

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

TERREBONNE PARISH 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-SCR

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION TO
EXCLUDE TESTIMONY OF MICHAEL BEYCHOK**

Plaintiffs, Terrebonne Parish Branch NAACP, Reverend Vincent Fusilier, Sr., Lionel Myers, Wendell Desmond Shelby, Jr., and Daniel Turner (collectively, “Plaintiffs”), respectfully submit this Memorandum of Law in Support of their Motion to Exclude the Testimony of Michael Beychok (“Beychok”).

INTRODUCTION

Plaintiffs contend that Defendants’¹ use of at-large voting for the 32nd Judicial District Court (“32nd JDC”), which is coterminous with Terrebonne Parish (“Terrebonne”), has operated as a wall of exclusion, denying Plaintiffs of their right to elect their preferred candidates for the 32nd JDC in violation of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301 (“Section 2”), and the voting guarantees of the Fourteenth and Fifteenth Amendments of the U.S. Constitution (“Fourteenth and Fifteenth Amendments”). Doc. 1 at 1.

¹ Defendants are Piyush (“Bobby”) Jindal, the Governor of the State of Louisiana, in his official capacity, and James D. (“Buddy”) Caldwell, the Attorney General of the State of Louisiana, in his official capacity. Plaintiffs also filed suit against Tom Schedler, the Secretary of State, in his official capacity, but subsequently voluntarily dismissed him as a defendant in this action. Doc. 69.

Defendants have retained Beychok, a political consultant, to: (a) examine the political campaigns of the candidates that ran for office in six at-large elections in Terrebonne that other experts in this case have studied; and (b) offer his opinion that Black candidates lost in five of the contested at-large elections for reasons other than race.² *See generally* Ex. 1 (Beychok Report).

Beychok's opinion is inadmissible because it reflects a result-driven and flawed methodology. Specifically, the record demonstrates that: (1) Beychok had a preconceived theory that three factors ("money, time, and people") are more important than race in elections; (2) in accordance with that theory, Beychok refused to analyze race as a factor in the five contested elections that he examined, despite overwhelming and undisputed evidence that race drove voting behavior; and (3) in spite of his decision *not* to analyze race, Beychok insists that it did not play a significant role in the elections that he reviewed. This result-oriented analytical framework fails to meet the precondition of reliability under the Federal Rules of Evidence ("FRE"). Moreover, even assuming that Beychok's chosen methodology is reliable, he applies it inconsistently, thus defying the basic requirement that an expert witness must "reliably appl[y] the principles and methods to the facts of the case." Fed. R. Evid. 702(d). Accordingly, pursuant to FRE 702, Beychok's testimony should be excluded.

BACKGROUND

Beychok is a political consultant who has testified as an expert witness in only one other Section 2 case. *See* Ex. 1 at 1 (Beychok Report); Ex. 2 at 9:4-19; 10:7-16; 11:17-12:5; 12:22-13:1 (Beychok Dep.). He was retained by Defendants in this case to analyze the campaigns of

² *See Teague v. Attala Cnty., Miss.*, 92 F.3d 283, 290 (5th Cir. 1996) (holding that a plaintiff's proof of the three preconditions of a Section 2 vote-dilution claim under *Thornburg v. Gingles*, 478 U.S. 30 (1986), is sufficient to create an inference of racial bias in the electoral system, and that it is the defendant's burden, if it so chooses, to attempt to rebut this showing with evidence that "factors other than race" explain the electoral outcomes).

candidates running in six at-large elections in Terrebonne that Plaintiffs' expert, Dr. Richard L. Engstrom ("Dr. Engstrom"), and Defendants' expert, Dr. Ronald E. Weber ("Dr. Weber"), have studied. *See also* Ex. 2 at 86:8-19; 87:2-20; 251:9-15 (Beychok Dep.). Specifically, Beychok examined the campaigns for the: (1) 2014 Houma City Court election; (2) 2014 32nd JDC election; (3) 2014 City Marshal election; (4) 2011 Tax Assessor election; (5) 1994 32nd JDC election; and (6) 1993 First Circuit Court of Appeal election. Ex. 1 at 3-20 (Beychok Report); *see also* Ex. 2 at 87:2-20 (Beychok Dep.). Beychok was asked to opine on why Black candidates lost in the five elections that were contested. *See* Ex. 1 at 1 (Beychok Report); Ex. 2 at 86:8-87:1 (Beychok Dep.).

According to Beychok, numerous factors—including name recognition, Ex. 2. at 262:13-263:3 (Beychok Dep.), and scandals, *id.* at 199:6-23—can influence the outcome of an election. *Id.* at 68:3-7; 69:17-70:1; 197:6-11. In fact, Beychok testified that "there are so many factors" that it may be impossible to explain electoral outcomes. *Id.* at 151:16-152:2 ("I mean, I don't know that that's even [possible] - - you know, why does someone win? Why does someone lose? *I think you can talk about it generally*, but there are so many factors.") (emphasis added).

One factor that Beychok acknowledges is relevant in Terrebonne elections is race. Ex. 1 at 6, 20 (Beychok Report); *see also* Ex. 2 at 68:3-70:5 (Beychok Dep.) (Q: I am not asking if it's the sole factor. I'm asking if it's a factor, and you have agreed that it is? A. Yes."); *id.* at 123:6-16 (acknowledging that race "certainly is a factor"); *id.* at 125:1-126:1 (disclaiming that he "ruled [race] out"); *id.* at 198:14-22 ("I don't think that I opined that race was not a factor"). Indeed, in Beychok's own experience as a political consultant, he has seen race as a factor in political campaigns and elections. Ex. 2 at 68:3-70:5 (Beychok Dep.) (acknowledging that race is a factor in contests where white candidates defeat Black candidates); *id.* at 77:17-79:6

(acknowledging that race is “one of many demographics that [he] consider[s]” in advising Black candidates); *id.* at 79:7-15 (conceding that he has advised white candidates about race as a factor); *id.* at 129:12-131:2 (stating that, in taking the “inventory” of a candidate’s resources, he assesses the “different levels of support [that the candidate] has among different racial groups in the communities”).³

Before preparing his analysis in this case, Beychok reviewed the report of Plaintiffs’ expert, Dr. Engstrom, who analyzed racially polarized voting (“RPV”) in Terrebonne elections. *See id.* at 96:14-17 (testifying that he reviewed Dr. Engstrom’s report to “familiarize [himself] with what elections [Dr. Engstrom] had analyzed”); *id.* at 251:9-15 (“I wanted to make sure that I was speaking to the cases that other experts were examining”). However, Beychok is not a political scientist, statistician, or demographer. *Id.* at 92:17-93:5; 133:3-17. Accordingly, he conceded that he lacks the expertise to challenge the findings of Dr. Engstrom or Dr. Weber, which, he acknowledged, were similar to one another. *See, e.g., id.* at 96:18-97:9 (“I have no standing to dispute the findings”); *see also, e.g., id.* at 159:16-160:5. Thus, Beychok cannot and does not take issue with Dr. Engstrom’s determination that the five contested elections that Beychok studied are characterized by RPV, *i.e.*, Black voters, who are the minority, voted as a bloc for their preferred candidates, and white voters, who are the majority, voted as a block against those candidates, such that Black voters’ preferred candidates lost in the examined at-large elections. *Id.* at 92:5-18; 92:22-93:5; 94:4-6; 96:2-97:9; 200:2-25.

³ Beychok testified to consulting for the campaigns of approximately 18 Black candidates in Louisiana since 1990, only one of whom he could identify as having run in a majority-white district like the at-large majority-white voting district at issue in this case. Ex. 2 at 41:13-19 (Beychok Dep.); *id.* at 46:2-47:12; 49:10-56:22. Moreover, Beychok testified to working for approximately nine white candidates, all of whom, except for one, defeated Black candidates in majority-white districts like the at-large majority-white voting district at issue in this case. *Id.* at 54:8-11; 55:12-17; 61:23-64:2; 65:4-66:7; 66:18-68:2.

Despite his acknowledgment that race “certainly is a factor,” *id.* at 123:6-16, and his inability to dispute the finding that voting in each of the five contested elections in Terrebonne was racially polarized, *see id.* at 92:5-18; 92:22-93:5; 94:4-6; 96:2-97:9, Beychok chose *not* to analyze the role of race in those elections. *See, e.g., id.* at 194:22-25 (testifying that, in the context of the 2014 election for City Marshal, he did not consider race “as a specific” factor). Indeed, when asked *how* he considered race, Beychok stated that all he did was identify the race of each candidate in the elections. *Id.* at 123:17-124:1. This testimony was underscored by the fact that counsel for Defendants repeatedly emphasized Beychok’s decision not to analyze race as a factor. *Id.* at 71:11-15 (“[H]is report specifically talks about other factors besides race. That’s the whole reason why he is being called as an expert.”); *id.* at 77:10-13 (“He has not talked about race as a factor.”).

Instead of considering the role of race in the elections, Beychok determined that he would focus his analysis on three other factors: (1) the amount of money that the campaign raised and spent; (2) the amount of time that the campaign spent communicating with voters; and (3) the extent to which the campaign recruited volunteers. Ex. 1 at 1-2, 20 (Beychok Report); *see also* Ex. 2 at 123:6-16 (Beychok Dep.) (identifying “money, time, and people” as the “most important factors”).⁴ Significantly, however, Beychok acknowledged that “[t]here are [elections] where other factors are more important than time, money, and people.” Ex. 2 at 199:6-23 (Beychok

⁴ Further, Beychok did *not*: (a) observe firsthand *any* of the six campaigns; (b) speak with any candidates in any of the five contested elections; (c) speak with any campaign volunteers; (d) poll or speak to any Terrebonne voters to “gauge their opinions” as he typically does as a political consultant; or (e) compile a list of endorsements for any of the candidates in the six campaigns. Ex. 1 at 2 (Beychok Report); *see also* Ex. 2 at 117:12-17; 139:21-140:22; 144:12-14; 146:23-147:14; 175:19-23; 176:3-5; 187:20-188:12; 190:6-9; 208:20-209:14; 209:23-210:2; 222:11-223:17; 235:9-236:12 (Beychok Dep.).

Instead, Beychok prepared his report primarily based on a review of documents, namely: (a) campaign finance records and reports; (b) certain expert reports in this case; (c) certain depositions in this case; and (d) election results for the elections at issue and other data from the website of the Louisiana Secretary of State. Ex. 1 at 2 (Beychok Rep.); Ex. 2 at 86:20-87:1; 88:7-90:1; 90:24-92:10; 96:8-17; 99:24-100:11; 140:23-141:1; 177:19-25; 188:13-189:12; 209:15-19; 223:4-9; 236:1-5; 260:8-12 (Beychok Dep.).

Dep.); *see also id.* at 194:3-8 (in attempting to explain why David Mosely (“Mr. Mosely”), a Black candidate came in third place in the 2014 City Marshal election, nearly making the runoff, Beychok conceded “we have factors other than you know, money and time”).

Even though he did not evaluate the role of race, Beychok ultimately opines that race was *not* a significant factor in the contested elections that he examined. *See, e.g., id.* at 123:17-124:1 (opining with respect to the 2014 Houma City Court election, that “it’s too simple of an explanation to merely attribute a loss due to voting on suggested racial lines”); *id.* at 124:8-18 (stating that, “in [his] opinion, [race was] not the biggest factor contributing to the outcome of the [2014 Houma City Court] election”); *id.* at 155:10-23 (opining that “race was not as important of a factor” in the 2014 Houma City Court election); *id.* at 191:4-12 (attributing the loss of Mr. Mosely, the Black candidate, in the 2014 election for City Marshal, to purportedly non-racial factors); *id.* at 211:18-212:9 (attributing the loss of Mr. Clarence Williams (“Mr. Williams”), the Black candidate, in the 2011 election for Tax Assessor, to purportedly non-racial factors); *id.* at 224:5-12 (attributing the loss of Mr. Anthony Lewis (“Mr. Lewis”), the Black candidate, in the 1993 election for the First Circuit Court of Appeal, to purportedly non-racial factors); *id.* at 236:25-237:6 (attributing the loss of Mr. Lewis, the Black candidate, in the 1994 election for the 32nd JDC, to purportedly non-racial factors).⁵

LEGAL STANDARD

The admission of expert testimony is governed by FRE 702 and the Supreme Court’s decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). FRE 702

⁵ Beychok implicitly conceded that race is a factor that affects the amount of money that candidates can raise—one of the three factors that he considers most important to election outcomes. *See* Ex. 2 at 111:18-22 (Beychok Dep.) (conceding that “it’s easier for [B]lack candidates in majority [B]lack districts to raise money than in majority white districts”). Moreover, he acknowledged that the amount of money a candidate raises can in turn affect the amount of time a candidate can have to campaign, the timing of her entry into the race, and the number of volunteers that she can have. *Id.* at 119:3-120:4. Thus, Beychok acknowledged that race can directly or indirectly affect all three factors that he chose to focus on. Yet, Beychok chose not to analyze *why* Black candidates raised the amount of money that they respectively did. *See, e.g., id.* at 216:5-9.

establishes that expert testimony is admissible only if: (1) the testimony will help the finder of fact understand the evidence or determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; *and* (d) the principles and methods have been reliably applied to the facts of the case. Fed. R. Evid. 702. “In short, expert testimony is admissible only if it is both relevant and reliable.” *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir. 2002). The proponent of expert testimony bears the burden of establishing the admissibility of the testimony. *See Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998) (en banc). The “gatekeeping obligation” that a district court has under FRE 702 “applies to all expert testimony,” not just scientific testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999).

ARGUMENT

A. Beychok’s Testimony Is Inadmissible Because His Methodology Is Unreliable.

Beychok’s testimony should be excluded because his methodology is unreliable, and FRE 702 requires that expert testimony be “the product of reliable principles and methods.” Fed. R. Evid. 702(c). Courts in the Fifth Circuit have long cautioned that expert testimony that simply reflects “a preconceived theory” does not satisfy this reliability requirement. *Viterbo v. Dow Chem. Co.*, 646 F. Supp. 1420, 1424 (E.D. Tex. 1986), *aff’d*, 826 F.2d 420 (5th Cir. 1987); *see also Munoz v. Orr*, 200 F.3d 291, 301 (5th Cir. 2000) (district court properly excluded testimony of expert who “began his analysis” by “assum[ing]” his conclusion); *Castellow v. Chevron USA*, 97 F. Supp. 2d 780, 797-98 (S.D. Tex. 2000) (excluding expert testimony where the expert used a “result driven methodology,” and the analysis “was devised to support a [particular] opinion”).⁶

⁶ *See also Perry v. United States*, 755 F.2d 888, 892 (11th Cir.1985) (“A scientist who has a formed opinion as to the answer he is going to find before he even begins his research may be less objective than he needs to be in

Beychok's methodology suffers from this very flaw. Beychok acknowledged that a plethora of factors can influence election outcomes. Ex. 2 at 68:3-7; 69:17-70:1; 151:16-152:2; 197:6-11 (Beychok Dep.); *see also id.* at 199:6-23 (scandals); *id.* at 262:13-263:3 (name recognition). In particular, Beychok conceded that race "certainly is a factor" in Terrebonne elections. *Id.* at 123:6-16 (Beychok Dep.); *see also id.* at 69:17-70:5; 125:1-126:1; 198:14-22; Ex. 1 at 6, 20 (Beychok Report). This acknowledgment is consistent with Beychok's own experience as a political consultant, having seen race as a factor in political campaigns and elections. *See id.* at 68:3-70:5; 77:17-79:15; 129:12-131:2.

Moreover, before preparing his report, Beychok reviewed the RPV analysis of Plaintiffs' expert, Dr. Engstrom. *See id.* at 96:14-17, 251:9-15. Consistent with the fact that Beychok is not a political scientist, statistician, or demographer, *id.* at 92:17-93:5, 133:3-17, Beychok conceded that he has no basis to dispute any of Dr. Engstrom's findings, including that the five contested elections that Beychok examined are characterized by RPV. *Id.* at 96:18-97:9; *see also, e.g., id.* at 159:16-160:5. For example, with respect to the 2014 Houma City Court election, Beychok does not dispute that approximately 85 percent of Black voters supported Cheryl Carter ("Ms. Carter"), the only Black candidate in the all-Republican field; only about 6 percent of non-Black voters supported her; and she was defeated by two white candidates in that at-large election. *Id.* at 138:9-23; 139:15-17; 159:16-160:11.

However, while Beychok acknowledges that race "certainly is a factor," *id.* at 123:6-16, and that voting in each of the five contested elections was racially polarized, *see id.* at 92:5-18; 92:22-93:5; 94:4-6; 96:2-97:9; Beychok specifically chose *not* to analyze race as a factor in those

order to produce reliable scientific results."); *see also Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 502-03 (9th Cir. 1994) ("Coming to a firm conclusion first and then doing research to support it is the antithesis of [the scientific] method.").

elections. *See, e.g., id.* at 194:22-25; *see also id.* at 123:17-134:1.⁷ Instead, Beychok determined that his analysis would focus on three factors that he considered the most important: (1) the amount of money that the campaign raised and spent; (2) the amount of time that the campaign spent communicating with voters; and (3) the extent to which the campaign recruited volunteers. Ex. 1 at 1-2, 20 (Beychok Report); *see also* Ex. 2 at 123:6-16 (Beychok Dep.) (identifying “money, time, and people” as the “most important factors”). Ultimately, despite not having specifically analyzed the impact of race, Beychok maintains that race was *not* a significant factor in the contested elections that he examined. *See, e.g.,* Ex. 2 at 124:8-18 (Beychok Dep.).

Beychok’s failure to determine whether and to what extent race, in and of itself, affected the elections renders his opinion entirely unreliable. Indeed, “[a]n expert’s failure to consider . . . other explanatory variables is fatal to the reliability of his testimony.” *Flores v. Allstate Tex. Lloyd’s Co.*, 229 F. Supp. 2d 697, 703 (S.D. Tex. 2002); *see also* *Munoz*, 200 F.3d at 301 (expert opinion was unreliable because the expert “admitted to failing to consider other variables” for the phenomenon); *see also* *Cooper v. Smith & Nephew, Inc.*, 259 F.3d 194, 202-03 (4th Cir. 2001) (expert opinion was unreliable because he “did not identify specifically how he ruled out . . . other potential causes”). As detailed above, Beychok acknowledged that (1) race *is* a factor in Terrebonne elections, Ex. 2 at 123:6-16 (Beychok Dep.), and (2) “[t]here are [elections] where other factors are more important than time, money, and people.” *Id.* at 199:6-23; *see also id.* at 194:3-8. Under these circumstances, and given Beychok’s failure to examine race specifically, it is clear that his opinion that race was *not* a significant factor constitutes “unsupported

⁷ When asked *how* he considered race, Beychok stated that he identified the race of each candidate in the examined electoral campaigns. Ex. 2 at 123:17-124:1 (Beychok Dep.).

During the course of Beychok’s deposition, counsel for Defendants repeatedly underscored Beychok’s decision not to analyze race as a factor. *Id.* at 71:11-15 (“[H]is report specifically talks about other factors besides race. That’s the whole reason why he is being called as an expert.”); *id.* at 77:10-13 (“He has not talked about race as a factor.”).

speculation.” *Daubert*, 509 U.S. at 590. “[T]here is simply too great an analytical gap” between Beychok’s analysis and his ultimate conclusion. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

Perhaps more problematically, the analytical framework that Beychok uses “assum[es]” his conclusion—that race is not a significant factor. *See Munoz*, 200 F.3d at 301 (expert opinion was unreliable because he “began his analysis” by “assum[ing]” his conclusion). Even though the record is “replete with evidence” that race is a factor in Terrebonne elections, Beychok chose not to consider it. *Cooper*, 259 F.3d at 202. It is clear that his analysis “was devised to support a [particular] opinion” and that it reflects a “result driven methodology.” *Castellow*, 97 F. Supp. 2d at 797-98. The law is well settled that this is not an appropriate basis for an expert opinion. *See Viterbo*, 826 F.2d at 424 (district court properly excluded the testimony of an expert who “admitted that [the] symptoms could have numerous causes and . . . simply pick[ed] the cause that [was] most advantageous to [the party’s] claim”).

Beychok attempts to justify his focus on his three factors—and his premise (and conclusion) that race is not an important factor—based on his personal experience that “money, time, and people” are generally the most important factors in an election. *See* Ex. 2 at 123:6-16 (Beychok Dep.); *id.* at 199:6-23. However, Beychok offers *no* evidence and nothing other than his experience as support for his theory. Ex. 1 at 6, 20 (Beychok Report); Ex. 2 at 123:6-16 (Beychok Dep.); *id.* at 199:6-23. The law is clear that this is not a sufficient basis upon which to admit expert testimony. *See Hathaway v. Bazany*, 507 F.3d 312, 318 (5th Cir. 2007) (excluding expert testimony where expert “offered little more than personal assurances based on his [professional] experience that his conclusions are so”); *Viterbo*, 826 F.2d at 421 (excluding

expert testimony where expert “brought to court little more than his credentials and a subjective opinion”).

In sum, the record unambiguously reveals that: (1) Beychok had “a preconceived theory” that the factors of “money, time, and people” are more important than race, *Viterbo*, 646 F. Supp. at 1424; (2) in accordance with that theory, Beychok declined to analyze race as a factor in the five contested Terrebonne elections, in spite of overwhelming and undisputed evidence that race drove voting behavior; and (3) notwithstanding his failure to analyze the impact of race, Beychok maintains that it did not play a significant role in the elections that he examined. This opinion is wholly unreliable and thus inadmissible. *See* Fed. R. Evid. 702(c).

B. Beychok’s Testimony Is Inadmissible Because He Does Not Reliably Apply His Own Methodology.

FRE 702 provides that an expert opinion is admissible only if “the expert has reliably applied the principles and methods to the facts of the case.” Fed. R. Civ. P. 702(d). As the Fifth Circuit has explained, “*any* step that renders the analysis unreliable . . . renders the expert’s testimony inadmissible. This is true whether the step *completely changes a reliable methodology or merely misapplies that methodology.*” *Moore*, 151 F.3d at 278 n.10 (emphasis added) (internal quotation marks and citation omitted). Even assuming that Beychok’s methodology was reliable, his testimony should be excluded because he did not consistently apply it. In particular, Beychok inconsistently: (1) added new factors to his analysis; (2) excluded some of the original three factors from his analysis; (3) measured the starting dates of campaigns; and (4) measured the amount of money raised by candidates.

First, and most conspicuously, Beychok added at least nine factors *other* than “money, time, and people”—while failing to apply *each* of these extra factors across *each* of the

campaigns that he examined—in an attempt to explain Black electoral defeat in the examined at-large elections. *See generally* Ex. 1 at 3-20 (Beychok Report). For example, in the:

- 2014 Houma City Court campaigns, Beychok focused on whether or not a candidate was “homegrown” in seeking to explain why the Black candidate lost to a white candidate, *id.* at 5;
- 2014 32nd JDC campaigns, Beychok focused on whether or not a candidate had a certain “party affiliation,” *id.* at 7;
- 2014 City Marshal campaigns, Beychok focused on whether or not a candidate had “some sort of geographic base,” “residual name recognition,” “a history of running for office in the parish,” and “a history of leadership in a position that interacts with voters” in seeking to explain why the Black candidate lost to a white candidate, *id.* at 9, 12;
- 1993 First Circuit Court of Appeal campaigns, Beychok focused on whether or not a candidate “was a judge,” even though not an incumbent to the seat at issue, and the “turnout/participation rates on Election Date” in seeking to explain why the Black candidate lost to a white candidate, *id.* at 16, 17; and,
- 1994 32nd JDC campaigns, Beychok focused on whether or not a candidate hired a “professional political consultant” in seeking to explain why the Black candidate lost to a white candidate, *id.* at 19.

By adding these extra factors on an ad hoc basis into his analysis, Beychok either “change[d] [his] methodology” or simply “misapplie[d] that methodology,” rendering his opinion unreliable. *Moore*, 151 F.3d at 278 n.10.

Second, Beychok inconsistently excluded certain factors when analyzing elections. Though Beychok initially claimed that the recruitment of volunteers is one of the most important factors in explaining election outcomes, he only assessed volunteer recruitment in only one of the six elections that he examined in his report, the 2011 Tax Assessor election. Ex. 1 at 14 (Beychok Report).

Third, Beychok also was inconsistent in determining the start date of the campaigns, one of his three original key factors in explaining election outcomes. Within the same election *and* across different elections, Beychok used different campaign milestones as markers of the beginning of the campaigns. For example, Beychok deemed:

- Matt Hagen to have started his campaign for the 2014 Houma City Court election on the date that his campaign first filed a campaign finance report with the State Board of Ethics, *Id.* at 4;
- Juan Pickett to have started his campaign for the 2014 32nd JDC election on the date he began going door-to-door to seek support, *see id.* at 7;
- Mr. Mosely to have started his campaign for the 2014 City Marshal election on the date that he publicly announced his campaign, *see id.* at 10; and,
- Randy Parro to have started his campaign for the 1993 First Circuit Court of Appeal election on the date that he deposited his first campaign contribution, *see id.* at 16.⁸

Fourth and finally, Beychok inconsistently compared fundraising amounts within the same election. For example, in the campaigns for the 2011 Parish Tax Assessor election, Beychok calculated the time periods in which the amounts were raised and spent differently. For

⁸ Beychok conceded that the start time of a campaign “is a difficult element to quantify if you are not involved in a campaign,” and that he was not involved in any of the campaigns that he analyzed. Ex. 2 at 116:13-117:6 (Beychok Dep.). Indeed, Beychok acknowledged that candidates can begin campaigning informally before filing their notice of candidacy and that such informal campaigning is “hard to ascertain.” *Id.* at 117:7-11; *see also id.* at 148:7-20.

the two white candidates who made the runoff, Beychok calculated their amounts for the time period from the start of their campaigns to the date of the general election; but for the Black candidate and another white candidate, Beychok calculated their amounts only for the time period from the start of their campaigns to the date of the primary. *Id.* As such, the two white candidates who made the runoff were given an artificial increase in their presumed fundraising and spending ability, an advantage Beychok did not factor out of the analysis. *Id.*

In sum, even assuming that Beychok has a reliable methodology in focusing on his three key factors of “money, time, and people” (at the exclusion of race) to explain the outcomes of the elections that he reviewed (and ultimately opine that race did not play a significant role), he failed to apply that methodology consistently across the elections that he examined. This renders his opinion testimony entirely unreliable and inadmissible. *See* Fed. R. Evid. 702(d); *Moore*, 151 F.3d at 278 n.10.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion to Exclude the Testimony of Michael Beychok.

This the 21st day of August, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Plaintiffs' Memorandum of Law in Support of their Motion to Exclude the Testimony of Michael Beychok* with this Court using the CM/ECF system, which provides notice of filing to all counsel of record.

This the 21st day of August, 2015.

Respectfully submitted,

s/ Leah C. Aden