



Sent Via Email

February 18, 2022

The Honorable John Bel Edwards  
Governor, State of Louisiana  
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**Re: State Legislative Redistricting Compliance with Section 2 of the Voting Rights Act**

Dear Governor Edwards,

The American Civil Liberties Union of Louisiana, American Civil Liberties Union Foundation, NAACP Legal Defense and Educational Fund, Inc., the NAACP, Power Coalition for Equity and Justice, Black Voters Matter, Urban League of Louisiana, Southern Poverty Law Center Action Fund, Campaign Legal Center, Louisiana Progress, Louisiana Budget Project, Fair Districts Louisiana, E Pluribus Unum Fund, and United Ballot PAC write in opposition to Senate Bill 1 and House Bill 14, the proposed legislative districting plans passed by the Louisiana State Legislature on February 18. Senate Bill 1 and House Bill 14 do not comply with Section 2 of the Voting Rights Act (“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.<sup>1</sup> We, therefore, respectfully ask you to veto House Bill 14 (“HB14”) and Senate Bill 1 (“SB1”).

Currently just 37 out of the 144 (25.69%) members of the Louisiana Legislature are Black even though Black residents comprise 33.1% of the state’s population.<sup>2</sup> Of these Black legislative members, all but one are elected from single-member majority-minority districts. This is a direct consequence of the configuration of Louisiana’s legislative districts. Under the current state legislative maps, Black voters in Louisiana have less opportunity to elect candidates of their choice than white voters. Instead of using the redistricting process as an opportunity to correct the long-standing dilution of Black voting strength in Louisiana, the State Legislature introduced HB14 and SB1, which would further entrench and exacerbate the dilution of Black voting strength in Louisiana over the next ten (10) years. HB14 does not provide any additional majority-minority Black opportunity districts. And the only change in SB1 to majority-minority Black opportunity districts is the increase of the BVAP to over 50% in one Senate district that is already electing a Black preferred candidate. This minimizes the growth of Black political power.

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.”<sup>3</sup> It is fair, necessary, and logical that Black Louisianans have an equal opportunity to participate in the political process and elect representatives of their choice through additional majority-minority districts. Members of the State Legislature make decisions and policies that impact every aspect of life in Louisiana, including access to education, economic opportunity, housing, health care, and criminal justice. Under redistricting plans proposed by HB14 and SB1, Louisiana’s Black voters are severely underrepresented. Adding new majority-minority Black opportunity districts would provide Black voters with representation to address the state’s pervasive and ongoing record of inequality of opportunity in various aspects of life.

The failures of the maps in HB14 and SB1 are particularly concerning because of the population growth and shifts in Louisiana over the last ten years. According to the new Census data, the number of Black people in Louisiana increased by 3.78%.<sup>4</sup> And the total number of Black Louisiana residents over the age of 18—the Black Voting Age Population (“BVAP”)—increased by 7.21%.<sup>5</sup> Furthermore, Louisiana’s

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<sup>1</sup> *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

<sup>2</sup> The source of this data is the 2021 P.L. 94-171 Restricting Data released by the Census Bureau and accessible at [data.census.gov](https://data.census.gov).

<sup>3</sup> *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

total population growth since 2010 was driven by growth in minority populations. For example, per the 2020 Census data, in the Shreveport area (including Bossier, Caddo, and De Soto Parishes), the overall population decreased by 1.3%, but the region's Black population *grew* by 2.14%.<sup>6</sup> In the Lake Charles area (including Calcasieu and Cameron Parishes), since 2010, the overall population decreased by 11.42%, but the Black population *grew* by 19.12%.<sup>7</sup> You must veto these bills to ensure that these communities are fairly and accurately represented by the new House and Senate districts, even as many districts must be reapportioned due to overall population loss. The Legislature has been presented with multiple options to achieve this, even as many districts must be reapportioned due to overall population loss.

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

The Louisiana Legislature 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.<sup>8</sup> A chief purpose of Section 2 is to prohibit minority vote dilution at all levels of government.<sup>9</sup>

A district map may violate Section 2 when 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, which deprives them of the opportunity to elect candidates of choice in other districts.<sup>10</sup> Section 2 prohibits minority vote dilution regardless of whether a plan was adopted with a discriminatory purpose.<sup>11</sup> 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 single-member districts in which the minority community is sufficiently large and geographically

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Thornburg v. Gingles*, 478 U.S. at 34.

<sup>9</sup> 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).

<sup>10</sup> See *Gingles*, 478 U.S. at 46, n.11.

<sup>11</sup> *Id.* at 35.

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.<sup>12</sup> Together, the second and third *Gingles* preconditions are commonly referred to as racial bloc or racially polarized voting (“RPV”).<sup>13</sup> The presence of RPV is key evidence of the need to remedy racial vote dilution, as discussed below.

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.”<sup>14</sup> Courts consider several factors to determine whether the minority vote has been diluted impermissibly.<sup>15</sup> 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.”<sup>16</sup>

## II. HB14 and SB1 Were Passed in Contravention of Section 2 of the Voting Rights Act

HB14 and SB1 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. HB14 does not provide any additional majority-minority Black opportunity districts. Furthermore, the only change in SB1 to majority-minority Black opportunity districts is the increase of the BVAP to over 50% in one Senate district that is already electing a Black preferred candidate. However, the Louisiana Black population is sufficiently numerous and geographically compact to comprise the majority of the voting age population of between six and nine additional majority-minority Black opportunity

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<sup>12</sup> *Id.* at 50-51.

<sup>13</sup> 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.

<sup>14</sup> 52 U.S.C. § 10301(b); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006).

<sup>15</sup> 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.

<sup>16</sup> *Clark v. Calhoun Cty.*, 21 F.3d 92, 97 (5th Cir. 1994).

House districts that are not contained in HB14. The Louisiana Black population is also sufficiently numerous and geographically compact to comprise the majority of the voting age population of at least three additional majority-minority Black opportunity Senate districts that are not contained in SB1.

Legislators were aware of other options that could have helped achieve Section 2 compliance. For example, Senate Bill 17 was introduced during the redistricting session, which would have added two additional majority-minority Black opportunity districts—one in the Baton Rouge area and one in the Shreveport area.<sup>17</sup> Additionally, ACLU presented a map that showed three new majority-minority Black opportunity Senate districts and nine new majority-minority Black opportunity House districts. The Legislature was aware of these maps and the possibilities that they present because they introduced and discussed them at the roadshow hearing held on January 20, 2022.<sup>18</sup> Additionally, amendments were offered to House Bill 14 from Representative Glover, demonstrating multiple ways to create an additional majority-minority Black opportunity district in the Shreveport area that would reflect the increase in the Black population in northwest Louisiana. Moreover, there was extensive testimony during the redistricting session during which members raised concerns about compliance with Section 2 and the importance of ensuring that Black voters in Louisiana have an equal opportunity to elect candidates of their choice. For example, Senator Peterson spoke extensively about her concerns that the increased Black population of Jefferson Parish were being cracked among multiple Senate districts or packed into Senate District 5, anchored in Orleans Parish, resulting in a dilution of their voting strength. This choice deprives many Black voters in Jefferson of the opportunity to have an equal opportunity to elect candidates of their choice. Black voters in Jefferson are sufficiently numerous and geographically compact for the creation of a new majority-minority Black opportunity districts in Jefferson Parish. Despite ample opportunities to adopt House and Senate maps that fairly represent minority voters, the Legislature chose to proceed with passing HB14 and SB1.

Section 2 can require the creation of new majority-minority opportunity districts in which a minority group composes a numerical, working majority of the voting-age population.<sup>19</sup> If the maps in HB14 and SB1 are enacted, each of the three *Gingles* preconditions will likely be present in Louisiana. And there is ample evidence 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. Therefore, new State Legislature maps that do not provide significant increases in the number of majority-minority Black opportunity districts in both the Senate and the House of Representatives will likely violate Section 2.

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<sup>17</sup> See <https://redist.legis.la.gov/HouseSenateBlockEquiv>.

<sup>18</sup> See [https://redist.legis.la.gov/default\\_PlanSubmissions](https://redist.legis.la.gov/default_PlanSubmissions).

<sup>19</sup> See *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

**a. *Gingles* Precondition One: It Is Possible to Draw State Legislature Maps with Additional Majority-Minority Black Opportunity Districts**

As explained, it is possible to draw additional majority-minority Black opportunity districts in both the Senate and the House of Representatives. As explained, the ACLU presented illustrate maps that showed three new majority-minority Black opportunity Senate districts and nine new majority-minority Black opportunity House districts.<sup>20</sup>

These maps are based on 2020 Census data, and demonstrate that additional majority-minority Black opportunity districts can be drawn in both the Senate and the House, achieving compliance with the Voting Rights Act. The provided maps illustrate just two possible ways to draw maps that follow traditional redistricting principles<sup>21</sup> and meaningfully expand the number of majority-minority Black opportunity districts. There are countless other potential district configurations of both the Senate and the House that would add a significant number of new majority-minority Black opportunity districts where the BVAP is the numerical majority,<sup>22</sup> the Black voting community is geographically compact, and the share of majority-minority Black opportunity districts would fairly reflect the State’s population and demographics.

The illustrative Senate map demonstrates fourteen majority-minority opportunity districts, adding three new majority-minority Black opportunity districts. In this illustrative plan, BVAP within each of the three new majority-minority Black opportunity districts is sufficiently large and geographically compact to satisfy *Gingles*’ first precondition. This illustrative plan provides fourteen majority-minority Black opportunity districts where the BVAP is over 50%.

The illustrative House of Representatives map demonstrates 38 majority-minority Black opportunity districts, adding nine new majority-minority Black opportunity districts. Within each of the nine new majority-minority opportunity districts in the illustrative plan, BVAP is sufficiently large and geographically compact to satisfy *Gingles*’ first precondition. The illustrative State House map provides 38 majority-minority Black opportunity districts where the BVAP is over 50%.

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<sup>20</sup> See [https://redist.legis.la.gov/default\\_PlanSubmissions](https://redist.legis.la.gov/default_PlanSubmissions)

<sup>21</sup> Traditional Redistricting Principles include population equality, non-dilution of minority voting strength, respect for consideration of communities of interest, compactness and contiguity of districts, and other considerations.

<sup>22</sup> 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. at 18.

These maps also respect traditional redistricting principles. For example, the illustrative Senate map has fewer overall parish and precinct splits than the current map, and the overall average of the widely recognized statistical measures of compactness of the illustrative Senate map are better than the current map.<sup>23</sup> The most of the majority-minority Black opportunity districts on the illustrative Senate map also have better compactness scores for two of the widely accepted measures than the current map. And overall, the compactness measures of three new majority-minority Black opportunity districts are better than, or essentially the same, as that of the current map. Similarly, this illustrative House map has fewer overall parish and precinct splits than the current map; and the overall average of the widely recognized statistical measures of compactness of the illustrative House map are better than the current map. Additionally, more than half of the majority-minority Black opportunity districts of the illustrative House map have better compactness scores for two of the widely used measures than the current map. And overall, the compactness measures for the nine new majority-minority Black opportunity districts are better than, or essentially the same, as that of the current map.<sup>24</sup>

As shown by the illustrative maps, it is possible to draw a House map with between six and nine additional majority-Black districts. Similarly, the Senate map could contain three more majority-Black districts. Because the State Legislature could have created House and Senate maps that both comport with traditional districting criteria and contain more majority-minority Black opportunity districts, the first *Gingles* precondition would likely be satisfied by the new maps in HB14 and SB1.<sup>25</sup>

### **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 due to Louisiana’s well-documented history and ongoing record of racially polarized voting in elections across the state.<sup>26</sup>

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<sup>23</sup> See, e.g., Compactness Reports for Illustrative Maps (on file with ACLU). Also it should be noted that it is possible to draw a Senate map with three new three new majority-minority Black opportunity districts and a House map with six to nine new majority-minority Black opportunity districts and still avoid most, if not all, precinct splits.

<sup>24</sup> While the illustrative maps reflect improvements in compactness, it should be noted that the Louisiana State Legislature Redistricting Criteria requires compliance with Section 2 of the Voting Rights Act, and only requires consideration of compactness concerns to the “extent practicable.” Therefore, the State Legislature should not prioritize compactness over compliance with Section 2 when creating new state legislative maps. See Joint Rule No. 21. Redistricting criteria.

<sup>25</sup> See *Gingles*, 478 U.S. at 50.

<sup>26</sup> *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 499 (5th Cir. 1987) (“Racially polarized voting is the linchpin of a § 2 vote dilution claim.”); *McMillan v. Escambia County*, 748 F.2d 1037, 1043 (5th Cir. 1984) (“[RPV] will ordinarily be the keystone of a dilution case”); see also *Clark v.*

Over the past three decades, numerous federal courts have found that racially polarized voting pervades Louisiana statewide and local elections.<sup>27</sup> In the past two decades, 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.<sup>28</sup>

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, the majority of white voters elected white candidates, defeating the Black candidates.<sup>29</sup> Furthermore, as noted, currently only one of the 37 Black members of the Louisiana Legislature is from a district that is not a single-member majority-minority districts. There is ample evidence to support the conclusion that there are racially polarized voting patterns that may satisfy *Gingles* preconditions two and three.

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*Calhoun County*, 88 F.3d 1393, 1397 (5th Cir. 1996); *Gingles*, 478 U.S. at 48 n.15; *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1122 (5th Cir. 1991).

<sup>27</sup> 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 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 held that there was racial polarization in Orleans Parish).

<sup>28</sup> 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").

<sup>29</sup> See *United States House of Representatives elections in Louisiana, 2020*, Ballotpedia, [https://ballotpedia.org/United\\_States\\_congressional\\_delegations\\_from\\_Louisiana](https://ballotpedia.org/United_States_congressional_delegations_from_Louisiana) (last accessed Sep. 1, 2021).

**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 State Legislature elections.<sup>30</sup> Several of the Senate Factors<sup>31</sup> strongly indicate that vote dilution is occurring, 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 Louisiana has used various voting practices that may enhance the opportunity for discrimination against Black voters (Factor 3); 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). No set number of these factors need to be established.<sup>32</sup> Senate factors Two and Seven are the most significant<sup>33</sup> and the evidence of them in Louisiana is indisputable. The following are a sample of the indicia under the totality of circumstances impacting Black voters’ ability to participate equally in Louisiana’s State Legislature elections:

Senate Factor 1:

- The State of Louisiana has an extensive history and ongoing record of voting discrimination that has touched upon the right of Black and other minority voters, to register to vote, to vote, or otherwise to participate in the political process.<sup>34</sup> From Reconstruction to present day, Louisiana has passed countless laws to deny Black democratic participation, including grandfather clauses, poll taxes, and educational and property qualifications.<sup>35</sup>
- Louisiana has a long history and ongoing record of using various voting practices, such as at-large elections and redistricting to dilute 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.*

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<sup>30</sup> *Gingles*, 478 U.S. at 36-37.

<sup>31</sup> *See supra* n.13.

<sup>32</sup> *Gingles*, 478 U.S. at 45.

<sup>33</sup> *Id* at 48 n.15.

<sup>34</sup> *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.”)

<sup>35</sup> Debo P. Adegbile, *Voting Rights in Louisiana: 1982 -2006*, 17 S. Cal. Rev. L. & Soc. Just. 416-418 (2008).

*Holder* decision in 2013, the DOJ blocked nearly 150 voting related changes, including many vote dilution as well as vote denial schemes, in Louisiana pursuant to Section 5 of the Voting Rights Act.<sup>36</sup> Most recently, the DOJ successfully challenged the City of West Monroe’s at-large alderman elections under Section 2.<sup>37</sup>

- Louisiana’s statewide district maps have been challenged under the Voting Rights Act in numerous reapportionment cycles since 1965.<sup>38</sup> District 2, Louisiana’s only majority-minority Congressional district, was established in 1983, after the 1981 reapportionment cycle, when 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.<sup>39</sup>

Senate Factor 2:

- As noted above, there is indicia of stark patterns of RPV throughout the State.

Senate Factor 5:

- Black Louisianans continue to experience the brunt of racial discrimination in every sector of public life. 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.<sup>40</sup> 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.<sup>41</sup> Health disparities also persist among Black as compared to

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<sup>36</sup> See *Voting Determination Letters for Louisiana*, Department of Justice, <https://www.justice.gov/crt/voting-determination-letters-louisiana> (last accessed Aug. 25, 2021).

<sup>37</sup> See *United States v. City of West Monroe*, No. 21-cv-0988 (W.D. La. Apr. 14, 2021).

<sup>38</sup> 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).

<sup>39</sup> 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.

<sup>40</sup> *State unemployment by race and ethnicity*, Economic Policy Institute, <https://www.epi.org/indicators/state-unemployment-race-ethnicity/> (last updated July 2021).

<sup>41</sup> *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).

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.<sup>42</sup>

Senate Factor 6:

- Louisiana political campaigns have been characterized by subtle and overt racial appeals impacting the political process. 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. Senate to “defend the heritage of European American people.”<sup>43</sup> Even with his explicit ties to white supremacy, he received over 58,000 votes.<sup>44</sup> 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.<sup>45</sup> 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.”<sup>46</sup>
- 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.”<sup>47</sup>

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<sup>42</sup> *Black Communities Are Hit Hardest By COVID-19 In Louisiana And Elsewhere*, New Orleans Public Radio, (Apr. 6, 2020), <https://www.wvno.org/latest-news/2020-04-06/black-communities-are-hit-hardest-by-covid-19-in-louisiana-and-elsewhere>.

<sup>43</sup> 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>.

<sup>44</sup> *United States Senate election in Louisiana, 2016*, Ballotpedia, [https://ballotpedia.org/United\\_States\\_Senate\\_election\\_in\\_Louisiana,\\_2016](https://ballotpedia.org/United_States_Senate_election_in_Louisiana,_2016) (last accessed Sep. 1, 2021).

<sup>45</sup> 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>.

<sup>46</sup> 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](https://www.theadvocate.com/baton_rouge/news/communities/livingston_tangipahoa/article_e0999182-9506-11e8-bf14-fb6afcf2a6ee.html).

<sup>47</sup> *St. Bernard Citizens For Better Gov’t*, 2002 WL 2022589, at \*10.

Senate Factor 7:

- Black people have been largely underrepresented in Louisiana public offices, particularly outside of the majority-Black districts. There is currently only one Black member of the Louisiana Legislature from a district that is not a single-member majority-minority districts. Moreover, Louisiana has never had a Black U.S. Senator, and has not had a Black governor since Reconstruction. Louisianans rarely elect Black candidates to Congress; the State has had only four Black Congresspeople since Reconstruction.<sup>48</sup> Louisiana’s first Black Chief Justice of the state Supreme Court was appointed 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.<sup>49</sup>

An additional important factor in evaluating the totality of the circumstances is whether there is rough proportionality between the number of majority-minority voting districts and the minority members’ share of the relevant population.<sup>50</sup> “The relevant proportionality inquiry compares the percentage of total districts that are [minority] opportunity districts with the [minorities] share of the citizen voting-age population.”<sup>51</sup>

As noted, Black individuals are currently underrepresented in the Louisiana State Legislature. Currently just 37 out of the 144 (25.69%) members of the Louisiana Legislature are Black and there are no other members of color. According to the 2020 census data, Black people make-up 33.1% of the total population in Louisiana.<sup>52</sup> Additionally, per the 2019 census data, the BVAP population in Louisiana was 31.5%; and per the 2020 census data, the current BVAP population is 31.2%.<sup>53</sup> However, only 27 out of the 105 Louisiana House of Representatives seats are filled by a Black individual. This is only 25.7% of the total number of House districts. Similarly, the Louisiana State Senate has only 10 seats filled by a Black individual out of 39. This is only 25.6% of the total number of Senate districts. There

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<sup>48</sup> 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).

<sup>49</sup> See *Chisom v. Jindal*, 890 F. Supp. 2d 696, 702-705 (E.D. La. 2012).

<sup>50</sup> See *LULAC v. Perry*, 548 U.S. 399, 403 (2006) (citing *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994)).

<sup>51</sup> *Id.*; see also *Patino v. City of Pasadena*, 677 Fed. Appx, 950, 953 (5th Cir. 2017) (*citation omitted*) (noting that one among many factors in the totality of circumstances to be considered is proportionality, which links the number of majority-minority voting districts to the minority members’ share of the relevant population).

<sup>52</sup> The source of this data is the 2021 P.L. 94-171 Restricting Data released by the Census Bureau and is accessible at [data.census.gov](https://data.census.gov).

<sup>53</sup> *Id.*

has not been proportionality between the State Legislature and the Black population in Louisiana in the past, and unless additional majority-minority Black opportunity districts are added this lack of proportionality will continue.

Our illustrative House of Representative map, by contrast, includes potentially 38 reasonably compact majority-Black districts out of 105 total statewide that, based on a preliminary analysis, have the opportunity to function for Black voters. Similarly, our illustrative State Senate map creates potentially 14 reasonably compact majority-minority Black opportunity Districts out of 39 statewide that, based on a preliminary analysis, have the opportunity to function for Black voters. These maps would create the possibility of achieving representation that is proportional with the percentage of Black Louisianians statewide. As such, our illustrative maps in both the House and Senate clearly “result[] in less disparity than the [current] plan and more closely approximate[] rough, or substantial proportionality”—especially when considering that Black Louisiana should not “continue to bear the burden of underrepresentation under the [proposed] scheme while the white majority enjoys overrepresentation.”<sup>54</sup> It is possible for the Legislature to draw new state legislative maps that achieve proportionality.

### **III. You Must Veto HB14 and SB1**

HB14 and SB1 violate Section 2 because they do not provide Black voters with an equal opportunity to elect candidates of their choice. We urge you to veto these bills and ask the Legislature to consider redistricting plans that ensure non-dilution of Black voting strength in legislative elections. A veto from you will help ensure that the legislative maps are fair for all Black Louisianans.

Your approval is required before the Legislature can enact any House or Senate map.<sup>55</sup> You, therefore, play a vital role in the redistricting process. We ask you to recognize the importance of adding a meaningful number of new majority-minority Black districts to both the House and the Senate. By vetoing HB14 and SB1, you will ensure that that Black Louisianans have an opportunity to participate equally in the political process and to elect the candidate of their choice to the State Legislature.

Moreover, your veto will ensure that the Legislature works to improve the maps, which will help to achieve compliance with Section 2. Your veto can also protect the State of Louisiana from unnecessary and costly litigation. 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. We

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<sup>54</sup> *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).

<sup>55</sup> *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.”).

assume that those resources could be more reasonably and appropriately for other priorities in Louisiana.

For the reasons explained here, it is critical that you veto HB14 and SB1 to ensure that Louisiana's legislative maps comply with federal and state laws and redistricting principles.

Please feel free to contact Chris Kaiser, Advocacy Director with the ACLU of Louisiana, with any questions at 512-740-1317 or email at [ckaiser@laaclu.org](mailto:ckaiser@laaclu.org) to discuss these issues in more detail.

Sincerely,

/s/

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### American Civil Liberties Union 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 Foundation

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.

### 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.

### Louisiana NAACP State Conference

Louisiana State Conference of the NAACP is a state subsidiary of the NAACP, 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 is a group of community-based organizations that work together to educate and empower voters across Louisiana. Through our voter engagement and community organizing work, we seek to unify our collective voices into a stronger, more cohesive force that can successfully advocate for an agenda of shared values and issues.

### 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.

### Southern Poverty Law Center Action Fund

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

### 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 Progress

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

### Black Voters Matter Fund

The Black Voters Matter Fund believes in the value of the voter 365. In this vein, not only do we support our partners' voting rights during and in between elections, we also support capacity and power building all year long.

### 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.

### E Pluribus Unum

Founded by former New Orleans Mayor Mitch Landrieu in 2018, E Pluribus Unum (EPU) is a nonprofit, nonpartisan organization whose mission is to build a more just, equitable, and inclusive South, uprooting the barriers that have long divided the region by race and class. Incubated at Emerson Collective, EPU is focused on changing the divisive narratives that perpetuate systemic and interpersonal racism, cultivating and empowering courageous leaders who are advancing racial equity, and championing transformative policy change. Learn more at [www.unumfund.org](http://www.unumfund.org).

### Fair Districts Louisiana

Fair Districts Louisiana is a grassroots, non-partisan alliance of citizens advocating for redistricting and voting reform.