



National Council of Jewish Women
Greater New Orleans Section



Sent Via Email

February 18, 2022

The Honorable John Bel Edwards
Governor, State of Louisiana
c/o Matthew Block, Executive Council
Office of the Governor
Louisiana State Capitol
900 North Third Street
Baton Rouge, LA 70804
jbe@la.gov
matthew.block@la.gov

Re: Congressional Redistricting Compliance with Section 2 of the Voting Rights Act

Dear Governor Edwards,

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), the American Civil Liberties Union Foundation of Louisiana, the ACLU Voting Rights Project, Louisiana Justice

Institute, Louisiana State Conference of the NAACP, Power Coalition for Equity and Justice, Louisiana Fair Housing Action Center, Anti-Defamation League, Louisiana Progress, Black Voters Matter Fund, Fair Districts Louisiana, Southern Poverty Law Center Action Fund, League of Women Voters of Louisiana, National Council of Jewish Women – Greater New Orleans Section, Campaign Legal Center, Louisiana Budget Project, Urban League of Louisiana, Voters Organized to Educate, Voice of the Experienced, MetroMorphosis, the Education Trust Group, the Jeremiah Group, and New Orleans Maternal and Child Health Coalition write in opposition to HB 1 and SB 5, the proposed congressional districting plans passed by the Louisiana State Legislature on February 18, 2022. For the reasons explained below, HB 1 and SB 5 run afoul of Section 2 of the Voting Rights Act of 1965 (“Section 2”) because they fail to provide Black voters in Louisiana with an equal opportunity to participate in the political process and elect candidates of their choice.¹ As such, we strongly and respectfully urge you to veto HB 1 and SB 5.

It is fair, necessary, and logical that Black Louisianans have an opportunity to elect their preferred congressional representatives to Congress. Members of Congress make decisions and enact policies that impact every aspect of American life, including access to education, economic opportunity, housing, health care, and criminal justice. An additional district in which Black voters comprise the majority (“majority-Black district”) would provide Black voters with a chance to elect candidates of their choice and address the state’s pervasive and ongoing record of racial inequality.

Under the current map, Black Louisianans are severely underrepresented. Louisiana’s voting-age population is nearly one-third Black.² However, Black voters in Louisiana only have an opportunity to elect candidates of their choice in one of the six congressional districts (i.e., 16.7% of the districts). Similarly, Louisiana’s white population is dramatically overrepresented: only 58% of Louisiana’s population is non-Hispanic white,³ but the candidates they prefer generally prevail in five out of six districts (83.3%) in each of these proposals.

This is a direct consequence of the configuration of Louisiana’s congressional districts: Black voters are packed into District 2, the state’s only majority-Black opportunity district, and Black communities are cracked among the state’s five majority-white districts (Districts 1, 3, 4, 5, and 6). Although District 2 has elected Black candidates in all but one congressional contest over the past 30 years,⁴ none of the majority-white districts have *ever* elected a Black

¹ *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

² *U.S. Census Bureau QuickFacts*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/LA/POP010220#POP010220> (last visited Sep. 10, 2021). According to 2020 Census data, the total number of Black Louisiana residents over the age of 18 (also known as the Black voting age population, or BVAP) has increased by 4.4 percent since 2010.

³ *Id.*

⁴ Voters in District 2 have elected a Black candidate in all but one congressional election since 1990. See *Louisiana’s 2nd Congressional District*, Ballotpedia, https://ballotpedia.org/Louisiana%27s_2nd_Congressional_District (last visited Aug. 31, 2021).

or Black-preferred Congressperson.⁵ That is because of the irrefutable and unfortunate reality that Black and white voters generally prefer different candidates and, in districts where they are the majority, white voters control election results.⁶ Simply put, Black voters in Louisiana are afforded less opportunity to elect candidates of their choice than white voters.

HB 1 and SB 5 perpetuate the same dilution by depriving Black voters of the equal opportunity to elect candidates of their choice in five out of six congressional districts. HB 1 and SB 5 continue to pack Black voters from Baton Rouge and New Orleans into the same district. It is imperative that you veto HB 1 and SB 5 because they fail to remedy the long-standing dilution of Black voting strength in Louisiana's congressional map and violates Section 2.

I. The State of Louisiana Has an Obligation to Comply with Section 2 of the Voting Rights Act in Redistricting.

The State of Louisiana has an affirmative obligation to comply with the Voting Rights Act in the redistricting process. In particular, Section 2 requires the redistricting body to ensure that voters of color have an equal opportunity “to participate in the political process and elect candidates of their choice,” taking into consideration the state or locality's demographics, voting patterns, and other circumstances.⁷ A chief purpose of Section 2 is to prohibit minority vote dilution at all levels of government.⁸

A district map may violate Section 2 if it dilutes the voting power of voters of color, including by “packing” Black voters into districts where they constitute an unnecessarily large percentage of the voting population and depriving them of the opportunity to elect candidates of choice in other districts.⁹ Section 2 prohibits minority vote dilution regardless of whether a plan was adopted with a discriminatory purpose.¹⁰ Indeed, Section 2 outlaws redistricting plans that *result in* a reduced ability of voters of color to elect candidates of their choice, whatever the reason for that result may be.

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the U.S. Supreme Court set forth three preconditions for assessing whether a districting plan or voting system has resulted in vote dilution. The three “*Gingles* preconditions” are whether: (1) an alternative districting plan can be drawn that includes one or more single-member districts in which the minority community is sufficiently large and geographically compact to constitute a majority in the district; (2) the minority group is politically cohesive in its support for its preferred

⁵ See *United States Congressional Delegations from Louisiana*, Ballotpedia, https://ballotpedia.org/United_States_congressional_delegations_from_Louisiana (last visited Aug. 31, 2021).

⁶ It is no coincidence that there are no Black elected officials in statewide positions, though they have regularly competed for those seats against white candidates. See *infra* p. 9-10.

⁷ *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

⁸ See *St. Bernard Citizens For Better Gov't v. St. Bernard Par. Sch. Bd.*, No. CIV.A. 02-2209, 2002 WL 2022589, at *10 (E.D. La. Aug. 26, 2002); *Fifth Ward Precinct 1A Coal. & Progressive Ass'n v. Jefferson Par. Sch. Bd.*, No. CIV.A. 86-2963, 1989 WL 3801, at *1 (E.D. La. Jan. 18, 1989).

⁹ See *Gingles*, 478 U.S. at 46, n.11.

¹⁰ *Id.* at 35.

candidates; and (3) in the absence of majority-minority districts, candidates preferred by the minority group would usually be defeated due to the political cohesion of non-minority voters in support of different candidates.¹¹ Together, the second and third *Gingles* preconditions are commonly referred to as racial bloc or racially polarized voting.¹²

If these three *Gingles* preconditions are met, a decisionmaker must then evaluate the “totality of circumstances” 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.”¹³ Courts consider several factors (commonly known as the “Senate Factors”) pertaining to the jurisdiction’s history of voter discrimination to determine whether the minority vote has been diluted impermissibly.¹⁴ It will be “only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.”¹⁵

II. HB 1 and SB 5 Were Passed in Contravention of Section 2 of the Voting Rights Act.

HB 1 and SB 5 disregard the mandates of Section 2 because they fail to provide Louisiana’s Black voters with an equal opportunity to elect candidates of their choice. For the reasons explained below, HB 1 and SB 5 will result in unlawful vote dilution because there is evidence that each of the three *Gingles* preconditions are present, and there is ample evidence to show that under the totality of circumstances, Black voters have less opportunity than other members of the electorate to participate in the political process and elect candidates of their choice to Congress.

a. *Gingles* Precondition One: It Is Possible to Draw a Congressional District Map with Two Majority-Minority Opportunity Districts.

If HB 1 and SB 5 are enacted, the first *Gingles* precondition would be satisfied because it is beyond question that Louisiana’s Black community is sufficiently large and

¹¹ *Id.* at 50-51.

¹² Racially polarized voting occurs when different racial groups vote for different candidates. In a racially polarized election, for example, Black people vote together for their preferred (frequently Black) candidate, and most non-Black voters vote for the opposing (typically white) candidate.

¹³ 52 U.S.C. § 10301(b); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006).

¹⁴ Courts examine the “totality of the circumstances” based on the so-called “Senate Factors,” named for the Senate Report accompanying the 1982 Voting Rights Act amendments in which they were first laid out. *Gingles*, 478 U.S. at 43-45. The Senate Factors are: (1) the extent of any history of discrimination related to voting; (2) the extent to which voting is racially polarized; (3) the extent to which the state or political subdivision uses voting practices that may enhance the opportunity for discrimination; (4) whether minority candidates have access to candidate slating processes; (5) the extent to which minority voters bear the effects of discrimination in areas of life like education, housing, and economic opportunity; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which minority people have been elected to public office; (8) whether elected officials are responsive to the needs of minority residents; and (9) whether the policy underlying the voting plan is tenuous. *Id.* at 36-37. However, “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *Id.* at 45.

¹⁵ *Clark v. Calhoun Cty.*, 21 F.3d 92, 97 (5th Cir. 1994).

geographically compact to constitute a majority of voters in a second congressional district.¹⁶ There are numerous alternate congressional maps that have been introduced by members of the public, including seven different congressional maps presented by a coalition of organizations, including the undersigned, on October 18, 2021 (the “Coalition maps”).¹⁷ During the special session, dozens of congressional maps were introduced as bills or proposed amendments that would have provided for a second majority-Black district, including HB 5, HB 8, HB 9, HB 12, SB 2, SB 4, SB 6, SB 9, SB 10, SB 11, SB 18, Amendments #88, #99, and #153 to HB 1, and Amendments #91 and #116 to SB 5.¹⁸

These proposals each contain two districts in which the Black voting age population (“BVAP”) is sufficiently large and geographically compact to constitute a majority. Each map includes two compact districts¹⁹ of Black voters who form communities of interest in those districts and are more than 50% of the BVAP.²⁰ For instance, in SB 6, CD2 includes communities connected by shared industries, such as the petrochemical and fishing

¹⁶ *Gingles*, 478 U.S. at 50.

¹⁷ These bills include versions of the maps submitted to the Committees on October 18, 2021, by a coalition of organizations, including the undersigned. See *LDF Sends Letter to Louisiana House and Senate Governmental Affairs Committees on their Obligation to Comply with Section 2 of the Voting Rights Act During Redistricting* (Oct. 18, 2021), <https://www.naacpldf.org/press-release/ldf-sends-letter-to-louisiana-house-and-senate-governmental-affairs-committees-on-their-obligation-to-comply-with-section-2-of-the-voting-rights-act-during-redistricting/>.

¹⁸ See H.B. 5, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1245583>; H.B. 8, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1245612>; H.B. 9, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1245638>; HB12, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1245740>; S.B. 2, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244872>; S.B. 4, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244876>; S.B. 6, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244880>; S.B. 9, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245001>; S.B. 10, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245003>; S.B. 11, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/BillInfo.aspx?i=241496>; S.B. 18, 1st Spec. Sess. (La. 2022), <https://www.legis.la.gov/Legis/BillInfo.aspx?i=241506>; Amendment #88 to H.B. 1, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1246825>; Amendment #99 to H.B. 1, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1247152>; Amendment #153 to H.B. 1, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1247602>; Amendment #91 to S.B. 5, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1246183>; Amendment #116 to S.B. 5, 1st Spec. Sess. (La. 2022), <https://legis.la.gov/legis/ViewDocument.aspx?d=1247368>.

Indeed, the Legislature has been on notice since 2011 when after the 2010 Census, legislators proposed congressional maps that included a second majority-Black district. See e.g., H.B. 42, 1st Spec. Sess. (La. 2011), <https://legis.la.gov/legis/ViewDocument.aspx?d=735282>; S.B. 32, 1st Spec. Sess. (La. 2011), <https://legis.la.gov/legis/ViewDocument.aspx?d=737086>.

¹⁹ *League of United Latin Am. Citizens*, 548 U.S. at 433 (“While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries.”).

²⁰ The Supreme Court has held that a minority community is sufficiently large when it “make[s] up more than 50 percent of the voting-age population in the relevant geographical area.” *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009).

industries, and communities that face the same challenges, such as flooding and hurricanes, and CD5 includes the Delta parishes and many of Louisiana's colleges, including University of Louisiana-Monroe, Louisiana State University of Alexandria, Southern University, and many community colleges.²¹ Each of these proposals contain two districts that we have confirmed will give Black voters an opportunity to elect candidates of their choice, based on our analysis of recompiled election results under these plans.²²

A map with two majority-Black districts can be drawn while satisfying the one person, one vote requirement of equal populations among the districts, as well as respecting traditional redistricting principles. All seven of the Coalition maps contained two majority-Black districts while remaining more compact than HB 1 and SB 5 on at least two of the three widely recognized statistical measures of compactness. Remarkably, Amendment #91 to SB 5 (Fields) and Amendment #88 to HB 1 (Gaines) contain two districts with a BVAP over 50% but are also more compact than HB 1 and SB 5 on all three widely recognized statistical measures of compactness, split fewer parishes than HB 1 and SB 5, achieve better population equality across the six districts, and contain no precinct splits at all.

These proposals confirm that there are multiple ways to draw two majority-Black districts in the six-district congressional map. Accordingly, because it is possible to adopt a congressional map with two majority-Black districts, the first *Gingles* precondition could readily be satisfied.²³

b. *Gingles* Preconditions Two and Three: Louisiana Elections Reflect Racially Polarized Voting Patterns.

There is ample evidence to suggest that the second and third *Gingles* preconditions are satisfied. Louisiana has a well-documented history and ongoing record of racially polarized voting in elections across the state. For example, over the past three decades, numerous federal courts have found that racially polarized voting pervades Louisiana statewide and local elections.²⁴ Additionally, in the past two decades—including as recently

²¹ See Testimony from Jared Evans at the Senate Governmental Affairs Feb. 3, 2022, hearing, https://senate.la.gov/s_video/videoarchive.asp?v=senate/2022/02/020322SG3.

²² See *LDf Sends Letter in Response to Misinterpretations of Federal and State Redistricting Law to Louisiana House and Senate Committees* (Dec. 14, 2021), <https://www.naacpldf.org/press-release/ldf-submits-testimony-on-congressional-redistricting-to-louisiana-house-and-senate-committees/>.

²³ See *Gingles*, 478 U.S. at 50.

²⁴ A district court recently found that there was sufficient preliminary evidence of racially polarized voting statewide to support plaintiffs' challenge to Louisiana's Supreme Court district map. *Louisiana State Conference of NAACP v. Louisiana*, 490 F. Supp. 3d 982, 1019 (M.D. La. 2020). In *St. Bernard Citizens For Better Government*, the district court found racially polarized voting patterns in statewide gubernatorial elections, as well as local parish elections. *St. Bernard Citizens For Better Gov't*, 2002 WL 2022589, at *7 (E.D. La. Aug. 26, 2002). See, e.g., *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 436-37 (M.D. La. 2017), *rev'd on other grounds sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020) (The district court found that there were racially polarized voting patterns in the parish's judicial elections, and although the Fifth Circuit reversed the district court's decision, it held that the district court did not err in its finding of racially polarized voting); *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1124

as this year—the Department of Justice (“DOJ”) has sued local parishes under Section 2 three times; in each case, the DOJ identified racially polarized voting patterns within the parish.²⁵ Likewise, the 2020 congressional elections similarly reflected racially polarized voting patterns. For instance, in the five districts comprised of a majority of white voters, there were four contests in which voters had a choice between Black and white congressional candidates. In each of these four races, white candidates were elected over Black candidates.²⁶

Moreover, our preliminary analysis of HB 1 and SB 5 indicates that under this configuration, in five of the six districts, candidates preferred by Black voters would usually be defeated by candidates preferred by white voters by insurmountable margins.

c. Totality of Circumstances: Louisiana’s Voters of Color Have Less Opportunity to Elect Candidates of Their Choice.

In addition to the indicia of the three *Gingles* preconditions, under the “totality of circumstances,” Black voters have “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice” in Louisiana’s congressional elections.²⁷ There is ample evidence that several of the congressionally delineated “Senate Factors,” listed in footnote 14 above, can be demonstrated, including: the extent of the history of voting discrimination in Louisiana (Factor 1); the extent of racially polarized voting in Louisiana (Factor 2); the extent to which Black voters bear the effects of discrimination in a variety of areas of life (Factor 5); whether political campaigns in Louisiana have been characterized by overt or subtle racial appeals (Factor 6); and the extent to which Black candidates have been elected to public office in Louisiana (Factor 7). For example:

- Factor 1: The state of Louisiana has an extensive history and ongoing record of voting discrimination that has adversely impacted the right of Black and other minority voters to register to vote, to vote, or otherwise to participate in the

(E.D. La. 1986); *Major v. Treen*, 574 F. Supp. 325, 337 (E.D. La. 1983) (The court held that there was racial polarization in Orleans Parish).

²⁵ Most recently, in 2021, the DOJ sued the City of West Monroe under Section 2 over its at-large alderman elections. The DOJ contended that there was racially polarized voting sufficient to satisfy *Gingles* because “[i]n contests between Black candidates and White candidates for West Monroe Board of Alderman and other parish, state, and federal positions, White voters cast their ballots sufficiently as a bloc to defeat the minority’s preferred candidate.” The court agreed and entered a consent decree between the parties. *United States v. City of West Monroe*, No. 21-cv-0988 (W.D. La. Apr. 14, 2021); see also *United States v. City of Morgan*, No. 00-cv-1541 (W.D. La. Aug. 17, 2000) (“Racially polarized voting patterns prevail in elections for the City Council of Morgan City. In contests between [B]lack and white candidates for City Council, [B]lack voters consistently vote for [B]lack candidates and white voters vote sufficiently as a bloc to usually defeat the [B]lack voters’ candidates of choice.”); *Greig v. City of St. Martinville*, No. 00-cv-00603 (W.D. La. Jun. 3, 2000) (The DOJ asserted that “[e]lections in the City of St. Martinville are racially polarized”).

²⁶ See *United States House of Representatives elections in Louisiana, 2020*, Ballotpedia, https://ballotpedia.org/United_States_House_of_Representatives_elections_in_Louisiana,_2020 (last accessed Sep. 1, 2021).

²⁷ *Gingles*, 478 U.S. at 36 (quoting 42 U.S.C. § 10301(b)).

political process.²⁸ Since Reconstruction, Louisiana has passed countless laws to deny Black democratic participation, including grandfather clauses, poll taxes, and educational and property qualifications.²⁹

- Factor 1: Louisiana’s statewide district maps have been challenged under the Voting Rights Act in numerous reapportionment cycles since 1965.³⁰ Indeed, District 2, Louisiana’s only majority-minority district, was established in 1983 only after a federal district court held that the 1981 proposed congressional map diluted Black voting power in Orleans Parish by dispersing the parish’s Black majority into two different congressional districts.³¹
- Factor 1: Louisiana has a long history and ongoing record of employing voting practices, such as at-large elections and redistricting, that have diluted the weight of Black Louisianans’ vote once they cast them. From the passage of the Voting Rights Act in 1965 until the Supreme Court’s *Shelby County v. Holder* decision in 2013, the DOJ blocked nearly 150 proposed changes to voting policies or practices in Louisiana on the grounds that they discriminated against Black voters or diluted Black voting strength, pursuant to Section 5 of the Voting Rights Act.³² As mentioned above, the DOJ has sued parishes in Louisiana for violating Section 2’s non-vote dilution prohibition three times over the past thirty years.³³ Most recently, the DOJ successfully challenged the City of West Monroe’s at-large

²⁸ *St. Bernard Citizens For Better Gov’t*, 2002 WL 2022589, at *9 (quoting *Citizens for a Better Gretna*, 636 F. Supp. at 1124) (“The history of black citizens’ attempts, in Louisiana since Reconstruction, to participate effectively in the political process and the white majority’s resistance to those efforts is one characterized by both *de jure* and *de facto* discrimination. Indeed, it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana’s political process.”)

²⁹ Debo P. Adegbile, *Voting Rights in Louisiana: 1982 -2006*, 17 S. Cal. Rev. L. & Soc. Just. 416-418 (2008).

³⁰ *See Louisiana House of Representatives v. Ashcroft*, No. 02-0062 (D.D.C. May 21, 2003) (challenge to congressional redistricting after the 2000 census); *Hays v. Louisiana*, 936 F. Supp. 2d 820, 824-826 (M.D. La. 1996) (challenge to congressional redistricting after 1990 Census); *Major v. Treen*, 574 F. Supp. 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).

³¹ *See Major*, 574 F. Supp at 327. Although this case predated *Gingles*, the district court found that racially polarized voting, combined with “Louisiana’s history of racial discrimination, both *de jure* and *de facto*, continue to have an adverse effect on the ability of its [B]lack residents to participate fully in the electoral process.” *Id.* at 339-40.

³² *See Voting Determination Letters for Louisiana*, Department of Justice, <https://www.justice.gov/crt/voting-determination-letters-louisiana> (last accessed Aug. 25, 2021).

³³ *See Cases Raising Claims Under Section 2 of the Voting Rights Act*, Department of Justice, <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0> (last accessed Aug. 25, 2021).

alderman elections under Section 2.³⁴ In addition, courts have held that at-large elections and majority-vote requirements discriminated against minority voters in violation of Section 2 by “mak[ing] it less likely that the candidates of any identifiable voting minority will ever win elections.”³⁵

- Factor 2: As explained above, it is indisputable that there is racially polarized voting in Louisiana’s elections at the state and local level.
- Factor 5: Black Louisianans continue to experience the brunt of racial discrimination in every sector of public life.³⁶ Black Louisianans experience higher unemployment rates than white Louisianans. Unemployment data from early 2021 shows that Black people were unemployed at a rate of 12%, compared to 5.3% for white people.³⁷ Black Louisianans also experience socioeconomic disparities as a result of systemic discrimination. In 2019, 29.4% of Black people lived below the poverty line, compared to 12.5% of white people.³⁸ Health disparities also persist among Black as compared to white Louisianans. Although only one-third of Louisiana’s population, Black people accounted for more than 70% of the people who died of COVID-19.³⁹
- Factor 6: Louisiana political campaigns have been characterized by subtle and overt racial appeals impacting the political process. Current U.S. Representative for Louisiana’s first congressional district, Steve Scalise, spoke to a white supremacist group in 2002 while serving as a Louisiana state legislator.⁴⁰ David Duke, the former grand wizard of the Ku Klux Klan, has run for public office in Louisiana several times; most recently, in 2016, he unsuccessfully ran for U.S.

³⁴ See *United States v. City of West Monroe*, No. 21-cv-0988 (W.D. La. Apr. 14, 2021).

³⁵ *Citizens for a Better Gretna v. City of Gretna, La.*, 636 F. Supp. 1113, 1124 (E.D. La. 1986), *aff’d*, 834 F.2d 496 (5th Cir. 1987).

³⁶ “Congress and the Courts have recognized the effect lower socio-economic status has on minority participation in the political process.” *Id.* In *Citizens for a Better Gretna*, the court found that “depressed levels of income, education and employment are a consequence of severe historical disadvantage” that in turn engenders “depressed levels of participation in voting and candidacy.” 636 F. Supp. at 1120.

³⁷ *State unemployment by race and ethnicity*, Economic Policy Institute, <https://www.epi.org/indicators/state-unemployment-race-ethnicity/> (last updated July 2021).

³⁸ *Poverty Rate by Race/Ethnicity*, KFF, <https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last accessed Sep. 1, 2021).

³⁹ *Black Communities Are Hit Hardest By COVID-19 In Louisiana And Elsewhere*, New Orleans Public Radio, (Apr. 6, 2020), <https://www.wno.org/latest-news/2020-04-06/black-communities-are-hit-hardest-by-covid-19-in-louisiana-and-elsewhere>.

⁴⁰ Dan Roberts, *Senior Republican Steve Scalise spoke at white supremacist meeting in 2002*, *The Guardian*, (Dec. 30, 2014), <https://www.theguardian.com/us-news/2014/dec/29/senior-republican-steve-scalise-spoke-at-white-supremacist-meeting-in-2002>.

Senate to “defend the heritage of European American people.”⁴¹ Even with his explicit ties to white supremacy, Duke received over 58,000 votes.⁴² Evoking imagery of lynching for political gain, in 2018, a white Tangipahoa School Board Member and candidate for reelection posted a picture of a noose on Facebook with the caption “IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT.”⁴³ Additionally, in 2001, the St. Bernard Parish School Board was sued under Section 2 for its redistricting plan that eliminated the only district where Black voters had an opportunity to elect a candidate of choice. Lynn Dean, a white state senator who was involved in the redistricting and the highest-ranking public official in the Parish, testified that he use[d] the [“n-word”] and “ha[d] done so recently.”⁴⁴

- Factor 7: Black people have been largely underrepresented in Louisiana public offices.⁴⁵ Louisiana has never had a Black U.S. Senator and has not had a Black governor since Reconstruction. As described above, Louisianans rarely elect Black candidates to Congress; the state has had only four Black Congresspeople since Reconstruction, all of whom were elected to represent majority-Black districts.⁴⁶ By contrast, since the Voting Rights Act was adopted in 1965, Louisiana has sent 45 white representatives to Congress.⁴⁷ As noted above, none of the majority white districts in Louisiana has ever elected a Black representative. Louisiana’s first

⁴¹ Camila Domonoske, *Former KKK Leader David Duke Says ‘Of Course’ Trump Voters Are His Voters*, NPR, (Aug. 5, 2016), <https://www.npr.org/sections/thetwo-way/2016/08/05/488802494/former-kkk-leader-david-duke-says-of-course-trump-voters-are-his-voters>.

⁴² *United States Senate election in Louisiana, 2016*, Ballotpedia, https://ballotpedia.org/United_States_Senate_election_in_Louisiana,_2016 (last accessed Sep. 1, 2021).

⁴³ Caroline Grueskin, *Tangipahoa School Board member who posted noose meme opts for last-minute run for reelection*, The Advocate (Jul. 31, 2018), https://www.theadvocate.com/baton_rouge/news/communities/livingston_tangipahoa/article_e0999182-9506-11e8-bf14-fb6afcf2a6ee.html.

⁴⁴ *St. Bernard Citizens For Better Gov’t*, 2002 WL 2022589, at *10.

⁴⁵ The U.S. Supreme Court has held that one of the “predominant” factors under Section 2 is “the extent to which members of the minority group have been elected to public office in the jurisdiction.” *Gingles*, 478 U.S. at 37. See also *Citizens for a Better Gretna*, 636 F. Supp. at 1120 (“Where members of the minority group have not been elected to public office, it is of course evidence of vote dilution.”)

⁴⁶ Three of the Black Congresspeople were elected in large part due to Black voter support in District 2. See *Black-American Members by State and Territory, 1870–Present*, History, Art & Archives: United States House of Representatives, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-State-and-Territory/> (last accessed Sep. 1, 2021).

⁴⁷ See *United States Congressional Delegations from Louisiana*, Ballotpedia, https://ballotpedia.org/United_States_congressional_delegations_from_Louisiana (last visited Aug. 31, 2021).

Black chief Justice of the state Supreme Court was appointed in 1994 following a consent decree that was entered in a case challenging the use of at-large judicial districts. As part of the consent decree, the court created a majority-minority judicial district that has continued to elect the only Black member of the State Supreme Court.⁴⁸

III. It is Imperative that You Veto HB 1 and SB 5.

For the reasons explained above, HB 1 and SB 5 violate Section 2 because they do not provide Black voters with an equal opportunity to elect candidates of their choice. We implore you to veto HB 1 and SB 5 and urge the legislature to reconsider districting plans that ensure non-dilution of Black voting strength in congressional elections, including HB 5, HB 8, HB 9, HB 12, SB 2, SB 4, SB 6, SB 9, SB 10, SB 11, SB 18, Amendments #88, #99, and #153 to HB 1, and Amendments #91 and #116 to SB 5.

As Governor, you play an integral role in the redistricting process. Your approval is required before the Legislature can enact any congressional map.⁴⁹ You have previously voiced support for a second majority-Black district, and we commend you for recognizing that a second majority-Black congressional district would be “fair” for Black Louisianans.⁵⁰

By vetoing HB 1 and SB 5, you will ensure that Black Louisianans have an equal opportunity to participate equally in the political process and to elect candidates of their choice to Congress. Additionally, your veto can protect the state of Louisiana from unnecessary and costly litigation.⁵¹ States that fail to adhere to federal law in the redistricting process risk exposure to legal challenges and costly legal fees—including both defense costs and the costs of prevailing plaintiffs. As you know, those resources could be more reasonably and appropriately used to address the needs of your constituents throughout Louisiana.

For all of the above reasons, it is critical that you veto HB 1 and SB 5 to ensure that Louisiana’s congressional map complies with federal and state laws and principles.

Please feel free to contact LDF Redistricting Counsel Michael Pernick at (917) 790-3597 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail.

⁴⁸ See *Chisom v. Jindal*, 890 F. Supp. 2d 696, 702-705 (E.D. La. 2012).

⁴⁹ See *Major v. Treen*, 574 F. Supp. 325, 333 (E.D. La. 1983) (“Hence the legislature has no authority to create congressional districts independently of the participation of the Governor as required by the state constitution with respect to the enactment of laws.”).

⁵⁰ Blake Peterson, *Gov. John Bel Edwards says ‘fair’ congressional maps would include another majority-Black district*, *The Advocate* (Dec. 16, 2021), https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_64e99736-5ea6-11ec-bea4-2fa9f0b6f8c9.html.

⁵¹ LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, (Sept. 19, 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf>.

Sincerely,

/s/ Michael Pernick

Michael Pernick
Leah C. Aden, Deputy Director of Litigation
Stuart Naifeh, Manager of the Redistricting Project
Kathryn Sadasivan
Jared Evans
Victoria Wenger
Arielle McTootle
NAACP Legal Defense & Educational Fund,
Inc.
40 Rector Street, 5th Fl.
New York, NY 10006

Alanah Odoms, Executive Director
Chris Kaiser, Advocacy Director
Megan Snider, Staff Attorney
ACLU Foundation of Louisiana

Sarah Brannon
T. Alora Thomas
Samantha Osaki
American Civil Liberties Union Foundation

Tracie L. Washington, Esq.
Louisiana Justice Institute

President Michael McClanahan
Louisiana State Conference of the NAACP

Ashley Shelton
Power Coalition for Equity and Justice

Cashauna Hill
Executive Director
Louisiana Fair Housing Action Center

Lindsay Baach Friedmann
Regional Director
ADL South Central Region

Peter Robins-Brown
Executive Director
Louisiana Progress

Omari J. Ho-Sang, State Organizing Manager
Keturah Butler-Reed, Regional Organizer
Black Voters Matter

Stephen Kearny
Organizer
Fair Districts Louisiana

Terry C. Landry Jr., Policy Director, Louisiana
Chandra Shae Foster, Policy Associate
Liza Weisberg, Staff Attorney
Southern Poverty Law Center Action Fund

Hilda Walker Thomas
President
League of Women Voters of Louisiana

Gail Fenton Pesses
President
National Council of Jewish Women, Greater New
Orleans Section

Mark Gaber, Senior Director of Redistricting
Chris Lamar
Valencia Richardson
Campaign Legal Center

Davante Lewis
Director of Public Affairs
Louisiana Budget Project

Judy Reese Morse,
President and CEO,
Urban League of Louisiana

Jennifer Harding
Chapter Organizer, Baton Rouge
Voters Organized to Educate
Voice Of The Experienced (c)(3)

Raymond A. Jetson
Chief Executive Catalyst
MetroMorphosis

Tramelle D. Howard, J.D.
State Director
The Education Trust

Jacqueline Carroll Jones
Executive Director/Lead Organizer
Jeremiah Group

New Orleans Maternal and Child Health Coalition

NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

American Civil Liberties Union Foundation of Louisiana

The ACLU of Louisiana has worked to advance and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States and the State of Louisiana since 1956. The organization is part of a nationwide network of ACLU affiliates that fight tirelessly in all 50 states, Puerto Rico, and Washington, D.C.

American Civil Liberties Union

For 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States. Whether it’s ending mass incarceration, achieving full equality for the LGBT community, advancing racial justice, establishing new privacy protections for our digital age, or preserving the right to vote or the right to have an abortion, the ACLU takes up the toughest civil liberties and civil rights cases and issues to defend all people from government abuse and overreach. With more than one million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, age, disability, national origin, and record of arrest or conviction.

Louisiana Justice Institute

Louisiana Justice Institute is a non-profit civil rights legal advocacy organization and law firm that fosters and supports social justice campaigns across Louisiana to protect the rights of Black communities. Since its founding in 2007, LJI has been involved in numerous campaigns, impact litigation, and social justice advocacy involving – but not limited to – immigrant rights, housing rights, education rights (including special education advocacy and litigation), voting rights, and environmental litigation.

Louisiana NAACP State Conference

Louisiana State Conference of the National Association for the Advancement of Colored People (the “Louisiana NAACP State Conference”) is a state subsidiary of the National Association for the Advancement of Colored People, Inc. For decades, the Louisiana NAACP State Conference has worked towards its mission to ensure the political, educational, social, and economic equality of all persons and to eliminate race-based discrimination.

Power Coalition for Equity and Justice

The Power Coalition for Equity and Justice works to build voice and power in traditionally ignored communities. We are a coalition of groups from across Louisiana whose mission is to organize in impacted communities, educate and turn out voters, and fight for policies that create a more equitable and just system in Louisiana.

Louisiana Fair Housing Action Center

The Louisiana Fair Housing Action Center (LaFHAC), established in 1995, is a nonprofit civil rights organization working to eradicate housing discrimination and segregation across Louisiana. LaFHAC's work includes educational offerings, free legal services for victims of housing discrimination and people facing eviction, policy advocacy, and foreclosure prevention counseling.

Anti-Defamation League ("ADL")

ADL is a leading anti-hate organization. Founded in 1913 in response to an escalating climate of anti-Semitism and bigotry, its timeless mission is to protect the Jewish people and to secure justice and fair treatment for all. Today, ADL continues to fight all forms of hate with the same vigor and passion. ADL is a global leader in exposing extremism and delivering anti-bias education, and is a leading organization in training law enforcement. ADL is the first call when acts of anti-Semitism occur. ADL's ultimate goal is a world in which no group or individual suffers from bias, discrimination or hate.

Louisiana Progress

Louisiana Progress is a nonprofit organization dedicated to informing, engaging, and mobilizing grassroots organizations, advocates, and activists to enact people-centered public policy in Louisiana.

Black Voters Matter Fund

Our goal is to increase power in our communities. Effective voting allows a community to determine its own destiny.

Fair Districts Louisiana

Fair Districts Louisiana is a Louisiana-based grassroots redistricting and voting reform organization.

South Poverty Law Center Action Fund

SPLC Action Fund is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

League of Women Voters of Louisiana

The League of Women Voters of Louisiana is a nonpartisan political organization encouraging informed and active participation in government. It influences public policy through education and advocacy.

National Council of Jewish Women – Greater New Orleans Section

The National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. Our section has almost 900 members.

Campaign Legal Center

The nonpartisan Campaign Legal Center advances democracy through the law at the federal, state and local levels, fighting for every American's rights to responsive government and a fair opportunity to participate in and affect the democratic process. Since the organization's founding in 2002, CLC has participated in major redistricting, voting rights, and campaign finance cases before the U.S. Supreme Court as well as numerous other federal and state court cases. CLC's work promotes every citizen's right to participate in the democratic process.

Louisiana Budget Project

The Louisiana Budget Project (LBP) monitors and reports on public policy and how it affects Louisiana's low- to moderate-income families. We believe that the lives of Louisianans can be improved through profound change in public policy, brought about by: creating a deeper understanding of the state budget and budget-related issues, looking at the big picture of how the budget impacts citizens, encouraging citizens to be vocal about budget issues that are important to them, and providing insight and leadership to drive the policy debate.

Urban League of Louisiana

The Urban League of Louisiana's mission is to assist African Americans and other communities seeking equity to secure economic self-reliance, parity, and civil rights. As an affiliate of the National Urban League, and for over 83 years, the Urban League of Louisiana has worked to ensure quality education, equal employment, entrepreneurial opportunities, economic inclusion, and shared dignity under the law.

Voters Organized to Educate

Voters Organized is a 501(c)4 non-profit focused on building collective power to create change in the criminal legal system. We are dedicated to building an educated and engaged democracy. We do this by keeping people informed regarding elections, and ongoing issues in city, state, and national policy reform. Through working with organizations and individuals that believe in the principles of social justice and equality, Voters Organized impacts elections and legislation in Louisiana and beyond. We educate and mobilize organizations

and individuals that believe in the principles of grassroots movement building, social justice, and equality.

Voice of the Experienced (VOTE)

VOTE is a grassroots organization founded and run by formerly incarcerated people (FIP), our families and our allies. We are dedicated to restoring the full human and civil rights of those most impacted by the criminal (in)justice system. Together we have the experiences, expertise and power to improve public safety in New Orleans and beyond without relying on mass incarceration.

MetroMorphosis

Our mission is to transform urban communities from within. We understand the essence of this mission to be connecting people and organizations in ways that allow them to co-create a Baton Rouge in which all of its citizens feel it is a vibrant, thriving place to live, work and experience success.

The Education Trust Group

The Education Trust is a national nonprofit that works to close opportunity gaps that disproportionately affect students of color and students from low-income families. Through our research and advocacy, Ed Trust supports efforts that expand excellence and equity in education from preschool through college, increase college access and completion particularly for historically underserved students, engage diverse communities dedicated to education equity, and increase political and public will to act on equity issues.

The Jeremiah Group

The Jeremiah Group is a broad-based community organization working with congregations, schools, unions, neighborhood associations and other community networks in Jefferson Parish.

New Orleans Maternal and Child Health Coalition

We aim to improve outcomes, experiences, and access to quality, respectful care during pregnancy, birth, and the postpartum period by centering the experiences of Black birthing people and their infants in New Orleans.