racial gerrymander argument because "Defendants' arguments and evidence . . . do not address the issue of whether . . . [the] use of race was narrowly tailored to achieve a compelling government interest").

***GINGLES* TWO AND THREE**

299. In *Gingles*, the Supreme Court explained that "[t]he purpose of inquiring into the existence of [RPV] is twofold: [1] to ascertain whether minority group members constitute a politically cohesive unit and [2] to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." 478 U.S. at 56. "A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim." *Id*. A showing that "in general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." *Id.*

300. The Fifth Circuit has declined to "hold that plaintiffs must supply conclusive proof that a minority group's failure to elect representatives of its choice is *caused by* racial animus in the white electorate." *Clements*, 999 F.2d at 859 (emphasis added). RPV exists where there is a "consistent relationship between the race of the voter and the way in which the voter votes." *Gingles*, 478 U.S. at 53 n.21. Proof of RPV under *Gingles* is sufficient to create an inference of "racial bias operating in the electoral system." *Teague*, 92 F.3d at 290.

301. The Supreme Court and the Fifth Circuit have delineated several guidelines for assessing RPV. *First*, endogenous elections are those concerning the office at issue, in this case the 32nd JDC, while exogenous elections are those for other offices. *See Clark*, 88 F.3d at 1397; *Citizens for a Better Gretna*, 834 F.2d at 502-03. While exogenous elections are less probative of RPV than endogenous elections, *see Clark*, 21 F.3d at 97, they may not be excluded from the analysis, particularly where there are few or no endogenous elections to analyze. *See, e.g.*, *Citizens for a Better Gretna*, 834 F.2d at 502-03 (affirming consideration of exogenous elections because of "sparse relevant statistical data" from endogenous elections); *Westwego Citizens for Better Gov't*,

872 F.2d at 1207 (reversing district court for "declin[ing] to consider evidence of [RPV] derived from elections other than the [endogenous] elections").

302. *Second*, the Fifth Circuit has explicitly rejected the notion that "plaintiffs may never make out a vote dilution claim when there is no evidence from 'indigenous' elections." *Id.* at 1209; *see also id.* at 1208 (reversing the district court because it erroneously "believed that plaintiffs could not, as a matter of law, make out a vote dilution claim based on evidence of [RPV] drawn from elections other than the [endogenous] elections themselves."). Indeed, "the lack of black candidates [may well be] a . . . result of a racially discriminatory system." *McMillan v. Escambia County*, 748 F.2d 1037, 1045 (5th Cir. 1984). Accordingly, "plaintiffs may not be denied relief simply because the absence of black candidates has created a sparsity of data on [RPV] in purely indigenous elections." *Westwego Citizens for Better Gov't*, 872 F.2d at 1209. "To hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress sought to remove." *Id.* at 1208 n.9.

303. *Third*, the Fifth Circuit has repeatedly held that "evidence most probative of [RPV] must be drawn from elections including both black and white candidates." *Id.* at 1208 n.7; *see also E. Jefferson Coalition for Leadership & Dev.*, 926 F.2d at 493 ("The district court did not err by limiting its investigation of racial polarization to elections involving black candidates."); *Campos*, 840 F.2d at 1245 (holding that "the district court was warranted in its focus on those races that had a minority member as a candidate"); *Citizens for a Better Gretna*, 834 F.2d at 503-04 ("[I]mplicit in the *Gingles* holding is the notion that black preference is [to be] determined from elections which offer the choice of a black candidate."). "[W]hen there are only white candidates . . . it is virtually unavoidable that certain white candidates would be supported by a large percentage of . . . black voters. Evidence of black support for white candidates in an all-white field, however, tells

us nothing about the tendency of white bloc voting to defeat black candidates." *Westwego Citizens for Better Gov't*, 872 F.2d at 1208 n.7.

304. *Fifth*, the Supreme Court has held that "a pattern of [RPV] that extends over a period of time is more probative . . . than are the results of a single election." *Gingles*, 478 U.S. at 57. However, there is no minimum number of elections that must be analyzed. *See id.* at 57 n.25 ("The number of elections that must be studied in order to determine whether voting is polarized will vary according to pertinent circumstances."). In *Gingles*, the Supreme Court affirmed a finding of RPV based on data from "three election years." *Id.* at 61.

305. *Finally*, the Supreme Court has held that "in a district where elections are shown usually to be polarized, the fact that [RPV] is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." *Id.* at 57; *see also Teague*, 92 F.3d at 288 ("[T]he results of a couple of elections do not discount the presence of [RPV;] . . . a showing that bloc voting is not absolute does not preclude a finding of racial polarization."). The question is whether "whites vote sufficiently as a bloc *usually* to defeat the minority's preferred candidates." *Gingles*, 478 U.S. at 56 (emphasis added).

306. Applying these principles to the foregoing findings of fact, the Court concludes that Plaintiffs have established *Gingles* two and three. Across seven biracial elections held parish-wide in Terrebonne over a 20-year period, Black voters cohesively supported Black candidates, with levels of support ranging from 71.4% to 99.8% and averaging 87.1%. *See supra*. Across the same seven elections, non-Black voters overwhelmingly declined to support the Black candidates, with levels of support ranging from 1.1% to 13.7% and averaging 7.8%. *See supra*. In each election, the candidate of choice of Black voters was defeated regardless of whether the candidate ran: (a) as a Democrat, Republican, or otherwise; (b) for a judicial or non-judicial office; or (c) for a local,

state, or federal office. Based upon this consistent pattern of RPV, the Court concludes that Black voters in Terrebonne are "politically cohesive," and white voters "vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Gingles*, 478 U.S. at 56.[124]

307. That there is only one endogenous election in this case and that it may be "stale" are inconsequential. As noted above, the Fifth Circuit has rejected the notion that "plaintiffs may never make out a vote dilution claim when there is no evidence from 'indigenous' elections." *Westwego Citizens for Better Gov't*, 872 F.2d at 1209. Moreover, even excluding the 1994 32nd JDC election and the 1993 First Circuit Court of Appeal election, the foregoing findings of fact demonstrate that the five remaining elections exhibit the same pattern of RPV.[125] In sum, the Court concludes that Plaintiffs have established *Gingles* two and three.

TOTALITY OF CIRCUMSTANCES

308. After a plaintiff establishes the three *Gingles* preconditions, a "totality of circumstances" analysis is required to determine whether minority voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b); *see also LULAC*, 548 U.S. at 425. The Supreme Court has made clear that "whether the political processes are equally open depends upon a searching practical evaluation of the past and present reality and on a functional view of the political process." *Gingles*,

[124] This conclusion comports with other Section 2 cases. In *Teague*, the Fifth Circuit held that "evidence of racial polarization" was "overwhelming," given that on average across eight elections, Black candidates received 87% of Black voter support but only 15% of white voter support, and reversed the district court's contrary finding as clearly erroneous. 92 F.3d at 289, 291. In *Westwego*, the Fifth Circuit held that the evidence "unmistakably demonstrates" RPV. 946 F.2d at 1119. In the only endogenous election, the Black candidate received 89% of Black voter support, but only 16% of white voter support, thus "finish[ing] twelfth in a field of sixteen candidates." *Id.* at 1113, 1122. Four other exogenous elections also "exhibited racial polarization." *Id.* at 1114, 1119. Accordingly, the Court of Appeals reversed the district court's contrary finding of no RPV as clearly erroneous. *Id.* at 1119.

[125] The 2014 Houma City Court election is particularly probative because it was a judicial election conducted at-large parish-wide for a court that exercises concurrent territorial jurisdiction as the 32nd JDC. *See Clark*, 777 F. Supp. at 460 (in finding a Section 2 violation with respect to the 24th JDC, noting that an election for the Jefferson Parish Juvenile Court, together with other exogenous elections, provided "strong" evidence of RPV because "[t]his [was] a parish wide election with exactly the same district lines as the district court and, of course, is a judicial election").

478 U.S. at 45. This determination "requires an intensely local appraisal of the design and impact of the contested electoral mechanisms." *Id.* at 79.

309. Senate Factors are relevant in this inquiry. *Id.* at 36-37, 44-45. However, a plaintiff need not prove "any particular number of factors . . . or that a majority of them point one way or the other." *Id.* at 45; *see also Westwego Citizens for Better Gov't*, 946 F.2d at 1120 ("No one of the factors is dispositive; the plaintiffs need not prove a majority of them; other factors may be relevant."). The "two most important factors" are "the existence of [RPV] and the extent to which minorities are elected to public office." *Clark*, 88 F.3d at 1397 (citing *Gingles*, 478 U.S. at 48 n.15; *Westwego Citizens for Better Gov't*, 946 F.2d at 1122); *see also Citizens for a Better Gretna*, 834 F.2d at 499 ("[RPV] is the linchpin of a § 2 vote dilution claim."); *McMillan*, 748 F.2d at 1043 ("[RPV] will ordinarily be the keystone of a dilution case"). Courts have found vote dilution based solely on the existence of RPV and the extent to which minority candidates have been elected to office. *See, e.g.*, *Bone Shirt*, 461 F.3d at 1022; *NAACP v. Gadsden Cty. Sch. Bd.,* 691 F.2d 978, 982-83 (11th Cir. 1982).

310. The Fifth Circuit has recognized that "it will be only the very unusual case in which the plaintiffs can establish the . . . *Gingles* factors but still have failed to establish a violation of § 2 under the totality of the circumstances." *Clark*, 21 F.3d at 97; *accord Teague*, 92 F.3d at 293; *Clark*, 88 F.3d at 1396. "In such cases, the district court must explain with particularity" why it has reached such a conclusion. *Clark,* 21 F.3d at 97.

Senate Factor 1: History of Voting Discrimination in Louisiana and Terrebonne

311. Numerous federal courts have recognized the history of voting discrimination in Louisiana. *See, e.g.*, *Westwego Citizens for Better Gov't*, 946 F.2d at 1114 ("The unfortunate history of racial discrimination in Louisiana . . . is a matter of common knowledge."); *Zimmer*,

485 F.2d at 1301 & n.7, 1306 (describing Louisiana's "protracted history of racial discrimination which touched [the plaintiffs'] ability to participate in the electoral process" and Louisiana's authorization of at-large voting, which had been prohibited, for local parish boards, in 1968, following increased Black voter registration and turnout following the passage of the VRA).[126]

312. Based upon the foregoing findings of fact, the Court concludes that there is a persistent history of *de jure* and *de facto* discrimination against Black voters that extends to the use of at-large voting and the election of judges in Louisiana. The Court also concludes that there is a history of voting discrimination in Terrebonne. This factor weighs in favor of a finding of vote dilution.

Senate Factor 2: RPV

313. Louisiana has an extensive and judicially recognized history of RPV. *See, e.g., Clark*, 725 F. Supp. at 296 ("The existence of [RPV] in Louisiana has been found by many courts."); *see also Westwego Citizens for Better Gov't*, 946 F.2d at 1118 ("There is no dispute that the results from every election which included a viable [B]lack candidate exhibit racial polarization . . . ."); *Citizens for a Better Gretna*, 834 F.2d at 504 (recognizing RPV in Gretna's aldermanic elections as the "[m]ost notable" factor in affirming the finding of vote dilution); *E. Jefferson Coalition for Leadership & Dev.*, 691 F. Supp. at 1004 ("From the elections submitted into evidence, it is difficult to conclude that the voting in Jefferson Parish is not racially polarized.").

314. As set forth above, the Court concludes that elections in Terrebonne are characterized by

[126] *See also, e.g.*, *Clark*, 725 F. Supp. at 295 ("Louisiana has a long history of de jure and de facto restrictions on the right of black citizens to register, to vote, and otherwise participate in the democratic process."); *Chisom v. Edwards*, 690 F. Supp. at 1534 (taking judicial notice of state-implemented "stratagems including educational and property requirements for voting, a 'grandfather' clause, an 'understanding' clause, poll taxes, all-white primaries, anti-single-shot voting provisions, and a majority-vote requirement to suppress black political involvement"); *Citizens for a Better Gretna v. City of Gretna,* 636 F. Supp. 1113, 1116 (E.D. La. 1986) (noting that "it would take a multi-volume treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process"); *Major*, 574 F. Supp. at 339-41 (Black citizens in Louisiana and its political subdivisions have suffered from a history of official racial discrimination in voting); *id*. ("Louisiana's history of racial discrimination, both de jure and de facto, continues to have an adverse effect on the abilities of its black residents to participate fully in the electoral process.").

stark patterns of RPV. A Section 2 claim fails if "the record indisputably proves that partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens." *Clements*, 999 F.2d at 850. Based upon the foregoing findings of fact, however, the Court concludes that the record does not "indisputably prove[]" that party affiliation explains voting patterns in Terrebonne. *Id.* This factor weighs in favor of a finding of vote dilution.

Senate Factor 3: Enhancing Factors

315. The Supreme Court has long recognized the dilutive impact of enhancing factors. *See, e.g.*, *Gingles*, 478 U.S. at 39-40, 80 (affirming finding of vote dilution in part because of "a majority vote requirement," which "presents a continuing practical impediment to the opportunity of black voting minorities to elect candidates of their choice"); *White,* 412 U.S. at 766 (affirming finding that a majority-vote requirement and a "place" system "enhanced the opportunity for racial discrimination"). The Fifth Circuit and federal courts in Louisiana have likewise recognized that such devices impair minority voting strength. *See, e.g., Westwego Citizens for Better Gov't*, 946 F.2d at 1113 n.4; *Jones v. City of Lubbock*, 727 F.2d 364, 383-84 (5th Cir. 1984); *Lodge v. Buxton,* 639 F.2d 1358, 1380 (5th Cir. 1981), *aff'd sub. nom.*, *Rogers v. Lodge*, 458 U.S. 613 (1982); *Zimmer*, 485 F.2d at 1306 & n.25; *Citizens for a Better Gretna*, 636 F. Supp. at 1124; *Clark*, 725 F. Supp. at 301; *Major*, 574 F. Supp. at 340, 351 & n.32; *Ausberry,* 456 F. Supp. at 466.

316. Based upon the foregoing findings of fact, the Court concludes that the majority-vote requirement, division system, and large election district for the 32nd JDC enhances the opportunity for discrimination against Black voters. This factor weighs in favor of a finding of vote dilution.

Senate Factor 5: Discrimination in Areas of Life that Hinder Political Participation

317. To establish this Senate Factor, a plaintiff must demonstrate socioeconomic disparities and "proof that participation in the political process is in fact depressed among minority citizens."

Clements, 999 F.2d at 867. Plaintiffs may offer evidence "of reduced levels of black voter registration, lower turnout among black voters, or any other factor tending to show that past discrimination has affected their ability to participate in the political process." *Id.* However, "Plaintiffs are not required to prove a causal connection between [socioeconomic disparities] and a depressed level of political participation." *Teague*, 92 F.3d at 294.

318. Numerous courts have recognized that, as a result of past and present discrimination, Black voters in Louisiana suffer from socioeconomic disadvantages that diminish their ability to participate in the political process. *See, e.g.*, *Citizens for a Better Gretna*, 834 F.2d at 499 ("A history of de jure and de facto discrimination contributes to depressed socio-economic conditions for Gretna's blacks and a low black voter turnout."); *Westwego Citizens for Better Gov't*, 946 F.2d at 1115, 1122 (noting disparities in family income, poverty, unemployment, home ownership, and vehicle ownership rates in finding that "the black citizens of Westwego continue to bear the heavy burdens of past racial discrimination" and "continue to suffer significant disabilities").

319. Based upon the foregoing findings of fact, the Court concludes that Black residents of Terrebonne bear the effects of discrimination, which depress their socioeconomic status and ability to participate in the political process. This factor weighs in favor of a finding of vote dilution.

Senate Factor 7: Lack of Black Electoral Success

320. The lack of Black electoral success weighs significantly toward a finding of vote dilution. *See, e.g.*, *Teague*, 92 F.3d at 285 (reversing finding of no vote dilution where "no black candidate has ever won a county-wide election or an election in a white majority district when pitted against a white candidate"); *Clark*, 88 F.3d at 1398 (reversing finding of no vote dilution where there was a "virtually complete absence of black elected officials in county offices"); *Westwego Citizens for Better Gov't*, 946 F.2d at 1122 (reversing finding of no vote dilution where "no black [person] has

ever been elected to municipal office in Westwego"); *Campos*, 840 F.2d at 1249 (affirming finding of vote dilution where "no minority [person] has ever been elected to the Baytown City Council"); *Citizens for a Better Gretna*, 834 F.2d at 504 (affirming finding of vote dilution and noting that "in the entire history of Gretna, . . . no black [person] has ever been elected to municipal office"); *McMillan*, 748 F.2d at 1045 (affirming a finding of vote dilution where, prior to the litigation, no Black person had been elected to the county commission or school board).

321. As set forth in the above findings of fact, prior to this litigation, no Black candidate had ever been elected to the 32nd JDC; no Black candidate has ever been elected to any other parish-wide, at-large elected office in Terrebonne; and to this day, no Black candidate who has faced opposition has been elected to a parish-wide, at-large position. The current Black members of the Parish Council and School Board are elected from majority-Black SMDs. This factor weighs in favor of a finding of vote dilution.

Special Circumstances Surrounding Judge Pickett's Election

322. The unopposed election of Judge Pickett to the 32nd JDC in 2014, after this case was filed, does not indicate the absence of vote dilution. The Supreme Court has held that "proof that some minority candidates have been elected does not foreclose a § 2 claim," particularly where "special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success." *Gingles* 478 U.S. at 57, 75. In *Gingles* itself, the Supreme Court held that it was proper to discount Black electoral success in elections (1) where Black candidates were "running essentially unopposed" and (2) that "occurred after the instant lawsuit had been filed." *Id.* at 60 & n.29, 76. Regarding the latter circumstance, the Supreme Court noted "the possibility . . . that the majority citizens might evade § 2 by manipulating the election of a 'safe' minority candidate," and observed that "the pendency of this very litigation might have

worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting." *Id.* at 75, 76.

323. The Fifth Circuit has similarly recognized that minority electoral success in elections that are (1) uncontested and (2) held during the pendency of litigation are of little probative value. *See Clark*, 21 F.3d at 96 (holding that the election of a Black candidate "in an uncontested race that occurred while this litigation was pending" was of "limited relevance"); *Zimmer*, 485 F.2d at 1307 (holding that the success of three Black candidates did not foreclose claim because "such success might be attributable to political support motivated by [the fact] that election of a black candidate will thwart successful challenges to electoral schemes on dilution grounds").[127]

324. As set forth above, special circumstances mark Judge Pickett's election to the 32nd JDC in 2014. Judge Pickett not only was elected after this case was filed, but also ran for an open seat on the 32nd JDC unopposed—the only Black candidate to have done so for a parish-wide office in Terrebonne's history. This extraordinarily unusual election "does not negate [Plaintiffs'] § 2 claim and does not establish that [RPV] does not exist," *Clark*, 21 F.3d at 96, particularly because the evidence does not show that Judge Pickett was the candidate of choice of Black voters.

325. Even assuming that Judge Pickett's election did not involve any "special circumstances," his isolated success would not rebut the consistent pattern of Black electoral defeat in Terrebonne. The Supreme Court has made clear that "[w]here [a voting method] generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits

[127] In *Clark*, this Court likewise declined to accord weight to elections that were uncontested or that had been held during the pendency of the case. *See* 777 F. Supp. at 460 (noting that the 1984 and 1988 reelections "without opposition" of a Black judge who had been first appointed to the 24th JDC "do not reveal very much about the electorate" and finding a Section 2 violation with respect to the 24th JDC); *id.* at 459 ("Judge Pitcher's election [to the 19th JDC in 1987] was unusual. It was held at a time when this litigation was pending in Baton Rouge, where the suit had received substantial news coverage."); *id.* at 478, 480 (holding that "Judge Jasmine's election [to the 40th JDC in 1990] is the result of a culmination of unusual circumstances. The court is by no means persuaded that vote dilution has been cured in that district, particularly in view of the low percentage of cross over voting.").

minority voters." *Gingles*, 478 U.S. at 76. The Fifth Circuit has likewise recognized that the success of some minority candidates does not automatically defeat a Section 2 claim. *See, e.g.*, *Clark*, 88 F.3d at 1397-98 (noting that "the election of a few minority candidates does not necessarily foreclose the possibility of dilution of the black vote," and holding that the "isolated victories" of three Black candidates, "one of which occurred in a race with no opponent," did not rebut "the presence of [RPV] and the virtually complete absence of black elected officials"); *McMillan*, 748 F.2d at 1045 & nn.20-21 (affirmed a finding of vote dilution despite the election of three Black candidates, including after the case was filed); *see also Teague*, 92 F.3d at 288 ("[T]he results of a couple of elections do not discount the presence of [RPV]."). [128]

326. Likewise, this Court concludes that Judge Pickett's election after the commencement of this case does not vitiate Plaintiffs' showing of RPV and does not demonstrate that at-large voting provides Black voters with the equal opportunity to elect candidates of their choice.

Ward-Level Elections

327. The Court also rejects Defendants' argument that several ward-level elections in Terrebonne in which Black candidates have been successful indicate the absence of vote dilution. As set forth in the above findings of fact, many of these elections are: (1) stale based upon the standard of Defendants' own experts; (2) not biracial, *see, e.g.*, *Westwego Citizens for Better Gov't*, 872 F.2d at 1208 n.7 (holding that "evidence most probative of [RPV] must be drawn from elections including both black and white candidates"); and (3) marked by "special circumstances, such as incumbency and lack of opposition," *Gingles*, 478 U.S. at 54.

[128] Consistent with this precedent, in *Clark*, this Court found a Section 2 violation with respect to the 1st JDC, even though "[t]wo black lawyers ha[d] been elected district judge in recent years in Caddo Parish" (Judge Paul Lynch and Judge Carl Stewart). 777 F. Supp. at 454. This Court held that "[d]espite the election victories by Judge Lynch and Judge Stewart, there is evidence to support the conclusion that the white majority usually does vote sufficiently as a bloc to prevent the minority's preferred candidate from winning." *Id.* at 454-55.

328. Most critically, none of these ward-level elections are parish-wide contests, and such elections are "of negligible probative value." *Rangel v. Morales*, 8 F.3d 242, 247-48 (5th Cir. 1993); *see also Teague*, 92 F.3d at 289 (an "assessment of vote dilution based on two precincts in two elections is insufficient to overcome the . . . compelling statistical evidence of racial bloc voting [county-wide]"); *Clark*, 21 F.3d at 97 ("[I]n analyzing voting patterns in Calhoun County, the district court should accord greater weight to the virtual absence of black electoral success in county-wide elections as opposed to their limited electoral success in municipal elections.").

Non-Racial Factors

329. The Court also rejects Defendants' argument that non-racial factors account for voting patterns in Terrebonne. As set forth above, proof of RPV under *Gingles* creates an inference of racial bias in the electoral system. *Teague*, 92 F.3d at 290 ("Plaintiffs are to present evidence of racial bias operating in the electoral system by proving up the *Gingles* factors."). Plaintiffs do not bear the initial "burden of negating all nonracial reasons possibly explaining" RPV and Black electoral defeat. *Id.* at 295; *see also id.* at 291 (district court erred when it "placed upon the plaintiffs the insurmountable burden of coming forward with evidence disproving all nonracial reasons that can explain election results [where] the defendant had itself produced no real evidence that factors other than race were at work"). It is Defendants' burden, if they so choose, to seek to rebut RPV by establishing that Black electoral defeat is due to factors other than race. *Id.* at 290. Based on the foregoing findings of fact, the Court concludes that Defendants have failed to rebut Plaintiffs' showing of RPV and the operation of "racial bias . . . in the electoral system." *Id.*

Lack of Black Candidates

330. Finally, Defendants' argument that the lack of Black candidates shows the absence of vote dilution is meritless. The Fifth Circuit has rejected this contention, noting that it "begs the ultimate

question whether [Black voters] possess the same opportunities to participate in the political process and elect [the candidates] of their choice." *Clark*, 88 F.3d at 1398. As set forth above, the Fifth Circuit has explained that "the lack of black candidates [may be] a likely result of a racially discriminatory system." *McMillan*, 748 F.2d at 1045. Accordingly, "[t]hat few or no black citizens have sought public office in the challenged electoral system does not preclude a claim of vote dilution." *Clark*, 88 F.3d at 1398; *see also Westwego Citizens for Better Gov't*, 946 F.2d at 1113, 1122 (holding that vote dilution was shown, even though only one Black candidate had ever run for the office in question); *McMillan*, 748 F.2d at 1045 (noting that "the fact that no [Black candidate] ran for the Commission between 1970 and the time this litigation commenced [did not] help defendants").

331. As set forth in the above findings of fact, the consistent and stark patterns of RPV, combined with at-large voting and enhancing factors, discourages Black candidates from running for the 32nd JDC and other parish-wide offices. The relatively low number of Black candidates who have run for the 32nd JDC does not preclude a finding of vote dilution.

Senate Factor 9: Tenuousness

332. "[A] strong state policy in favor of at-large elections is less important under the results test, [but] a tenuous explanation for at-large elections is circumstantial evidence that the system is motivated by discriminatory purposes and has a discriminatory result." *McMillan*, 748 F.2d at 1045. As set forth in the above findings of fact, the rationales offered to maintain at-large voting for the 32nd JDC, including to maintain the alleged linkage interest, are pretextual and thus tenuous. This factor weighs in favor of a finding of vote dilution.

Linkage

333. In *Clements*, the Fifth Circuit held that "[a] state's interest in maintaining" a link between

a judge's electoral base and jurisdiction "must be weighed in the totality of circumstances to determine whether a § 2 violation exists." 999 F.2d at 868. However, the Supreme Court has made clear that the mere assertion of a linkage interest is insufficient to defeat a Section 2 claim. *See Houston Lawyers' Ass'n*, 501 U.S. at 427 ("[T]hat interest does not automatically, and in every case, outweigh proof of racial vote dilution."). In *Clements*, the Fifth Circuit rejected Texas's argument that the linkage interest "must defeat liability in *every* case, regardless of the other circumstances." 999 F.2d at 870. Instead, a state may defeat a Section 2 claim only if it has a "substantial" linkage interest. *See id.* at 868.

334. In *Clark*, this Court held that "no such vital state interest precludes a finding of Section 2 violations." 777 F. Supp. at 479; *see also id.* at 483-84 ("[T]he court rejects the notion that the State has a greater interest in linking election districts and geographical jurisdiction in judicial election districts than in ridding judicial elections of minority vote dilution which violates federal law."); *id.* at 485 ("The record . . . does not support any 'linkage' argument as to either 'liability' or remedy. . . . This court . . . is firmly convinced that there is no basis for using the 'linkage' argument to impede this court's findings on either liability or remedy.").

335. Likewise, based upon the foregoing findings of fact, the Court concludes that Louisiana does not have a substantial linkage interest that precludes a finding of a Section 2 violation. As a result of actions taken by Louisiana, both in and outside of litigation, 12 of the 41 JDCs in Louisiana use subdistricts to elect their members, encompassing a total of 106 of the 203 (52%) district judges. Numerous other trial courts in Louisiana, including family, juvenile, and city courts, also use subdistricts to elect judges. Given the extensive use of subdistricts in Louisiana,

Defendants' contention that Louisiana has a substantial linkage interest is unpersuasive.[129]

336. The Fifth Circuit's decision in *Clements*, which addressed trial courts in Texas, is not to the contrary. *See Clark*, 777 F. Supp. at 485 (noted that "[t]here are differences between this litigation and the [*Clements*] litigation."). In *Clements*, the Fifth Circuit noted that the Texas Constitution "requires that judges be elected from districts no smaller than a county, absent a majority vote by the citizens of that county." 999 F.2d at 848 (citing Tex. Const. art. 5, §§ 7, 7(a)(i)). By contrast, Louisiana's Constitution does not mandate that district judges be elected at-large, but instead allows the Legislature, with the Governor's consent, to determine the method of election. *See* La. Const. art. V, § 22(A) ("Except as otherwise provided in this Section, all judges shall be elected."); *id.* art. XI, § 1 ("The legislature shall adopt an election code which shall provide . . . for the conduct of all elections."); *id.* art. III, § 18 (Governor's veto power over bills passed by the Legislature); Hargrave, *supra*, at 776 ("By its silence . . . , the constitution allows the legislature discretion to regulate the system of electing district judges."). Accordingly, Louisiana has created numerous subdistricts to elect district and other trial court judges. *See supra*.

337. Even assuming that Louisiana has a "substantial" linkage interest, "substantial proof of racial dilution" is sufficient to outweigh any such interest. *Clements*, 999 F.2d at 868. The two most important factors in determining whether proof of dilution outweighs a state's linkage interest are: (1) "the willingness of the racial or ethnic majority . . . to give their votes to minority candidates" and (2) "the ability of minority voters to elect candidates of their choice even when opposed by most voters from the majority." *Id.* at 876. Here, the Court concludes that there is

[129] This conclusion comports with *Martin v. Allain*, 658 F. Supp. 1183 (S.D. Miss. 1987), which challenged the use of multimember district to elect judges in Mississippi under Section 2. There, the court found that that the state's policy of electing judges in such districts was "tenuous." *Id.* at 1195-96. The court observed that Mississippi "has the policy of judges deciding cases which may originate outside their election districts." *Id.* at 1195. For example, "[j]ustice court judges are elected from districts but hear cases countywide." *Id.* Like Mississippi, Louisiana has created a structure under which trial court judges—including the 106 district judges elected from subdistricts—decide cases from outside of their electoral districts. *See supra*.

"substantial proof" of vote dilution that outweighs any linkage interest. *Id.* at 868.

338. As set forth in the above findings of fact, on average across seven elections, non-Black voters in Terrebonne consistently and overwhelmingly declined to support the Black candidates who were consistently and overwhelmingly supported by Black voters, with levels of non-Black voter support ranging from 1.1% to 13.7% and averaging 7.8%. *See supra*. As a result, in each election, the candidate of choice of Black voters was defeated regardless of whether the candidate ran: (a) as a Democrat, Republican, or otherwise; (b) for a judicial or non-judicial office; or (c) for a local, state, or federal office. The record thus demonstrates that white voters rarely are willing to "give their votes to minority candidates." *Clements*, 999 F.2d at 876.

339. Further, as set forth in the above findings of fact, no Black candidate, regardless of party affiliation, has been elected to the 32nd JDC or any other at-large elected office in Terrebonne in a parish-wide, contested election. The evidence thus shows that Black voters in Terrebonne are unable to elect their candidates of choice "when opposed by most voters from the majority." *Id.*

340. The facts of *Clements* are distinguishable. There, the Fifth Circuit found vote dilution in three Texas counties "marginal" and thus insufficient to outweigh Texas's linkage interest. *Id.* at 876-77. However, unlike in Terrebonne, in each of those counties, a substantial proportion of minority candidates were elected in contested elections. *See id.* at 881-84 (Black-preferred candidates prevailed in 17 of 45 (38%) contested elections analyzed in Harris County, and thus "Black voters could . . . repeatedly elect candidates of their choice"); *id.* at 889-90 (Hispanic-preferred candidates prevailed in 4 of 12 (33%) elections studied, demonstrating that "Hispanic voters are plainly a potent political force" in Bexar County); *id.* at 890-91 (Black-preferred candidates prevailed in 3 of 8 (38%) elections in Jefferson County, and thus proof of dilution was not "substantial"). As set forth above, no Black candidate who has faced opposition has been

elected to an at-large position in Terrebonne.

Proportionality

Relative to the Black Population in Terrebonne

341. The Supreme Court has held that proportionality is a relevant consideration in the totality of circumstances. *De Grandy*, 512 U.S. at 1000. However, Congress has expressly disclaimed the notion that Section 2 protects a right to proportional representation—*i.e.*, a "right to have members of a protected class elected in numbers equal to their proportion in the population." 52 U.S.C. § 10301(b). Rather, the right that is guaranteed under Section 2 is the right to have the equal "*opportunity* [as] other members of the electorate to participate in the political process and to elect representatives of [one's] choice." *Id.* (emphasis added). Accordingly, the Supreme Court has clarified that the concept of proportionality in a Section 2 case "links *the number of majority-minority voting districts* to minority members' share of the relevant population." *De Grandy*, 512 U.S. at 1014 n.11 (emphasis added); *see also id.* (this "concept is distinct from the subject of the proportional representation clause of § 2").

342. Defendants' contention that there is proportionality because of Judge Pickett is meritless. *First*, as set forth above, his election is of "limited relevance" because it involved "an uncontested race that occurred while this litigation was pending." *Clark*, 21 F.3d at 96. *Second*, proportionality focuses on "the number of majority-minority voting districts to minority members' share of the relevant population." *De Grandy*, 512 U.S. at 1014 n.11. There are *no* majority-Black subdistricts to elect any 32nd JDC judges.

Relative to the Number of Black Attorneys in Terrebonne

343. The Fifth Circuit has held that the number of minority lawyers eligible to run is a relevant consideration in the totality of circumstances. *Clements*, 999 F.2d at 865. However, the Fifth

Circuit did not hold that the proportion of minority lawyers to minority judges is dispositive of a Section 2 case. *See id.* at 865-66. Indeed, Section 2 does not protect a right to proportional representation, but instead ensures the "equality of opportunity [to elect] minority-preferred candidates *of whatever race*." *LULAC*, 548 U.S. at 428 (quoting *De Grandy*, 512 U.S. at 1014 n.11) (emphasis added). While "experience . . . demonstrate[s] that minority candidates will tend to be [the] candidates of choice among the minority community," quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. Of Educ.*, 4 F.3d 1103, 1126 (3d Cir. 1993), the Fifth Circuit has recognized that "[t]he minority candidate need not be the preferred candidate among minority voters." *E. Jefferson Coalition for Leadership & Dev.*, 926 F.2d at 493.

344. Unlike the Texas counties in *Clements*, Terrebonne is not a jurisdiction where "minority lawyers disproportionately [have] serve[d] as judges." 999 F.2d at 865. Prior to this case, no Black candidate had ever served on the 32nd JDC. Although Judge Pickett has since been elected, he ran unopposed after this case was filed, and the evidence does not show that he was the candidate of choice of Black voters. Given the special circumstances that mark his election, the Court rejects the suggestion that his presence on the 32nd JDC constitutes proportional representation. In addition, the Court finds that the complete absence of any Black judge on the 32nd JDC prior to this case is best explained by the stark patterns of RPV and the dilutive effect of at-large voting, in combination with enhancing factors, which discourage Black candidates from running for the 32nd JDC, rather than by the number of Black attorneys in Terrebonne.

Overall Conclusion on Discriminatory Effect

345. "[T]his is not that 'unusual case' in which the three *Gingles* preconditions are satisfied but the totality of circumstances fail[s] to show a § 2 violation." *Clark*, 88 F.3d at 1402. Plaintiffs have established Senate Factors 1, 2, 3, 5, 7, and 9. *See McMillan*, 748 F.2d at 1043-47 (finding a Section

2 violation based on Senate Factors 1, 2, 3, 5, 7, and 9). These include the most important Senate Factors: Senate Factors 2 (RPV) and Senate Factor 7 (lack of Black electoral success). *See Westwego Citizens for Better Gov't*, 946 F.2d at 1122; *Citizens for a Better Gretna*, 834 F.2d at 499; *McMillan*, 748 F.2d at 1043.[130] Considering the totality of circumstances, including the above Senate Factors, and based upon "a searching practical evaluation of the past and present reality and . . . a functional view of the political process," as well as "an intensely local appraisal of the design and impact of the contested electoral mechanisms," *Gingles*, 478 U.S. at 45, 79, the Court concludes that at-large voting for the 32nd JDC deprives Black voters of the equal opportunity to elect candidates of their choice, in violation of Section 2. 52 U.S.C. § 10301(b).

DISCRIMINATORY PURPOSE

346. "A plaintiff bringing a voting dilution case . . . may challenge such system on the grounds that it violates either the Fourteenth or Fifteenth Amendment." *Lodge*, 639 F.2d at 1372. "Cases charging that [at-large voting] unconstitutionally dilute[s] the voting strength of racial minorities are . . . subject to the standard of proof generally applicable to Equal Protection Clause cases." *Rogers*, 458 U.S. at 617. Thus, "a determination of discriminatory intent is 'a requisite to a finding of unconstitutional vote dilution' under the Fourteenth and Fifteenth Amendments." *Id.* at 621; *see also see also id.* at 617 (a voting practice "violate[s] the Fourteenth Amendment if 'conceived or operated as purposeful devices to further racial discrimination'"); *Jones*, 727 F.2d at 370 ("the

[130] Although there is no evidence of a candidate slating process (Senate Factor 4) or of overt racial campaign appeals (Senate Factor 6), the absence of these factors is of minimal relevance. *See McMillan*, 748 F.2d at 1045 ("The lack of [Senate Factors 4, 6, and 8] . . . does not lead this court to hold for the defendants.").

Senate Factor 8 may be less relevant in this case. *See Nipper v. Smith*, 39 F.3d 1494, 1534 (11th Cir. 1994) (en banc) (plurality opinion) ("Trial court judges . . . are neither elected to be responsive to their constituents nor expected to pursue an agenda on behalf of a particular group . . . . The factor calling for an evaluation of whether the elected officials are addressing the 'particularized needs of the members of the minority group' is, therefore, inappropriate in the judicial context."). Insofar as this factor is relevant, based on the foregoing findings of fact, the Court concludes that state and local officials, including 32nd JDC judges, have not been responsive to the Black community's advocacy since *Clark* for district-based voting, in which case this factor weighs in favor of a finding of vote dilution.

fifteenth amendment proscribes voting dilution, and . . . the dilution must be purposeful").

347. Section 2 also prohibits intentional discrimination in voting practices. *McMillan*, 748 F.2d at 1046 ("Congress intended that fulfilling either the . . . intent test or the results test would be sufficient to show a violation of section 2."). Proof of a constitutional violation "is sufficient" to establish intentional discrimination under Section 2. *Id.*

348. A state violates the Constitution and Section 2 if it *maintains* an at-large voting system with discriminatory purpose. *See Rogers*, 458 U.S. at 622-27 (affirming finding that "the at-large system . . . was being maintained for the invidious purpose of diluting the voting strength of the black population" in violation of the Constitution); *McMillan*, 748 F.2d at 1040-41 & nn.5-6, 1046 (affirming finding that "the at-large election system was maintained for a discriminatory purpose" where officials "refus[ed] to submit to voters a proposed referendum that would change the election system from at-large to [SMDs]" in violation of Section 2 and the Constitution).

349. While "[p]roof of racially discriminatory intent or purpose is required," *Arlington Heights*, 429 U.S. at 265, "[r]acial discrimination need only be one purpose, and not even a primary purpose, [to establish] a violation of the Fourteenth and the Fifteenth Amendments." *Velasquez v. City of Abilene,* 725 F.2d 1017, 1022 (5th Cir. 1984); *see also United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009) (same). Governmental bodies may have more than one motive in making a decision. *See Arlington Heights*, 429 U.S. at 265 ("Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the 'dominant' or 'primary' one."). It is sufficient to show that "a discriminatory purpose [was] a motivating factor" in the challenged decision. *Id.* at 265-66.

350. To prove discriminatory purpose, a plaintiff may rely upon direct or circumstantial evidence. *Rogers*, 458 U.S. at 618 (holding that "discriminatory intent need not be proved by direct

evidence"). Indeed, the "true purpose" behind an electoral scheme may be "cleverly cloaked in the guise of propriety," and "[t]he existence of a right to redress does not turn on the degree of subtlety with which a discriminatory plan is effectuated." *Lodge*, 639 F.2d at 1363; *see also Veasey*, 830 F.3d at 235-36 ("In this day and age we rarely have legislators announcing an intent to discriminate based upon race . . . . To require direct evidence of intent would essentially give legislatures free rein to racially discriminate . . . ."). In *Arlington Heights*, the Supreme Court identified five non-exhaustive factors that guide the circumstantial evidence inquiry. *See* 429 U.S. at 266-68. While disparate impact "is not the sole touchstone of an invidious racial discrimination," *id.* at 265, "[s]howing disproportionate impact, even if not overwhelming impact, suffices to establish *one* of the circumstances evidencing discriminatory intent." *N.C. State Conference of NAACP*, 831 F.3d at 231. Once the plaintiff shows that race was a motivating factor, "the burden [then] shifts to the law's defenders to demonstrate that the law would have been [maintained] without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).[131]

351. As set forth in the above findings of fact, having considered each of the *Arlington Heights* factors, the Court finds that discriminatory purpose has been a motivating factor in the maintenance of at-large voting for the 32nd JDC. Further, the evidence does not show that at-large voting would have been maintained in the absence of such intent. Accordingly, the Court concludes that at-large voting for the 32nd JDC has been maintained with a discriminatory purpose, in violation of the Fourteenth and Fifteenth Amendments and Section 2.[132]

[131] A court "cannot avoid ruling on [a] discriminatory claim [if] the remedy . . . for a discriminatory intent violation is potentially broader than the remedy . . . for the discriminatory impact violation." *Veasey*, 830 F.3d at 230 n.11. Here, pursuant to Section 3(c) of the VRA, Plaintiffs seek bail-in of Louisiana with respect to any voting changes related to the 32nd JDC. 52 U.S.C. § 10302(c); Doc. 1 at 22-23. Such relief is appropriate only if the Court finds a violation of the Fourteenth or Fifteenth Amendment. *Id.* Because a finding of discriminatory effect is insufficient to provide this remedy, the Court addresses Plaintiffs' claims of discriminatory intent.

[132] Defendants' motion for judgment on partial findings, deferred at trial, *see* Doc. 263 at 1; 3/17/17 at 115:8-116:7, is DENIED.

REMEDY

352. The questions of liability and remedy have been bifurcated in this case. Doc. 236 at 76. Having found a violation of Section 2 and the Fourteenth and Fifteenth Amendments, the Court will set a briefing schedule on the issue of remedies. An appropriate order will issue.

Respectfully submitted this 8th day of June, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Plaintiffs' Post-Trial Proposed Findings of Fact & Conclusions of Law* with this Court using the CM/ECF system, which provides notice of filing to all counsel of record.

Dated: June 8, 2017

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