

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

TERREBONNE PARISH BRANCH NAACP, et al.,

Plaintiffs,

v.

JOHN BEL EDWARDS, the GOVERNOR of the
STATE OF LOUISIANA, in his official capacity, et
al.,

Defendants.

Civil Action. No. 3:14-cv-69-SSD-EWD

**PLAINTIFFS' RESPONSE TO DEFENDANTS' RESPECTIVE MEMORANDA
REGARDING SPECIAL MASTER'S REPORT AND RECOMMENDED REMEDY**

This Court, Plaintiffs, the Special Master, (previously) the Louisiana Legislature, and now, critically, the Defendant Governor of the State of Louisiana all agree that it is feasible to draw a majority-Black single-member district (“SMD”) to remedy the Voting Rights Act and Constitutional violations that this Court held exist.¹ In his two-page Response to Special Master’s Report and Recommended Remedy, Defendant Governor urges a remedy of a majority-Black SMD; but the Governor also asks that the remainder of the four seats on the five-member 32nd JDC continue to be elected at-large. *See generally* Doc. 399. The U.S. Supreme Court and Fifth Circuit, however, have expressed a preference for single-member remedial districts and held that maintaining remnants of the illegal at-large system in a remedial plan requires justification. Doc.

¹ This Court accepted Plaintiffs’ Illustrative Plan for liability purposes, further found that it could be an effective remedy, and Plaintiffs offered it for a proposed remedy. That plan contained a majority-Black SMD for the 32nd JD, as did Plaintiffs’ Alternative Plan, which they also offered as a proposed remedy. The Special Master proposed two remedial plans, both of which included a majority-Black SMD for the 32nd JDC. And, as this Court recognized, following the 2010 Census, a bill passed out of committee in the Louisiana Legislature that included a majority-Black SMD (House Bill 582 of 2011). *See* 410 at 5 (citing Doc. 289 at 87). Moreover, after the 1990 and 2000 Censuses, pending before the Louisiana Legislature were other bills (e.g., Senate Bill 1052 of 1999, SB 958 of 2001, and HB 1723 of 2001), that included a majority-Black SMD for the 32nd JDC that this Court also recognized. *Id.* (citing Doc. 289 at 81-83).

410 at 9-10 (plaintiffs providing a mountain of cites to earlier pleadings calling the Court and the parties' attention to this precedent). Defendant Governor has provided no such justification and this Court is required to justify such a proposed hybrid remedy.²

Defendant Attorney General is the only actor in this lawsuit who continues to claim that it is “impossible” to draw a majority-Black SMD without violating traditional redistricting principles and without race being the predominant consideration driving the development of such a district. *See, e.g.*, Doc. 409 at 1. This directly conflicts with this Court's findings, the Governor of Louisiana, the Special Master's analysis,³ Plaintiffs' experts, and the Louisiana Legislature, which, as noted, developed a majority-Black SMD for the 32nd JDC on multiple occasions. To be clear, the Special Master Plan 2 is not a so-called racial gerrymander; but, importantly, even if it were, Defendant Attorney General concedes, as he must, that even a purported racial gerrymander can survive constitutional scrutiny if it was drawn to comply with Section 2, which can be a compelling state interest. *Id.* at 3.

Defendant Attorney General also continues to rely upon his expert, Mr. Hefner—whose opinions this Court *rejected* after trial—to support the contention that it is “impossible” to draw a legal majority-Black SMD. But Mr. Hefner continues to make a number of baseless claims that must be rejected during this remedial phase including that:

- “citizenship voting age population (“CVAP”) data should not be used as a criteria for a remedy plan or its evaluation,” Doc. 409-3 at 3;
- “the multi-decade trend of decentralization of the minority population in Terrebonne

² For similar reasons, the opinion of Dr. Weber, an expert for Defendant Attorney General, who contends that Special Master Plan 2 “baffles” him and is not “narrowly tailored” because it contains five SMDs should be rejected in light of Supreme Court and Fifth Circuit precedent. Doc. 409-1 at 5-6.

³ Under any standard of review of the Special Master's findings of fact, it is clear that Special Master Plan 2 complies with this Court's Ruling, the VRA, and the U.S. Constitution. *Cf.* Doc. 409 at 2 *with* Doc. 385 at 4.

- ... requires the drawing of a bizarre and awkward district to connect the scattered remaining neighborhoods of majority Black residents across the Parish,” *id.* at 3; *see also id.* at 4-9;
- the proposed five SMDs under Special Master Plan 2 will become misaligned with the precincts for the Terrebonne Parish Council and School Board over time because those bodies will “create[e] new precincts, chang[e] boundaries, and chang[e] precinct designations” after 2020 with the next decennial redistricting and Louisiana is not required to redistrict judicial bodies, *id.* at 9;
 - the Special Master (like Plaintiffs) should not rely on the Parish Council and School Board districts as benchmark plans upon which to consider and develop remedial (or liability) plans in this case, including because of the “significant difficulties maintaining the two majority Black districts” within each of those nine-SMD plans, *id.* at 10; *see also id.* at 13-26;
 - the Special Master’s plans “carve[] up” communities of interest, or related to the above point, erroneously rely upon the communities already combined under the Parish Council and School Board Plans, *id.*; and,
 - “[i]mplementation of a single-member district plan will do little to broaden the area within the Parish from which a judge is elected,” *id.* at 28.

Mr. Hefner’s opinions should be rejected because this Court has already rejected most, if not all of these contentions. *See, e.g.*, Doc. 289 at 17, 21-26 (specifically addressing the “parties’ disagreements about whether the black population [in Terrebonne] is compact” and finding that it is; *id.* at 26 (this Court specifically rejecting testimony from “Defendants’ experts ... that Terrebonne’s population is diversifying and that black residents are too spread out to create a

majority-black [SMD]”); *id.* at 30 (this Court disagreeing with defense experts on their issues with split precincts and recognizing that Terrebonne’s precinct “boundaries, while they should be adhered to if possible, are not set in stone”); *see also id.* at 30-31 n.171; *id.* at 29 (this Court specifically rejecting Mr. Hefner’s opinion on communities of interest and finding that “there are numerous districts” in “[c]urrent electoral districts (Parish Council District 2, School Board District 2, House District 51, Senate District 21)” that “combine” the same areas included in every proposed plan before this Court).

Moreover, Mr. Hefner’s arguments also are baseless for the following reasons:

- CVAP is commonly used in remedial redistricting to assess effectiveness, *see, e.g., Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 708, 729 (S.D. Tex. 2017); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1391, 1405, 1412 (E.D. Wash. 2014);
- To be sufficiently numerous and geographically compact, Section 2 does not require Black people to live in the most hyper racially-segregated areas of a jurisdiction; that is, even if Black people may have achieved some residential integration, that does not change, as this Court recognized, that a sufficiently large and geographically compact Black community resides in concentrated areas of the Parish, areas of which are included in the Special Master’s Plan 2--indeed, as noted above, these are similar areas included in every map before this Court (*i.e.*, state legislative districts like House District 51 under Louisiana’s 2011 plan, Parish Council and School Board districts 1 and 2, the Illustrative Plan, the Alternative Plan, and the Special Master’s Plan 1);
- Plaintiffs should not be denied relief because Louisiana fails to engage in decennial judicial redistricting and, thus, precincts for judicial bodies become misaligned with precincts for other Louisiana bodies. As Plaintiffs’ expert, Bill Cooper, whose

testimony this Court accepted after trial, has repeatedly made clear, Louisiana can correct this misalignment after 2020 redistricting. *See, e.g.*, Doc. 284 at ¶¶50-53;⁴

- Plaintiffs also should not be denied relief because of Mr. Hefner’s unsubstantiated issues with the plans for the Parish Council and School Board. These plans have never been adjudicated to be illegal. Moreover, if there is any problem with them, that is for Louisiana officials to correct. Moreover, this Court heard Mr. Cooper’s testimony at trial and Defendants had the opportunity then to contest that Mr. Cooper has been able to draw apportioned, majority-minority SMDs for both the Parish Council and School Board. *See* Day 2, Trial Tr. at 152:20-153:9 (Mr. Cooper testifying that more compact districts that comply with one person one vote can be drawn for the Parish Council and School Board); *see also* Day 8, Trial Tr. at 279:18-280:7 (Mr. Cooper testifying that “there was no reason to under populate [the majority-minority districts in the Parish Council and School Board districts post-2010]. Two districts could have been drawn that were more compact with deviations that were just under [O]ne was like minus 2 percent and the other was minus 4 percent”);
- Relatedly, it is commonplace for demographers to rely upon maps already in use as benchmarks for developing new maps. Here, thus, it is appropriate for the Special Master (and before then Mr. Cooper) to look to the Parish Council and School Board

⁴ Indeed, Plaintiffs primarily offered the Alternative Plan that includes whole precincts, like the Special Master’s Plan 2, because of Defendants repeated complaints about the number of split precincts included in the Illustrative Plan, complaints that this Court ultimately rejected after trial. Doc. 289 at 30-31.

Moreover, assuming Louisiana fails to resolve any alignment issues post-2020, there would be only one election during the next decade—in 2026. Louisiana, therefore, would have another opportunity to align precincts post-2030 before the next election in 2032. Ultimately, however, as the trial records make clear, Louisiana, generally, and Terrebonne, specifically, are accustomed to administering judicial and other elections under plans with split precincts. *Id.* at 30-31; Doc. 284 at ¶¶ 48-50 (citing an Attorney General Opinion on a mechanism used to address split precincts and including testimony from Terrebonne’s former Voter Registrar for 25 1/2 years that Terrebonne has administered elections for taxing districts, justice of the peace, constables, and some school board offices under split precincts).

districts—which contain nine SMDs and two majority-Black SMDs within them—to ascertain the communities that already have been brought together by Louisiana officials in election after election since the 1970s to provide Black voters with electoral opportunity, and to develop a new majority-Black SMD for the five-member 32nd JDC.⁵

- By Mr. Hefner’s own admissions, at present, the current judges all live in close proximity to each other in Houma and thus fail to bring geographical diversity to the 32nd JDC, because they do not all live in diverse areas of the Parish, . Special Master Plan 2, however, provides Black voters with their statutory right to elect their candidates of choice to the 32nd JDC in election after election from proposed District 1. Nothing about the Special Master’s Plan 2 stops any lawyer from any part of the Parish from running for any of the seats (A-E), including the soon-to-be vacant seats A and B. Thus, the recommended plan’s implementation has the opportunity to bring not just racial diversity to the 32nd JDC, but also geographic diversity—and, perhaps, gender diversity—to a state court that was all white and all male from 1968 to 2014, and which remains all male through the present.⁶

⁵ As this Court recognized, SMDs for the Parish Council and School Board were developed in response to Section 2 litigation, similar to the present case, in the late 1970s. Doc. 289 at 16. Similar areas are brought together in House District 51, as also recognized by this Court and noted previously by Plaintiffs.

Further, even though Plaintiffs continue to disagree with the Special Master’s finding, in contravention of this Court’s findings, that District 3 in the Illustrative Plan is not a community of interest, Plaintiffs remind this Court that it is only one district out of five where the Special Master has made this finding; he did not, however, find that the entire Illustrative map fails to respect communities of interest including in proposed District 1, the majority-Black SMD.

⁶ For similar reasons, the opinion of Dr. Weber should be rejected. *See generally* Doc. 398-3. This Court rejected his testimony after trial. Moreover, aspects of Dr. Weber’s opinion continue to illuminate what this Court recognized after trial: Black voters in Terrebonne continue to encounter disparities in registration and turnout as compared to the white population, which Plaintiffs contend is a continuing legacy of discrimination in voting, education, and other areas of life in Terrebonne, specifically, and Louisiana, generally. *Cf.* Doc. 409-1 at 3-4 *with* Doc. 289 at 59-60. However, this Court considered those turnout disparities and still found that an effective remedy was possible and that a remedy also may prompt participation in Terrebonne elections. Doc.

This Court has broad, equitable powers to remedy the violations of Plaintiffs' voting rights. *See, e.g.*, Doc. 319 at 2-3, 6-8. For these reasons, and those explained in Plaintiffs' Corrected Memorandum Regarding the Special Master's Report and Recommended Remedy, we urge this Court to accept the Special Master's recommended Plan 2.

Respectfully submitted this 4th day of June, 2019.

/s/ Ronald L. Wilson

Ronald L. Wilson (LSBN 13575)
701 Poydras Street, Ste. 4100
New Orleans, LA 70139
T: (504) 525-4361 / F: (504) 525-4380
cabral2@aol.com

Michael de Leeuw*, Cozen O'Connor
William Lesser*
45 Broadway, 16th Floor
New York, NY 10006
T: (212) 908-1131 / F: (646) 461-2042
MdeLeeuw@cozen.com

/s/ Leah C. Aden

Leah C. Aden*, **, NAACP LDF
40 Rector Street, 5th Floor
New York, NY 10006
T: (212) 965-2200 / F: (212) 226-7592
laden@naacpldf.org

Micheale N. Turnage Young*, NAACP LDF
700 14th Street NW, Suite 600
Washington, D.C. 20005
T: (202) 216-5567 / F: (202) 682-1312
mturnageyoung@naacpldf.org

*PRO HAC VICE / **TRIAL ATTORNEY

Counsel for Plaintiffs

289 at 33-34 & n.187; *see also* Doc. 410 at 4 n.2.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Plaintiffs' Response to Defendants' Respective Memoranda Regarding Special Master's Report and Recommended Remedy* with this Court using the CM/ECF system, which provides notice of filing to all counsel of record.

Dated: June 4, 2019

/s/ Leah C. Aden
LEAH C. ADEN
NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
(212) 229-7592 (fax)