



I. **Introduction**

- Good morning, your Honor.
- My name is Leah Aden of the NAACP Legal Defense and Educational Fund. I am here, along with my colleagues Victorien Wu, also of LDF; Michael de Leeuw, Alexander Selarnick, and William Lesser, of Cozen O'Connor; and Ronald Wilson, who will be here shortly and has practiced civil rights law in Louisiana for 41 years. We represent:
 - The Terrebonne Parish Branch NAACP,
 - And individual Black registered voters, Reverend Vincent Fusilier, Sr., Lionel Myers, Wendell Desmond Shelby, Jr., and Daniel Turner.
- Your Honor, this case raises fundamental legal questions about the equality of opportunity for Black residents in Terrebonne to participate in the democratic process generally, and the impact on Black voters in particular, because of the at-large method of electing judges to the 32nd District Judicial Court, a state court that has jurisdiction over Terrebonne Parish.
- At large voting in Terrebonne operates as a structural barrier that denies Black voters of an equal opportunity to elect their candidates of choice.



- This lawsuit is not a new fight. The Plaintiffs in this case and others before them have fought for nearly 30 years to have the right to elect candidates of their choice to the bench in Terrebonne Parish. They have repeatedly been turned away or unaided in this fight—by local officials and the Legislature, as well as the Governor and Attorney General, who are the Defendants.
- The evidence in this case will show,
 - *first*, the use of at-large voting for the 32nd JDC has the impermissible, discriminatory effect of diluting Black voting strength in violation of Section 2 of the Voting Rights Act of 1965,
 - and *second*, at-large voting, which has been the method of election for the 32nd JDC since 1968, has been maintained, in part, because of race, in contravention of Section 2 and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.
- Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution unequivocally bar Louisiana from enforcing its at-large method of electing judges to the 32nd JDC.



- At its core, as courts have recognized, “Section 2 of the VRA demands that racial discrimination not spread to the ballot box.” The evidence at trial will establish that this is precisely what has occurred in Terrebonne Parish.

II. Discriminatory Effects

- In 1982, a bipartisan United States Congress amended the Voting Rights Act to make it clear that under Section 2, a plaintiff need only show that a particular voting practice has a discriminatory result. 52 U.S.C. § 10301 (formerly 42 U.S.C. § 1973(a)). The bill was introduced by both Democrats and Republicans, and it was signed by President Reagan.
- The Supreme Court’s landmark decision in *Thornburg v. Gingles* in 1986 lays out the framework for analyzing such claims. As the Supreme Court explained, a plaintiff must first establish three preconditions:
 - *first*, minority voting-age residents are sufficiently numerous and geographically compact to constitute a majority of the voting-age population,
 - *second*, minority voters are cohesive, and



- *third*, the “majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.”
- Once these preconditions are established, a plaintiff must show that, under the totality of circumstances, minority voters “have less opportunity than other members of the electorate to . . . elect [candidates] of their choice.” 52 U.S.C. § 10301(b).
- Section 2’s results test requires this Court to conduct a searching inquiry into whether Black voters have an equal opportunity to participate in the political process under “the totality of the circumstances.”
- The Senate Report that accompanied the 1982 bipartisan amendments to Section 2 identified “typical factors” (the “Senate Factors”) that are relevant in this totality of circumstances analysis.
- Here, your Honor, an inquiry into these factors shows that the at-large method of electing judges to the 32nd JDC creates precisely the type of inequality in opportunity that Section 2 prohibits.
- Plaintiffs will prove by the preponderance of the evidence that they satisfy each of the three *Gingles* preconditions and show that under the totality of



circumstances, at-large voting for the 32nd JDC has the impermissible effect of diluting Black voting strength.

- With respect to the first *Gingles* prerequisite, Plaintiffs will demonstrate that Black voting-age residents in Terrebonne are sufficiently numerous and geographically compact to constitute a majority of the voting-age population in one of five single-member districts for electing a judge of the five-member 32nd JDC.
 - You will hear from Plaintiffs' expert demographer, Bill Cooper, that a majority-Black single-member district can be created in the five-member 32nd JDC.
 - An expert demographer for more than three decades, Mr. Cooper has prepared redistricting plans for approximately 700 state and local jurisdictions, including here in Louisiana.
 - Mr. Cooper will testify that Black voters already comprise a majority of voters in two out of the nine single-member districts for the Terrebonne Parish Council and the School Board. These are the districts in which members of the Terrebonne NAACP and Rev. Fusilier, Mr. Turner, Mr. Myers, and Mr. Shelby reside. Mr. Cooper will testify



that a single-member majority-Black district for the 32nd JDC can be created by combining those populations.

- Indeed, because two of nine single member districts have been functional voting districts for the Parish Council and School Board, which have had majority-Black single-member districts since the late 1970s, there is no doubt that it is “feasible” to create one majority-Black single-member district out of five for the 32nd JDC. *Clark v. Calhoun County*, 21 F.3d 92, 95 (5th Cir. 1994).
- With respect to the second and third *Gingles* prerequisites, Plaintiffs will demonstrate that Black voters in Terrebonne are politically cohesive and that white voters, as a majority, vote sufficiently as a bloc to defeat Black voters’ candidates of choice *in election after election*.
 - Dr. Richard Engstrom, a political scientist whose scholarly research the U.S. Supreme Court cited in *Gingles*, will testify that across seven biracial elections conducted parish-wide and at-large in Terrebonne between 1993 and 2014, Black voters gave an average of 87% of their support to the Black candidates that they preferred.



- Dr. Engstrom will testify that, in the same seven elections in which Black voters were politically cohesive, non-Black voters gave an average of only 8% of their support to the candidates of choice of Black voters.
- Your Honor, these statistics, which lie at the *heart* of a Voting Rights Act case like this one, will be essentially unrefuted by Defendants.
- You will hear from Dr. Engstrom that across the seven elections, racially polarized voting led to the defeat of the candidates of choice of Black voters, regardless of whether those candidates ran as Democrats, Republicans, or otherwise, or for judicial or non-judicial offices.
- In addition to satisfying each of the *Gingles* preconditions, Plaintiffs will prove that, under the totality of circumstances, at-large voting does not provide Black voters with the equal opportunity to elect their candidates of choice to the 32nd JDC.
- You will hear from Dr. Allan Lichtman, an expert historian who has worked on approximately 90 civil and voting rights cases and whose work has also



been cited by the U.S. Supreme Court. Dr. Lichtman’s testimony will illustrate that numerous Senate Factors demonstrate vote dilution, including:

- The long, intense, and persistent histories of *de jure* and *de facto* discrimination against Black voters that extends to the use of at-large voting for judges (this is Senate Factor 1);
 - The use of voting devices such as a majority-vote requirement and division posts, in conjunction with at-large voting, for the 32nd JDC enhances the likelihood of discrimination against Black voters (this is Senate Factor 3);
 - The impact of historical and ongoing racial discrimination in education, employment, health, and other areas of life that has resulted in stark socioeconomic disparities between Black and white residents in Terrebonne and, as a consequence, has depressed Black political participation (this is Senate Factor 5);
 - As a result of racially polarized voting (this is Senate Factor 2), *no* Black candidate, who has faced opposition, has been elected to the 32nd JDC or any other parish-wide office in Terrebonne (this is Senate Factor 7);
- and



- The justifications for maintaining at-large voting for the 32nd JDC are tenuous. (this is Senate Factor 9). *Gingles*, 478 U.S. at 36-37.
- Your Honor, the evidence in this case will demonstrate that, within the past decade alone, at-large voting enabled a sitting white judge to be reelected, *without opposition*, to a six-year term on the 32nd JDC, even after the Louisiana Supreme Court suspended him for wearing blackface, an orange prison jumpsuit, handcuffs, and an afro wig in an offensive parody of Black criminal defendants who appeared before him. *In re Ellender*, 889 So. 2d 225, 227-29, 234 (La. 2004).

III. Intent

- Plaintiffs also will show that since adopting at-large voting for the 32nd JDC in 1968, three years *after* the Voting Rights Act was enacted, Louisiana has maintained this system with a discriminatory purpose, in violation of Section 2 and the Fourteenth and Fifteenth Amendments.
- You will hear from Dr. Lichtman and Mr. Jerome Boykin, who has worked more than 20 years as president of the Terrebonne NAACP, about the advocacy that Black residents of Terrebonne have waged to obtain an equal electoral opportunity for the 32nd JDC.



- You will hear that for nearly 30 years—and in the face of six legislative proposals—in 1997, in 1998, in 1999, in 2001, and most recently in 2011—and other efforts to create a majority-Black subdistrict in Terrebonne—Louisiana has held onto this dilutive system.
- You will hear that Louisiana has done so, even as a Louisiana Supreme Court Task Force on Racial and Ethnic Fairness in the Courts, concluded *in 1996* that the creation of subdistricts is “the only feasible means of ensuring diversity and ethnic heterogeneity in [the state’s] judicial system” and eliminating “the perception, if not the reality, of bias in the court system.” Louisiana Task Force on Racial and Ethnic Fairness in the Courts, Final Report, vol. 1, p. 89 (1996).
- You will hear that Louisiana has clung to at-large voting for the 32nd JDC, even as majority-minority subdistricts were created throughout the state, in part because of Section 2 litigation like this.
- Today, majority-minority districts are used to elect judges of the 1st, 4th, 9th, 14th, 15th, 16th, 18th, 19th, 23rd, 24th, 27th, and 40th JDCs, and numerous other trial and appellate courts, including the Louisiana Supreme Court.



- Judicial districts that neighbor Terrebonne Parish like the 16th JDC (encompassing St. Mary, Iberia, and St. Martin parishes) and the 23rd JDC (encompassing Assumption, Ascension, and St. James parishes) have subdistricts that enable minority voters to elect their preferred judicial candidates. The 19th JDC, serving Baton Rouge, also uses subdistricts to elect its members.
- The Governor and Attorney General, unlike now, took leadership roles in the landmark litigation that led to the integration of the Louisiana Supreme Court and trial and appellate courts in Louisiana by, among other things, creating a task force to consider remedies for the dilution of Black voting strength in judicial elections.
- The Governor and Attorney General have failed to do so in this case, leaving no choice to Plaintiffs but to come to this Court to vindicate their fundamental right to vote.
- The Supreme Court recognized in *Reynolds v. Sims* that “the right of suffrage can be denied by [means of] dilution ... just as effectively as by wholly prohibiting the free exercise of the franchise.”



IV. Defendants' Arguments

- For their part, your Honor, Defendants will advance arguments that cannot overcome the strength of Plaintiffs' case demonstrating a violation of the Voting Rights Act and the Constitution.
 - *First*, in November 2014, *after* this case was filed, a Black assistant district attorney, Juan Pickett, ran without opposition for an open seat on the 32nd JDC.
 - As the Supreme Court and the Fifth Circuit have recognized, an election like this—one that is held during the pendency of litigation and features a minority candidate who runs unopposed—must be viewed with skepticism.
 - Indeed, you will hear that was the very first time in the history of Terrebonne Parish where not a single white lawyer competed for the open seat on the 32nd JDC. There are approximately 170 white lawyers who were eligible to run for the 32nd JDC, but not a single one chose to run in 2014.



- You will hear that, pursuant to state law, because he ran unopposed, Judge Pickett’s name did not even appear on the ballot in November 2014. So not a single voter—let *alone any Black voter*, including any of the Plaintiffs—had the opportunity to vote for or against him.
- Judge Pickett’s election simply does not demonstrate that Black voters have the equal opportunity to elect their preferred candidates in Terrebonne’s at-large system.
- *Second*, Defendants will argue that the purported lack of Black attorneys (and lack of Black candidacies) in Terrebonne shows no vote dilution. But the evidence will rebut this claim.
 - You will hear about the history and ongoing reality of racial discrimination in education, employment, and other areas of life that affect the number of Black attorneys in Terrebonne.
 - You will hear that the existence of racially polarized voting and the use of at-large voting discourages Black candidates from running for parishwide, at-large elected offices.



- And you will hear from Plaintiffs that the right that they seek to secure is *their* right to elect *their* candidates of choice—regardless of the candidates’ race—in *election after election*.
- *Finally*, Defendants will likely contend that Louisiana has an interest in linking the parish-wide jurisdiction of courts like the 32nd JDC with an at-large voting base. The evidence will not support this argument.
 - As I stated earlier, Louisiana has created numerous subdistricts to elect judges at all levels of its judiciary.
 - Your honor, there is no evidence that judges elected from those districts are less accountable, fair, or independent, or otherwise fail to serve Louisiana residents.

V. This Court’s Role

- To conclude, your Honor, federal courts play a vital role in protecting the right of every citizen “to participate equally in the political process.” *Gingles*, 478 U.S. at 80.
- As the evidence in this case will demonstrate, Louisiana’ at-large method of electing judges to the 32nd JDC dilutes the voting strength of Black voters and undermines their right to participate fully and equally in the political process.

Terrebonne Parish Branch NAACP, et al. v. Jindal, et al.

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- That is the precise evil the Voting Rights Act was designed to remedy; in fact, it is the reason that Section 2 of the Voting Rights Act and the U.S. Constitution exist.
- For this reason, as the evidence will show, the at large method of electing judges to the 32nd JDC should, indeed it must, be enjoined.
- Thank you, your Honor.