



**LOUISIANA
PROGRESS**



LDF
DEFEND EDUCATE EMPOWER



February 10, 2022

Sent via email

President David Tatman
East Baton Rouge Parish School Board
1050 S. Foster Drive
Baton Rouge, LA 70806
dtatman@ebrschools.org

**Re: East Baton Rouge Parish School Board Redistricting Must
Comply with Section 2 of the Voting Rights Act of 1965**

Dear President Tatman, Madame Vice President Collins, and Members of the East Baton Rouge Parish School Board,

The Louisiana State Conference of NAACP, NAACP Baton Rouge Branch, Power Coalition for Equity & Justice, Progressive Social Network, Louisiana Progress, NAACP Legal Defense and Educational Fund, Inc. (“LDF”), and Southern Poverty Law Center (“SPLC”), write to urge you to comply with Section 2 of the Voting Rights Act of 1965 (“Section 2”) in redistricting the School Board following the 2020 U.S. Census. As explained in more detail below, there is substantial evidence that a map in which less than half of the districts are comprised of a majority of Black voters (majority-Black) will likely violate Section 2.¹ In order to ensure that Black voters have an equal opportunity to participate in the political process and elect candidates of their choice, as required by Section 2, **we urge you to ensure that at least half of the East Baton Rouge Parish School Board districts are majority-Black districts.**

¹ This assumes that the school board map has at least nine districts.

The East Baton Rouge Parish School Board has a broad impact on the education of the students in the system. The School Board sets budgetary, curricular, hiring, and resource priorities for the more than 40,000, overwhelmingly Black, school children in the East Baton Rouge Parish School System,² over 80 percent of whom are economically disadvantaged.³

Without a map in which at least half of the districts are majority-Black, we are concerned that Black voters will remain underrepresented on the East Baton Rouge Parish School Board. Black students comprise 71.9% of the student body and white students comprise only 11.4%.⁴ The Black voting age population of EBR also is larger than the white voting age population.⁵ However, in at least the last decade, candidates preferred by Black voters have never held a majority of the seats on the School Board.

I. The Redistricting of the East Baton Rouge Parish School Board Must Comply With Section 2 of the Voting Rights Act.

Louisiana law mandates that the School Board reapportion its districts after each decennial census;⁶ that is, the School Board must balance the population within the East Baton Rouge Parish Public School System as equally as possible among its School Board districts to comply with the “one person, one vote” principle under the U.S. Constitution’s Equal Protection Clause.⁷

² East Baton Rouge Parish School System Strategic Plan, 2021-2025 [https://go.boarddocs.com/la/ebrp/Board.nsf/files/C5JQG36461CB/\\$file/2021%20Strategic%20Plan.pdf](https://go.boarddocs.com/la/ebrp/Board.nsf/files/C5JQG36461CB/$file/2021%20Strategic%20Plan.pdf).

³ *Id.*

⁴ See *U.S. News and World Report, East Baton Rouge Parish*, available at <https://www.usnews.com/education/k12/louisiana/districts/east-baton-rouge-parish-103154>.

⁵ According to the 2020 U.S. Census, the total population and voting age population within the East Baton Rouge Parish School System, broken out by race, is as follows:

	Total Population	% Total Population	Voting Age Population	% Voting Age Population
Black	186,003	48.01%	137,488	45.17%
White	154,076	39.77%	131,637	43.25%
Latino	27,985	7.22%	19,894	6.54%
Asian	16,047	4.14%	12,309	4.04%
AIAN	5,114	1.32%	3,979	1.31%
NHPI	313	0.08%	249	0.08%
Total			304,347	

⁶ La. Stat. Ann. § 18:1921; La. Stat. Ann. § 18:1922.

⁷ For local elections, a 10% maximum population deviation is presumptively valid. See *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (“Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.”). The state may justify population deviations over 10% if the plan “may

The School Board also has an affirmative obligation to comply with the Voting Rights Act in the redistricting process. 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.⁸ A chief purpose of Section 2 is to prohibit minority vote dilution at all levels of government, including school boards.⁹

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. 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.

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 SMDs 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 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

reasonably be said to advance [a] rational state policy” and, if so, “whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits.” *Id.* at 843.

⁸ See *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

⁹ 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).

¹⁰ *Gingles*, 478 U.S. at 35.

¹¹ *Id.* at 50-51.

¹² Racially polarized voting occurs when members different racial groups vote as a bloc for different candidates. In a racially polarized election, Black people vote together for their preferred (usually Black) candidate, and most white voters vote for the opposing (usually white) candidate.

process and to elect representatives of their choice.”¹³ Courts consider several factors (commonly known as the “Senate Factors”) to determine whether, under the totality of the circumstances, 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. The East Baton Rouge Parish School Board Map Will Likely Violate Section 2 if Less Than Half of the Districts are Majority-Black

a. *Gingles* Precondition One: It Is Possible to Draw a School Board Map in Which at Least Half of the Districts are Majority-Black.

We have confirmed that it is possible to draw a school board map in which at least half of the districts are majority-Black, provided that the map contains at least nine single-member districts. An illustrative nine-district map in which five of the districts are majority-Black districts is presented in **Appendix 1**. An illustrative eleven-district map in which six of the districts are majority-Black is presented in **Appendix 2**. An illustrative fifteen-district map in which eight of the districts are majority-Black is presented in **Appendix 3**. Based on our analysis, it is unnecessary and harmful to continue to pack Black voters into less than half of the school board districts. Accordingly, the first *Gingles* precondition could readily be satisfied.¹⁶

b. *Gingles* Preconditions Two and Three: East Baton Rouge Parish Elections Reflect Racially Polarized Voting Patterns.

There is ample evidence to suggest that the second and third *Gingles* preconditions are likely satisfied due to Louisiana’s well-documented history and ongoing record of racially polarized voting in elections across the state. Over the past three decades, numerous federal courts have found that racially polarized voting

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).

¹⁶ *See Gingles*, 478 U.S. at 50.

pervades Louisiana statewide and local elections.¹⁷ Additionally, in the past two decades—including as recently 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.¹⁸

In addition, LDF has conducted a preliminary analysis of voting patterns in East Baton Rouge Parish and have confirmed the existence of racially polarized voting in recent elections among voters in the East Baton Rouge Parish Public School System.

c. Totality of Circumstances: Voters of Color Have Less Opportunity to Elect Candidates of Their Choice to the East Baton Rouge Parish School Board.

In addition to the indicia of the three *Gingles* preconditions, under the “totality of the 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” to the East Baton Rouge Parish School Board.¹⁹ There is ample evidence that several of the congressionally-delineated “Senate Factors” can be demonstrated including: the extent of the history of voting discrimination in East Baton Rouge specifically and Louisiana generally (Factor 1); the extent of racially polarized voting

¹⁷ 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 (E.D. La. 1986); *Major v. Treen*, 574 F. Supp. 325, 337 (E.D. La. 1983) (The court found that there was racial polarization in Orleans Parish).

¹⁸ 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”).

¹⁹ *Gingles*, 478 U.S. at 36-37 (quoting 42 U.S.C. § 10301(b)).

in East Baton Rouge (Factor 2); the extent to which Black voters bear the effects of discrimination in a variety of areas of life, including in education (Factor 5); and whether elected members of the East Baton Rouge School Board are responsive to the needs of Black residents (Factor 8). For example:

- Factor 1: As discussed above, in the last two decades, when East Baton Rouge Parish bodies have engaged in changes to their structure or method of election, either the DOJ and/or Black voters have objected on the grounds that the changes will result in a dilution of the political power of Black voters.
- Factor 1: The state of Louisiana has an extensive history and ongoing record of voting discrimination that has adversely impacted the right of Black voters to register to vote, to vote, or otherwise to participate in the political process.²⁰ Since Reconstruction, Louisiana has passed countless laws to deny Black democratic participation, including grandfather clauses, poll taxes, and educational and property qualifications.²¹
- Factor 2: As explained above, LDF has confirmed that racially polarized voting in recent elections for the East Baton Rouge Parish Public School System not only exists, but is stark.
- Factor 5: Black voters in East Baton Rouge continue to experience the brunt of racial discrimination in every sector of public life, including in education, income and employment opportunities.²² *Hall v. Louisiana*, 108 F. Supp. 3d 419, 442 (M.D. La. 2015) (finding this factor to be satisfied based on evidence concerning racial disparities in education, income, and employment).

²⁰ *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.”)

²¹ Southern Poverty L. Ctr., *Fight for Representation: Louisiana’s Pervasive Record of Racial Discrimination in Voting, the Steadfast Louisianians Who Battle Onward & the Urgent Need to Restore the Voting Rights Act*, Report to the U.S. House Com. on the Judiciary (Aug. 16, 2021), https://www.splcenter.org/sites/default/files/louisiana_hr_4_report_final.pdf; Debo P. Adegbile, *Voting Rights in Louisiana: 1982 -2006*, 17 S. Cal. Rev. L. & Soc. Just. 416-418 (2008).

²² “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.

- Factor 8: The interests of Black students, in particular, are severely underrepresented on the East Baton Rouge Parish School Board. Although Black students account for 71.9% of the student body and white students account for a mere 11.4%, five of the Board’s nine members are white and four are Black. The economic disadvantages faced by the majority of the student body continues to pose a barrier to Black student success and a School Board that reflects the school system’s population would be more responsive to the needs of its students.
- Factor 8: In 2014, the East Baton Rouge Parish School Board reduced its size from 11 members to nine members. This action was fiercely challenged by members of the NAACP on the grounds that the change would weaken Black representation on the School Board and lead to a school board that was less responsive to the needs of Black communities.²³ Similar proposals to restructure the East Baton Rouge Parish Council were previously blocked by the DOJ under Section 5 of the Voting Rights Act because it would result in impermissible retrogression of the position of Black voters in Baton Rouge.²⁴ However, unlike the proposals to restructure the Parish Council—which were blocked by DOJ—the reduction in size of the East Baton Rouge Parish School Board was implemented without DOJ review because it was adopted shortly after the United States Supreme Court’s opinion in *Shelby County v. Holder* rendered Section 5 inoperable.²⁵

There is strong evidence based on the totality of circumstances that Black voters in East Baton Rouge Parish have less opportunity to participate in the political process and elect candidates of their choice to the School Board.

III. The East Baton Rouge Parish School Board Must Enact a Map in Which At Least Half of the Districts are Majority-Black.

For the reasons explained above, the School Board must consider its obligations under the Voting Rights Act, including in particular adopting a map in

²³ *McClanahan et al., v. East Baton Rouge Parish School Board*, No. 2014–CC–1797, 148 So.3d 568 (La. 2014).

²⁴ See Voting Determination Letters for Louisiana <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1570.pdf> (last accessed Jan. 25, 2022).

²⁵ See *Shelby County v. Holder*, 570 U.S. 529 (2013). Given the circumstances in which the decision was made, the school board’s decision to reduce the size to nine members might also provide a basis for an intentional racial discrimination claim, which could subject the board once again to preclearance under Section 5 of the VRA. See *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-68 (1977).

which at least half of the districts are majority-Black. A failure by the School Board to comply with Section 2 may lead to costly and unnecessary litigation.²⁶ We therefore urge the School Board to consider districting plans that ensure non-dilution of Black voting strength in East Baton Rouge Parish, including the illustrative maps that we have presented in Appendices 1 and 2.

We are happy to meet with members of the School Board, its staff, or its consultants, to discuss the issues raised in this letter. Along with this letter, we are providing shapefiles of the illustrative maps included in **Appendices 1, 2 and 3** and can provide a more detailed image upon request.

Please feel free to contact Kathryn Sadasivan at 332-600-9546 or by email at ksadasivan@naacpldf.org with any questions or to discuss these issues in more detail. We recommend you read *Power on the Line(s): Making Redistricting Work for Us*,²⁷ a guide for community partners and policy makers who intend to engage in the redistricting process at all levels of government. We also suggest you review the guidance recently issued by the DOJ concerning compliance with Section 2 of the Voting Rights Act in redistricting.²⁸

Sincerely,

/s/ Kathryn Sadasivan

Kathryn Sadasivan

Leah C. Aden, Deputy Director of Litigation

Stuart Naifeh, Manager of the Redistricting Project

Michael Pernick

Jared Evans

NAACP Legal Defense & Educational Fund,
Inc.

40 Rector Street, 5th Fl.

New York, NY 10006

²⁶ See NAACP Legal Defense and Educational Fund, Inc., *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of September 2021*, NAACP Legal Defense and Educational Fund, <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf> (last visited Dec. 12, 2021).

²⁷ See NAACP Legal Defense and Educational Fund, Inc., Mexican American Legal Defense and Educational Fund, and Asian Americans Advancing Justice | AAJC, *Power on the Line(s): Making Redistricting Work for Us*, (2021), <https://bit.ly/3ogg6pS>.

²⁸ See U.S. Department of Justice, Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for Redistricting and Methods of Electing Government Bodies (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

/s/ Liza Weisberg

Liza Weisberg, Staff Attorney

Caren E. Short, Interim Deputy Legal Director

Southern Poverty Law Center

P.O. Box 1287

Decatur, GA 30031

Terry C. Landry Jr., Policy Director – Louisiana

Chandra Shae Foster, Policy Associate

201 St. Charles Avenue

Suite 2000

New Orleans, LA 70170

cc: Michael Hefner

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 education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

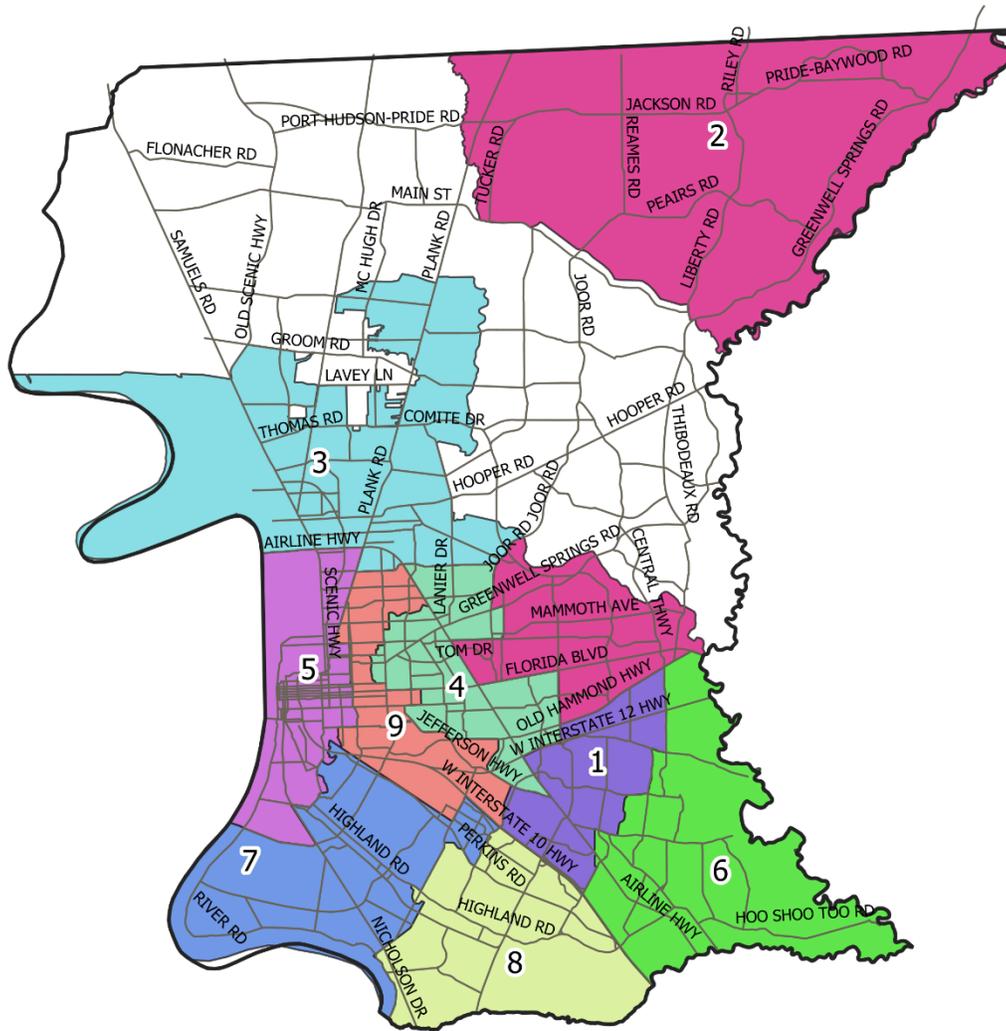
Southern Poverty Law Center (“SPLC”)

The SPLC 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.

APPENDIX 1

Illustrative Nine-District Map With Five Majority-Black Districts

East Baton Rouge, LA Proposed School Districts 9 District Plan



APPENDIX 1-a

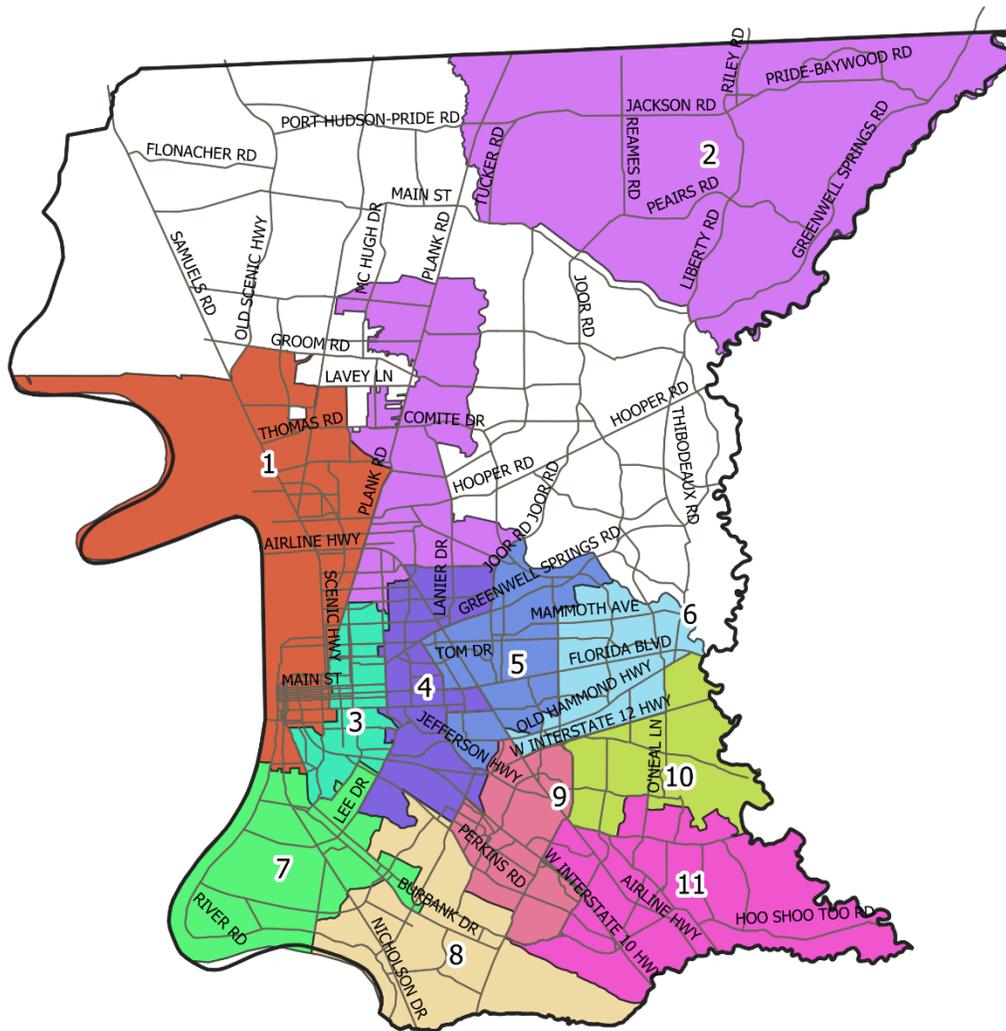
2020 Census Demographics for Illustrative Map (from Appendix 1)

District	Population	Deviation	Deviation %	VAP	BVAP	BVAP %
1	45103	2053	4.8%	35029	12548	35.8%
2	42368	-682	-1.6%	31607	18521	58.6%
3	43283	233	0.5%	33050	29779	90.1%
4	42882	-168	-0.4%	32992	18036	54.7%
5	41407	-1643	-3.8%	34916	18278	52.4%
6	43393	343	0.8%	33205	6422	19.3%
7	44751	1701	4.0%	37624	6839	18.2%
8	43093	43	0.1%	33593	9375	27.9%
9	41172	-1878	-4.4%	32331	17690	54.7%

APPENDIX 2

Illustrative Eleven-District Map With Six Majority-Black Districts

East Baton Rouge, LA Proposed School Districts 11 District Plan



APPENDIX 2-a

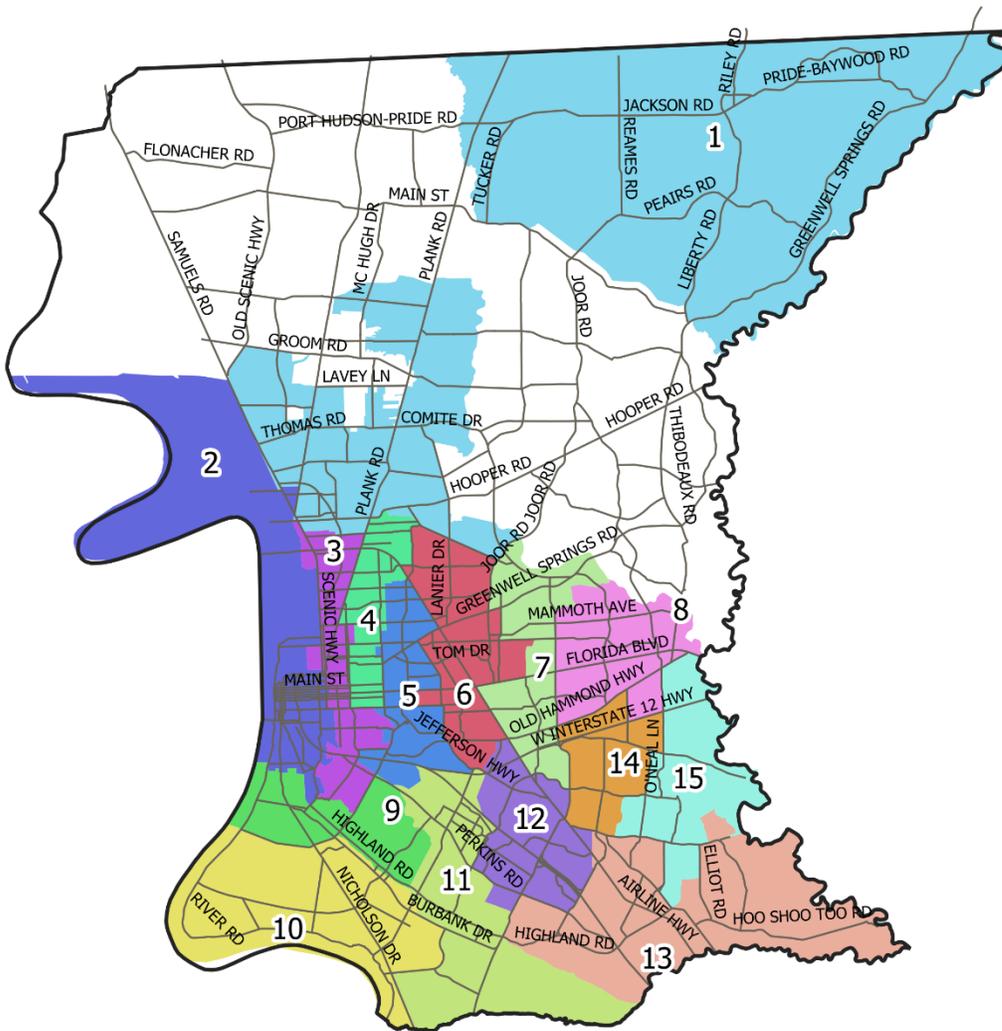
2020 Census Demographics for Illustrative Map (from Appendix 2)

District	Population	Deviation	Deviation %	VAP	BVAP	BVAP %
1	36717	1494	4.2%	29074	23147	79.6%
2	35061	-162	-0.5%	26333	20852	79.2%
3	35230	7	0.0%	28591	16057	56.2%
4	35469	246	0.7%	27409	14407	52.6%
5	34599	-624	-1.8%	26712	14437	54.1%
6	35740	517	1.5%	26430	13761	52.1%
7	34786	-437	-1.2%	30745	6722	21.9%
8	34794	-429	-1.2%	26431	8488	32.1%
9	36810	1587	4.5%	29748	7827	26.3%
10	33799	-1424	-4.0%	26216	7352	28.0%
11	34447	-776	-2.2%	26658	4438	16.7%

APPENDIX 3

Illustrative Fifteen-District Map With Eight Majority-Black Districts

East Baton Rouge, LA
Proposed School Districts
15 District Plan



APPENDIX 3-a

2020 Census Demographics for Illustrative Map (from Appendix 3)

District	Population	Deviation	Deviation %	VAP	BVAP	BVAP %
1	26,000	170	0.66%	20,367	14,617	71.77%
2	26,434	604	2.34%	22,555	12,124	53.75%
3	25,634	-196	-0.76%	19,834	11,483	57.90%
4	25,024	-806	-3.12%	18,640	17,071	91.58%
5	26,111	281	1.09%	19,947	11,816	59.24%
6	26,355	525	2.03%	20,238	13,152	64.99%
7	25,980	150	0.58%	20,072	10,629	52.95%
8	26,364	534	2.07%	19,357	10,521	54.35%
9	26,336	506	1.96%	23,135	4,680	20.23%
10	25,199	-631	-2.44%	20,012	6,617	33.07%
11	24,815	-1,015	-3.93%	19,801	5,145	25.98%
12	25,749	-81	-0.31%	20,405	5,484	26.88%
13	26,199	369	1.43%	20,529	2,860	13.93%
14	26,087	257	0.99%	20,318	7,105	34.97%
15	25,165	-665	-2.58%	19,137	4,184	21.86%