

Nos. 24-109, 24-110

IN THE
Supreme Court of the United States

STATE OF LOUISIANA,
v. *Appellant,*
PHILLIP CALLAIS, ET AL.,
Appellees.

PRESS ROBINSON, ET AL.,
v. *Appellants,*
PHILLIP CALLAIS, ET AL.,
Appellees.

**On Appeal from the
United States District Court for the
Western District of Louisiana**

**JOINT APPENDIX
VOLUME I**

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APPEAL DOCKETED: AUGUST 1, 2024
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(Western District of Louisiana)**

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2024 First Extraordinary Session ENROLLED

ACT No. 2

SENATE BILL NO. 8

BY SENATOR WOMACK AND
REPRESENTATIVES BRYANT, WILFORD
CARTER, CHASSION, GREEN, MANDIE LANDRY,
LARVADAIN, MOORE, SELDERS, WALTERS,
YOUNG AND KNOX

AN ACT

To enact R.S. 18:1276.1 and to repeal R.S. 18:1276, relative to congressional districts; to provide for the redistricting of Louisiana's congressional districts; to provide with respect to positions and offices, other than congressional, which are based upon congressional districts; to provide for the effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 18:1276.1 is hereby enacted to read as follows:

§1276.1. Congressional districts

Louisiana shall be divided into six congressional districts, and the qualified electors of each district shall elect one representative to the United States House of Representatives. The districts shall be composed as follows:

(1) District 1 is composed of Precincts 13, 14, 15, 18, 21, 22, 25, 26, 27, 33, 34, 35, 41, 43 and 69 of Ascension Parish; Precincts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79,

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(2) District 2 is composed of Precincts 6, 7, 9, 11, 17, 20, 23, 24, 28, 30, 31, 32, 36, 37, 38, 39, 40, 42, 44, 45, 47, 48, 50, 51, 52, 53, 54, 55, 57, 58, 62, 63, 65, 66, 68, 71, 72, 73, 77 and 78 of Ascension Parish; Assumption Parish; Iberville Parish; Precincts 57, 104, 108, 115, 116, 131, 133, 138, 150, 151, 152, 153, 154, 155, 156, 157A, 157B, 170, 171, 172, 173, 174, 175, 176, 177, 178,

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(3) District 3 is composed of Acadia Parish; Precincts 167, 260, 261, 262, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309E, 309W, 310, 311, 312, 313E, 313W, 314, 315E, 315W, 316E, 316W, 317, 318, 319N, 319S, 320E, 320W, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332N, 332S, 333, 334, 335, 336, 337, 338, 339, 340, 360, 361, 362, 363, 364, 368, 369, 370, 372, 405, 440, 441, 463, 464, 467, 800, 801, 860S, 861E and 861W of Calcasieu Parish; Cameron Parish; Iberia Parish; Jefferson Davis Parish; Precincts 1, 3, 8, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 130, 131, 133, 134, 135 and 136 of Lafayette Parish; Precincts 1-1, 2-2, 2-6, 2-8, 2-12, 2-13, 2-14, 2-15, 3-1, 3-2, 3-4, 3-5, 3-7, 5-2, 6-1, 6-2, 6-3, 6-4, 6-5, 7-1, 7-2, 7-3 and 11-4 of Lafourche Parish; St. Martin Parish; St. Mary Parish; Terrebonne Parish and Vermilion Parish.

(4) District 4 is composed of Allen Parish; Beauregard Parish; Bienville Parish; Bossier Parish; Precincts 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 2-1, 2-2, 2-4, 2-7, 3-1, 3-8, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 4-10, 5-10, 6-1, 7-1, 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 9-1, 9-2, 9-3, 9-4, 9-5, 9-6, 9-7, 9-8, 9-9, 9-10, 9-11, 9-12, 9-13, 10-2, 11-1, 11-2, 11-3, 11-6, 11-7, 11-9, 11-10, 12-1, 12-3, 12-7, 12-8 and 12-9 of Caddo Parish; Precincts 160E, 160W, 161, 162E, 162W, 163, 164, 165, 166E, 166W, 365, 366, 367, 371N, 371S, 400, 401, 402, 403, 404, 406, 407, 408, 460E, 460W, 461, 465, 466E, 466W, 468, 469, 560, 561, 562, 600, 601, 602, 603, 660, 661, 662, 663, 664, 700, 701, 702, 703, 760, 761, 762 and 860N of Calcasieu Parish; Claiborne Parish; Precincts 10, 11, 11B, 11C, 16, 16A, 16B, 16C, 23, 28, 30A, 31A, 34, 34A, 34B, 35, 35A, 35B, 37, 37C, 46, 46A, 48, 49, 49A and 51 of De Soto Parish; Evangeline Parish; Grant Parish; Jackson Parish; Lincoln Parish; Precincts 1, 1A, 2, 4, 25, 32, 33, 38, 41, 43, 44, 44A, 45, 49, 50, 51, 51A, 53, 55, 57, 58, 61, 64, 71, 75, 76 and 77 of Ouachita Parish; Precincts C22, C23, C35, C37-A, C37-B, C41, S7, S8, S9, S10, S11, S13, S14, S21, S22, S23, S24, S25, S26, S27, S28 and S29 of Rapides Parish; Red River Parish; Sabine Parish; Union Parish; Vernon Parish; Webster Parish and Winn Parish.

(5) District 5 is composed of Precincts 1, 2, 3, 4, 5, 8, 10, 12, 16, 19, 61, 64 and 76 of Ascension Parish; Precincts 1-1, 1-2, 1-3, 1-3A, 2-1, 2-1A, 2-2, 2-2A, 2-2B, 2-2C, 2-2D, 2-2F, 2-3A, 2-4, 2-4A, 2-5, 2-5E, 2-7, 2-8, 3-1B, 4-1, 4-2, 5-1, 5-1A, 5-1B, 6-1A, 6-2, 6-2A, 7-3B and 9-4B of Avoyelles Parish; Caldwell Parish; Catahoula Parish; Concordia Parish; Precincts 1-12, 1-34, 1-41, 1-42, 1-43, 1-44, 1-46, 1-47, 1-49, 1-56, 1-69, 1-74, 1-75, 1-76, 1-79, 1-80, 1-99, 1-105, 1-107, 2-6, 2-7, 2-8, 2-33, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-9, 3-13, 3-14, 3-15, 3-16,

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(6) District 6 is composed of Precincts 3-1, 3-3, 4-2A, 4-2B, 6-1B, 7-1, 7-3, 8-1, 8-2A, 8-2B, 8-3, 8-3A, 9-1A, 9-2, 9-2A, 9-3, 9-4, 9-5B, 10-2, 10-2A, 10-2B, 10-3A, 10-3B, 10-4, 11-1 and 11-2A of Avoyelles Parish; Precincts 2-3, 2-5, 2-6, 2-8, 2-9, 2-10, 2-11, 2-12, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-9, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-8, 5-9, 5-11, 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, 6-8, 6-9, 6-10, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 10-1, 10-3, 10-4, 10-5, 10-6, 10-7, 10-8, 10-9, 11-4, 11-5, 11-8, 12-2, 12-4, 12-5, 12-6, 12-10 and 12-11 of Caddo Parish; Precincts 1, 4, 5, 5A, 6, 6A, 6B, 9, 21, 22, 22A, 26, 26A, 30, 31, 32, 33, 33A, 38, 38A, 42, 44, 46B, 53, 55, 56, 59, 60, 60A, 63 and 63A

of De Soto Parish; Precincts 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-13, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, 1-22, 1-23, 1-24, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, 1-31, 1-32, 1-33, 1-35, 1-36, 1-37, 1-38, 1-39, 1-40, 1-45, 1-48, 1-50, 1-51, 1-52, 1-53, 1-54, 1-55, 1-57, 1-58, 1-59, 1-60, 1-61, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-70, 1-71, 1-72, 1-73, 1-77, 1-78, 1-81, 1-82, 1-83, 1-84, 1-85, 1-86, 1-87, 1-88, 1-89, 1-90, 1-91, 1-92, 1-93, 1-94, 1-95, 1-96, 1-97, 1-98, 1-100, 1-101, 1-102, 1-103, 1-104, 2-1, 2-2, 2-3, 2-4, 2-5, 2-9, 2-10, 2-11, 2-12, 2-13, 2-14, 2-15, 2-16, 2-17, 2-18, 2-19, 2-20, 2-21, 2-22, 2-23, 2-24, 2-25, 2-26, 2-27, 2-28, 2-29, 2-30, 2-31, 2-32, 2-34, 2-35, 2-36, 2-37, 2-38, 3-8, 3-10, 3-11, 3-12, 3-19, 3-20, 3-24, 3-27, 3-28, 3-32, 3-42, 3-44, 3-50, 3-52, 3-54, 3-55, 3-56, 3-57, 3-59, 3-63, 3-69, 3-70, 3-72, 3-75 and 3-76 of East Baton Rouge Parish; Precincts 2, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 68, 112, 113, 122 and 129 of Lafayette Parish; Natchitoches Parish; Pointe Coupee Parish; Precincts C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11-A, C11-B, C13, C14, C15, C17, C18, C19, C20, C21, C24, C25, C26, C27, C28, C30, C31, C32, C33, C34, C36, C38-A, C38-B, C39, C40, C42, N1, N2, N3, N4, N5, N6, N7, N8, N9, N10, N11, N12, N13-A, N13-B, N14-A, N14-B, N15, N16, N17, N18-A, N18-B, N19, N20, N21, N22, N23, N24, N25, N26, N27, N28, N29, S1, S2, S4, S5, S6A, S6B, S15, S16, S17, S18, S19 and S20 of Rapides Parish; St. Landry Parish and West Baton Rouge Parish.

Section 2. R.S. 18:1276 is hereby repealed.

Section 3.(A) The precincts referenced in this Act are those contained in the file named “2024 Precinct Shapefiles (1-10-2024)” available on the website of the Legislature of Louisiana on the effective date of this Section. The 2024 Precinct Shapefiles are based upon

those Voting Districts (VTDs) contained in the 2020 Census Redistricting TIGER/Line Shapefiles for the State of Louisiana as those files have been modified and validated through the data verification program of the Louisiana House of Representatives and the Louisiana Senate to represent precinct changes submitted through January 10, 2024, to the Legislature of Louisiana by parish governing authorities pursuant to the provisions of R.S. 18:532 and 532.1.

(B) When a precinct referenced in this Act has been subdivided by action of the parish governing authority on a nongeographic basis or subdivided by action of the parish governing authority on a geographic basis in accordance with the provisions of R.S. 18:532.1, the enumeration in this Act of the general precinct designation shall include all nongeographic and all geographic subdivisions thereof, however such subdivisions may be designated.

(C) The territorial limits of the districts as provided in this Act shall continue in effect until changed by law regardless of any subsequent change made to the precincts by the parish governing authority.

Section 4. The provisions of this Act shall not reduce the term of office of any person holding any position or office on the effective date of this Section for which the appointment or election is based upon a congressional district as composed pursuant to R.S. 18:1276. Any position or office that is filled by appointment or election based upon a congressional district and that is to be filled after January 3, 2025, shall be appointed or elected from a district as it is described in Section 1 of this Act.

Section 5.(A) Solely for the purposes of qualifying for election and the conduct of the election of representa-

tives to the United States Congress at the regularly scheduled election for representatives to the congress in 2024, the provisions of Section 1 of this Act shall become effective upon signature of this Act by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the governor and subsequently approved by the legislature, the provisions of Section 1 of this Act shall become effective on the day following such approval for the purposes established in this Subsection.

(B) For subsequent elections of representatives to the United States Congress and for all other purposes, the provisions of Section 1 of this Act shall become effective at noon on January 3, 2025.

(C) The provisions of Section 2 of this Act shall become effective at noon on January 3, 2025.

(D) The provisions of this Section and Sections 3 and 4 of this Act shall become effective upon signature of this Act by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If this Act is vetoed by the governor and subsequently approved by the legislature, the provisions of this Section and Sections 3 and 4 of this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

[11] SENATOR JENKINS: All right. Thank you, Mr. Chairman. And let me start off also by just expressing my appreciation for all the hard work that has gone into this effort. I said in my opening comments, well, my introduction, that I served in-house and governmental affairs. So I was very much a part of the redistricting process over there, served with Senator Duplessis, who was vice chair of our House and governmental affairs committee, and certainly want to salute you, sir, on your leadership once again. We touched upon it somewhat, but I just want, just for the record, if we could, can you expand a little bit on the motivating factors behind this particular map?

ATTY. VICTORIA WENGER: Certainly. So I can speak from the perspective of the litigation, and again, where the map was a teeny, tiny bit different because this one has been adjusted for precinct lines and updates since our phases of litigation, when this map was introduced jointly by parties involved. But we had our incredible map drawer Tony Fairfax, who's been credited by courts for decades now testified before the district court about his process of drawing a map. And he spoke to balancing principles, to really looking at joint Rule 21, the rules of the game that the legislature here enacted, but also what courts have sustained for decades now. We really look at the rubric provided by *Thornburg v. Gingles*, which was upheld in *Allen v. Milligan* just last year. The Alabama case, very analogous to this one before the Supreme Court and argued by my colleagues at LDF. So he was able to provide in his analysis, and this is all in the public record. I can provide it, or you can find it there. A comparison on eight of the quantitative measures for redistricting that really put in joint Rule 21 into

numeric measures so that you can see a side by side of this map compared to the enacted map or any of the other maps that were presented or argued either as bills or amendments during prior redistricting sessions or in the session that we were reconvened for today. So we can first talk about population deviation. At the time that Mr. Fairfax was working on this map, we spoke to this earlier, he was able achieve a deviation of only 61 people HB1 have a deviation of 65.

[00:40:07]

Both maps were able to comply with the principle of geographic contiguity. That's the idea that you don't have one pocket of a district over here and the other pocket over here. Everything is connected by land or waterway. You can get from one point in a district to the other without needing to go through another district. Both were successful on that, but he was ensuring that he was complying with that principle. Parish splits is a huge one here and my colleague, Jared, spoke to it earlier. Mr. Fairfax was able to get parish splits down to 11. We've seen very few bills here, or in other phases of the process that we're able to keep so many parishes whole. And in Louisiana, that's a huge deal. If you do anything on elections, voter registration, and I know each one of you all do, because you have to run for office. That's the level at which elections are administered. Ballots are often built at that level. But you also see school boards, administration, all these other elements of civic and public life really codified around that parish level. So keeping parishes whole was a huge guiding principle here, but again, balanced with all of these other dynamics. In comparison, again, HB-1 split 15 parishes. VTD splits, that's a fancy census way of saying precinct splits. This legislature is very committed to making sure that

number is zero, both maps achieved that. Census place split. So that's another fancy term for municipal splits, but also accounting for unincorporated areas. It's really what's your hometown and is it encompassed in one district or cut up into multiple. Mr. Fairfax was able to get it down to 27 splits in comparison to HB-1, the enacted maps 32. Landmark splits. So this is where we're talking about airports, cemeteries, parks, schools, churches. How many times are they sliced and diced into multiple different districts? Mr. Fairfax had it at 58. Same number for HB-1. Now let's get into compactness. The layman's way of analyzing compactness is something very scientific called the Eyeball Test. How does it look? Do the district lines look silly? Do they look like they have a bunch of tendrils going in one direction or another? Just illogical if you're taking any kind of rivers or other things that may also wind and bent out of the equation. What's that eyeball test? You can run the eyeball test for yourself. If I was offering my opinion here, I would say that our map looks much more compact than the enacted map that voters are participating on to this day and represented under right now. But we also have some math to back that up. And specifically, Mr. Fairfax was looking at three tests, which again, my colleague mentioned earlier, the Reock Test which calculates the ratio of district area to the smallest circle containing the district. So draw the district and try to have a circle encompass it, you can run some numbers to see what that ratio is. You have the Convex-Hull Test, which determines the ratio of the area of the district to the convex-hull area of the district. And then finally, the Polsby-Popper Test, which calculates the ratio of the same area of the district to the area of a circle with the same perimeter. So here your goal is to get as close to one as possible. And I'll give you the numbers for Mr.

Fairfax's map and then the enacted one. He was able to get to a compactness score of point 0.4, 0.2 and 0.7 compared to HB-1's 0.37, 0.14 and 0.62. In easiest terms, this map that we're presenting here today beats the enacted map and many of the others that it was up against throughout the multi fold processes we've been before the legislature during it outperforms on every measure. So compactness is another check in favor of this bill. And then finally, Fracking, which I know can mean different things in different contexts. But here fracking is whether or not discontinuous parts of a district are or of a parish are populating the district. So essentially, how are things being sliced and diced. Here, Mr. Fairfax was able to get the number down to 12. Again, lower the better versus the inactive plan at 17. So that is 8 quantitative measures where at worst this map is exactly the same as the enacted map and at best it is well outperforming it. But on one measure which is listed towards the top, if not at the top of Joint Rule 21, and a guiding principle for how redistricting comes into play is compliance with Federal and State Law. And one of those Federal Laws is the Voting Rights Act of 1965, including Section 2, including the promise that black voters where there's an opportunity to create a second black majority district or any additional majority districts that give black voters an opportunity to elect their candidate of choice where it is possible, we're number one, and this is the Jingles Test.

[00:45:03]

It's possible to draw a map because that population lives geographically compactly enough to be able to draw the district. So again, this is not about just some ratio, it's not because black voters are 1/3 of the state that they inherently get another black majority

district, it's because of where they live, it's because we've seen multiple maps presented here in these chambers and in front of the courts that showed it's possible, it's easy, and in fact, you can do a better and comply with all of these other measures, better wills doing that, then passing the map that you all have enacted here and that voters are operating under today. So number one, is it possible. Number two, is it necessary. The Voting Rights Act looks to voting behaviors. It's asking in the second part of that Jingles test, if the black voters are voting cohesively, if they really have a voting block and shared interests and community and needs based off of legacies of discrimination, but also contemporary realities. And then two, are white voters, the majority population voting in the opposite direction. So unless you create a geographic majority, black voters or whatever the minority population is are just not going to see their candidates of choice elected. Those conditions exist here. This record is replete with examples, including ones filed finally from across the aisle here that show it's possible to create another black majority district. And we know from Dr. Lisa Hanley's analysis and other record evidence before the courts that it is necessary because of patterns of racially polarized voting in this state. If those elements weren't here, we wouldn't be in this place. There's a future where maybe those elements subside where the state is more integrated, where the politics are less divided by race. We are not there yet. So we're in this situation. And so what we have here is a map that complies with the Voting Rights Act of 1965, that has withstood that test of jingles, which has now been in play wills, we had to see that test sustained through *Allen V. Milligan* and the Supreme Court of the United States. All of these factors bring us to today and bring us to this map

which is well vetted by the courts and which a lot of folks in this room have been really excited about for many years now. So I'll leave it at that. But the point is, this map complies with the Voting Rights Act, and we hope that you can get on board with it.

* * *

[1] IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Docket No. 3:24-cv-122

PHILLIP CALLAIS, ET AL
VERSUS
NANCY LANDRY, ET AL

April 4, 2024
Via VTC/Zoom

OFFICIAL TRANSCRIPT OF PRETRIAL
CONFERENCE BEFORE UNITED STATES
DISTRICT JUDGES DAVID C. JOSEPH AND
ROBERT R. SUMMERHAYS AND FIFTH CIRCUIT
JUDGE CARL E. STEWART

APPEARANCES

FOR THE PLAINTIFFS:

EDWARD D. GREIM
Graves Garrett & Greim
1100 Main Street, Suite 2700
Kansas City, MO 64105

Also Present:
Katherine Graves

FOR THE DEFENDANT NANCY LANDRY:

ALYSSA M. RIGGINS

Nelson Mullins

301 Hillsborough Street, Suite 1400

Raleigh, NC 27603

Also Present:

John Carroll Walsh

Cassie A. Holt

* * *

[8] remotely. Intervenors' counsel will ensure that there are no delays or technical difficulties resulting from this. Senator Roy Duplessis will need to testify in person considering plaintiffs' objection and a lack of good cause for remote testimony.

The next motion is Document 144, motion in limine by intervenors. That motion is denied. The points of law raised therein may be argued by counsel at trial. Counsel may also make contemporaneous objections to evidence being offered by the adverse party.

I also want to address, of course, we haven't and we don't have time this morning to go through each of the objections. We'd hoped that there would have been more coordination regarding joint exhibits and things of that nature, but it appears there's objections to pretty much everything being offered that have been filed. So I'll just broadly address those and we will have to address each as they come up during the trial. Okay.

Broadly, and this shouldn't be news to anybody, expert reports are inadmissible hearsay. The expert testimony, of course, is what will be considered at trial.

Newspaper articles are inadmissible hearsay. Of course, the exception, the caveat to that, is assuming these articles are being offered for the truth of the

* * *

[1] UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF LOUISIANA MONROE DIVISION

Civil Action No. 3:24-cv-00122

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,
Plaintiffs,

vs.

NANCY LANDRY, in her official capacity as
Secretary of State,
Defendant.

PRELIMINARY INJUNCTION HEARING
CONSOLIDATED WITH BENCH TRIAL
OFFICIAL TRANSCRIPT OF PROCEEDINGS,
VOLUME I
BEFORE THE HONORABLE CIRCUIT JUDGE
CARL E. STEWART
THE HONORABLE DISTRICT JUDGE
DAVID C. JOSEPH
AND THE HONORABLE DISTRICT JUDGE
ROBERT R. SUMMERHAYS
APRIL 8, 2024
SHREVEPORT, LOUISIANA

DIANA CAVENAH, RPR
FEDERAL OFFICIAL COURT REPORTER
300 FANNIN STREET, SUITE 4203
SHREVEPORT, LOUISIANA 71101
(318) 934-4754

* * *

[84] JUDGE JOSEPH: I think it's time for our morning break. we will take a 15-minute break and come back at 10 after 11. I think we'll probably go a little later and maybe take lunch around one or so today, okay?

(Recess.)

JUDGE JOSEPH: Please be seated. Plaintiffs may call their next witness.

MR. GREIM: We call Dr. Stephen Voss.

(Oath administered to the witness.)

MR. CHAKRABORTY: Your Honor, before we get started, when we had the pretrial conference you mentioned that if we have objections in terms of renewing our objections with respect to our motion in limine, to do them now. So we are lodging that objection to Dr. voss's testimony on the record for the same reasons that are outlined in our --

JUDGE JOSEPH: To all of his testimony?

MR. CHAKRABORTY: Say it one more time.

JUDGE JOSEPH: You're objecting to all of his testimony?

MR. CHAKRABORTY: I'm sorry. We are objecting to the portions of his testimony that are -- that we are objecting to in our motion in limine.

JUDGE JOSEPH: Okay. That motion is overruled. Please proceed, Counsel.

* * *

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA—
MONROE DIVISION

Case No.

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

v.

NANCY LANDRY, IN HER OFFICIAL CAPACITY AS
LOUISIANA SECRETARY OF STATE,

Defendant.

COMPLAINT

Violations of Civil Rights Protected by the Fourteenth
and Fifteenth Amendments of the United States
Constitution; 42 U.S.C. § 1983; Three-Judge Court
Requested Under 28 U.S.C. § 2284

I. Introduction

1. In a matter of eight days, a bill to redistrict all
the congressional districts of the State of Louisiana,
SB8, was introduced in the Louisiana Senate, went
through Senate committee hearings, passed by a vote
in the Senate, was transferred to the Louisiana House
of Representatives, went through House committee
hearings and amendments, was passed by a vote in the
House, went back to the Senate with amendments and

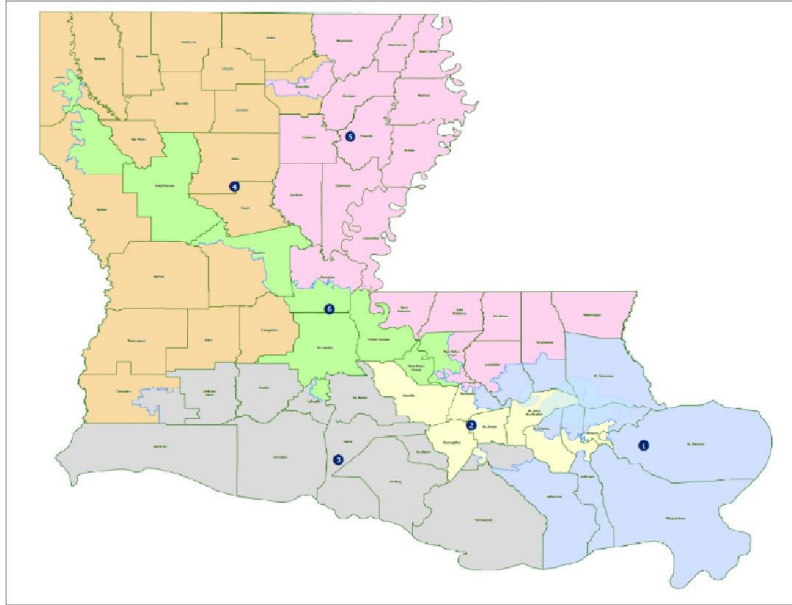
passed by a vote, was sent to the Governor's desk, and was signed by the Governor.

2. From start to finish the State's purpose was clear: segregate voters based entirely on their races and create two majority-African American voting districts and four majority non-African American districts, without regard for any traditional redistricting criteria. SB8's sponsors and many other lawmakers expressly stated their intent was to maximize the voting strength of African American voters by stripping them from their communities in far-flung regions of Louisiana and consolidating them into two districts that stretched hundreds of miles in length and dwindled to less than a mile in width. In doing so, the State engaged in textbook racial gerrymandering and violated the U.S. Constitution.

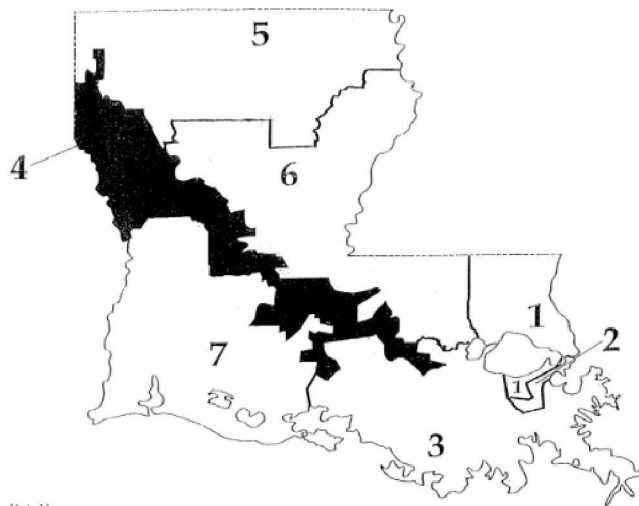
3. The State's new map divides its congressional districts into six bizarre shapes:¹

¹ This official map can be found along with the text of the enacted statute and reports for SB8/Congress Act 2 on the Louisiana Government Redistricting website: https://redist.legis.la.gov/2024_Files/2024CONGRESSACT2.

Act 2 (SB2) 1st ES (2024) - Congressional Districts



4. The State of Louisiana has tried this redistricting strategy before. Not long ago, the State, after years of litigation and several trips to the Supreme Court, enacted a map remarkably similar to the one in SB8:



(Act 1)

Hays v. Louisiana, 936 F. Supp. 360, 374 app. III (W.D. La. 1996). That map too had two majority-minority districts: District 2 and District 4. District 4 was long and narrow and slashed from the Northwest corner of Louisiana down to Southeastern Baton Rouge. But the Court recognized the map for what it was: an unconstitutional racial gerrymander. *Hays v. Louisiana* “presents us with what we in Louisiana call a ‘Goose’ case,” meaning it is almost factually identical to the case before this Court today. *Id.* at 368. Like District 4 of the past, District 6 in SB8 today “is approximately 250 miles long.” *Id.* “The District thinly links minority neighborhoods of several municipalities from Shreveport in the northwest to Baton Rouge in the southeast (with intermittent stops along the way at Alexandria, Lafayette, and other municipalities), thereby artificially fusing numerous and diverse cultures, each with its unique identity, history, economy, religious preference, and other such interests.” *Id.* The resemblances between the past and present State actions are extraordinary. Only here, the facts are far worse for the State.

5. Here, the State has engaged in explicit, racial segregation of voters and intentional discrimination against voters based on race. The State has drawn lines between neighbors and divided communities. In most cases, the lines separate African American and non-African American voters from their communities and assign them to Districts with dominating populations far away. In the matter of a mile, a person can travel in a straight line from a majority-non-African American district to a majority-African American district and then back to a majority-non-African American one. The State has not even tried to cover its motives or offer race-neutral reasons for the map. *Cf. id.* at 369. Legislators have openly admitted that the sole purpose behind the configuration of these bizarre

districts was to create “two congressional districts with a majority of Black voters” with “over 50% Black voting age population,”² without considering any traditional criteria such as compactness or communities of interest, so Louisiana would have “two majority-minority districts that perform.”³ But the State has conceded that it is “impossible” that “a second majority-minority district can be drawn without impermissibly resorting to mere race as a factor,”⁴ that any attempt to do so with Louisiana’s African American voters dispersed throughout the State is only doable as an unconstitutional “racial gerrymander,”⁵ and that “attempting to pick out only those census blocks over 50% population and excluding to the extent possible blocks of less than 50% Black population” on a map demonstrates “the exact type of evidence of racial intent that dooms legislative action.”⁶ These statements

² See the introductory statements of Senator Glen Womack and Representative Beau Beaulieu on the Senate and House floors, respectively. Louisiana State Senate, *Senate Chamber 1ES Day 3* (Jan. 17, 2024), https://senate.la.gov/s_video/VideoArchivePlayer.aspx?v=senate/2024/01/011724SCHAMB [hereinafter Senate Archive]; Louisiana State House of Representatives, *House Chamber Day 5, 1ES – SINE DIE* (Jan. 19, 2024), https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2024/jan/0119_24_1ES_Day5 [hereinafter House Archive].

³ See statement of Senator Gary Carter quoting Congressman Troy Carter during the Senate debate. Senate Archive, *supra.*; see also statement of Senator Royce Duplessis, *id.*, and statement of Representative C. Denise Marcelle, House Archive, *supra.*

⁴ *Intervenor-Defendant the State of Louisiana’s Combined Opposition to Plaintiffs’ Motions for Preliminary Injunction* at 15, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. Apr. 29, 2022), ECF 108.

⁵ *Id.* at 13-15.

⁶ *Id.* at 14-15.

confirm that the State has violated the U.S. Constitution by enacting SB8 in at least two ways. First, the State has violated the Equal Protection Clause of the Fourteenth Amendment by enacting racially gerrymandered districts. And second, the State has violated the Fourteenth and Fifteenth Amendments by intentionally discriminating against voters and abridging their votes based on racial classifications across the State of Louisiana. Accordingly, Plaintiffs respectfully ask the Court for declaratory and injunctive relief.

I. Jurisdiction

1. This Court has jurisdiction under 42 U.S.C. §§ 1983 and 1988, as well as 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

2. Plaintiffs are entitled to have their case decided by a three-judge district court panel because this action challenges “the constitutionality of the apportionment of congressional districts.” 28 U.S.C. § 2284(a).

3. Venue is proper in this district because a “substantial part of the events or omissions giving rise to the claim occurred” here. 28 U.S.C. § 1391(b)(2). Specifically, Plaintiff-voters suffered a violation of their rights under the Fourteenth and Fifteenth Amendments in this district.

4. This Court has authority to award the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

I. Parties

1. Plaintiff Albert Caissie, Jr., is a non-African American voter who resides in Monroe, Louisiana and Ouachita Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8,

his address was in congressional District 5. SB8 now places his address in District 5.

2. Plaintiff Phillip Callais is a non-African American voter who resides in Brusly, Louisiana and West Baton Rouge Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 2. SB8 now places his address in District 6.

3. Plaintiff Elizabeth Ersoff is a non-African American voter who resides in Shreveport, Louisiana and Caddo Parish. She resided at the same address before SB8 was enacted. She plans to vote in the 2024 congressional election. Prior to the enactment of SB8, her address was in congressional District 4. SB8 now places her address in District 6.

4. Plaintiff Grover Joseph Rees is a non-African American voter who resides in Lafayette, Louisiana and Lafayette Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 3. SB8 now places his address in District 6.

5. Plaintiff Lloyd Price is a non-African American voter who resides in DeVille, Louisiana and Rapides Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 5. SB8 now places his address in District 6.

6. Plaintiff Rolfe McCollister is a non-African American voter who resides in Baton Rouge, Louisiana and East Baton Rouge Parish. He resided at the same address before SB8 was enacted. He plans to vote in

the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 6. SB8 now places his address in District 5.

7. Plaintiff Candy Carroll Peavy is a non-African American voter who resides in Shreveport, Louisiana and Caddo Parish. She resided at the same address before SB8 was enacted. She plans to vote in the 2024 congressional election. Prior to the enactment of SB8, her address was in congressional District 4. SB8 now places her address in District 4.

8. Plaintiff Mike Johnson is a non-African American voter who resides in Shreveport, Louisiana and Caddo Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 4. SB8 now places his address in District 4.

9. Plaintiff Bruce Odell is a non-African American voter who resides in Lafayette, Louisiana and Lafayette Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 3. SB8 now places his address in District 3.

10. Plaintiff Joyce LaCour is a non-African American voter who resides in Gonzales, Louisiana and Ascension Parish. She resided at the same address before SB8 was enacted. She plans to vote in the 2024 congressional election. Prior to the enactment of SB8, her address was in congressional District 6. SB8 now places her address in District 2.

11. Plaintiff Tanya Whitney is a non-African American voter who resides in Sorrento, Louisiana and Ascension Parish. She resided at the same address

before SB8 was enacted. She plans to vote in the 2024 congressional election. Prior to the enactment of SB8, her address was in congressional District 6. SB8 now places her address in District 1.

12. Plaintiff Daniel Weir, Jr., is a non-African American voter who resides in Meraux, Louisiana and St. Bernard Parish. He resided at the same address before SB8 was enacted. He plans to vote in the 2024 congressional election. Prior to the enactment of SB8, his address was in congressional District 1. SB8 now places his address in District 1.

13. Defendant is Secretary of State Nancy Landry. She is only sued in her official capacity. As Secretary of State, she is “the chief election officer of the state.” La. Const. art. 4, § 7; La. R.S. § 18:421. The State Constitution requires her to “prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines.” La. Const. art. 4, § 7. Her oversight of elections extends to federal congressional elections. La. R.S. §§ 18:452, 18:462. She opens and determines whether potential candidates qualify to run in federal congressional elections before placing their names on the ballot, and she holds and conducts the elections. *Hall v. Louisiana*, 974 F. Supp. 2d 978, 993 (M.D. La. 2013); *Johnson v. Ardoin*, No. CV 18-625 SDD-EWD, 2019 WL 2329319, at *3 (M.D. La. May 31, 2019).

14. Each Plaintiff is a registered voter who has a right to vote and plans to vote in the 2024 congressional election.

15. Plaintiffs have standing to challenge SB8 because the law classifies and segregates them into distinct districts based on their races for purposes of

voting. See *North Carolina v. Covington*, 138 S. Ct. 2548, 2552-54 (2018) (per curiam) (holding that plaintiffs can establish a cognizable injury by showing “they had been placed in their legislative districts on the basis of race”); see also *Miller v. Johnson*, 515 U.S. 900, 911 (1995); *Shaw v. Reno (Shaw I)*, 509 U.S. 630, 650 (1993); *Harding v. Cnty of Dallas, Tex.*, 948 F.3d 302 (5th Cir. 2020). They all reside in racially gerrymandered districts. Plaintiffs have thereby suffered a constitutional injury that is traceable to the challenged law and redressable by this Court.

16. Plaintiffs also have standing because they suffered unlawful, intentional discrimination based on race when the State used a racial quota to create two majority-African American districts. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 1 (2023); *Adarand Constructors v. Pena*, 515 U.S. 200 (1995); *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

17. Plaintiffs also have standing because they have suffered an abridgement of their rights to vote. *Shaw v. Hunt (Shaw II)*, 517 U.S. 899, 917 (1996); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

18. These injuries are traceable to SB8, which directly and intentionally caused these injuries.

19. These injuries are also redressable by this Court because this Court can declare this map invalid and enjoin its use, and thereby stop the constitutional harm and unlawful racial discrimination. This Court can also reshape each district to remedy the violation of Plaintiffs’ constitutional rights.

I. Statement of Facts

1. During its 2021 legislative session, the Louisiana State Legislature received the 2020 decennial census data and learned that the State of Louisiana would continue to have six congressional districts.

2. The census data revealed that 29.87% of the Louisiana voting age population was non-Hispanic African American and 31.25% of the voting age population was African American.

3. The Louisiana Legislature then adopted a joint rule to establish redistricting criteria. La. Leg. J.R. 21A. From October 2021 to January 2022, the Legislature held public meetings to solicit comments on redistricting maps. Then after this extensive process, the Legislature convened. On February 1, 2022, both Chambers presented identical redistricting bills. After weeks of deliberation and debate, the bills passed in each Chamber. Louisiana Governor John Bel Edwards vetoed the two bills, but the Legislature overrode the veto for the House bill, and it became law on March 30, 2022.

4. On March 9, 2022, some voters filed a lawsuit against the Louisiana Secretary of State and sought a preliminary injunction. The State of Louisiana intervened.

5. On April 29, 2022, the State, through then-Attorney General Jeff Landry's Office, argued before the district court in opposition to the preliminary injunction: "No sufficiently numerous and geographically compact second majority-minority district can be drawn in Louisiana." *Intervenor-Defendant the State of Louisiana's Combined Opposition to Plaintiffs' Motions for Preliminary Injunction* at 6, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. Apr. 29, 2022),

ECF 108 [hereinafter *State Motion*]. It went on to say: “The minority population in Louisiana is not compact” when accounting for the necessary “traditional districting principles.” *Id.* at 11. Rather, to draw two districts with a certain African American voting age population percentage, you “had to ignore any conception of communities of interest.” *Id.* at 8; *see id.* (“The fact that so many communities of interest were either divided among the Congressional districts or paired with unlikely and dissimilar larger cities begs the question of whether the distribution of African Americans are truly compact enough to create a second majority-minority Congressional district.”). The State also claimed, “no constitutional second majority-minority congressional district is *possible* in Louisiana” and any attempt to create one would be an unconstitutional “racial gerrymander.” *Id.* at 13 (emphasis added). The State also said plaintiffs presented “the exact type of evidence of racial intent that dooms legislative action.” *Id.* at 14-15. In sum, the State repeatedly stressed that it was “impossible . . . to demonstrate that a second majority-minority district can be drawn without impermissibly resorting to mere race as a factor.” *Id.* at 15; *see also id.* at 7 (“again, . . . you cannot create two legally sufficient BVAP congressional districts”). In doing so, the State admitted that it could not create two majority-African American districts without violating the U.S. Constitution. *Id.*

6. SB8 did exactly that by creating two majority-African American districts.

7. The State also acknowledged the limits of Section 2 of the Voting Rights Act in the briefing, arguing that, “it is well established that when a plaintiff brings a claim under Section 2, there is ‘nothing in [Section 2 that] establishes a right to have members of a

protected class elected in numbers equal to their proportion in the population.” *Id.* at 10-11 (citing 52 U.S.C. § 10301(b); *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986)).

8. The State also argued that maps proposed by the plaintiffs in that case, creating majority-African American districts composed of African American voters in cities 152 and 157 miles apart, demonstrated that the districts were not compact. *Id.* at 12.

9. SB8 later created majority-African American districts with African American voters in cities 250 miles apart.

10. Despite the State’s arguments and admissions, the United States District Court for the Middle District of Louisiana granted a preliminary injunction. But the District Court did not issue a final order. The case never advanced to the merits. At no point did any court—not the Middle District of Louisiana, the United States Court of Appeals for the Fifth Circuit, or the Supreme Court of the United States—issue a final order on the merits.

11. Defendant Nancy Landry was elected to serve as Louisiana Secretary of State in November 2023 and assumed office on January 8, 2024.

12. Jeff Landry, who previously defended the State as Attorney General, was elected to serve as Louisiana Governor in November 2023 and assumed office on January 8, 2024.

13. On the Governor’s very first day in office, he called a special legislative session specifically to redistrict Louisiana’s congressional districts.

14. On January 15, 2024, the Governor opened the session with a few remarks. He said he called the

Legislature to the redistricting special session to perform “[a] job that our own laws direct us to complete” and “a job that our individual oaths promised we would perform.” Office of the Governor, *Governor Jeff Landry Opens First Special Session on Court Ordered Redistricting* (Jan. 16, 2024), <https://gov.louisiana.gov/news/governor-jeff-landry-opens-first-special-session-on-court-ordered-redistricting>. He said he gathered the Legislature to “seek to amplify the voice of the few.” *Id.*

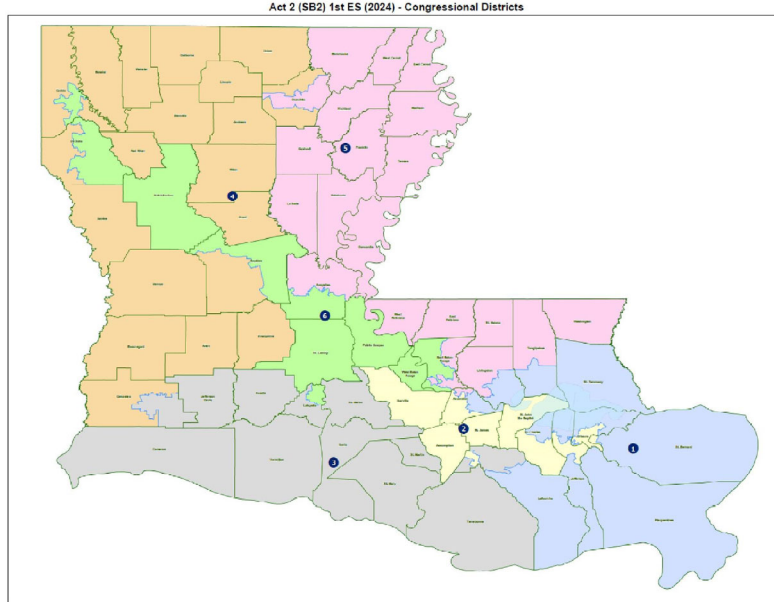
15. During that special session, Senator Glen Womack introduced SB8, a bill to redistrict Louisiana’s congressional districts, with the stated goal of creating two majority-African American districts.

16. SB8 repealed La. R.S. § 18:1276—the State’s congressional redistricting map enacted on March 30, 2022.

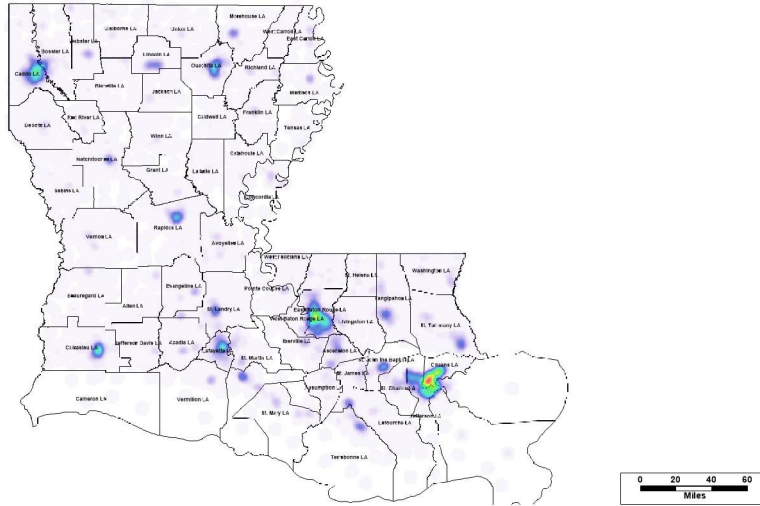
17. SB8’s final map created two majority-African American districts, Districts 2 and 6, and four majority-non-African American districts, Districts 1, 3, 4, and 5.

18. The map was drawn on the presumption that African American voters in Louisiana all share the same interests and issues because of their race, regardless of where they geographically reside, and even though Louisiana’s African American residents are dispersed throughout the State, living in integrated parishes and cities throughout Louisiana.

19. That map, as laid out in the legislative reports, is included here:



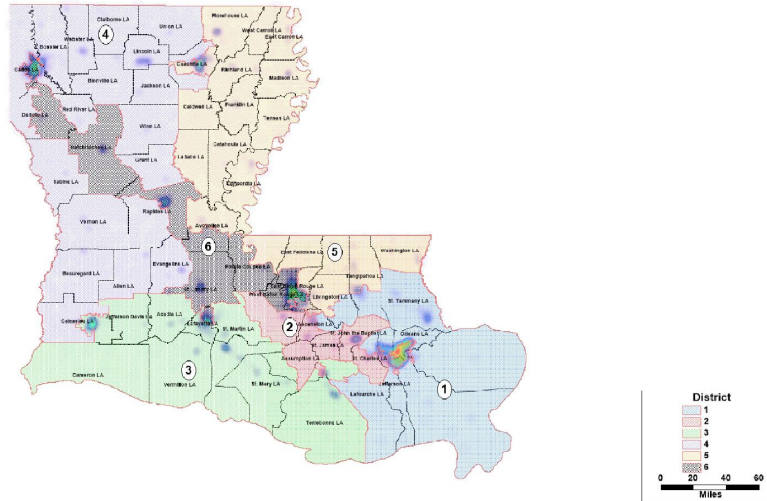
20. A map of the dispersion of these African American voters is included here, with the highest numbers of African American voters located first in New Orleans, then Baton Rouge, and finally in Shreveport.



21. SB8's map did not resemble any alternative maps presented in the prior litigation.

22. SB8's enacted District 6 stretches in a familiar slash mark, reminiscent of the rejected map in *Hays*, from the top Northwest corner of the State in Shreveport, diagonally to central Alexandria, and then further down to Baton Rouge in the Southeast. It also takes an abrupt detour even further South to Lafayette in the heart of Acadiana to pick up African American voters.

23. SB8 drew Districts 6 and 2 to "connect the dots" of areas with large numbers of African American voters. A map depicting the areas with the highest numbers of African American voters alongside SB8's district lines illustrates this point.



24. Baton Rouge and Shreveport are roughly 250 miles apart. They are not only separated by distance but also by culture, industry, topography, and even common natural disasters. The geographic, economic, and cultural gulf between Shreveport in the North and Lafayette in the South looms just as large.

25. In Rapides Parish, District 6 dwindles down to a narrow width of 2.5 miles before continuing its snake upward toward Shreveport.

26. District 6's appendages are also extremely narrow. It dwindles down to a width of less than a mile—4,384.17 feet—wide in East Baton Rouge Parish between I-10 and the juncture of Perkins Road and Dawson Creek. Another slice of District 6 at the bottom of East Baton Rouge Parish between Burbank Drive and the Iberville Parish line is only 1.82 miles wide. Another appendage between St. Landry Parish and Lafayette Parish is only 2.95 miles wide. In North De Soto Parish, District 6 carves out a 1.9-mile-wide sliver between Wallace Lake and Linwood Avenue.

27. District 6 cuts through and divides many parishes, including Caddo, De Soto, Rapides, Lafayette, Avoyelles, and East Baton Rouge Parishes—six out of the ten parishes in District 6.

28. District 2 divides even more parishes: Ascension, Assumption, Terrebonne, St. Charles, Jefferson, St. Bernard, and Orleans—seven out of the nine parishes in District 2.

29. The map also intentionally created four majority-non-African American districts and excluded African American voters in Districts 1, 3, 4, and 5.

30. These districts too were gerrymandered based on race.

31. District 5 barely satisfies the contiguity requirement. A minuscule land bridge only 1.2 miles wide at the juncture of West Feliciana and Avoyelles Parishes unites District 5's Northern and Southern arms, which threaten to break in half from erosion. It is only contiguous by virtue of the Mississippi River; the surrounding shores and an island are uninhabited. These two halves are unconnected by road, bridge, ferry, trail, or path. Any unity or community of interest is pure myth.

32. District 5 and District 6 divide Baton Rouge purely based on race. The areas of Baton Rouge with predominantly non-African American populations were drawn to fall under District 5, which was designed to be a majority-non-African American District. The areas of Baton Rouge with predominantly African American populations were drawn to fall under District 6, which was designed to be a majority-African American District.

33. District 4 is nearly cut in half by District 6.

34. None of these six districts are compact. When measured on the Polsby-Popper Scale of 0 to 1, with a score of 0 indicating absolutely no compactness and 1 indicating total compactness, all six districts barely rise above 0. District 6 is the worst, with a score of 0.05 compactness. But Districts 4 and 5 both have a staggering score of 0.08 compactness. District 2 has a score of 0.11. And the State's most compact districts, District 1 and District 3, have scores of 0.16 and 0.19, respectively. The mean of all six districts was 0.11 for compactness.

35. These compactness scores are lower than the scores for the State's 2022 enacted map.

36. Of special concern, SB8 divided communities of interest. Some residents in Shreveport, for example, were carved out of District 4 from their neighbors to join residents in East Baton Rouge, a city 250 miles away with its own ideals, values, culture, economics, and concerns, solely because they are the same race as those people in East Baton Rouge.

37. SB8 also stripped Lafayette residents from their community of interest in Southern Louisiana and forced them into the same district as residents of Shreveport in Northern Louisiana. Lafayette is the core city of "Acadiana," a region also known as Cajun Country and home to most of the State's Francophone population, many of whom identify as Cajuns or Creoles. Residents of Lafayette and Southern Louisiana pride themselves on their unique, rich culture with its French and Spanish roots. Southern Louisiana is organized around sugar cane farming, fishing, and more recently the oil industry. Northern Shreveport has more in common culturally, socially, economically, and agriculturally with neighboring Texas than with Southern Louisiana. The only reason to include these

two disparate cities in one district and divide both from their cultural regions is race.

38. SB8 significantly altered the percentages of voting age populations in each district along racial lines, demonstrating the State’s sole purpose to consolidate African American voters into two districts.

39. The voting age population (“VAP”) percentages for the previously enacted districts were:⁷

District	African American VAP %	Non-African American VAP %
1	13.482%	86.518%
2	58.650%	41.350%
3	24.627%	75.373%
4	33.820%	66.180%
5	32.913%	67.087%
6	23.861%	76.139%

40. The voting age population percentages for SB8’s enacted districts are:⁸

District	African American VAP %	Non-African American VAP %
1	12.692%	87.308%
2	51.007%	48.993%
3	22.568%	77.432%

⁷ This data comes from the official Report for Congress Act 5 (HB1) on the Louisiana Redistricting website. *See Report – Congressional Districts by Parish – Pop (2020), VAP (2020) and Registration (12-2022)*, Louisiana Redistricting, https://redist.legis.la.gov/2023_07/2023CONGRESSACT5.

⁸ This data comes from the official Report for Congress Act 2 (SB8) on the Louisiana Redistricting website. *See Report – Congressional Districts by Parish – Pop (2020), VAP (2020), and Registration (12-2023)*, Louisiana Redistricting, https://redist.legis.la.gov/2024_Files/2024CONGRESSACT2.

4	20.579%	79.421%
5	26.958%	73.042%
6	53.990%	46.010%

41. The biggest change was in District 6, where the African American VAP percentage increased sharply by 30%, from 23.861% to 53.990%, even though District 6 previously held the second lowest African American VAP and the second highest non-African American VAP. The non-African American VAP in District 6 decreased proportionately.

42. SB8 decreased the African American VAP percentage in every district except District 6. In District 2, African Americans still held a majority of the VAP at 51%.

43. SB8 increased the non-African American VAP percentage in every district except District 6, where it dramatically decreased, so non-African Americans went from the majority to the minority.

44. SB8 gave African Americans a majority, as measured by the BVAP criterion, in Districts 2 and 6.

45. Senator Womack was the author of SB8. He first introduced SB8 in the Senate on January 15, 2024. SB8 then went to the Committee on Senate and Governmental Affairs. On January 17, 2024, it was presented on the Senate floor again for a third reading and final passage.

46. During that third reading and final passage on January 17, 2024, several Senators debated and spoke on the bill. Senator Womack, author and sponsor of SB8, stated the bill intentionally created “two congressional districts with a majority of Black voters.” Senate Archive, *supra*, at 8:47-8:54. He went on to discuss “the boundaries of District 2 and District 6 on your map,”

and emphasized that both were “over 50% Black voting age population.” *Id.* at 9:20-9:35. He went on to state: “Given the State’s current demographics, there is not enough high Black population in the Southeast portion of Louisiana to create two majority Black districts and to also comply with the U.S. Constitution’s one-person one-vote requirement. That is the reason why District 2 is drawn around Orleans parish while District 6 includes the Black population of East Baton Rouge Parish and travels up the I-49 corridor to include Black population in Shreveport.” *Id.* at 9:35-10:00.

47. Senator Womack repeated throughout his remarks that his primary goal in drafting SB8 was to create two majority-African American districts. He repeatedly referred to District 2 and District 6 as the “minority” or “Black” districts. *Id.* at 9:00-10:40, 16:35-16:43, 18:15.

48. Senator Womack did not identify any traditional redistricting criteria, such as compactness or communities of interest, as part of his analysis in crafting SB8 and selecting the district lines. In fact, he disavowed that he had complied with traditional redistricting criteria.

49. Senator Jay Morris asked Senator Womack about the two majority-minority districts: “Among the factors that you considered, was the community of interest of the district something that was considered in coming up with this version of the map that we have before us? . . . You didn’t consider the community of interests of people having something in common with one another within the district?” *Id.* at 11:10-11:53. Senator Womack then responded: “No, I didn’t because it was, we had to draw two districts and that’s the only way we could get two districts . . .” *Id.* at 11:54-12:05. Senator Womack also denied that he considered

agriculture as a community of interest in District 6. *Id.* at 12:09-12:48.

50. Senator Womack repeatedly referred to the 250 miles between Baton Rouge and Shreveport in District 6 as merely a “corridor.” *Id.* at 9:55-10:00, 12:50-12:55.

51. Senator Morris also asked Senator Womack when referring to District 6: “Would you say the heart of the district is Northeast Louisiana, North Central Louisiana?” *Id.* at 12:50-13:05. Senator Womack responded: “I wouldn’t say the heart of that district is that way.” *Id.* at 13:05-13:20. He went on to state District 6 simply “had to be drawn like it had to be drawn to pick that up.” *Id.* at 13:05-13:20. Senator Morris asked again: “So is there a heart of the district?” *Id.* at 13:20-13:25. Senator Womack said: “I don’t think it has a heart of the district.” *Id.* at 13:25-13:35. In doing so, Senator Womack stated that there was no tie or common interest between the Northern region of District 6 and its other regions. Race was the only reason District 6 extended into far-flung regions of Louisiana.

52. When Senator Morris raised other concerns about the districts, Senator Womack agreed that these issues were valid but said: “Where we had to draw two minority districts, that’s the way the numbers worked out. You’ve worked with redistricting before and you have to work everyone around that the best you can.” *Id.* at 18:08-18:30.

53. Senator Gary Carter then rose to speak. *Id.* at 24:30. He raised concerns about the “current African American voting age population in District 2” because it was now only “51%.” *Id.* at 24:30-25:10. He had “serious concerns” with whether “District 2 continues to perform as an African American district.” *Id.* at

25:10-25:25. But despite those concerns about African American “perform[ance]” in District 2, he supported the legislation. *Id.* In making these comments, Senator Carter demonstrated that he was especially concerned about ensuring a certain percentage of the population was African American in District 2. Senator Carter also read and endorsed a statement on the Senate floor from Congressman Troy Carter, who currently represents District 2 in the U.S. House of Representatives. He said: “My dear friends and colleagues, as I said on the steps of the Capitol, I will work with anyone who wants to create two majority-minority districts. I am not married to any one map. I have worked tirelessly to create two majority-minority districts that perform. That’s how I know that there may be better ways to craft both of these districts. There are multiple maps that haven’t been reviewed at all. However, the Womack map creates two majority-minority districts and therefore I am supportive of it, and I urge my former colleagues and friends to vote for it while trying to make both districts stronger with appropriate amendment. We do not want to jeopardize this rare opportunity to give African American voters the equal representation they rightly deserve.” *Id.* at 26:00-27:00.

54. Senator Katrina Jackson also said on the floor that she supported SB8. *Id.* at 28:00. She stated, “I don’t think we’re in the hands of a heavy-handed judge.” *Id.* at 29:50-30:00. “There is nothing that says that a second African American serving in Congress in Louisiana will not help the masses. If we think that, then we think that we’re less than or better than a person based on race. If anyone in this chamber could articulate a reason why they believe that any African American that sits before you today wouldn’t go before you with the same heart and zeal and vigor and heart for the people, then maybe we can say that there’s not

an African American in this State that's not going to stand before Congress and represent us. But I literally do not believe that there's a colleague in here that looks across this Chamber at any member of the Black Caucus that does not believe that we would not go to Congress and represent the State of Louisiana. And so I stand in support with reluctance of having to talk to my constituents after this vote but with carrying the spirit of fairness that they asked me to carry in the last redistricting session." *Id.* at 30:00-32:08.

55. Senator Jackson also stated that her "constituents and a lot of constituents in North Louisiana are experiencing ice . . . and so a lot of them don't even know that we're down here right now passing maps and so this is the first time in a long time that I am probably going to vote for something that I haven't vetted through my constituency." *Id.* at 28:00-29:30. She went on to state that she, along with "Representative Fisher [and] Representative Morrell will have a zoom community meeting to catch them up on what they have lost while they were at home." *Id.* at 28:00-29:30.

56. Senator Royce Duplessis spoke next, stating that SB8 "was much more than lines on a map." *Id.* at 32:30-33:00. He said SB8 "was about one-third of this State going underrepresented for too long." *Id.* at 33:00-34:15. "So I think it's important that we keep the focus on why we're here today." *Id.* at 34:15-34:35. His reference to one-third of the State was a reference to the African American population. He went on to state: "Just like Senator Carter, I'm not thrilled with what's happening in District 2 and the way it's lowering the numbers," referring to the numbers of African American voters Senator Carter discussed. *Id.* at 34:40-34:52. Senator Duplessis discussed how he had created a map with Senator Price that "we thought

performed better.” *Id.* at 34:52-35:00. He stated he would support SB8 “because he thought it was time to give people of this State fair representation.” *Id.* at 35:25-35:32.

57. Senator Thomas Pressly also rose in opposition, stating that Northwest Louisiana was “unique from the rest of our State, and I believe that commonalities of interest are important.” *Id.* at 35:55-36:40. He explained the strong cultural, industrial, and agricultural differences between Northwest Louisiana and Baton Rouge, as well as the different natural disasters facing the two regions. *Id.* at 37:14. He stated: “I cannot support a map that puts Caddo Parish and portions of my district, which is over 220 miles from here, in a district that will be represented by someone in East Baton Rouge Parish that may or may not have ever even been to Northwest Louisiana and certainly doesn’t understand the rich culture, rich important uniqueness of our area of the State.” *Id.* at 36:55-37:23. He went on: “When we look at Louisiana we often talk about North and South. And that division is true. It’s real. I think all of us acknowledge that. The I-10 corridor has unique needs. When we think of the challenges you face with storms, often you think of hurricanes. In North Louisiana we think of tornadoes and ice storms. When you look at the important regions of our States and the diverse industries that we have . . . that is something that we must keep in mind as we continue through this process.” *Id.* at 37:23-38:14. He said: “I am concerned with the important part of this State—Northwest Louisiana—not having the same member of Congress.” *Id.* at 38:14-38:29. He said it made no sense to create two congressional districts and draw District 6 and District 4 “along a line that’s based purely on race.” *Id.* at 38:29-38:40.

58. SB8 passed in the Louisiana Senate on January 17, 2024, by a vote of 27-11.

59. SB8 was then transferred and presented in the Louisiana House of Representatives on January 17, 2024. SB8 went to the Committee on House and Governmental Affairs that same day.

60. Then, on January 19, 2024, Representative Beau Beullieu, as the bill sponsor, presented SB8 to the House of Representatives for debate and final passage. During his opening remarks, Representative Beullieu stated that SB8 created “two congressional districts with a majority of Black voters.” House Archive, *supra*, at 2:48:25-2:48:31. Like Senator Womack, he discussed, “the boundaries for District 2 and District 6,” and emphasized that “both of which are over 50% Black voting age population or BVAP.” *Id.* at 2:49:00-2:49:13. He went on to state: “Given the State’s current demographics, there is not a high enough Black population in the Southeast portion of Louisiana to create two majority Black districts and to also comply with the U.S. Constitution’s one-vote one-person requirement. That is the reason why District 2 is drawn around Orleans Parish, why District 6 includes the Black population of East Baton Rouge Parish and travels up the I-49 corridor and the Red River to include Black population in Shreveport.” *Id.* at 2:49:19-2:49:49.

61. Representative C. Denise Marcelle also expressed that the goal was to get “a second congressional district.” *Id.* at 2:43:25-2:43:30.

62. Only one Representative asked Representative Beullieu a question after his presentation. Representative Beryl Amedee asked, “Is this bill intended to

create another Black district?” Representative Beaulieu responded: “Yes, ma’am.” *Id.* at 2:51:00-2:51:17.

63. Representative Mike Bayham then rose in opposition of SB8. *Id.* at 2:51:30. He stated: “St. Bernhard [Parish] has never been split into two congressional districts.” *Id.* at 2:52:07-2:52:10. “Looking at these precincts, and I know every precinct, I’ve campaigned in every precinct in St. Bernhard, we have two precincts, for example, that are in the second congressional district. One, Precinct 24, gave President Trump 75% of the vote. Precinct 25 gave President Trump 69% of the vote. Those are in the second district. And the first district is Precinct 44 which gave President Biden 83% of the vote. Precinct 45 gave President Biden 85% of the vote. It seems like these precincts were just thrown together like a mechanical claw machine just grabbing people and dropping them off.” *Id.* at 2:52:17-2:23:05. St. Bernhard Parish is divided between District 1 and 2. He went on to state: “We are being told that we have to redraw all of this in a period of less than eight days. That is not how you make sausage. That’s how you make a mess. I cannot in good conscience vote for this bill that divides my community and I will stand by that for my community.” *Id.* 2:53:10-2:53:33.

64. No other representatives spoke.

65. SB8 then went to a vote, and it passed in the Louisiana House of Representatives by a vote of 86-16 on January 19, 2024.

66. SB8 was then sent to the Senate with House amendments, and it passed by a vote of 27-11 on January 19, 2024.

67. Even before the special session, legislators voiced their intent to create two majority-African

American districts. When he received the Governor's call for the special legislative session on January 8, 2024, Representative Matthew Willard told the press: "The math is clear. A third of six is two. And so we look forward to beginning that redistricting session and walking away with two majority-minority African-American congressional districts." *See* Sabrina Wilson, *Gov. Landry calls special session on redistricting as new legislature takes office*, Fox 8 (Jan. 8, 2024), <https://www.fox8live.com/2024/01/09/gov-landry-calls-special-session-redistricting-new-legislature-takes-office/>. He also told the public: "We'll be doing everything we can to make sure that we are not diluting the voices of Black voters in Louisiana and to get those two majority-minority seats." *Id.* Representative Willard had recently received a new leadership role in the House as the chair of the House Democratic Caucus, where in his words, he "lead[s] the caucus of 32 members." *Id.*

68. Other elected officials in Louisiana remarked on the purpose of the bill to create two majority-African American districts and four majority-non-African American districts.

69. Congressman Troy Carter of the U.S. House of Representatives held a press conference on January 15, 2024, where he stated: "For nearly two years, I have consistently called for the creation of a second majority-minority district. . . . This is our responsibility, not the judiciary. . . . I stand here with my friends from the Legislative Black Caucus, the NAACP, Urban League of Louisiana, and civil rights leaders to firmly state that we are unified and ready to work with anyone who is working to create a map that establishes two majority-minority districts that give Black candidates a meaningful opportunity to win." Press Release,

Congressman Troy Carter Demands Fair Congressional Maps (Jan. 15, 2024), <https://troycarter.house.gov/media/press-releases/congressman-troy-carter-demands-fair-congressional-maps>. The press conference was an effort to express his “commitment to work with the Louisiana Legislature and Governor Landry to develop a constitutional map that contains two majority-minority congressional districts.” *Id.*

70. As the current Congressman for District 2, Congressman Carter’s voice was especially important for the passage of SB8. His statements were read on the Senate floor right before the vote for SB8’s final passage.

71. Other officials made similar comments. For example, Tres Bernhard, adviser to Congressman Carter, told the Illuminator: “This historical moment is about creating two seats that a Black person can win And that’s what this is about. It’s not about a Democratic seat, it’s about creating two seats that a Black person can win.” *Id.*

72. After both Houses passed SB8 on Friday, January 19, 2024, the bill went to the Governor’s desk.

73. The following Monday, January 22, 2024, the Governor signed SB8 into law. Upon his signature, SB8 went into effect and repealed the 2022 redistricting law.

74. The entire process—from the first introduction of SB8 until the Governor signed it into law—took only eight days.

Count I: Racial Gerrymandering in Violation of the Fourteenth Amendment

75. The above paragraphs are hereby incorporated by reference as if set forth fully herein.

76. The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o State shall . . . deny any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. States must “govern impartially [and] not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.” *Id.*

77. The Equal Protection Clause forbids racial gerrymandering. The State “may not separate its citizens into different voting districts on the basis of race.” *Miller*, 515 U.S. at 911. Racial gerrymandering and segregation harm all voters, regardless of race.

78. To prevail on a racial gerrymandering claim, plaintiffs must show race was the predominant factor the State considered when creating the challenged districts.

79. Plaintiffs can rely on either circumstantial evidence of a district’s shape and demographics or more direct evidence of legislative purpose to show that race was the predominant factor governing the State’s line-drawing decisions. *Covington*, 138 S. Ct. at 2553.

80. Here, Plaintiffs have presented sufficient direct and circumstantial evidence to show the State’s consideration of race predominated over its consideration of traditional redistricting criteria when it created all six districts. The evidence demonstrates that race was not just the State’s predominant factor. Race was the State’s sole factor.

81. First, Plaintiffs have presented sufficient direct evidence of the State’s purpose to draw all six districts predominantly based on the race of voters.

82. Immediately prior to SB8's passage, bill sponsors and other legislators on the Senate and House floors stated that the lines were drawn purely based on race.

83. Both SB8 sponsors, Senator Womack and Representative Beaulieu, separately stated that the goal was to create "two congressional districts with a majority of Black voters." Senate Archive, *supra*; House Archive, *supra*. They drew "the boundaries for District 2 and District 6" to include "over 50% Black voting age population." Senate Archive, *supra*; House Archive, *supra*. And they stated that the districts were drawn *solely* with that goal in mind: "Given the State's current demographics, there is not a high enough Black population in the Southeast portion of Louisiana to create two majority Black districts and to also comply with the U.S. Constitution's one-vote one-person requirement. *That is the reason why* District 2 is drawn around Orleans Parish, *why* District 6 includes the Black population of East Baton Rouge Parish and travels up the I-49 corridor and the Red River to include Black population in Shreveport." Senate Archive, *supra* (emphasis added); *see also* House Archive, *supra*.

84. The one question Representative Beaulieu was asked after presenting SB8 was: "Is this bill intended to create another Black district?" He answered: "Yes." House Archive, *supra*.

85. The bill sponsors "purposefully established a racial target"—*i.e.* an African American voting majority in two districts—and they were "not coy in expressing that goal." *Cooper v. Harris*, 581 U.S. 285, 299-300 (2017). They "repeatedly told [] colleagues that [the districts] had to be majority-minority." *Id.* at 299. Their statements show that race predominated over other traditional criteria.

86. Additionally, SB8 sponsor Senator Womack conceded that he did not consider communities of interest or other traditional redistricting criteria when selecting this map. He never mentioned compactness. In fact, he acknowledged the odd shape of District 6 when addressing “why” it narrowly “travels up the I-49 corridor and the Red River.” Senate Archive, *supra*. He also said that District 6 simply “had to be drawn like it had to be drawn to pick [] up” African Americans. *Id.*

87. Other Senators and Representatives identified race as the chief districting criterion in creating all six districts. *See Shaw II*, 517 U.S. at 906–07; *Miller*, 515 U.S. at 917–18. For example, Senator Pressly said the lines were drawn “based purely on race.” Senate Archive, *supra*. Senator Duplessis said the “focus of why we’re here today” was to increase African Americans’ voting power. *Id.* Senator Carter relayed Congressman Carter’s statement that the singular goal was to create “two majority-minority districts.” *Id.* Senator Carter and Senator Duplessis discussed the importance of how District 2 would “perform” as an African American majority district. *Id.* Representative Marcelle expressed the goal to get “a second congressional district.” House Archive, *supra*.

88. Many also stated that the goal was to reach a certain threshold percentage of African American voters in two districts, so that African Americans would hold the VAP majority in those districts. Senator Carter, for example, stated that he was concerned about District 2 only having a “51%” African American majority, but because SB8 reached the threshold majority, he would vote in favor of SB8. Senate Archive, *supra*. Senator Duplessis expressed the same sentiment about the “the numbers.” *Id.*

89. Several senators and representatives in addition to SB8's sponsors expressed that SB8 did not conform to any traditional redistricting criteria. Senator Pressly stated that the line between District 4 and District 6 was "purely based on race," and did not account for the "commonalities of interest" of people in Northwest Louisiana and the "unique," "rich culture," "industries," and even natural disasters that distinguished the region from the rest of the State. Senate Archive, *supra*. Representative Bayham also raised concerns about the failure to abide by traditional redistricting criteria. He said the distinction between voters who were split between District 1 and District 2 did not even divide on partisan lines. Rather the line-drawing seemed "like a mechanical claw machine just grabbing people and dropping them off." House Archive, *supra*. Senator Morris also raised concerns about whether there were any "communities of interest" considered, a concern that was answered negatively by Senator Womack. Senate Archive, *supra*. No traditional redistricting factors account for these decisions. Only racial considerations drove this line-drawing.

90. The Governor's statements prior to the legislative session also indicate that the goal was to redistrict race-based lines. Speaking on behalf of the State while serving as Attorney General, he said that it was "impossible" for the State to create a second majority-African American district without violating the U.S. Constitution and traditional criteria, "without impermissibly resorting to mere race as a factor" and without engaging in an unconstitutional "racial gerrymander." *State Motion, supra*, at 13-15. These filings from "a state official," not to mention one of the key lawmakers in enacting SB8, is "powerful evidence" that the State "subordinated traditional districting principles to race when it ultimately enacted a plan

creating [the] majority-black districts.” *Miller*, 515 U.S. at 919.

91. Second, circumstantial evidence establishes that the State flouted traditional redistricting criteria, including compactness, contiguity, and cohesiveness of communities of interest, to draw all six districts based purely on race.

92. All the districts are “narrow and bizarrely shaped.” *Allen v. Milligan*, 599 U.S. 1, 28 (2023) (quoting *Bush v. Vera*, 517 U.S. 952, 965 (1996) (plurality)).

93. The districts are not compact. *Shaw I*, 509 U.S. at 646–48. District 6, for example, is a narrow diagonal line that runs along the Interstate 49 corridor akin to North Carolina’s infamous slash district that stretched approximately 160 miles along the Interstate 85 corridor and was struck down as an unconstitutional racial gerrymander by the Supreme Court in *Shaw. Id.* at 635. District 6 stretches at least 250 miles between its appendages in Shreveport and Baton Rouge, cities in opposite corners of the State. *Cf. Hays*, 936 F. Supp. at 370 (It “meanders for roughly 250 miles from the northwestern corner of the state to the southeast, dividing parishes and municipalities while surgically agglomerating pockets of minority populations along the way.”). It then plunges South to the heart of Cajun Country in Lafayette to encompass African American voters there. In Rapides Parish, it dwindles down to a narrow width of 2.5 miles before continuing its snake upward toward Shreveport. It has a compactness score of 0.05, with 0 being a total lack of compactness and 1 being total compactness. The sole goal behind District 6’s narrow line across Louisiana is obvious: maximize the African American vote. The other districts fare no better. Their compactness scores are all extremely low. The Northern and Southern portions of District 5, for

example, are barely connected. District 5 is *only 1.2 miles wide* at the juncture of West Feliciana and Avoyelles Parishes and is only contiguous by virtue of the Mississippi River; the surrounding shores and an island are uninhabited. They are unconnected by road, bridge, ferry, trail, or path. District 4 is nearly cut in half, and it extends from Northern to Southern Louisiana, despite the diverging interests of these two regions. Both District 4 and District 5 have compactness scores of 0.08. District 2 only has a compactness score of 0.11. District 1 and District 3 only reach scores of 0.16 and 0.19, respectively. All the shapes are bizarre. The goal of the districts is clear from their shapes: gerrymander and segregate voters purely based on race.

94. The districts also separate communities of interest and unite disparate groups of people with nothing in common apart from race. District 6 carves out a long, narrow peninsula into District 4, splicing several parishes and communities of interest. For example, the cultural and industrial unity of people in Caddo Parish and Northwest Louisiana far outweighs any unity between the sliver of people dissected from Caddo Parish and part of the population in East Baton Rouge, hundreds of miles away. Northern and Southern Louisiana have very distinct cultures. Race is the only reason to create districts crisscrossing the State.

95. The harm is felt by African American and non-African American voters alike, who no longer can influence their communities. *See Gomillion v. Lightfoot*, 364 U.S. 339 (1960). Instead, both sets of voters are separated from their communities and thrust into districts with other voters hundreds of miles away, with whom they have little in common apart from race. The result is they do not have the same power to

appeal to their congressional representatives—some of whom may have no knowledge of their region or culture.

96. The districts cut through many parishes. *Bush v. Vera*, 517 U.S. 952, 974 (1996) (plurality opinion); *Cooper*, 581 U.S. at 301 n.3 (finding a “conflict with traditional redistricting principles” where the legislature “split[] numerous counties and precincts”). District 2 severs seven of the nine parishes it touches. District 6 splinters six out of the ten parishes it cuts through.

97. The legislators’ comments and map show that race was not just the predominant purpose. Race was the sole purpose behind SB8. Plaintiffs have thereby satisfied their burden to show that race predominated over other traditional districting criteria.

98. Since Plaintiffs have satisfied their burden, the State has the burden to satisfy strict scrutiny, meaning the State must show it drew the challenged districts in pursuit of a compelling state interest, and the resulting districts were narrowly tailored to achieve that interest. *Shaw II*, 517 U.S. at 908.

99. First, the State must show it enacted these maps pursuant to a compelling state interest. The Supreme Court has assumed (but never held) that compliance with Section 2 of the Voting Rights Act (“VRA”) can be a compelling interest, but a State’s “ostensible effort to comply with the Voting Rights Act” does not allow for racial gerrymandering. *Covington*, 138 S. Ct. at 2550.

100. To satisfy strict scrutiny, the State must first show that the compelling interest applies—that the VRA is indeed triggered by Louisiana’s demographics, voting trends, and other factors. Only if the answer is “yes” may the State proceed to its second burden, meeting the narrow tailoring requirement by present-

ing actual “evidence or analysis supporting [the] claim that the VRA require[s]” creation of the districts as drawn on a district-by-district basis. *Wis. Legislature v. Wis. Elecs. Comm’n*, 595 U.S. 398, 403 (2022); *Bethune-Hill v. Va. State Bd. of Elecs.*, 580 U.S. 178, 191-92 (2017). The State must have a strong basis in evidence or good reasons as to why it drew the districts it did. Courts will not “approve a racial gerrymander whose necessity is supported by no evidence” and that proceeds on a legally mistaken view of the VRA. *Cooper*, 581 U.S. at 306.

101. Should the State rely on the VRA, it will fail at step 1. VRA Section 2 “never require[s] adoption of districts that violate traditional redistricting principles.” *Milligan*, 599 U.S. at 30; *see also Hays*, 936 F. Supp. at 370 (“Reduced to its essentials, the VRA simply does not *require* the enactment of a second majority-minority district in Louisiana.”).

102. The State has already conceded that it did not abide by traditional redistricting criteria. The State has previously admitted it is “impossible” that “a second majority-minority district can be drawn without impermissibly resorting to mere race as a factor,” that any attempt to do so would be an unconstitutional “racial gerrymander,” and that attempts to slice voters into districts that could create such a map demonstrate “the exact type of evidence of racial intent that dooms legislative action.” *State Motion, supra*, at 13-15. These statements alone show that the State did not abide by traditional redistricting criteria. *Miller*, 515 U.S. at 919.

103. Second, even if the State could surmount these hurdles, it will fail at step 2. The legislators’ statements also show that they failed to comply with any traditional redistricting criteria. Senator Womack,

SB8's author and sponsor, said so himself. *See supra* ¶¶ 69-75.

104. Additionally on step 2, the maps themselves show that the State violated traditional districting criteria. *Milligan*, 599 U.S. at 27 (quoting *Shaw*, 509 U.S. at 647); *see supra* ¶¶ 114-19.

105. The VRA is only satisfied if the State demonstrates that each minority-majority district complies with all three of the *Thornburg v. Gingles*, 478 U.S. 30 (1986), factors: (1) a “sufficiently large and geographically compact” minority, that is (2) “politically cohesive,” and (3) subject to majority bloc voting that usually defeats the minority group’s preferred candidate. *Id.* at 49-51.

106. The State cannot even satisfy the first *Gingles* factor—*i.e.* a showing of a “sufficiently large and geographically compact” minority. *Id.* at 50. These districts are plainly not compact. *See supra* ¶ 116; *Hays*, 936 F. Supp. at 370.

107. The State’s failure to comply with traditional redistricting principles or the *Gingles* factors demonstrates that the districts it drew were not narrowly tailored to serve any compelling interest. *Cooper*, 581 U.S. at 306. Thus, the State cannot satisfy strict scrutiny.

108. Accordingly, Plaintiffs are entitled to relief.

Count II: Plaintiffs’ Votes Are Abridged in Violation of the Fourteenth and Fifteenth Amendments

109. The above paragraphs are hereby incorporated by reference as if set forth fully herein.

110. The Fifteenth Amendment states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on

account of race, color, or previous condition of servitude.” U.S. Const. amend. XV, § 1. The Fifteenth Amendment “right to vote” may “be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *LULAC v. Edwards Aquifer Auth.*, 937 F.3d 457, 462 (5th Cir. 2019) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). States cannot abridge the right to vote by using racial criteria. *Shaw I*, 509 U.S. at 640-41.

111. This legislation has abridged Plaintiffs’ right to vote based solely on their race. While Plaintiffs recognize that no group of voters is entitled to proportional representation under the U.S. Constitution and the application of traditional race-neutral criteria may result in an underrepresentation or overrepresentation of racial, religious, or political groups, the Constitution clearly protects all racial groups from representational schemes which have as their sole purpose the intentional overrepresentation of voters of a particular race over all other voters in a jurisdiction. *See Gomillion v. Lightfoot*, 364 U.S. 339 (1960).⁹ A claim that an election scheme is based predominantly

⁹ Justice Stevens dissented in *Shaw* and *Miller v. Johnson* because he found the stereotyping harm in both to be insufficient, concluding that “[n]either in *Shaw* itself nor in the cases decided today has the Court coherently articulated what injury this cause of action is designed to redress.” *Miller v. Johnson*, 515 U.S. 900, 929 (1995) (Stevens, J., dissenting). Justice Stevens explained that the plaintiffs in those cases had made no showing of “vote dilution... to an identifiable group of voters” nor under the facts of the case were they capable of so doing. *Id.* (Stevens, J., dissenting). Louisiana’s current redistricting scheme obviates Justice Stevens’s concerns about the missing harm to plaintiffs in prior redistricting challenges.

on such discriminatory racial intent and results in the intended harm is actionable.

112. Here, as in *Gomillion*, SB8 imposes an obvious racial preference which abridges the ability of non-African American voters to engage in the normal compromises and influence that would exist in districts drawn consistent with traditional redistricting principles. The State has chosen to intentionally gerrymander for the sole purpose of providing a racial minority a greater proportion of congressional districts than their citizen voting age population. Each Plaintiff experiences this injury in his or her own district. African Americans constitute a little more than 29% of the citizen voting age population. The redistricting intentionally creates two majority-African American districts of the six districts, or slightly more than 33%. Using a mandatory racial quota to not only approach, but to exceed, the African American share of the citizen voting age population, constitutes an additional concrete harm to all non-African American voters, unseen in previous racial gerrymandering cases.¹⁰

113. Turning to the Fourteenth Amendment, the Equal Protection Clause prohibits a State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend XIV, § 1. The Equal Protection Clause requires States to

¹⁰ The racial gerrymandering cause of action in Count I is the same cause of action in the seminal case *Shaw v. Reno* and all its progeny, including *Hays*. The harm in those cases, and in this one, arises from stereotyping based on race and is felt by all voters in racially gerrymandered districts. In those earlier racial gerrymandering cases, the percentage of the challenged majority-minority gerrymandered districts compared to total districts was still less than the percentage of minority’s proportion of the citizen voting age population.

draw legislative districts so that citizens' votes are counted equally. *Baker v. Carr*, 369 U.S. 186 (1962). Thus, the Clause prohibits a State from gerrymandering in such a way that the State dilutes the votes of one class of voters and thereby treats voters unequally under its laws. *Shaw I*, 509 U.S. at 640-41.

114. As previously stated, the statements of lawmakers leave no doubt that race was not only the predominant reason for the passage of the current redistricting scheme. Race was the sole reason. No further proof of invidious discriminatory intent is necessary. However, sufficient circumstantial evidence also proves such intent. *See Rogers v. Lodge*, 458 U.S. 613 (1982).

115. The harm to all non-African American voters is the same harm described in other non-election law claims where States use racial quotas to discriminate against races or ethnicities outside the target group. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 1 (2023); *Adarand Constructors v. Peña*, 515 U.S. 200 (1995); *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

116. SB8 gave African American voters the majority in two congressional districts, where they previously held the majority in one, by consolidating them into these two districts from across the State. This required displacing other racial groups from the territories of Districts 2 and 6, and forcing them into adjoining portions of Districts 1, 3, 4, and 5. Had traditional districts been drawn that did not "bear[] more heavily on one race than another," *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)), these non-African American voters would have constituted a majority in five of Louisiana's six districts. But because the State acted with discriminatory

intent and developed racial quotas, it injured non-African American voters by costing them one district.

117. SB8 was created by means of an irregular procedure. It was the first legislative session after the Governor assumed office. In fact, on the Governor's *first* day in office—January 8, 2024—he called for the legislative special session to focus exclusively on redistricting. The legislative session was a special one and SB8 was passed by both Chambers and signed by the Governor in a matter of eight days. There was little debate, and the entire process was rushed to create two majority-African American districts and reduce the existing five majority-non-African American districts to four. While the Legislature had previously spent months after the 2020 census travelling across the State and soliciting public input, legislators did not even have time to *inform* their constituents about the redistricting bill or special session—much less ask their constituents for their opinions and provide proper representation on their behalf. *See* Senate Archive, *supra*, at 28:00-29:30. The entire session was a whirlwind. The historical background of the challenged decision and the sequence of events leading up to the challenged action show that SB8's maps were drawn specifically to form two majority-African American districts and reduce the number of majority-non-African American districts from five to four districts.

118. The viewpoints expressed by legislators and other decision makers show that they intended to abridge the votes of non-African American voters and that they were motivated by race when they configured the districts. *United States v. Brown*, 561 F.3d 420, 433-34 (5th Cir. 2009). The legislators claimed they drew these districts to allow for two majority-

African American districts and four majority-non-African American districts, where there had previously been five, even though these legislators were fully aware that they were violating all traditional redistricting criteria and creating a racial quota based on super-proportional representation at the expense of other voters.

119. For the reasons previously stated, this discrimination cannot satisfy strict scrutiny.

120. Thus, Plaintiffs are entitled to relief on Count II.

Prayer for Relief

WHEREFORE Plaintiffs pray that this Court “immediately notify the chief judge of the circuit, who shall designate two other judges” so that “[t]he judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.” 28 U.S.C. § 2284(b)(1). Plaintiffs pray that this Court issue a declaratory judgment that SB8 is unconstitutional under the Fourteenth and Fifteenth Amendments, issue an injunction barring the State of Louisiana from using SB8’s map of congressional districts for any election, and institute a congressional districting map that remedies these violations. Plaintiffs also request all fees and costs recoverable under 42 U.S.C. § 1988.

Dated this 31st day of January, 2024

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA,
MONROE DIVISION

Civil Action No. 3:24-cv-00122

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ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

v.

NANCY LANDRY, in her official capacity as
Secretary of State for Louisiana,

Defendant.

Judge David C. Joseph
Circuit Judge Carl E. Stewart
Judge Robert R. Summerhays

MOTION IN LIMINE

Robinson Intervenors move to exclude 1) evidence or argument offered to prove that SB 8 does not satisfy the *Gingles* standard, 2) evidence or argument on the question of whether Section 2 of the Voting Rights Act requires a congressional redistricting plan that includes two districts in which Black voters have an opportunity to elect candidates of their choice, and 3) testimony from Mr. Hefner regarding the *Hays* case. These issues are not relevant to the claims before this

Court and evidence concerning these matters will only serve to confuse the issues and would prejudice the *Robinson* Intervenors.

For the reasons more fully set forth in the attached memorandum of law, *Robinson* Intervenors respectfully requests that this Court GRANT its Motion in Limine.

Respectfully submitted, this 2nd day of April, 2024.

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 2nd day of April 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Sarah Brannon
Sarah Brannon

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA,
MONROE DIVISION

Civil Action No. 3:24-cv-00122

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

v.

NANCY LANDRY, in her official capacity as
Secretary of State for Louisiana,

Defendant.

Judge David C. Joseph
Circuit Judge Carl E. Stewart
Judge Robert R. Summerhays

ROBINSON INTERVENORS' MEMORANDUM IN
SUPPORT OF THEIR MOTION IN LIMINE

Robinson Intervenors move to exclude 1) evidence or argument offered to prove that SB 8 does not satisfy the *Gingles* standard, 2) evidence or argument on the question of whether Section 2 of the Voting Rights Act requires a congressional redistricting plan that includes two districts in which Black voters have an opportunity to elect candidates of their choice, and 3) testimony from Mr. Hefner regarding the *Hays* case.

These issues are not relevant to the claims before this Court and evidence concerning these matters will only serve to confuse the issues and would prejudice the *Robinson* Intervenors.

First, the *Gingles* standard allows courts or legislatures to assess whether vote dilution in violation of Section 2 has occurred or would occur without remedial action. Where it has been determined that the *Gingles* standard has been satisfied and remedial action is therefore necessary, the Legislature is not required to adopt a map that itself would satisfy *Gingles* or comport with traditional redistricting principles. Thus, whether SB 8—the Legislature’s remedial map—would be sufficient as an *illustrative* map to prove a Section 2 violation under *Gingles* is not relevant to whether it is an appropriate remedy for a Section 2 violation for which the state already had a strong basis in evidence.

Second, assuming Plaintiffs can show that race was the predominant factor in the creation of SB 8, the question of whether the State had a compelling state interest to justify the predominant use of race turns on whether the State had a strong basis in evidence to believe Section 2 required remedial action. Where, as here, the State was acting on a finding by a federal district court, affirmed by a federal court of appeals, that the 2022 map likely violated Section 2, *see Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022) (“*Robinson I*”); *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) (“*Robinson II*”); *Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023) (“*Robinson III*”), the question is whether those courts’ rulings were sufficient to provide the requisite strong basis in evidence, not whether this Court would have reached the same

conclusion had it been presented with the same or similar evidence.

LEGAL STANDARD

Rule 702 requires expert testimony to be relevant. Fed. R. Civ. P. 702(a); *see also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); Fed. R. Ev. 702. 591 (“Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful.” (citation omitted)); *In re: Taxotere (Docetaxel) Prod. Liab. Litig.*, 26 F.4th 256, 268 (5th Cir. 2022) (“To be relevant, the expert’s reasoning or methodology [must] be properly applied to the facts in issue.” (citing *Puga v. RCX Sols., Inc.*, 922 F.3d 285, 293 (5th Cir. 2019))). Furthermore, “[a]n expert may never render conclusions of law.” *Goodman v. Harris Cnty.*, 571 F.3d 388, 399 (5th Cir. 2009). Nor may an expert go beyond the scope of his expertise in giving his opinion. *First United Fin. Corp. v. U.S. Fid. & Guar. Co.*, 96 F.3d 135, 136 (5th Cir.1996).

ARGUMENT

1. *The Court Should Exclude Any Evidence or Argument Concerning Whether SB 8 Satisfies Gingles.*

For a state to be justified in using race as a factor in drawing a district to avoid a violation of the Voting Rights Act, “[t]he state must have a ‘strong basis in evidence’ for finding that the threshold conditions for § 2 liability [i.e., the *Gingles* preconditions] are present.” *Bush v. Vera*, 517 U.S. 952, 978 (1996). But once it has been shown—through, for example, the presentation of a reasonably configured illustrative redistricting plan—that the *Gingles* preconditions are present, nothing in Section 2 or the Equal Protection Clause obliges the state to create a remedial that looks

like the illustrative plan.¹ “Section 2 does not forbid the creation of a noncompact majority-minority district.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 430 (2006) (“*LULAC*”).

Accordingly, evidence that SB 8 could not satisfy *Gingles* because it fares worse on various traditional redistricting principles courts consider in Section 2 cases is irrelevant. SB 8 was not an illustrative plan offered to prove a Section 2 violation. It is a remedial plan created to avoid Section 2 liability where the Middle District of Louisiana and the Fifth Circuit, based on illustrative maps presented in those cases, found Section 2 likely required an additional district providing Black voters an opportunity to elect candidates of choice.

The Constitution does not require a court-adjudicated violation of Section 2 before a state may have the required strong basis in evidence to justify a race-conscious VRA remedy. *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015) (the state may “have good reasons to believe [consideration of race] is required, even if a court does not find that the actions were necessary for statutory compliance.”) (cleaned up). In most racial gerrymandering cases, unlike this one, the only evidence that *Gingles* could be satisfied is the enacted map. See, e.g., *Cooper v. Harris*, 581 U.S. 285, 303 n.4 (2017). Here, however, a court (in fact, two courts) *did* determine that Section 2 likely required a race-conscious remedy, and that determination was based on a showing that the *Gingles* preconditions had satisfied. In this circumstance, the State was relying on court adjudications in

¹ The *Gingles* preconditions for a Section 2 claim are set forth in *Thornburg v. Gingles*, 478 U.S. 30, 46 (1986).

determining that a second majority-Black district was required, and whether SB 8 would itself satisfy *Gingles* is no longer relevant. Thus, evidence concerning that issue should be excluded.

Even when evaluating whether SB 8 was narrowly tailored, it is not necessary to tie the map created in SB 8 to the specifics of the illustrative maps and evidence provided in the *Robinson* litigation. In this context, narrow tailoring does not “require an exact connection between the means and ends of redistricting,” but rather just “‘good reasons’ to draft a district in which race predominated over traditional districting criteria.” *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1064 (M.D. Ala. 2017) (three-judge court) (quoting *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)). To tie the Legislature precisely to the details of a potential Voting Rights Act claim would “afford state legislatures too little breathing room, leaving them ‘trapped between the competing hazards of liability’ under the Voting Rights Act and the Equal Protection Clause.” *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. at 196 (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996)). The relevant questions in this case are only whether the Legislature has good reasons to believe § 2 required a district with two Black majority districts and whether SB 8 is narrowly tailored to achieve that goal.

Here, the State offers expert testimony from two experts to show that CD6, SB 8’s new majority-Black district, is insufficiently compact to satisfy the *Gingles* standard. Specifically, Plaintiffs offer the opinion testimony of expert Michael Hefner purporting to evaluate the SB 8 in the context of customary traditional redistricting criteria as described in Section 2 of the Voting Rights Act. Because Section 2 does not require

states (as opposed to *litigants*) to produce compact redistricting plans once a violation has been shown, *LULAC*, 548 U.S. at 430, how well SB 8 comports with the traditional redistricting criteria applicable in the Section 2 analysis is irrelevant to whether SB 8 is a proper Section 2 remedy where the State had a strong basis in evidence for believing such a remedy was required based on court findings that the *Gingles* preconditions could be satisfied. Mr. Hefner’s opinion testimony should thus be excluded in its entirety under Fed. R. Evid. 401 and 402.²

Similarly, Plaintiffs offer the expert testimony of Dr. D. Stephen Voss, in Section 5.4 of his expert report, concerning how SB 8 performs on traditional redistricting criteria compared to other proposals put forward

² Mr. Hefner’s opinion testimony should be excluded for the additional reason that it is unreliable. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); Fed. R. Ev. 702. As an expert for the State in the *Robinson* litigation, Mr. Hefner offered the opinion that the plaintiffs plan in that case divided Red River a community of interest running “from Shreveport to the Mississippi river,” a community he disavows in his discussion of communities of interest in this litigation. And his credibility and findings have been called into question by this Court on more than one occasion. *See, e.g., Thomas v. Sch. Bd. St. Martin Par.*, No. 65-11314, 2023 WL 4926681, at *12, *29, (W.D. La. July 31, 2023) (concluding that Mr. Hefner used “‘guesswork,’ flawed methodology, and inaccurate population measurements” and he lacked the credibility or credentials of other experts); *Thomas v. Sch. Bd. St. Martin Par.*, 544 F. Supp. 3d 651, 685 (W.D. La. 2021) (observing that Mr. Hefner’s “testimony was argumentative and conclusionary”), *aff’d in part, rev’d in part sub nom. Borel v. Sch. Bd. St. Martin Par.*, 44 F.4th 307 (5th Cir. 2022); *see also Means v. DeSoto Parish*, No. 5:23-cv-669, transcript of hrg. on mot. for prelim. inj. (Jul 12, 2023) (finding that “the police jury received what I believe is properly characterized as constitutionally-suspect legal advice from its districting adviser, Mr. Hefner”).

to create a second majority-Black district outside of New Orleans. As explained above, Section 2 does not forbid non-compact districts. *LULAC*, 548 U.S. at 430. Thus, evidence that SB 8 is less compact than other plans that would also satisfy Section 2 does not tend to show that the use of race in SB 8 was not justified by the compelling state interest in complying with Section 2 and is therefore irrelevant. Accordingly, any testimony concerning the matters discussed in Section 5.4 of Dr. Voss’s report should be excluded.

2. *Any Evidence or Argument Concerning Whether Section 2 Requires a Second Black Opportunity District Should be Excluded.*

In evaluating whether a state had sufficient reason to consider race in redistricting decisions, courts evaluating claims of racial gerrymandering must determine whether the state had a “strong basis in evidence” to believe race-conscious line drawing was required. *See, e.g., Clark v. Calhoun Cty*, 88 F.3d 1391, 1405-06 (5th Cir. 1996) (“The State must have a strong basis in evidence for concluding that the three *Gingles* preconditions exist in order to claim that the redistricting plan is reasonably necessary to comply with § 2”). “That standard does not require the State to show that its action was ‘actually ... necessary’ to avoid a statutory violation, so that, but for its use of race, the State would have lost in court.” *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 194 (2017). Thus, a state need not wait to be sued or for a final judgment before it may conclude that local conditions require remedial action. *See Clark v. Calhoun Cty*, 88 F.3d at 1407 (“a state need not await judicial findings to [the] effect” that the *Gingles* preconditions are present) (citing *Bush v. Vera*, 517 U.S. 952 (1996) (O’Connor, J., concurring)); *Bethune-*

Hill, 580 U.S. at 194 (a state may have a strong basis in evidence to engage in race-conscious redistricting, “even if a court does not find that the actions were necessary for statutory compliance”). And it certainly need not exhaust every avenue of appeal to have a strong basis in evidence that it risks liability under the VRA if it does not act.

Accordingly, the question in this case is whether the decisions of the Middle District of Louisiana and the Fifth Circuit in *Robinson* themselves provided the required strong basis in evidence, not whether the courts that issued those decisions correctly evaluated the evidence before them or whether this Court would weigh that evidence differently. *See Bethune-Hill*, 580 U.S. at 194 (the court “does not [need to] find that the actions were necessary for statutory compliance—it is sufficient if the legislature has good reason to believe it must use race to satisfy the Voting Rights Act.”) (internal quotation omitted); *see also Bush*, 517 U.S. at 978 (“The State must have a ‘strong basis in evidence’ for finding that the threshold conditions for § 2 liability [*i.e.*, the *Gingles* preconditions] are present.”) (internal citation omitted); *accord Shaw v. Hunter*, 517 U.S. 899, 915 (1996).³

Here, Plaintiffs offer expert evidence and legal argument to show that the *Gingles* preconditions cannot be satisfied, contrary to the decisions of the District Court and the Fifth Circuit in *Robinson*. That is, rather than offer evidence that the Legislature improperly relied on those decisions, Plaintiffs offer

³ Indeed, Plaintiffs conceded when they strongly objected to consolidating this case with the still pending case in *Robinson*, that the *Robinson* case “implicated entirely different legal bases, statutes, and facts.” Doc. No. 33-1 at 23-24, Plaintiffs’ Response in Opposition to Motion to Intervene.

evidence to show those courts were wrong. For example, in Section 4 of his initial report, Dr. Voss offers his opinion that because his simulations did not produce two majority-Black districts in Louisiana using the limited redistricting criteria they incorporated, it is therefore not possible to draw two sufficiently compact Black majority congressional districts in LA. In other words, Dr. Voss's simulation analysis is offered not to elucidate the relationship between race and other traditional districting factors in the composition of SB 8, but on whether a second majority-Black district was actually necessary to satisfy Section 2. Voss Report at 7. Evidence on that question is irrelevant to the issues before this Court. *See Bethune-Hill*, 580 U.S. at 194.

Even if it were proper for this Court to engage in a *de novo* analysis of what Section 2 requires, Dr. Voss's opinion evidence based on his simulations would not be relevant. In *Milligan*, the Supreme Court rejected arguments made by the State of Alabama in reliance on simulation evidence and expressed strong doubts about the value in using simulations like ones Dr. Voss preformed here as a benchmark for assessing Section 2's requirements. *Allen v. Milligan*, 599 U.S. 1, 34-37 (2023). The Court held that "neither the text of § 2 nor the fraught debate that produced it suggests that equal access to the fundamental right of voting turns on computer simulations that are technically complicated, expensive to produce, and available to only a small cadre of university researchers that have the resources and expertise to run them," and concluded that "Section 2 cannot require courts to judge a contest of computers when there is no reliable way to determine who wins, or even where the finish line is." *Id.* at 37 (cleaned up). In *Robinson III*, the Fifth Circuit likewise rejected the notion that "a race-neutral benchmark

calculated by a computer-simulated map” provides a relevant benchmark for assessing what Section 2 requires. 86 F.4th at 599; *see also Nairne v. Ardoin*, No. CV 22-178-SDD-SDJ, 2024 WL 492688, at *25–27 (M.D. La. Feb. 8, 2024) (finding simulations evidence irrelevant to the question of whether the first *Gingles* precondition could be satisfied).

In addition, as explained in Defendant-Intervenors expert report from Dr. Cory McCartan, Dr. Voss’s simulation analysis does not “accurately represent[] the districting process in [Louisiana],” *Milligan*, 599 U.S. at 34, and therefore does nothing to make the satisfaction of the *Gingles* preconditions “more or less probable than it would be without the evidence.” Fed. R. Evid. 401. Dr. Voss’s simulations evidence is thus insufficiently reliable or grounded in any accepted methodology to satisfy the requirements of Rule 702. Fed. R. Evid. 702; *see Daubert*, 509 U.S. at 590–92. This evidence should be excluded.

3. *Testimony from Mr. Hefner Regarding Hays v. Louisiana Should Also Be Excluded.*

Section VIII of Mr. Hefner’s initial report and related testimony discussing the *Hays* case (*see, e.g., Hays v. State of Louisiana*, 862 F. Supp. 119 (W.D. La. 1994)) should be excluded because it is, in large part, irrelevant and presents legal conclusions. This current case turns on whether race predominated in the construction of SB 8. “[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 74 (1980). In other words, it does not matter whether legislation from many, many years ago may or may not have been unconstitutional, but whether Legislators in January 2024 used race excessively in constructing SB 8. *Abbott v. Perez*, 585

U.S. 579, 605 (2018) (reversing the district court’s failure to apply the presumption of legislative good faith where the enacted plan was similar to a prior invalidated plan).

In Section VIII, Mr. Hefner opines that, in his opinion, SB 8 resembles the congressional map adopted in Louisiana in the 1990s. That map, three decades old, drafted entirely by different legislators under different circumstances, has no relevance to the map adopted this year in an entirely different political context.⁴ *Abbott*, 585 U.S. at 603–04. The political realities governing Louisiana politics in the 1990s are very different from those of today. In addition, to the extent that a prior map was ruled unconstitutional is relevant, Mr. Hefner’s opinions constitute legal conclusions. The Court is fully capable of analyzing the law and making a determination as to the central legal issue in this case: whether race predominated in the construction of SB 8. “Allowing an expert to give his opinion on the legal conclusions to be drawn from the evidence both invades the court’s province and is irrelevant.” *Owen v. Kerr-McGee Corp.*, 698 F.2d 236, 240 (5th Cir. 1983); *see also Goodman*, 571 F.3d at 399. Focusing on the *Hays* case also neglects the decades of precedent since the 1990s that govern racial gerrymandering cases. *See, e.g., Abbott*, 585 U.S. 579 (2018); *Cooper*, 581 U.S. 285; *Bethune-Hill*, 580 U.S. 178.

⁴ As one example, Mr. Hefner engages in an apples-to-oranges comparison of compactness for plans with different numbers of districts. Plans with fewer districts will score better on compactness measures because the districts can be less expansive. Because the *Hays* plan contains seven congressional districts, as opposed to six in SB 8, comparing compactness scores provides little useful information.

CONCLUSION

The Court should exclude 1) evidence or argument offered to prove that SB 8 does not satisfy the *Gingles* standard, 2) evidence or argument on the question of whether Section 2 of the Voting Rights Act requires a congressional redistricting plan that includes two districts in which Black voters have an opportunity to elect candidates of their choice, and 3) testimony from Mr. Hefner regarding the significance of the *Hays* case.

DATED: April 2, 2024

Respectfully submitted,

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2022 FIRST EXTRAORDINARY SESSION

HB1 by Representative Clay Schexnayder

REAPPORTIONMENT/CONGRESS: Provides relative to the districts for members of the United States Congress (Item #3)

Current Status (as of 1/31/2024 3:50 pm): Sent to the Secretary of State - Act 5

Journal

Date	Chamber	Page	Action
03/31	H		Effective date: See Act.
03/31	H		Becomes Act No. 5.
03/31	H		Taken by the Clerk of the House and presented to the Secretary of State in accordance with the Rules of the House.
03/30	H		Notice Senate voted to override the Governor's veto
03/30	S	3	By a vote of 27 yeas and 11 nays, the Senate voted to override the Governor's veto.
03/30	S	3	Reconsidered.
03/30	S	2	Veto message from the Governor received and read.
03/30	S	1	Notice House voted to override the Governor's veto.
03/30	H	3	Veto message received and read. Rules suspended. By a vote of 72 yeas and 31 nays, having received two-thirds

vote of elected members,
veto overridden.

03/30 H	3	Reconsidered.
03/30 H	3	Rules suspended.
03/30 H	3	Read by title, reconsidered, returned to the calendar, under the rules.
03/10 H		Vetoed by the Governor.
02/21 H		Sent to the Governor for executive approval.
02/18 S	7	Signed by the President of the Senate.
02/18 H	13	Enrolled and signed by the Speaker of the House.
02/18 H	11	Read by title, roll called, yeas 62, nays 27, Senate amendments concurred in.
02/18 H	11	Rules suspended.
02/18 H	11	Received from the Senate with amendments.
02/18 S	1	Senate floor amendments read and adopted. Read by title, passed by a vote of 27 yeas and 10 nays, and ordered returned to the House. Motion to reconsider tabled.
02/18 S	1	Rules suspended. Called from the Calendar.

02/17 S	5	Read by title and returned to the Calendar, subject to call.
02/17 S	5	Called from the Calendar.
02/17 S	2	Read by title and returned to the Calendar, subject to call.
02/15 S	3	Reported without Legislative Bureau amendments. Read by title and passed to third reading and final passage.
02/15 S	2	Reported favorably. Rules suspended. Read by title and referred to the Legislative Bureau.
02/14 S	1	Received in the Senate; read by title Rules suspended. Read second time by title and referred to the Committee on Senate and Governmental Affairs.
02/10 H	9	Read third time by title, amended, roll called on final passage, yeas 70, nays 33. Finally passed, title adopted, ordered to the Senate.
02/10 H	3	Called from the calendar.
02/09 H		Scheduled for floor debate on 02/10/2022.

Date	Chamber	Page	Action
02/09	H	2	Notice given.
02/09	H	2	Read by title, returned to the calendar.
02/08	H		Scheduled for floor debate on 02/09/2022.
02/08	H	3	Notice given.
02/08	H	3	Read by title, returned to the calendar.
02/06	H		Scheduled for floor debate on 02/08/2022.
02/06	H	2	Read by title, ordered engrossed, passed to 3rd reading.
02/04	H	2	Reported favorably (13-5).
02/02	H	1	Read by title, under the rules, referred to the Committee on House and Governmental Affairs.
02/01	H	5	Read by title. Lies over under the rules.

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 Beau Beaulieu
 Daryl Deshotel
 Les Farnum
 Valarie Hodges
 Dodie Horton
 Tanner Magee
 John Stefanski

Available Documents:

Text

HB1 Act 5

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1267128>

HB1 Enrolled

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1248568>

HB1 Reengrossed

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247164>

HB1 Engrossed

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245838>

HB1 Original

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244898>

Amendments

Senate Floor Amendment, #174, Hewitt, Adopted

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1248358>

Senate Committee Amendment, #153, S&G, Draft

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247602>

House Floor Amendment, #99, Marcelle, Rejected

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247152>

House Floor Amendment, #80, Schexnayder, Adopted

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1246959>

House Floor Amendment, #88, Gaines, Rejected
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1246825>

House Floor Amendment, #66, Amedee, Withdrawn
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1246060>

Digests

Resume Digest for HB1
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1291946>

Digest of HB1 Reengrossed
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247178>

Digest of HB1 Engrossed
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1245814>

Digest of HB1 Original
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1244900>

Votes

Senate Vote on HB 1, Override Veto (#3)
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1263950>

House Vote on HB 1, PASS BILL SUBSEQUENT TO VETO (#4)
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1263924>

House Vote on HB 1, CONCUR IN SENATE AMENDMENTS (#53)
<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1248634>

Senate Vote on HB 1, FINAL PASSAGE (#47)

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1248522>

Senate Vote on HB 1, AMENDMENT # 174 BY HEWITT, HB 1 BY MR. SPEAKER (#46)

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1248505>

House Vote on HB 1, FINAL PASSAGE (#26)

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247159>

House Vote on HB 1, AMENDMENT # 88 BY GAINES, MOTION TO ADOPT (#25)

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247155>

House Vote on HB 1, AMENDMENT # 70 BY JENKINS, MOTION TO ADOPT (#24)

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1247153>

Other

HB1 Veto Message

<https://www.legis.la.gov/Legis/ViewDocument.aspx?d=1258719>

HISPANIC OR LATINO, AND NOT HISPANIC OR
LATINO BY RACE FOR THE POPULATION 18
YEARS AND OVER

Note: This is a modified view of the original table produced by the U.S. Census Bureau. This download or printed version may have missing information from the original table.

Label	Louisiana
Total:	3,570,548
Hispanic or Latino	223,662
Not Hispanic or Latino:	3,346,886
Population of one race:	3,248,981
White alone	2,082,110
Black or African American alone	1,066,511
American Indian and Alaska Native alone	19,531
Asian alone	67,983
Native Hawaiian and Other Pacific Islander alone	1,322
Some Other Race alone	11,524
Population of two or more races:	97,905
Population of two races:	91,451
White; Black or African American	18,172
White; American Indian and Alaska Native	34,949
White; Asian	8,985
White; Native Hawaiian and Other Pacific Islander	730
White; Some Other Race	16,982

Black or African American; American Indian and Alaska Native	4,858
Black or African American; Asian	1,215
Black or African American; Native Hawaiian and Other Pacific Islander	226
Black or African American; Some Other Race	4,426
American Indian and Alaska Native; Asian	174
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	42
American Indian and Alaska Native; Some Other Race	149
Asian; Native Hawaiian and Other Pacific Islander	351
Asian; Some Other Race	161
Native Hawaiian and Other Pacific Islander; Some Other Race	31
Population of three races:	5,646
White; Black or African American; American Indian and Alaska Native	2,752

Table Notes

HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE FOR THE POPULATION 18 YEARS AND OVER

Survey/Program: Decennial Census

Universe: Total population 18 years and over

Year: 2020

Table ID: P11

Note: For information on data collection, confidentiality protection, nonsampling error, subject definitions, and guidance on using the data, visit the 2020 Census 118th Congressional District Summary File (CD118) Technical Documentation webpage.

To protect respondent confidentiality, data have undergone disclosure avoidance methods which add “statistical noise” - small, random additions or subtractions - to the data so that no one can reliably link the published data to a specific person or household. The Census Bureau encourages data users to aggregate small populations and geographies to improve accuracy and diminish implausible results.

Source: U.S. Census Bureau, 2020 Census 118th Congressional District Summary File (CD118)

OFFICE *of the* GOVERNOR

Governor Jeff Landry Opens First Special Session on Court Ordered Redistricting

January 16, 2024

Baton Rouge, La - Today, Governor Jeff Landry opened his first special session, which will address the court order to redistrict the congressional districts of Louisiana along with the districts of the Louisiana Supreme Court, and it will make other election-related changes.

Remarks as prepared:

Mr. Speaker, Mr. President, Members of the House and Senate,

Thank you for your cordial welcome.

May I begin by recognizing on this day Dr. Martin Luther King, JR. whose moral fortitude, and spiritual inspiration allowed millions to live the American Dream.

I would like to begin with one of my favorites of his many quotes: "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

Our state's DNA, is directly connected to the diverse and varied relationships we all share with one another. Diverse relationships between our friends and acquaintances, Our neighbors, old classmates, co-workers, caregivers, teammates, colleagues, our family, and EACH OTHER right here in this room. For our culture is built on these relationships.

We are here today because we have inherited issues that others have laid at our feet. Let us accept this task. Let

us do the work incumbent upon us so we can move on to solving MUCH larger problems.

Now I am aware Huey Long was shot over redistricting, I am hopeful and confident we can dispose of this matter without you disposing of me.

For various reasons known and unknown, spoken and unspoken, CLOSURE of this re-districting problem has evaded us. It is time to stop averting the issue and confront it head on. We are here today because the Federal Courts have ordered us to perform our job. Our job - which is not finished. A job that our own laws direct us to complete. AND a job that our individual oaths promised we would perform.

To that end, I ask you to join me in adopting the re-districting maps proposed. These maps will satisfy the Court...and ensure that the congressional districts of our State -- are made right here in the Legislature and not by some heavy-handed member of the Federal Judiciary.

We do not need a federal judge to do for us what the people of Louisiana have elected YOU to do. You are the voice of the people. It is time to use that voice.

The people sent us here to solve problems, not exasperate them. To heal divisions, not widen them. To be fair and reasonable. The people expect us to operate government efficiently, and to act in compliance with the laws of our nation and the instruction of our Courts - even when we disagree with them. And let me say this: I know of the hard work some of our Legislators have endured -- trying their very best to get this right.

As Attorney General -- I did everything I could to dispose of this litigation. I defended the re-districting plan adopted by this body as the will of the people. I

sought a stay at the 5th Circuit. We successfully stayed the case at the U.S. Supreme Court for more than a year, allowing our 2022 elections to proceed. Last October, we filed a writ of mandamus, which was granted by the 5th Circuit -- giving the people of Louisiana yet another chance to take care of our own business. But when the 5th Circuit panel ruled against us in November, I filed for an en Banc hearing which was denied.

We have exhausted ALL legal remedies, and we have labored with this issue for far - too - long.

I recognize the difficulty of getting 144 people to agree on anything and I sincerely commend you for the work you have done so far. But now, once and for all, let's put this to bed. Let's make the Adjustments necessary, heed the instructions of the Court, take the pen out of the hand of non-elected Judges and place it in your hand - the hand of the people. Its that simple.

Help me make this a reality... in this special session for this special purpose on this special day.

This redistricting challenge goes further than just our congressional maps. While one Federal Judge has a pen in her hand eager to draw our Congressional maps, another threatens to pick up a pen and redraw OUR Supreme Court.

In your 2021 Regular Session, you passed Senate Resolution 248, asking our State Supreme Court to provide this legislature with recommendations for redistricting their districts. A wide majority of the Court (OVER 2/3) have responded.

Justice McCallum, Justice Genovese, Justice Crain, Justice Hughes, and Justice Griffin have conscientiously, unselfishly, and courageously stepped forward and presented us with a map that re-draws our Supreme

Court districts in a manner that will comply with the Voting Rights Act, - and alleviate costly litigation. You can fulfill your responsibility-- and honorably meet your obligation to re-district our High Court-- - so the people of Louisiana will have a fair, democratic, and equally representative judiciary. The litigation involving our Supreme Court districts -- has been pending for some time. There are cases in all 3 federal districts in this state.

As Attorney General we worked to defend the state and to have those cases dismissed. I know first-hand, this matter is in-defensible.

Our Supreme Court districts have been re-districted by the Legislature only ONE TIME in the last 103 years. The result -- is districts that are grossly unbalanced - with two districts twice as large as another one.

Last year, I negotiated a scheduling order with the plaintiffs allowing the Legislature the chance to willingly handle our own affairs, rather than unwillingly have it done by another non-elected Federal Judge.

I want to publicly commend the 5 Justices for their willingness to set aside any regard for their own careers, and the power they hold. They epitomize statesmanship, honor, integrity, and the very embodiment of fairness. They are a reflection of our people's goodness, decency, and justness. Every single person in our great state can look up to these 5 Justices with pride, with reverence, and with a reborn confidence in the judicial system that these great men and women administer for us each and every day.

Just as we would respect, honor, and comply with any other decision reached by such a majority of our High Court; I ask that you do so now by adopting the Court's

re-districting map, and allowing the first seat to be filled this Fall.

Every voting aged citizen in Louisiana may or may not join the political party of his or her choosing. It is a choice. It is a freedom. If you do choose to join a political party, it is only fair and right that you have the ability to select your Party's candidates for office, without the interference of another party and without the distraction and the interference of a convoluted, complicated, and extended ballot to wade through and decipher.

As I travel this state, I have listened carefully to those who seek a more focused electoral process...where they may participate in the nomination of THEIR party's chosen candidate. And I believe it is an issue that our Legislature should consider. We have included the proposal for a closed party primary system for your consideration for these very reasons.

It is about fairness. It is about simplicity. It is about clarity.

We have tested this system before in this state, and it works. The U.S. House Majority Leader is in his seat as a result of being first elected to Congress under a party primary system. Our State Treasurer was elected to Congress under this tried and tested system. I was elected to Congress under a party primary system. President Joe Biden was elected in Louisiana's Presidential Primary, and President Trump, and our other Presidential nominees put forward by this state -- were chosen in a party primary system which allows the major parties to pick their candidates. It is fair and it is common sense. And, for our independent or no party voters who by their own choice decide not to join a political party - their voice is heard and counted...

...Counted on a simpler, shorter, clearer November election ballot containing generally one Democrat, one Republican, and ballot qualified independent candidates.

Some things make Louisiana very unique: our food, our music, and our culture. These are a source of pride. However, our jungle of election system is the only one of its kind in the country.

It is relic of the past - which has left us dead last.

Our fellow southern states are succeeding - because of their primary process. A process which results in a stronger, more unified team of elected leaders. It is time to re-write our story and move to a similar system we have already tried, tested and still use in Presidential primaries today. As we work on other electoral reforms with these redistricting maps, now is the time to also deal with this common-sense change.

Today, as we honor Dr. Martin Luther King, JR. I do not believe that it is mere irony that finds us here today. On this consecrated day, we seek to amplify the voice of the few... We seek to broaden the opportunity for participation in the governance of our people.

The courage, the wisdom, and the relentless pursuit of fairness in our electoral process by Dr. King, is profoundly moving. His words in 1968 are wholly appropriate 56 years later at this very hour: ‘..the arc of the moral universe is long, but it bends toward justice...’

For Dr. King’s was an uphill journey into the headwinds of hate, His was a march into battle, while ours is a walk-in-the-park. His? -- Was persecution for speaking his truth, while ours is a comfortable dialogue. His was a mighty shove, while yours is the mere push of a button.

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*God bless Louisiana God bless each of you and God
bless the people we represent.*

###

2024 FIRST EXTRAORDINARY SESSION

SB8 by Senator Glen Womack

CONGRESS: Provides for redistricting of Louisiana congressional districts. (Item #1)(See Act) (EN INCREASE GF EX Se Note)

Current Status (as of 1/31/2024 3:20 pm): Signed by the Governor - Act 2

Journal

Date	Chamber	Page	Action
01/22	S		Effective date: See Act.
01/22	S		Signed by the Governor. Becomes Act No. 2.
01/19	S	6	Sent to the Governor by the Secretary of the Senate.
01/19	H		Signed by the Speaker of the House.
01/19	S	6	Enrolled. Signed by the President of the Senate.
01/19	S	4	Rules suspended. Amendments proposed by the House read and concurred in by a vote of 27 yeas and 11 nays.
01/19	S	3	Received from the House with amendments.
01/19	H		Read third time by title, amended, roll called on final passage, yeas 86, nays 16. Finally passed, ordered to the Senate.

01/18 H		Scheduled for floor debate on 01/19/2024.
01/18 H	3	Read by title, amended, passed to 3rd reading.
01/18 H	3	Reported without Legislative Bureau amendments.
01/18 H	1	Rules suspended.
01/18 H	1	Reported with amendments (14-1). Referred to the Legislative Bureau.
01/17 H	7	Received in the House from the Senate, rules suspended, read by title, referred to the Committee on House and Governmental Affairs.
01/17 S	2	Rules suspended. Read by title, passed by a vote of 27 yeas and 11 nays, and sent to the House. Motion to reconsider tabled.
01/16 S	3	Rules suspended. Reported with amendments. Rules suspended. Read by title; Committee amendments read and adopted. Ordered engrossed and passed to third reading and final passage.
01/15 S	5	Introduced in the Senate; read by title. Rules suspended. Read second time and referred to the Committee on Senate and Governmental Affairs.

Authors:

Glen Womack
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Available Documents: Text

SB8 Act 2

<https://legis.la.gov/legis/ViewDocument.aspx?d=1341081>

SB8 Enrolled

<https://legis.la.gov/legis/ViewDocument.aspx?d=1340797>

SB8 Engrossed

<https://legis.la.gov/legis/ViewDocument.aspx?d=1340284>

SB8 Original

<https://legis.la.gov/legis/ViewDocument.aspx?d=1340141>

Amendments

House Floor Amendment, #83, Beaulieu, Adopted

<https://legis.la.gov/legis/ViewDocument.aspx?d=1340695>

House Committee Amendment, #74, H&G, Adopted

<https://legis.la.gov/legis/ViewDocument.aspx?d=1340645>

House Committee Amendment, #68, H&G, Draft
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340501>

House Committee Amendment, #70, H&G, Draft
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340478>

Senate Committee Amendment, #48, S&G, Adopted
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340274>

Senate Committee Amendment, #38, S&G, Draft
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340218>

Senate Committee Amendment, #34, S&G, Draft
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340190>

Senate Committee Amendment, #31, S&G, Draft
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340187>

Digests

Summary of House Amendments to SB8
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340757>

House Committee Redigest of SB8
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340646>

Digest of SB8 Engrossed
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340304>

Digest of SB8 Original
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340142>

Notes

Fiscal Note - SB8 Enrolled
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340837>

Fiscal Note - SB8 Engrossed With House Floor Amendments
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340767>

Fiscal Note - SB8 Engrossed With House Cmte Amendments
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340657>

Fiscal Note - SB8 Engrossed
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340336>

Fiscal Note - SB8 Original
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340185>

Votes

Senate Vote on SB 8, CONCUR (#20)
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340794>

House Vote on SB 8, FINAL PASSAGE (#21)
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340770>

House Vote on SB 8, AMENDMENT # 83 BY BEAULLIEU, MOTION TO ADOPT (#20)
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340769>

Senate Vote on SB 8, FINAL PASSAGE (#9)
<https://legis.la.gov/legis/ViewDocument.aspx?d=1340426>

OFFICE of the GOVERNOR

Gov. Jeff Landry's First Special Session Concludes

January 19, 2024

Baton Rouge, LA - Today, Governor Jeff Landry marked the close of the special legislative session on court-ordered congressional redistricting. Watch Governor Landry's remarks here (<https://www.youtube.com/watch?v=UX7pHGih9po>)

"Today is an exciting day! The outcome of this special session is a win for the people of Louisiana. We started the process of necessary structural change to our election system, allowing for a cleaner and simpler final ballot, and we took the pen out of the hand of a non-elected judge and placed it in the hands of the people. I applaud those legislators who worked hard to pass these bills, and I look forward to moving on to our top priority—the upcoming crime special session," said Governor Jeff Landry.

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PohlmanUSA

Court Reporting and Litigation Services

Louisiana State Senate 1st Special Session-Audio
Transcription

January 19, 2024

In Re: Louisiana House Floor/Committee Video

[1] MALE SPEAKER: Secretary will open the machines. Vote at the machines, members. Vote at the machines. Are we finished voting? 36 members in a quorum. Next order of business.

THE CLERK: Messages. Messages from the House. The – I'm directed to inform you that the House of Representatives has finally passed the following Senate bills and joint resolutions. Senate Bill 8 reported with amendments respectfully submitted. Michelle Fontana, clerk of the house. Senate bills returned from the House with amendments. Senate Bill 8 by Senator Womack is an act to amend Title 18, relative to congressional districts, to provide for the redistricting of Louisiana's congressional districts to provide with respect to positions and offices other than congressional, which are based upon congressional districts. The bill comes from the House with a set of House Committee amendments and House Floor amendments.

Senator Womack now moves for suspension of the rules to take up the bill at this time.

MALE SPEAKER: Without objection. Without objection. Senator Womack, on your bill.

SENATOR WOMACK: Thank you, Mr. President. Members, Senate Bill 8, which provides for redistricting of congressional districts, appears to be before you now [2] in the exact posture that it left the Senate. The

House is removed. HGA Committee amendment I move to concur with on Senate Bill Number 8.

(Pause.)

MALE SPEAKER: Gotcha. Members, the summaries are being passed out right now, so we're just going to slow down a little bit. I want to give everybody the chance to see what we're voting on.

(Pause.)

MALE SPEAKER: Senator Womack, would you mind going over the – I know we've all seen the amendment once. We – we know what the bill looks like, but if you could just go over some high points on it while they're passing this out. Members, if you have a – members, if you want to speak, hit your Floor button if anybody would like to come to the Floor to discuss the bill. I know some members – make sure that you do that.

(Pause.)

SENATOR WOMACK: Okay. They're passing out the amendments. The – the way they did lay up the House – I mean, lay up the Senate, it was one district change on that amendment. That took in part of Avoyelles Parish. That was the only change, to my knowledge, that was in the – that was in the new map.

[3] MALE SPEAKER: Okay. Senate Morris for – for – Senator Morris for a question on the bill, and you also have your Floor button, so which – you want to question. Let's do question first, please, and then we can do the Floor. Thank you.

SENATOR MORRIS: Senator Womack, you said the only change was – was taking some of Avoyelles Parish and putting it in Miss Letlow's district, correct?

SENATOR WOMACK: Correct.

SENATOR MORRIS: However, it actually took my personal home out of Miss Letlow's district, as well as Senator Cathey's home precinct, as well as State Rep Echols' home precinct, and put that in Representative Johnson's district; did it not?

SENATOR WOMACK: It did.

SENATOR MORRIS: So the only thing being done was not just Avoyelles Parish, correct?

SENATOR WOMACK: I stand to be corrected. You're correct.

SENATOR MORRIS: Why did we do that for Avoyelles Parish?

SENATOR WOMACK: That was – that was brought before the – the – I'll have to look back. I – I was – I was thinking that was a – a – a Senate Committee amendment on that, and that's the way it came out of

[4] Committee.

SENATOR MORRIS: Yes, sir. I think you altered the amendment.

SENATOR WOMACK: Senator Morris, I'll have to – I'll have to look back and – and put that together for you. Any other questions?

SENATOR MORRIS: So you don't know why we put Avoyelles in Miss Letlow's district?

SENATOR WOMACK: As I stated earlier, we were – we were trying to put what we could to – to give senator – Representative Letlow as much North Louisiana as we could. So that was what we – that was what we done on – on that amendment.

SENATOR MORRIS: By – by trading Avoyelles for Monroe, we gave her more North Louisiana.

SENATOR WOMACK: As I understand it, in that bill, I didn't think that – that your home or Senator Cathey or Echols was in the original bill to start with. My recollection.

SENATOR MORRIS: It wasn't in Miss Letlow's district.

SENATOR WOMACK: Right.

SENATOR MORRIS: Would you be shocked if that was not the case, and that we were all in Miss Letlow's district?

[5] SENATOR WOMACK: Probably so. But that – at the – at the time I put that amendment on, I don't remember the original map having that – y'all's address in her district.

SENATOR MORRIS: But you did know that the amendment took some more of Ouachita Parish out of Letlow's, and put it into Johnson's district; you did know that, right?

SENATOR WOMACK: I knew it had to come from somewhere.

SENATOR MORRIS: Yes, sir. Thank you.

MALE SPEAKER: Senator Morris, you have the Floor now for the – for Senate (inaudible 0:08:19).

SENATOR MORRIS: Thank you, Mr. President. We came here to redistrict because there's a chance. It's not absolute, but there's a chance that the judge will rule that our districts that we – that we completed in the last couple of years will not be declared unconstitutional. That case never went to a final judgment. It hasn't even gone to a full trial on the

merits, but yet here we are. So what do we do? We're supposed to redistrict with a lot of principles in mind. Among those include compactness and contiguity.

This bill does neither. It's neither contiguous nor compact. We're all supposed to do it and [6] consider political subdivisions and communities of interest. So now, by everyone's account, I live in Northeast Louisiana, and now I'm in the same district as Lake Charles. Louisiana Tech, Grambling, and University of Louisiana, Monroe are now in different congressional districts. They're all only 30 miles apart.

Senator Womack said in Committee that what he wanted to do was protect Julia Letlow. She's the only woman in our congressional delegation in this state, she's the only member of appropriations, and she's on the Agriculture Committee. So protecting her district because she has seniority, and because she's a bright, articulate, and effective Congresswoman, that's a very noble and worthwhile goal. And I applaud him for having stated that that is one of the objectives of this bill, but this bill doesn't do that.

This bill puts more votes south of the Mississippi line in the Florida parishes than it does in the northeast corner of the state. Now, I'm not horribly disappointed to be in Congressman Johnson's district because I admire him immensely. It's nothing against him. He – I served with him in the House, and we are friends, and I'm a supporter, and he knows that. It has nothing to do with him. But we didn't do the things that I believe that we should have done. Well, [7] what did we do?

It looks like to me we primarily considered race, and we considered the personal interest of a handful of members. There was no reason. The bill, as originally

filed, we did not like. It cut my home parish in half. I understand it's got to go through somebody's district, right? A lot of you have your districts, your home parishes cut through, but you didn't have to zigzag it around just so somebody can get a personal stake, who might want to run for Congress, or just wants their parish there because of their personal interest.

I'm not going to be around to run for Congress or anything of the sort in two years, eight years, or ten years. This is about districts and regions that will represent the people of our area, and the lack of compactness is going to effectively disenfranchise, I believe, to a certain degree, the people that I represent. And for these reasons, I urge you to vote against this bill. Thank you, Mr. President.

MALE SPEAKER: Thank you, Senator Morris. Senator Cathey to the Floor on the bill.

(Pause.)

SENATOR CATHEY: Thank you, Mr. President. Members, I – I don't know that I can say any better [8] than what Senator Morris just said, and I wholeheartedly agree with everything that he said. You know, I love the Senate, and I love being a member of this body, and I'm excited about the things that we're going to do in this term. I think we're going to do some great things. Unfortunately, today is not one of those days.

What we're doing to Northeast Louisiana with this map is a travesty and a disservice to the only woman that we have serving in our congressional delegation. The only member that we have that sits on the House Appropriations Committee, which controls federal dollars to this state. When we say that this map protects Northeast Louisiana and Congresswoman Letlow, I'll have you know, 50 percent of the votes in

Congresswoman Letlow's district now reside within 30 miles of this building. Let that sink in. 30 miles of this building. Look, I can see the writing on the wall, and I know where this is going to go.

And so, look, I'm – I'm – I've been around long enough to – to count, and – and I know that -- that we can't get to 20, but – but I just couldn't let this go without standing up for my people and my district and my congresswoman. And so I guess there is one other thing that – that I do want to say just to put it into perspective. Again, kind of like Senator

[9] Morris said, my home, my personal home, which is 35 miles from the Arkansas line, and 65 miles from the Mississippi line will now be in the same congressional district as Fort Polk and McNeese State University and Lake Charles. That's a disservice and a travesty. So with that, I close.

MALE SPEAKER: Thank you, Senator Cathey. Senator Luneau for the Floor.

(Pause.)

SENATOR LUNEAU: Thank you, Mr. President. Members, we – we did redistricting last year, I'm sure most of you remember that, and it was an utter failure. And there were a lot of us that talked about some of the things that we could have done different to make it different, but it didn't work out that way, so here we are again. And I remember when we redistricted our own district, our Senate districts, Rapides Parish, my home parish, now has six different senators. Six. And I fought that, but I lost on that – on that – on that quest. I – I just couldn't – couldn't get everybody together.

And they said, "You know, it's going to be great if you have six centers. Then you've got six people coming

together.” That – that didn’t happen. That’s not true. We didn’t come together, and it hurt [10] Rapides Parish. And now this map, yet again, has Rapides Parish divided in half. I guess that’s better than six, but I guess we would have to have every congressperson from the – from the state to have six. It’s important that we do these maps, and we do them correctly, where we establish another minority majority district. And for that reason, I’m going to support and I’m going to vote for this map, but like my colleagues before me, I have to admit we should do better.

MALE SPEAKER: Thank you, Senator Luneau. Senator Carter for the floor.

SENATOR CARTER: Thank you, Mr. President. Members, we have an historic opportunity before us today, and it’s an exciting day for the great State of Louisiana. If we concur and accept Senate Bill 8, we get to create two performing African American districts right here in the State of Louisiana. That is historic. That is to be celebrated. I really want to say thank you to everyone in this room. I can’t thank you all enough. I appreciate the sincere effort. I appreciate the – the – the working late into the evenings that – I want to thank the staff of the SGA committee and the tireless hours that they have. This is – this is historic.

I know that it’s hard to do anything that’s [11] perfect, and I know redistricting is the hardest thing that we do of all. This is my second redistricting session, and they’re very tough, but we came together in a effort to comply with a federal judge’s order that Louisiana provide equal representation to the African Americans in the State of Louisiana, and we have an opportunity to do that. Let’s celebrate. Let’s be happy. Let’s be glad this state has an opportunity to provide equal representation in our congressional leadership

right here in the State of Louisiana. Thank you all so much.

And I also want to thank – I'll be remiss if I didn't thank the – the president, all the members of SGA committee, the – the governor who called this session. We began with the governor addressing us on Dr. King's Day, and here we are celebrating at the end of that week. And it just didn't start at the beginning of this week with Dr. King's Day. It started way back when Dr. King was alive, in a push for a voters' rights act. There's so many hurdles along the way and so many battles. There's so many – so many – so much effort. So much energy.

And when we were in Committee, we heard from many people. From the LDF people to the plaintiffs to all the – the community people that came to testify [12] because they did it last year. And some of them said, "We are tired. We're tired of keep doing this." But let me tell my friends and my colleagues, to everyone, we shall not tire. We shall continue to fight for what's right. It is – this is how we make progress. It is not easy, it is challenging, but this is how we make progress, and we make progress. We celebrate it. We acknowledge it. So thank you to my colleagues. Thank you to all of us who engaged in this process. Thank you, Mr. President.

MALE SPEAKER: Thank you, Senator Carter. Senator Womack to close.

SENATOR WOMACK: Members, we all – we all know what we went through and worked through and tirelessly. Late nights. Many hours. Many hours spent in the drafting room, of trying to help Senator Morris and Senator Cathey in trying to alleviate some of the problems they had. We worked on that. However,

congressional, it wasn't working for everybody. So we're here where we're at, and here your bill's before you. I ask that you concur with Senate Bill 8. Thank you.

MALE SPEAKER: Thank you, Senator Womack. Senator Womack moves to concur in Senate amendments proposed to House – to Senate Bill 8. When the [13] machines are open, all those in favor to concur in the Senate amendments will vote aye. All opposed will vote nay. Madam Secretary may open the machines.

SENATOR HENRY: Go to machine, members. Go to machines. Go to machines, members. Close machine, please.

27 yeas, 11 nays, and the motion carries.

Senator Talbot for a motion.

SENATOR TALBOT: Thank you, Mr. President. I make a motion that we adjourn sine die.

SENATOR HENRY: Without objection. Members, if you could have your seat just for a second. Sit down just.

[14] CERTIFICATE OF TRANSCRIPTION

I, Nathan Pikover, COO of TranscribeMe, Inc., do hereby certify that 290872-Audio-011924SCHAMB2-Edited-Appended was transcribed utilizing computer aided means and the TranscribeMe transcription team.

The transcript of the audio mentioned above, having been transcribed and reviewed by TranscribeMe, Inc. to the best of the company's ability, is a full, true, and correct transcription.

I further certify that neither I, nor the

120

TranscribeMe, Inc. transcription team, have any personal association with the parties involved or are in any way interested in the outcome thereof.

Dated this 8th of March, 2024.

Nathan Pikover, COO TranscribeMe, Inc.

Louisiana Congressional Districts

AUTHOR

50-State Simulation Project Team

PUBLISHED

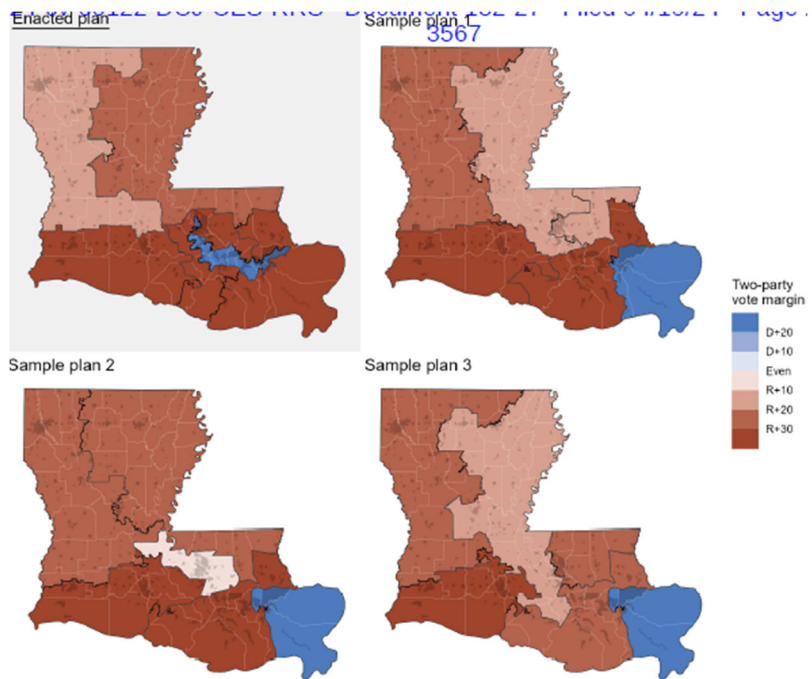
June 16, 2023

DOI

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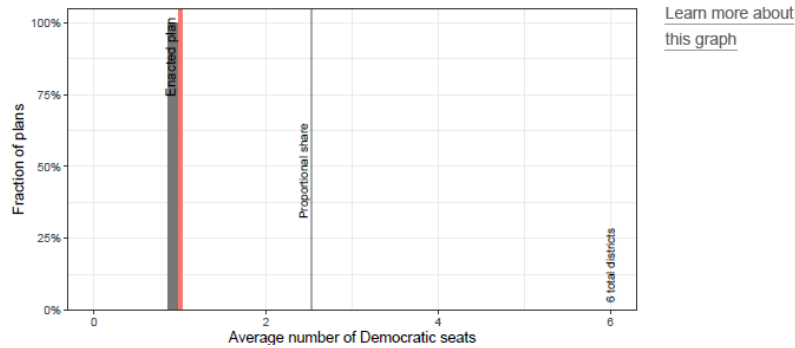
Back

Louisiana has 6 congressional districts. We've generated 5,000 sets of randomly simulated districts according to the relevant criteria. Three of these plans are shown here, along with the actual enacted map.



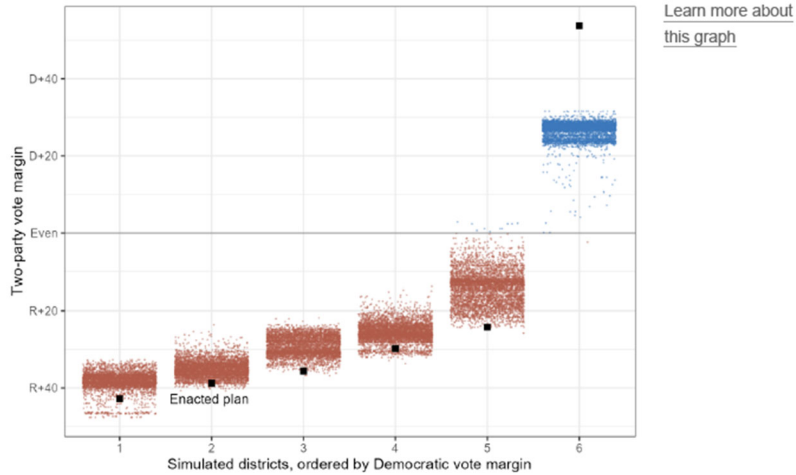
Partisan Features

In Louisiana, Democrats win about 42% of the vote in a typical statewide election. Proportionally, that would translate to 2.5 Democratic seats out of 6 total.



But proportionality isn't guaranteed, even in a fair redistricting process. In our simulated plans, Democrats won anywhere from 1.0 to 1.0 seats on average, with 1.0 being the most typical. In contrast, we expect the enacted plan to yield 1.0 Democratic seats on average, which is more than 100% of all simulated plans.

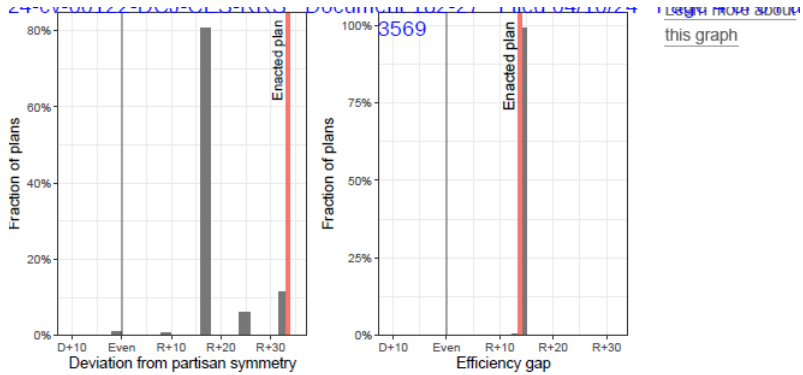
The graph below breaks this down in detail, showing how each district of the enacted plan compares to the set of simulated districts.



Gerrymandering metrics

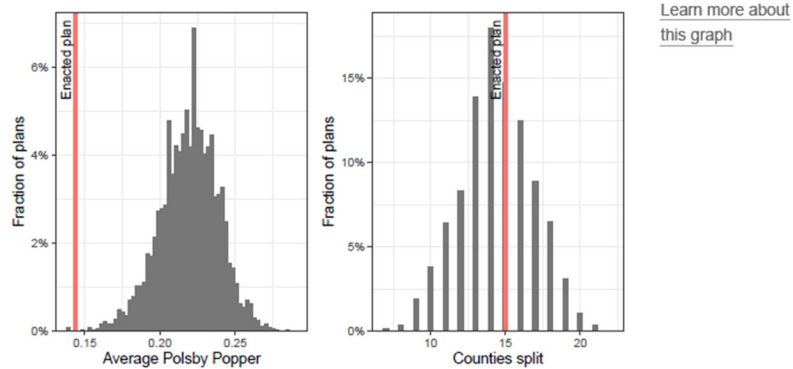
There are other ways of measuring the partisan skew of redistricting plan. The graph below shows two these metrics. The deviation from partisan symmetry measures the expected difference in each party's share of seats if they each won 50% of the statewide vote. The efficiency gap is calculated as the difference in the number of wasted votes for each party.

Learn more about these metrics here.



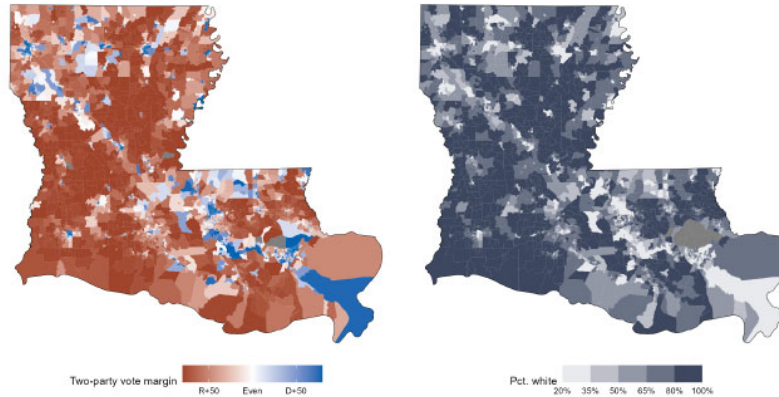
Traditional redistricting criteria

Factors other than partisanship are important for redistricting, too. The graph below shows the geographic compactness and the number of counties which are split into multiple districts. As far as compactness, Louisiana's enacted plan scores a 0.14, less than 100% of all simulated plans (a higher score means more compact). It splits 15 counties, compared to an average of 14 counties for our simulated plans.



Political Geography

These two maps show the partisan lean across Louisiana in a typical statewide election, and the share of minority voters around the state.



More information

[Download the data for Louisiana.](#)

[Learn more about our methodology.](#)

Elections included in analysis:

- President 2016
- US Senate 2016
- Secretary of State 2018
- President 2020
- US Senate 2020

Redistricting requirements

Our algorithmic constraints used in simulations are in part based on some of these requirements and discretionary criteria. See full documentation and code for the complete implementation details.

In Louisiana according to Louisiana Joint Rule No. 21 must:

1. be contiguous
2. have equal populations

3. be geographically compact
4. preserve parish and municipality boundaries as much as possible
5. preserve the cores of traditional district alignments

Corrections

If you see mistakes or want to suggest changes, please create an issue on the source repository.

Michael C. Hefner

*Vitae of Reapportionment, Economic, & Demographic
Work Experience*

1.0 Qualifications

*1.1 Demographic, Reapportionment and Economic
Development Experience*

Mike Hefner is the Chief Demographer and owner of Geographic Planning and Demographic Services, LLC. He has extensive experience working with specialized demographics, census counts from the Census Bureau and use of the Bureau's TIGER Line Files, dating back to 1990. These computer-generated map files are used to enumerate the Census as well as serving as the base map for reapportionments and other demographic uses.

Hefner served as the Economic Development Manager and later became the Assistant Director of the Evangeline Economic and Planning District from 1990-1995. Among other things, EEPD was the Census Data Center Affiliate for District 4. During that time, he served as the Census Bureau's liaison for the 8 Parish Acadiana area. He and staff from the Imperial Calcasieu Planning District were the first in the State to use the Census Bureau's TIGER Line Files and related census data on PC-based computers. He was also among the first in the State to fully computerize the functions of reapportioning based on PCs. During this time he also provided extensive assistance to other Planning and Development Districts statewide in use of the TIGER Line Files, the 1990 Census data, and reapportionment through the use of PC computers.

Hefner also provides demographic services under contract to the newly renamed Acadiana Regional Development District. His experience, combined with

his familiarity of the service area of the District, provides the district with a comprehensive source of demographic and economic data.

From 1995 to 1999, Hefner served as the Executive Director of the Enterprise Center of Louisiana. In that capacity, he provided hundreds of hours of assistance to entrepreneurs starting or expanding a business. In addition, he provided economic development assistance to municipalities and parish entities throughout the eight parish Acadiana Area. He also served as President of the Louisiana Business Incubator Association.

Hefner also served on the Lafayette Parish School Board, having first been appointed to the Board in 1986 to fill the unexpired term of his father-in-law, E. Lloyd Faulk. He was elected to the Board in 1990 and re-elected in the elections of 1994, 1998, 2002 and 2006. He has served in the capacity of President and Vice President of the Board. Hefner chose not to run for re-election in 2010 due to anticipated schedule conflicts arising from 2010 redistricting projects.

1.2 Legal Qualifications

In connection with the 1990 Census, Hefner was certified as an expert witness in the United States District Court Western District of Louisiana and testified when the Evangeline Parish School Board defended a Section 2 suit brought against their reapportionment plan by a citizen of the parish. The citizen filed suit against a Parish School Board on the plan after they had adopted and received Justice Department Section 5 approval. The plan was successfully defended.

For the 2000 Census, Hefner was retained by the Attorney General of the State of Louisiana and the

Department of Elections to develop alternative plans and provide expert testimony in the case of City of Baker School Board vs. State of Louisiana. The case was heard in the 19th Judicial Circuit Court and Hefner was the sole witness presented by the State. That case was ruled in favor of the State at both the district court and the Appellate Court.

After the 2000 census redistricting the redistricting plan for St. Landry Parish School Board was challenged under Section 2 of the Voting Rights Act. Hefner served as the expert witness for the defendants. The case was resolved among the parties based on some suggested modifications by Hefner.

Hefner currently serves as an expert witness in demography and reapportionment for the Louisiana Department of Justice. Recent cases involve the method of election for the five judicial seats in the 32nd JDC in Terrebonne Parish and in the 40th JDC. Hefner's earlier work in the Terrebonne 32nd JDC case on behalf of the Louisiana Secretary of State played a large part in successfully dismissing the Secretary as a defendant in the case. Hefner is also providing expert witness services in a case concerning the minority representation in the current Louisiana Congressional Districts.

Hefner is currently certified as an Expert Witness in reapportionment and demography for the U.S. District Court Western District of Louisiana, the Middle District of Louisiana, and the 15th and 19th District Courts in Louisiana. In the 15th District Court, Hefner was reaffirmed as an expert in reapportionment and demography in the 15th Judicial District Court in the case of *Kishbaugh vs The City of Lafayette Government, Lafayette Parish Government, and Lafayette City-Parish Government*.

Hefner also provided expert witness services in the area of demographics for St. Bernard Parish (Defendant) as well as for the Burlington Northern and Santa Fe litigation (Defendant). The BNSF litigation involved demographics of the population using a plume analysis. The St. Bernard Parish case involved determining the number of persons and households in the collection area using a variety of sources.

Hefner is actively involved in providing expert witness services, but not testifying in Court as of this date, in the cases of: *Ricky Bush vs. Clean Harbors Colfax, LLC*, CA No. 1:22-CV-02026, *Smith, et al.*, and *United States v Concordia Parish School Board, et al.*, CA No. 1:65-cv-11577 (W.D. La.), and *Boudreaux, et al., v School Board of St. Mary Parish, et al.*, CA No. 6:65-cv-11351 (W.D. La.).

Hefner has never been rejected as an expert witness in any case. His qualifications have survived several *Daubert* challenges.

Hefner completed his legal education and received his Juris Doctorate in law in January 2008. He successfully passed the California Bar exam and is a member in good standing with the California Bar.

2.0 Past Reapportionment, Economic Development, Demographic & Mediation/Facilitation Work

2.1 *Reapportionment, Demography & Economic Development*

After the 1990 Census, Hefner provided Technical Assistance Services to some 22 governmental entities for reapportionment. In addition, some half dozen was performed directly whereby the full scope of the reapportionment process was conducted. Much of the Technical Assistance comprised of drawing up a

number of possible plans with the associated data for consultants and governmental staff working on reapportionment or providing detailed demographic data at the precinct and/or census block level.

With the release of the 2000 Census, Hefner had been primarily involved in performing analyzing population trends in connection with the reapportionment services to over 41 jurisdictions throughout Louisiana.

For the 2010 Census, Hefner successfully completed redistricting plans for over 73 jurisdictions. Hefner has also performed a number of market analyses for private companies and site location analysts.

Hefner is currently serving on a legislative committee charged with reviewing redistricting statutes. He was appointed by the Louisiana Secretary of State to represent demographers.

Additionally, population census counts, updates, and projections have been conducted for several municipal governments, water, fire, and wastewater districts. The projections have withstood state reviews and court scrutiny as well as U.S. Department of Justice review where applicable.

During his tenure at the Evangeline Economic and Planning District, Hefner provided numerous economic and site location analyses for major corporations looking to locate or expand in south central Louisiana. Nearly every municipality, water district, wastewater district, and Parish government in the 8 parish Acadiana area was the recipient of one or more demographic studies performed at their request.

In addition, Hefner performed Economic Needs Assessments for each of the 8 Parishes in the District

annually and developed reports of the findings to the U.S. Department of Commerce. Many of these assessments were used to help secure millions of dollars in infrastructure grants.

2.2 School Demographic Work

In the highly specialized area of school demographics, Hefner has provided demographic services to the Lafayette Parish School Board, the St. Landry Parish School Board, the Pointe Coupee Parish School Board, the St. John the Baptist School Board, the Vermilion Parish School Board, the Bossier Parish School Board, the E. Feliciana Parish School Board, the Evangeline Parish School Board, the Union Parish School Board, the Ouachita Parish School Board, Monroe City School Board, the W. Baton Rouge Parish School Board, the DeSoto Parish School Board, the Jackson Parish School Board, the Lincoln Parish School Board, the St. Martin Parish School Board, the St. Mary Parish School Board, the Concordia Parish School Board, and the U.S. Department of Justice. For the Lafayette, Bossier, St. Martin, St. Mary, E. Feliciana, Vermilion, Evangeline, Union, Ouachita, Monroe City, DeSoto, W. Baton Rouge Parish School Boards as well as for the U.S. Department of Justice, much of the demographic work has concentrated on general population trends, student demographics, analyzing, and/or constructing school attendance zones in connection with their respective desegregation cases.

Recent efforts in St. Landry, Concordia, Evangeline, Monroe City, Union, DeSoto, Ouachita, St. John the Baptist, St. Martin, St. Mary, and Bossier have centered on modification of their school attendance zones as they relate to their school facilities in order to meet the mandates of their respective desegregation litigation. Pointe Coupee was a combined project of

consolidating schools, redrawing attendance zones, and a complete redesign of their bus transportation system and a complete audit of their contract bus routes. The U.S. Department of Justice project involved the student assignment plan for the Avoyelles Parish School Board and Morehouse Parish School Board.

To date the school districts in Ouachita, Evangeline, St. Landry, Avoyelles, and Morehouse Parishes have received Unitary Status based on the student assignment work conducted by Hefner. Union has recently received Unitary Status.

The use of computer GIS software has been extensively used to help with these efforts and provides the maximum opportunity to rapidly assess a number of different school district configurations or to analyze existing zones. Hefner is one of the few, if not the only one in the State currently using specialized GIS software for these educational-related activities.

2.3 Mediation / Facilitation

Hefner has extensive mediation and facilitation experience. For the Federal courts, he was one of the representatives from the School Board chosen to facilitate an agreement regarding the District's dress code and the exercise of religious customs of students attending Lafayette Parish Public Schools. A successful agreement was reached thereby avoiding a costly court hearing and trial.

Hefner also facilitated the Consent Decree response in the *Alfreda Trahan v. Lafayette Parish School Board* desegregation case. After the court ruling of May 19, 2002, Judge Richard Haik ordered the Board to develop a new desegregation plan within 6 weeks. Hefner was chosen by the Board President to facilitate the development of that plan. Street wisdom at that

time said it would take over a year for the Board to develop a plan and one could never be developed that all parties would agree to. By bringing all parties together from the beginning, a plan was developed within 5 weeks that all parties to the desegregation suit signed off on and the plan was later accepted by Judge Haik.

Hefner also exercised mediation and facilitation skills during many of the reapportionment projects undertaken during the past two censuses. Competing interests often came to the surface during many of the reapportionment discussions, which had to be successfully mediated in order to come reach agreement on a plan that would meet community and legal criteria. Many reapportionment projects conducted after the 2000 and 2010 censuses required mediation among elected officials as well as among some community leadership. All reapportionment projects conducted by Hefner received Section 5 approval from the U.S. Department of Justice on the first submission prior to the *Shelby* ruling.

2.4 Government Demographic, GIS, Reapportionment Projects, Expert Witness Testimony:

Acadia Parish Police Jury (reapportionment 2000, 2010, 2020 precinct mergers, 2021 prospective precincts).

Acadia Parish School Board (reapportionment 2000, 2010, 2020).

Acadia Parish Police Jury (parish wide GIS project).

Allen Parish Police Jury (reapportionment 2020).

Allen Parish School Board (reapportionment 2020).

Ascension Parish School Board (student attendance boundaries, school site selection, reapportionment 2020)

Ascension Parish Council (reapportionment 2020)

Avoyelles Parish Police Jury (reapportionment 2020).

Bossier Parish School Board (new school zones, student pop projections, school site planning).

Bossier Parish School Board (grade realignments/school zone modification project).

Bossier Parish School Board (school desegregation expert witness services).

Bossier Parish School Board (reapportionment 2010, 2020).

Bossier Parish Police Jury (reapportionment 2020).

Cameron Parish School Board (Reapportionment 2010).

Central Community School System (5/10 Year student projection report, reapportionment 2020)

DeSoto Parish Police Jury (Precinct mergers and consolidations, 2021 prospective precincts, 2020 redistricting, 2023 precinct mergers, witness testimony).

Concordia Parish School Board (desegregation-student assignment, transportation).

DeSoto Parish School Board (desegregation plan review, student projections, plan modification, USDoJ plan review, expert witness services, 2020 redistricting).

East Baton Rouge Parish School Board (Five-year student projection reports 2017, 2018, redistricting 2020).

East Baton Rouge Metro Council (redistricting 2020).

Evangeline Parish Police Jury (reapportionment 2000, 2010, 2020, Census update, precinct mergers).

Evangeline Parish School Board (reapportionment 1990, 2000, 2010, 2020).

Evangeline Parish School Board (School Consolidations, student projections, student assignment plans, and expert witness services).

E. Feliciana Parish Police Jury (Precinct realignments, 2021 Prospective Precincts, 2020 redistricting).

E. Feliciana Parish School Board (change in board composition, 12-year student population projections, 2020 redistricting).

Lafayette Parish School Board/Consolidated Council (TA) (reapportionment 2000, 2010, 2020).

Lafayette Parish School Board (30-year study of Parish demographic shifts by race, comprehensive student assignment plan, 2017 five-year student projection report with 2023 update).

Lafayette Consolidate Government (City of Lafayette & Lafayette Parish council reapportionments for charter revision, expert witness testimony).

Livingston Parish Police Jury (precinct realignments).

Iberia Parish HRC Council (reapportionment 1990, 2000, 2010, 2020, precinct mergers, 2021 prospective precincts).

Iberia Parish School Board (reapportionment 2000, 2010, 2020).

Iberia Parish School Board (student assignment plan 2018, 2019, 2023).

Iberia Parish HRC Council (Membership reduction plans).

Iberville Parish Police Jury (precinct realignments).

Jackson Parish School Board (student assignment plans, basic student projection report, expert witness services).

Madison Parish (Precinct realignments).

Monroe City School Board (Student projections and Zone Alignments 2010-2012, 2020, 2022).

Ouachita Parish School Board (Unitary Status *Green* factor review and expert witness services).

Plaquemine Parish Police Jury (precinct realignments).

Pointe Coupee Parish Police Jury (election districts for new Home Rule Charter implementation, precinct mergers, 2021 prospective precincts, 2020 redistricting).

Pointe Coupee Parish School Board (reapportionment 2000, 2010, 2020).

Pointe Coupee Parish School Board (transportation routing/school consolidation/zone boundary changes, bus audits).

Richland Parish School Board (student assignment plans).

St. Bernard Parish Government (residential housing study)

St. John the Baptist School Board (5/10 year student census projections).

St. Landry Parish Police Jury (reapportionment 2000, 2010 for new Home Rule Charter, 2020 redistricting).

St. Landry Parish Council (precinct realignments, Census LUCA updates, precinct mergers, 2021 prospective precincts).

St. Landry Parish School Board (reapportionment 2000, 2010, 2020).

St. Landry Parish School Board (student assignment plans, bus transportation plan, student population projection report, expert witness services).

St. James Parish School Board (student assignment, school attendance boundaries, 5-Year projection report, reapportionment 2010, 2020).

St. James Parish Council (Housing study).

St. John the Baptist Parish School Board (10-year student projection report)

St. Martin Parish HRC Council (reapportionment 2000, 2010, 2020).

St. Martin Parish School Board (reapportionment 2000, 2010, 2020).

St. Martin Parish School Board (2016 student assignment plans, expert witness services).

St. Martin Parish HRC Government (parish wide GIS project, Census LUCA updates).

St. Martin Parish Government (precinct realignments and mergers, 2021 prospective precincts).

St. Mary Parish HRC Council (reapportionment 2000 and 2010).

St. Mary Parish HRC Council (precinct realignments).

St. Mary Parish School Board (2010, 2020 reapportionment, student assignment plans, expert witness services).

State of Louisiana-Secretary of State (alternative reapportionment plans, demographic and reapportionment expert witness services).

State of Louisiana-Louisiana Department of Justice (32nd JDC, 40JDC demographic and reapportionment expert witness services.)

State of Louisiana-Louisiana Department of Justice
(2022 Congressional Districts reapportionment expert
witness services.)

Tangipahoa Parish School Board (5/10 Year Student
Projection Report).

City of Scott (reapportionment 1990, 2000, 2010, 2020
Census LUCA update).

City of Eunice (reapportionment 1990, 2000, 2010,
2020).

City of Broussard (reapportionment 2000, 2010, 2020).

City of Broussard (50-year population study).

City of Breaux Bridge (reapportionment 2010, 2020).

City of Crowley (reapportionment 1990, 2000, 2010,
2020).

City of Donaldsonville (reapportionment 2020).

City of Marksville (reapportionment 2010, 2020).

City of Rayne (reapportionment 2000, 2010, 2020).

City of Church Point (reapportionment 2000, 2010,
2020).

City of Opelousas (reapportionment 2010, 2020).

City of Central (reapportionment 2020).

City of Ville Platte (reapportionment 2010, 2020).

City of Zachary (2010, 2020 reapportionment).

Town of Sunset (reapportionment 2000, 2010, 2020).

Town of Mamou (reapportionment 2000, 2010, 2020).

Town of Washington (reapportionment 2000, 2010,
2020).

Town of Bunkie (reapportionment 2000, 2010, 2020).

Town of Cottonport (reapportionment 2000, 2010, 2020).

Town of Kinder (reapportionment 2000, 2010, 2020).

Town of Tallulah (reapportionment 2000).

Town of Springhill (reapportionment 2010, 2020).

Town of St. Francisville (reapportionment 2020).

Tucson Independent School District No. 1, Tucson AZ (Desegregation Initiatives and Review).

City of Youngsville (census update 2004, 2014, reclassification as a City in 2004, 30-Year Demographic Projection).

Union Parish School Board (student assignment plan for Union Parish Deseg case, expert witness services).

U.S. Department of Justice (student assignment plan for Avoyelles Parish Schools, expert witness services).

U.S. Department of Justice (student assignment plan review for Morehouse Parish, expert witness services).

Vermilion Parish School Board (school rezoning, parish-wide street and address updates, student population projection report, 2020).

Vermilion Parish School Board (reapportionment 2000, 2010, 2020).

Webster Parish School Board (school attendance plan, expert witness services).

W. Feliciana Parish HRC Council (Precinct mergers, 2021 prospective precincts, redistricting 2020). W. Feliciana Parish Police Jury (redistricting plan for Home Rule Charter compliance).

W. Feliciana Parish School Board (Twelve-year student projection report 2018, Report Update 2019).

W. Baton Rouge Parish School Board (5-year student projection, redistricting 2010, 2020) Winona-Montgomery Consolidated School District (School desegregation-Transportation bus route analysis).

1990 Census Reapportionments:

City of Crowley

City of Scott

City of Eunice

Evangeline Parish School Board

Iberia Parish Council (TA)

Several Private Consultants (*primarily city engineers doing redistricting plans*)

Vermilion Parish Police Jury (TA)

Lafayette Parish School Board (TA)

Town of Ville Platte (TA)

City of Breaux Bridge (TA)

Town of St. Martinville (TA)

3.0 Educational Background

- Graduated from Concord Law School earning a Juris Doctorate in law. Successfully passed the February 2008 administration of the California Bar exam. Member of the California Bar, Bar #257492.
- Commissioned as a Louisiana Notary Public, May 2015.
- Completed Public Service course sessions at the Leadership Institute, Greensboro, NC March 1993

- Graduated from the Basic Economic Development Course, University of Kansas, 1992
- Completed Leadership Lafayette, Class II, 1987
- Graduated from University of Southwestern Louisiana 1978, Degree in Business Administration, Marketing
- Graduated from Our Lady of Fatima High School, 1974

4.0 Community Leadership

- Member of the Lafayette Parish School Board, District 5, 1986, 1990 to 2010. Did not seek reelection due to meeting conflicts anticipated with redistricting.
- Past Chairman and director on the Board of Directors for Goodwill Industries.
- Director CADENCE non-profit board.
- Past Chairman of the Lafayette Parish Industrial Development Board
- Past Chairman of the Louisiana Business Incubation Association
- Past Chairman Citizens for Public Education
- One of the charter founders of the Lafayette Public Education Foundation, past member.

5.0 Contact Information:

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Cal. Bar #257492

[1] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. 3:24-cv-00122

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,
Plaintiffs,

vs.

NANCY LANDRY, in her official capacity as
Secretary of State,
Defendant.

PRELIMINARY INJUNCTION HEARING
CONSOLIDATED WITH BENCH TRIAL
OFFICIAL TRANSCRIPT OF PROCEEDINGS,
VOLUME I
BEFORE THE HONORABLE CIRCUIT JUDGE
CARL E. STEWART
THE HONORABLE DISTRICT JUDGE
DAVID C. JOSEPH
AND THE HONORABLE DISTRICT JUDGE
ROBERT R. SUMMERHAYS
APRIL 8, 2024
SHREVEPORT, LOUISIANA

DIANA CAVENAH, RPR
FEDERAL OFFICIAL COURT REPORTER
300 FANNIN STREET, SUITE 4203
SHREVEPORT, LOUISIANA 71101
(318) 934-4754

[7] JUDGE JOSEPH: Good morning.

Okay. Let's go through these motions. We did receive a motion to continue.

And what's the document number on that, the docket number, Lisa?

MS. LACOMBE: It's 161, Judge.

JUDGE JOSEPH: Okay. We received a filing over the weekend to continue the trial we have set for today. And, in the alternative, to separate the preliminary injunction hearing from the trial.

That motion is opposed – is it opposed by the State as well?

MR. GORDON: No, Your Honor. The State's position was that we oppose it to the extent it would interfere with the election calendar; otherwise, we take no position.

JUDGE JOSEPH: Okay. All right. In ruling on that motion, that motion to continue is denied for the following reasons.

First, the weekend before a trial is not the appropriate time to ask for a trial continuance absent some emergency. We very well may have granted a continuance had the motion to continue been timely filed.

Second, the intervenors' role in this case is limited to the subject matters permitted by the Court in order to [8] supplement the State's defense. But the map of the plaintiffs' challenge is not the Robinson intervenors' map. It's the State's map, duly enacted into law by the Legislature and signed by the Governor through the democratic process. It's primarily the State's duty to defend the map. And both the plaintiffs and the

State defendants initially requested an abbreviated time frame in order to ensure that there was certainty in the election map in sufficient time to have the election this fall. There is also substantial public interest of the citizens of Louisiana in ensuring certainty in the election map in sufficient time so that the candidates can decide to run and the voters can do due diligence on their preferred candidates.

Third, although the Robinson intervenors came into this case later than the other parties, they've been involved in redistricting litigation in the Middle District for years. They are very familiar with the subject matter of this case.

Now, I would like to go to the motion to reconsider striking the plaintiffs' expert, their rebuttal expert. I have read the – we have read the briefing on that. I think I have a proposal that may be acceptable to both parties, to all three parties.

It seems that the plaintiffs' position about the

* * *

[11] MR. GREIM: Okay.

JUDGE JOSEPH: All right. You'll have to touch on performance to some degree to rebut the fact that it's political, not racial, if he says that it's, you know, actually more of a racially motivated map, okay? That's a proper rebuttal opinion. But anything else about the performance of these districts as majority-minority districts is beyond the scope of the intervenors' case.

MR. GREIM: I understand.

JUDGE JOSEPH: All right.

MR. GREIM: I understand that we are to make our openings from this middle podium.

JUDGE JOSEPH: As long as there is a microphone, I don't think – I'll have to ask my fellow judges, but I don't have a preference, really. Wherever you are comfortable. Just make sure you stand up and you're near a microphone.

MR. GREIM: This is a case that may turn more on the law than on the facts. On plaintiffs' Shaw claim, Count 1, this is not a factually complicated case on either the two prongs that we will be addressing.

On the first prong, the direct evidence that you'll hear from the legislative record proves that race predominated. We're going to be playing the transcripts. The Court will hear the House and Senate sponsors each

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[19] conventions used in this case and I note that both the State and the Robinson intervenors are technically intervenors. We certainly didn't have a motion in limine here. I believe that refers to the Robinson intervenors. So to the extent I think we can all agree the parties can just refer, when they want to refer to the State specifically, just refer to "the State." And "intervenors," we can just take to mean, the Robinson intervenors. Is that –

JUDGE JOSEPH: Is there any daylight between the State and the Secretary?

MR. STRACH: Other than this space right here, not really.

JUDGE JOSEPH: Okay. Well, just we'll have "the State" and we'll have "the Robinson intervenors."

MR. GORDON: Thank you, Your Honor.

MS. BRUNGARD: Good morning, Your Honors.

Morgan Brungard on behalf of the State. It's my understanding that the Secretary is not going to give an opening and has given me a couple of minutes of their time.

We appreciate the opportunity to address the Court this morning. For the past 30 years, the State has been torn between the Voting Rights Act and the Fourteenth Amendment. In the 1990's the State drew a map with two [20] majority-black districts because the U.S. Attorney General required it under Section 5 of the Voting Rights Act. That map was challenged under the Fourteenth Amendment in the Hays litigation from the '90s that my friend on the other side mentioned, and that map was struck down as a racial gerrymander.

While the Supreme Court ultimately concluded that the Hays plaintiffs lacked standing, the State has followed this Court's merits holding in Hays that the Fourteenth Amendment prohibits two majority-black districts. That holding is why the State passed the map with one majority-black district in the 1990's and continued that practice through 2022.

In 2022, two sets of plaintiffs sued to enjoin that map under the Voting Rights Act. Those suits, consolidated in Robinson in the Middle District of Louisiana, alleged that Section 2 of the VRA required the creation of a second majority-black district. The State vigorously defended that case and lost. The Middle District preliminarily enjoined the 2022 map and held that Section 2 requires a second majority-black district. In the Fifth Circuit, the State strenuously again argued that the VRA did not require two majority-black

districts in Louisiana and again lost. The Fifth Circuit expressly agreed with the Middle District that plaintiffs were [21] likely to succeed in proving that the VRA requires two majority-black districts. But the Fifth Circuit vacated the preliminary injunction primarily for timing-related issues and remanded to the Middle District. On remand, the Middle District gave the State two options: Either enact a new map or go to trial in February 2024 on the single majority-black district map, a map that the

Middle District had enjoined once already.

The State took the first option. Seeing the VRA liability writing on the wall, the Governor called a special session of the Legislature in January 2024.

The Legislature convened and took the Middle District and Fifth Circuit at their word when they said the VRA requires a second majority-black district.

Senator Womack introduced SB8 that proposed a map with the second majority-black district, and he gave detailed political reasons for the shape of the districts. The Legislature passed the SB8 map, which plaintiffs here now challenge. The State's effort to comply with the decisions from the Middle District and the Fifth Circuit and draw a second majority-black district is the impetus of this Fourteenth Amendment challenge.

To prevail here, plaintiffs must show not just that the State was aware of racial demographics, but that race predominated in the drawing of the SB8 map. If they [22] succeed, the burden switches to the State to satisfy strict scrutiny. Plaintiffs cannot show predominance; and even if they could, the State can satisfy strict scrutiny.

Taking predominance first, plaintiffs cannot meet their burden. The evidence will show that the Legislature's predominant reason for passing the SB8 map was a desire to do two things: First, to comply with the decisions from the Middle District and the Fifth Circuit holding that the VRA requires a second majority-black district. And second, to protect Representative Julia Letlow. The difference between the SB8 map and the remedial map that the Robinson intervenors here presented to the Middle District there, illustrates that political considerations drove the configuration of the SB8 map. The Robinson remedial map and the SB8 map are largely the same in South and Middle Louisiana. Both maps encompass portions of Baton Rouge, Alexandria, and Lafayette in the second black-majority district. But where they diverge is in North Louisiana. The Robinson remedial map included minority areas in Monroe, the delta parishes, and portions of the Florida parishes in its second black-majority district. Drawing the district that way put incumbent Republican Representative Julia Letlow into a majority-black district that favors Democrats, making it nearly impossible for her to win. Essentially, the [23] Robinson remedial map redistricted Representative Letlow, the only woman in the Louisiana congressional delegation, out of Congress. She is one of only two incumbents representing North Louisiana who serve in the majority party of the U.S. House. She also serves on the Appropriations Committee and the Agriculture Subcommittee of Appropriations. These positions are crucial to Louisiana and especially to North Louisiana.

Senator Womack, who introduced SB8, is also from North Louisiana. And he stated very clearly that his political objective with SB8 was to protect Representative Letlow. To accomplish that political objective, the

SB8 map, second majority-black district, includes nearly all of Shreveport and excludes Monroe. Replacing Monroe with Shreveport keeps Representative Letlow in a district she can win, ensures that North Louisiana retains two incumbent congressional members, and guarantees Louisiana's presence on very powerful congressional committees.

This political reality, as Senator Womack explained in committee and on the Senate floor, coupled with the need to comply with the orders of the Middle District and the Fifth Circuit, drove the configuration of the SB8 map. To the extent that race played a role in the fact that the SB8 map has a second majority-black district, that [24] decision was made by the federal courts. The Court's decision to require two such districts cannot be impugned to the State. The only decision the State itself made was where to draw the lines of those districts, and that was a political decision.

Even if this Court finds that Plaintiffs have met their burden, the State can easily satisfy strict scrutiny. Under the first prong of strict scrutiny, the Supreme Court has long assumed without deciding that VRA compliance is a compelling government interest. Here the facts more strongly show a compelling interest because the State was complying with federal court decisions telling the State what the VRA required. And no one seriously disputes that the State enacted the SB8 map to comply with those court decisions. The Governor said as much when he convened the special session.

The inquiry then moves to the second prong: Whether the State's race-conscious redistricting was bolstered by a strong basis in evidence or good reasons to believe that the VRA required race-based redistricting here. And the answer is a resounding yes. The

State's decision to redistrict was expressly driven by the Middle District's and the Fifth Circuit's decisions indicating that the VRA requires a second majority-black district. And having not one but two court decisions saying the VRA requires a [25] second majority-black district is the strongest evidence of all that the VRA indeed requires that. To the best of our knowledge, the State's evidence of what the VRA required in this case is stronger than the evidence in all of the Supreme Court cases considering whether a map drawn by the State to comply with the VRA violates the Fourteenth Amendment.

Plaintiffs argue that the Legislature did not conduct racial performance analyses or consult experts when debating SB8. That's only half the story and also misses the point. The State was redistricting in response to two court decisions that took into account competing expert analyses. And so the Legislature was not drawing lines in a vacuum; it was working off multiple court decisions informed by the analyses of multiple experts. That is enough here. Indeed, the very reason that legislatures and redistricting bodies across the country hire VRA experts and Ph.D.s to evaluate their proposed map is to predict how federal courts might review the maps under the VRA. Of course, the Louisiana Legislature didn't need to hire experts to predict how the Courts might view the creation of a second majority-black district because the Courts had already spoken for themselves.

So although the Legislature did not specifically hire an expert during the special session, its drafting of the [26] SB8 map was informed by the most definitive experts whose opinions matter more than any others, the federal courts that would be adjudicating the maps' VRA compliance based on expert reports filed in

that case. There can be no stronger basis in evidence or better reasons to believe that the VRA required a second majority-black district here than a precedential opinion of the Fifth Circuit affirming that a map with a single majority-black district likely violated Section 2. Accordingly, the State's redistricting satisfies strict scrutiny.

Before concluding, I want to turn back to the law. Section 2's statutory language, as interpreted by the Supreme Court, demands that states consider race when redistricting. That is difficult to square with the Fourteenth Amendment's command that states act in a race-blind manner. The State's actions here are a good faith effort to comply with those statutory and constitutional commands as well as the decisions of the Middle District and the Fifth Circuit. The State's position in this matter is that the Middle District required the State to have a second majority-black district; and the Fifth Circuit affirmed that decision, which gave the Legislature the best reason of all to believe that such a district was required. It is irrelevant in this case whether the VRA actually requires [27] a second majority-black district or whether the State agrees with the Middle District or the Fifth Circuit.

In sum, the SB8 map is an attempt to comply with the command of the Middle District, backed by the Fifth Circuit, and the Republican majority's desire to preserve Julia Letlow's district. This attempt satisfies the Fourteenth Amendment, plaintiffs' case fails on the merits, and their requested injunction should be denied. We look forward to presenting our case to this Court.

Thank you.

MR. CHAKRABORTY: Good morning, Your Honors.

Your Honors, Amitav Chakraborty, on behalf of the Robinson intervenors. And similar to the State, I understand that I have a few more minutes, given that the Secretary has ceded, but I'll be brief.

Your Honors, this case presents the question of whether race was the predominant factor in the enactment of Senate Bill 8, a congressional plan with two majority-black districts. It is a question of monumental importance to the present and the future of this state and implicates the fundamental rights of its citizens and particularly its black citizens. The answer to that question is a resounding no. The Legislature properly took race into account in light of the multiple federal court decisions holding that any plan with one

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[42] I'll leave it to your discretion.

MR. GREIM: I'll watch my speed.

SENATOR ALAN THOMAS SEABAUGH,

having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. GREIM:

Q. Senator Seabaugh, welcome this morning. Could you please state your full name for the record.

A. Alan Thomas Seabaugh.

Q. What's your profession?

A. I am an attorney in my day job, but I'm also a Louisiana state senator.

Q. What office specifically do you hold?

A. Well, I was a Louisiana state representative for 13 years. I've been in the Louisiana state senate for two or three months now.

Q. And what is your current district?

A. The number is 31. It's basically all of two parishes and parts of eight parishes in Northwest Louisiana.

Q. If we can pull up – I think we have a demonstrative of the – of all of the senate districts. While we're doing that, let me ask you: Was your house district in the same general area as your senate district? Is it in a [43] corner of it?

A. General area, yes; but there wasn't very much overlap at all.

Q. Okay. We have shown you what we are going to – we will just call this Plaintiffs' Demonstrative 1. This is a map we exchanged with the parties last night.

Do you recognize this as a map of the current senate districts?

A. I do.

Q. And which one is your district? Can you describe it for us?

A. It's the large gray one on the left-hand side toward the top, but not going all the way up to the top.

Q. And you've been representing that area for about three months?

A. Well, yes. I started running about two years ago. So I campaigned for almost – about a year and a half and then was elected in October; so yes, I got sworn in, in January.

Q. Now, we're going to talk about redistricting this cycle in just a second. But before the most recent congressional redistricting, had you been involved in past cycles of redistricting in Louisiana?

A. Yes. I was there in 2011, when we redistricted after the 2010 Census. And then I was there in 2022, when the

* * *

[46] Q. And how many majority-minority districts did the congressional map have?

A. One.

Q. Let's talk now – let's move to SB8. You understand that that's the current redistricting law –

A. Yes.

Q. – that we're challenging here? And when was that passed?

A. January of this year, 2024.

Q. So I guess you were a freshman in the Senate when that was coming through?

A. I think it was my second week.

Q. Who was the sponsor in the Senate of SB8?

A. Senator Glen Womack.

Q. Now, when did you first learn of Senator Womack's map?

A. We knew there was a map that was floating around. I didn't know that Senator Womack was going

to be the sponsor and actually bring the bill until maybe session started or a week or so before. It was not known well in advance by me.

Q. And SB8, of course, has a second majority-minority district?

A. Correct.

Q. Once you saw Senate Bill 8, who did you discuss it [47] with?

A. A lot of people. Mostly colleagues in the Senate. I believe I discussed it with the Governor and the Attorney General.

Q. And there were several – I take it there were committee hearings but also floor debates on SB8?

A. Yes. And also other meetings, which were like delegation meetings and things like that.

Q. What do you mean by “delegation meetings”?

A. I’m a Republican, so it was discussed in the Republican delegation meetings.

Q. Some might call it like a caucus meeting –

A. Yes.

Q. – a caucus? Based on your personal observation, was there any consideration that, in your view, was overriding in the approval of SB8?

A. Any particular – ask me that again.

Q. Was there any consideration that, in your view, was overriding with respect – A. Yes.

Q. – to SB8? What was that?

A. Well, the – really, the only reason we were there was because of the other litigation; and Judge Dick saying that she – if we didn’t draw the second minority

district, she was going to. I think that's the only [48] reason we were there.

Q. Was there any decision that was made at the outset of this – well, I should back up. You were in special session; is that right?

A. Correct.

Q. And was there any decision that was made at the outset of that special session that was common to all of the proposed maps?

A. I'm not sure. I'm not sure what you're asking. I mean –

Q. Sure. Let me back up. You mentioned the litigation and Judge Dick a second ago.

A. Yes.

Q. So did you have any understanding that there was any particular number of majority-minority districts that had to be drawn in whatever map was drawn?

A. Yes. I mean, that was – we were there because – I mean, essentially, we were told we had to draw a second majority-minority district or the judge was going to. So there was really no point in introducing a map that did not include a second majority-minority district.

Q. Now, what was going to be the partisan impact of adding a second majority-minority seat?

A. I mean, theoretically, a second minority seat would switch from five Republicans and one Democrat to four [49] Republicans and two Democrats, theoretically.

Q. So was there some discussion about which Republican seat would be lost?

A. Yes, there was.

Q. And did anyone, to your knowledge, advocate for losing a Republican seat without drawing a majority-minority district?

A. No.

Q. Now, do you recall any discussion about protecting incumbent – I’m sorry?

A. Let me qualify that real quick. There’s a difference in majority-minority and majority black or majority African American. You can draw – there was a couple of people who floated maps counting – minority-minority, counting Native Americans, Hispanics, that sort of thing, trying to float that. And everybody was told no, it’s – if we say “majority-minority,” it really has to be majority African American.

So I don’t know if any of those actually got filed. I know they were floated around and people discussed it and – again, I don’t know if they were separate maps or amendments to SB8, but it was discussed, but I don’t think – it didn’t ever go anywhere.

Q. Is it fair to say that having a second majority-black district was the one thing that couldn’t be compromised in [50] the considered plans?

A. Yes. I mean, that’s why we were there.

Q. Now, you’ve mentioned the Voting Rights Act a couple of times. Do you recall having to apply that in 2011 and in this redistricting cycle?

A. Yes.

Q. What sort of analysis before this redistricting cycle does the Legislature typically consider in trying to draw maps consistent with the Voting Rights Act?

A. Well, again, sticking – well, obviously personal representation, the number has to be the same, which is surprisingly difficult to get there to get the number, the population the same.

But the other thing you would look at is, what has it always looked like – communities of interest, traditional voting blocks and traditional voting patterns, relationships of the people, and that sort of thing.

Q. Is one of the factors whether a given district has over 50 percent black voting age population?

A. Yes.

Q. Now, when – let me ask you this. Is the analysis of black voting age population, in your experience in the Legislature, has that been sufficient to decide whether the Voting Rights Act likely applies to a particular district?

* * *

[52] voter registration numbers, and then you have turnout numbers. And those are three completely different – you have total population, voting age population, registered voters, and then potential turnout. So if it's 50 or 51, it's less likely to perform. And "perform" means elect an African American, so it needed to be closer to 55.

Q. Now, let's talk about SB8 in particular. Do you recall any analysis or discussion in the Legislature about whether the second majority-minority district would actually perform?

A. Yes. And there were amendments that were floated and there was discussion – couldn't go below a certain number. Again, I think that's where the minority versus African American analysis came up in certain – like around New Orleans, there's a sizable

number of Hispanics that could have created a – it would have made it much easier to draw a second majority-minority district but it would not have been majority black.

Q. Now, you voted no ultimately on SB8, correct?

A. I did.

Q. Why was that?

A. I still think the 2022 map was good. I stand by the 2022 map. I don't think it violated anything, and I would have preferred to go to court in the other case and try the case rather than give up before going to trial.

* * *

[65] She'll tell us when she can't, but I'm telling you now, okay?

(Oath administered to the witness.)

SENATOR THOMAS PRESSLY,

having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. GREIM:

Q. Senator Pressly, good morning.

A. Good morning.

Q. My name is Eddie Greim, and I represent the plaintiffs in this case. It's nice to meet you.

A. Nice to meet you.

Q. Senator, what's your profession?

A. I'm an attorney and state senator.

Q. What district do you represent?

A. I represent District 38.

Q. We're going to put up a map here as a demonstrative exhibit, Plaintiffs' Demonstrative 1. That's a statewide map. And I wonder, from where you are sitting, can you see the district that you represent?

A. I can. It's in the green in the northwest corner.

Q. Sort of a triangle with its base to the west?

A. Sure. Yes.

[66] Q. And how long have you represented District 38?

A. I was elected in October, took office in January, and previously held a portion of this district in a state representative capacity.

Q. How long were you in the state house?

A. Four years.

Q. So I take it, then, that before – well, let me ask you: Were you involved in the passage of House Bill 1, which was the 2022 congressional map?

A. I was.

Q. And in your prior involvement in redistricting, in congressional redistricting, what sort of factors did you consider?

A. Communities of interest. Compactness. The appearance of reasonableness. Keeping the core of prior districts the same.

Q. What about – would parish or municipality splits be a factor?

A. Absolutely.

Q. What about equal population?

A. Yes.

Q. And the Voting Rights Act?

A. Sure.

Q. Now, are those all factors that you considered back when HB1 was passed?

[67] A. Yes.

Q. Now, let's fast-forward to January of this year. Was a congressional redistricting passed in January of 2024?

A. Did we pass legislation redistricting congressional seats? Yes, we did.

Q. And that was Senate Bill 8?

A. That's correct. Of the First Special Session.

Q. Who called that special session?

A. That was called by the Governor.

Q. And do you recall who the sponsor of Senate Bill 8 was?

A. Senator Womack.

Q. When did you, Senator Pressly, first learn of Senator Womack's proposed map?

A. I don't recall the specific time period. I'm sure it was just before or during the First Extraordinary Session.

Q. And does SB8 have a second majority-minority district?

A. It does.

Q. Let me ask you: Did you discuss Senate Bill 8 with other legislators?

A. I did.

Q. And just generally, who did you discuss it with?

A. Other senators, for the most part. I certainly had [68] some conversations with House members as well, just voicing my concerns about Northwest Louisiana.

Q. Did a particular caucus basically draw SB8?

A. I don't have specific knowledge of that.

Q. You know, in other words, was it put together by the Republican or the Democratic caucus?

A. I don't know specifically that the caucus put it together but certainly we were instructed that we needed to have two majority-minority districts, and any other redistricting guidelines were secondary to that.

Q. Which hearings and debates did you attend?

A. So I watched portions of the Senate and Governmental Affairs Committee, as well as the House and Governmental Affairs Committee. I don't believe I was in person for either of those. I was on the floor for the Senate bill when it first came to the Senate side, and I was also on the floor and participated in the debate during the concurrence discussion as well.

Q. You made some remarks on the floor, correct?

A. I did.

Q. Now, we're going to hear transcripts later, so just to save time, I'm not going to ask you to try to regurgitate your remarks here.

A. Sure.

Q. But I will ask you if you discussed Senate Bill 8 [69] with Senator Womack.

A. I know I came to the floor and spoke against the bill. I'm not sure that I came to the floor and asked him questions during that discussion. I believe I just spoke personally about my objections to the legislation.

Q. Did you ever speak with him off the record about the bill? Do you recall?

A. I did. I spoke with him about the legislation.

Q. And was there discussion about it within any kind of Republican caucus meeting?

A. Yes.

Q. And based on your own personal observation – I think you might have just told us this – was there any consideration that was, in your view, overriding in the Special Session?

A. Certainly the racial component in making sure that we had two performing African American districts was the fundamental tenet that we were looking at. Everything else was secondary to that discussion.

Q. Now, did the Legislature perform any analysis in the Special Session that considered whether any of the districts in SB8, or SB8 as a whole, was required under the Voting Rights Act?

A. We were told that we had to have two performing African American districts. And that we were – that [70] that was the main tenet that we needed to look at and ensure that we were able to draw the court – draw the maps; otherwise, the court was going to draw the maps for us.

Q. And who told the Legislature that? Do you recall?

A. Judge Dick is the one that ultimately told the Legislature. Governor Landry stated that when he opened the committee – I’m sorry – the Special Session and we heard it from Attorney General Murrill as well.

Q. Now, different versions of two majority-minority seat maps were considered, right?

A. I believe that’s correct. But this was the main bill that was being considered.

Q. What was the partisan impact of all of the different two majority-minority maps, if any? In other words, what was the – let me rephrase that.

What was the impact on the partisan split of the congressional delegation of all of the two majority-minority maps?

A. So like what would the ultimate impact of partisan Republican/Democrat split be? Q. Yes.

A. So, ultimately, we’d go from 5-1 Republican/Democrat to 4-2, more than likely with the way that it was drawn.

Q. And so, in other words, a Republican would lose a [71] seat?

A. That’s correct.

Q. Was there –

A. Most likely.

Q. Most likely. Was there a discussion within the caucus about if that was going to happen which Republicans ought to be protected?

A. And when say “caucus,” you’re talking the Republican delegation, right?

Q. That’s right.

A. There were certainly discussions on ensuring – you know, we’ve got leadership in Washington. You have the Speaker of the House that’s from the Fourth Congressional District and we certainly wanted to protect Speaker Johnson. The House Majority Leader, we wanted to make sure that we protected, Steve Scalise. Julia Letlow is on Appropriations. That was also very important that we tried to keep her seat as well.

Q. I just want to be very clear: Did anybody discuss creating a second majority-minority seat in order to protect any incumbent?

A. I’m sorry. Can you reask the question?

Q. Sure. Did any Republican legislator at any timesuggest creating a second majority-minority seat in order to protect any congressional incumbent?

[72] A. No. The conversation was that we would – that we were being told we had to draw a second majority-minority seat. And the question then was, okay, who – how do we do this in a way to ensure that we’re not getting rid of the Speaker of the House, the Majority Leader, and Senator Womack spoke on the floor about wanting to protect Julia Letlow as well.

Q. Earlier you discussed that one issue that’s considered by the Legislature is communities of interest. If we could put the map up again as a demonstrative.

I’m going to show you your parish again. I mean, I don’t think you need to see it. That’s really all for our benefit.

A. Sure.

Q. Let me ask you, which parish do you generally cover?

A. So about 85 percent of my district is in Caddo Parish, the southern portion of Caddo Parish and western portions of Caddo Parish. And then I represent the western side of DeSoto Parish, and the northern portion kind of splits in a 45-degree angle between Senator Seabaugh and my district in DeSoto Parish.

Q. And do you believe your own senate district is in a community of interest?

A. I do.

Q. How would you describe it?

[73] A. So certainly – you know, it's the northwest corner of the State. So when you're dividing by about 120,000 people, you know, I represent a large portion of the city of Shreveport. I represent folks in DeSoto Parish, the northern portion of DeSoto Parish. A lot of those kids go to school in South Shreveport as well. I represent folks that are – you know, it's generally the urban area of Shreveport as well as some rural outskirts of the third largest city in our state.

Q. Do you consider any part of your district to share a community of interest, for example, with Lafayette?

A. I don't. I think there is a large divide between

North and South Louisiana. You know, when you're looking at natural disasters, for example, we're concerned about tornadoes and ice storms; they are concerned about hurricanes.

When you're looking at educational needs, you know, our community has two satellite public universities

being – actually three – being LSU-Shreveport, Northwestern State University’s Nursing School is up here, as well as having, you know, Southern University at Shreveport; whereas Lafayette has a Tier 1 research institution in University of Louisiana Lafayette.

Q. Same question, but what about Baton Rouge? Do you believe any part of your district shares communities of [74] interest with Baton Rouge?

A. I can say without any hesitation that Baton Rouge and Shreveport are very different locations. I fight the North Louisiana fight on a regular basis at the State Capitol, and our need for funding, our needs for economic development, and our needs that are unique and different from almost 250 miles from this location.

Q. Senator, I have no further questions. Thank you.

A. Thank you.

MR. KLEIN: Good morning, Your Honors. I’m Robert Klein of Paul Weiss for the Robinson intervenors.

CROSS-EXAMINATION

BY MR. KLEIN:

Q. Senator, did you talk to any colleagues about whether it was possible to draw a map with two majority-black districts that also kept Northwest Louisiana together in one district?

A. I did have some conversations on that and the need for our region to have – to remain intact.

Q. Right. And were you aware that legislators introduced several alternative redistricting bills?

A. I'm aware that during the course of not only the special but during prior legislation sessions we had those discussions.

Q. And several of those bills contained two

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[76] create a map that addressed the underlying basis, which was two majority-minority districts, as we were being told by our leaders – by the Governor and by the Attorney General – that we had to do.

Q. Okay. So you're not aware of any alternative maps where Representative Letlow would have been in the second majority-black district? You didn't see those maps?

A. I don't recall seeing them, as I sit here today. But if you tell me that we had some out there, I have looked at lot of maps on this issue, on the Supreme Court redistricting as well.

Q. And if Representative Letlow were in the second black-majority district, would she be likely to lose that district in your view?

A. I don't know the answer to that. I certainly think that she would be at a disadvantage compared to her current seat that she ran in two years ago. But I will also say that I think Congresswoman Letlow is in a district that now has the majority of population in the Baton Rouge and the southern portion of her district, which I think puts her at risk as well.

Q. But you did testify earlier that a Republican would be likely to lose in a second majority-black district, right?

A. Yeah. I think that that is the view of most. I will

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[79] A. Certainly it would be important to keep our leadership in Washington and our power base for the state in Washington, yes, I would agree with that fundamentally. Yes.

Q. And that's fundamentally a political consideration, isn't it?

A. Yeah. It's a political consideration to ensure that we keep those that are in power up there. But I think that you – also, again, going back to the fundamental what we were told we had to do was create two minority districts, right? That's issue one that we were asked to do.

Issue two was: Okay, now what? Right? And that's where that secondary decision of okay, how do we draw this in a way that we are keeping Speaker Johnson, Leader Scalise, and Julia – and Representative Letlow in power. Q. And to the point you were just making that it was the primary consideration, are you aware of the ongoing litigation right now in the Middle District of Louisiana over House Bill 1, the previous congressional map?

A. I am familiar with that.

Q. What do you understand that litigation to be about? A. That there were challenges made to the way that we redrew the maps in 2022, and that the plaintiffs asked for a trial on the merits of whether or not the maps were [80] racially gerrymandered in a way that limited the African American ability to draw a map.

Q. All right.

A. Influence in electing their member of Congress rather.

Q. Understood. And are you aware that the Middle District Court preliminarily enjoined HB1?

A. Yes. And that's why we were called to the First Special Session. Again, we were told that essentially we were being forced to draw a second majority-minority district prior to any other consideration.

Q. And, similarly, you are aware that the same Middle District Court enjoined the current senate map that you sit in; is that right?

A. I am familiar with that, yes.

Q. And just touching again on the issue of politics, sort of as a sitting state senator, politics is part of your job; is that right?

A. It is.

Q. It's sort of the day-to-day root and branch thing you do?

A. Day to day, when I'm not in session, I try to practice a little bit of law. I'm having a harder and harder time with all of these special sessions, though.

Q. Understood. And do know if federal – I mean, you're

* * *

[83] BY MR. GREIM:

Q. Senator Pressly, you were asked several questions about Judge Dick's proceeding in the Middle District. You never understood that the Legislature was actually under an order from Judge Dick at the time that you were in session, did you?

A. No. We were – I was told that we were given one last chance to try to cure the defect that was being alleged against us.

Q. And the Attorney General, when she addressed the Legislature, did you ever hear her once state that the State actually believed that the Voting Rights Act required two majority-minority districts?

A. I don't recall her ever saying that.

MR. KLEIN: Objection. It's a leading question.

JUDGE JOSEPH: He's asking his personal knowledge, so he can answer the question. Overruled.

MR. GREIM: No further questions.

JUDGE JOSEPH: All right. May Senator Pressly be released?

MR. GREIM: Yes, he may.

JUDGE JOSEPH: All right.

Senator, you may step down. Thank you for your testimony.

THE WITNESS: Thank you, Judge.

* * *

[85] DENNIS GEORGE STEPHEN VOSS, JR.,
having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. GREIM:

Q. Dr. Voss, good morning. Could you state for us your full name for the record?

A. Sure. Dennis George Stephen Voss, Jr.

Q. Can you tell us just a little bit about your personal background?

A. Yes. I was born in Louisiana in Orleans Parish. I lived most of my life in Jefferson Parish. I have a family who remain here in several of the parishes nearby, St. Tammany, Livingston, Tangipahoa. I went to high school in Natchitoches Parish, went to college in East Baton Rouge Parish, and I served newspapers based in Caddo, Bossier, and Ouachita Parish, the Shreveport Times and the Monroe News Star.

Q. And before we go much further, Dr. Voss, I am going to make sure we're – for some reason I am having a little bit of a hard time.

MR. GREIM: I wonder if the court reporter is okay? You're good?

THE REPORTER: Speak up, please.

[86] MR. GREIM: Okay.

THE WITNESS: Sure thing.

Q. (BY MR. GREIM) During your time here, either personally or through past employment, have you had any exposure to Louisiana politics?

A. Sure. I spent – other than being a college reporter for a while – we covered political affairs – I spent two years as an intern with Gannett News Service, covering the State House. That's the service for the Times of Shreveport and the Monroe News Star.

JUDGE STEWART: We're getting some feedback somewhere.

JUDGE JOSEPH: Yeah, I wonder maybe try pushing your microphone a little further away and lowering your seat a little bit.

THE WITNESS: Okay.

JUDGE JOSEPH: Brent, if you have suggestions, please let him know.

Q. (BY MR. GREIM) You don't sound like yourself.

Okay. So let's go back. I think you had indicated you did some reporting. Let's go back to that. Tell us about your reporting experience.

A. Well, the other main connection is after two years with the press corps, I crossed the aisle and I served as an aide to a state senator from Northwest Louisiana, State [87] Senator Syd Nelson, and I spent the legislative session as a senate aide.

Q. Okay. So let's talk – anything else from your Louisiana political or personal experience?

A. No, I don't think so.

Q. Let me ask you now about your education, just starting with college.

A. Okay. I went to Louisiana State University. I earned two bachelor's degrees, one in history and one in journalism. I then went to Harvard University where I earned a master's and then a Ph.D.

Q. And where did you earn your master's and Ph.D. in at Harvard?

A. Government, which is what they call political science.

Q. And do you have any kind of education in statistics or quantitative – the quantitative side of political science?

A. Yes. My focus field in the graduate program was political methodology, which is quantitative analysis, as I have studied it at least. And then my dissertation,

my main two advisers were political methodologists: Gary King and James Alt.

Q. What is Gary King known for in the field of political methodology?

[88] A. Well, related to – I mean, it's so many things.

He's the most cited political scientist of his generation. He is known for ecological inference, which is used to study voting behavior by race. He was responsible for the JudgeIt software that was a groundbreaker in terms of simulating districts or estimating the effect of districts using simulation. I co-authored one version of the manual along the way, but it moved well past where it was when I worked on it.

His solution to the ecological inference problem, which also used simulations as part of the methodology, I was involved with that enough that his very first example in that book was a Louisiana precinct analysis using data that I simultaneously had been working on. Anyway, we could spend on Gary King's resume and take the whole session, so...

Q. Let me try to hit few more highlights before we get on with some of your substantive testimony. Have you had any peer-reviewed publications regarding southern elections and voting behavior?

A. Yes. In fact, my most cited piece to this day is an analysis of David Duke's voting support in the early '90s in the *Journal of Politics*.

Q. And I guess – was that Louisiana?

A. That was Louisiana. Now, you know, the discipline [89] does not encourage state-specific studies. If you do that, it has to be sort of a hobby. So not everything I have done on Louisiana or Kentucky makes it into a peer-reviewed publication.

My most famous piece now, notorious piece now analyzing Louisiana voting, is a conference paper that was never published but that Harvard University President Claudine Gay used almost verbatim. So I got caught in that plagiarism – Harvard plagiarism scandal. So more people have looked at that unpublished paper now than have looked at most anything I have written.

Q. This was the – understood. What about elections and redistricting?

A. Yes. I have peer-reviewed publications related to both voting behavior and redistricting. Maybe the highest ranked one is a piece on southern state legislative districts in the American Journal of Political Science.

Q. What about methods of quantitative analysis?

A. Yes. I have published on ecological inference in particular, but most of my work uses quantitative analysis along the way. I have very few publications that are purely what we call qualitative.

Q. In the past, have you designed simulations or conducted research that applied them?

A. Yes. Most – as I mentioned, most of those methods [90] Gary King developed used simulations. I didn't mention one that's used for interpreting – I didn't mention one of his software packages which is used for figuring out the results of a quantitative analysis called Clarify. But that one also uses simulation, Clarify. That one also uses simulation. In these cases, for my work applying his software packages, I have gone into the simulation method and, you know, altered it in order to adapt it to a new research situation.

So I also, at the early end of the design stage, was involved in a simulation of inland waterway vessels, barges moving through rivers, locks and dams, although that was at the design end. I wasn't there by the time of the final execution of that particular simulation.

Q. Now, we're here on a redistricting case, so I've got to ask you: Have you acted as an expert in any redistricting cases before, Dr. Voss?

A. Just a few. I was involved in the '90s, I guess, or maybe early 2000s in a pair of Indiana redistricting cases or voting rights cases that included district shapes.

More recently, two years ago, I was involved in Kentucky's redistricting case, which involved a partisan gerrymandering claim. I very briefly was involved recently with Wisconsin's, but I basically talked them out of using me. I didn't want to do that one because I don't [91] know Wisconsin the way I know Kentucky and Louisiana. That's pretty much it.

Q. Let's turn to the subject of your testimony here today. Are there questions that you are prepared to address here today as an expert witness?

A. Yes.

Q. What are those?

A. Okay. So the first is whether Senate Bill 8 represents an egregious partisan gerrymander – racial gerrymander, excuse me, egregious racial gerrymander, which is to say that race is a, if not the predominant, influence on numerous features of the districts that resulted.

Q. Okay. What else?

A. The second is that in drawing the districts in Senate Bill 8, various traditional redistricting criteria were compromised to a fairly severe degree, including compactness, how tidy the district is. We'll talk about that more I think later. The parish lines that were preserved versus split.

And then, finally, whether it's even possible to draw two majority black districts in a way that is compact, or if instead there really is not a sufficiently large and compact African American population to allow districts that would conform to traditional redistricting criteria.

[92] Q. So let's just march through, then, Dr. Voss. I want to first ask you, you used the phrase "racial gerrymandering." What do you mean by that? What understanding are you applying today?

A. That term is problematic because there's no one agreed cutoff for what is versus isn't a racial gerrymander, even among social scientists, let alone any differences between how we might argue about it compared to legal definitions, which could be distinct. But, you know, as I said, there are numerous features of Senate Bill 8 that are explicable primarily based on race. Add them up; it's fairly conspicuous.

JUDGE JOSEPH: Mr. Greim, do you want to tender him as an expert? I wasn't sure, when you finished his qualifications, if you were going to do that or not.

MR. GREIM: I will. I will use that method. I'll tender him – I'll ask him for his first opinion, then I'll tender him as an expert on that opinion.

JUDGE JOSEPH: All right.

Q. (BY MR. GREIM) So back on the very first topic that you mentioned, what opinion are you prepared to give here today?

A. That Senate Bill 8 represents an egregious racial gerrymander.

MR. GREIM: Then I would tender the witness on [93] that topic.

JUDGE JOSEPH: Do you want to voir dire on the qualifications?

MR. CHAKRABORTY: Objection, Your Honor. I don't – he's being tendered as to what's an egregious racial gerrymander?

JUDGE JOSEPH: Sir, I asked if you have any voir dire of this witness before we decide qualification.

MR. CHAKRABORTY: No, Your Honor.

JUDGE JOSEPH: State?

MR. TORCHINSKY: No, Your Honor.

JUDGE JOSEPH: Secretary?

MR. STRACH: No.

(Reporter clarification.)

MR. TORCHINSKY: Jason Torchinsky for the State, Your Honor.

(Judges confer off the record.)

JUDGE JOSEPH: All right. Dr. Voss is qualified to render expert opinion on the first factor. Go ahead, Mr. Greim.

Q. (BY MR. GREIM) Dr. Voss, when you look at SB8 as an election scholar, what evidence did you examine to determine whether race was the predominant factor?

A. Okay. Just looking at the districts, what you have is a district that stretches, or I guess the term is

[94] “slashes” across the state of Louisiana to target four metropolitan areas, which is the majority of the larger cities in the state. It then scoops out from each of those predominant – the majority black and predominantly black precincts from each of those cities.

It also has – both District 6 and District 2 have various tendrils or scoops or bulges that specifically pull in African American dominated precincts. I’ll stop there.

MR. GREIM: Maybe what I can do is, if you don’t mind, please put up Plaintiffs’ Demonstrative 2.

Q. (BY MR. GREIM) Are you able to see this either on your screen or on -

A. On my screen just fine. Thank you.

Q. So I wonder if you could show us, using this map, the areas that you’re talking about. You mentioned four far-flung areas. Which areas are you talking about?

A. Okay. So we have Caddo Parish, Shreveport there.

We’ve got Rapides Parish here. We’ve got Lafayette here. We’ve got East Baton Rouge here. In each of the cases, if you look at where the district lines track, it’s tracking along the darker gray; those are the precincts with the larger African American population percentage. And you see how it hugs the border in Alexandria, which is the middle one in Rapides Parish, sticking to the darker [95] colored precincts. You can see how it pushes down into Lafayette just to grab the more African American part of Lafayette.

You also get this bulge here to grab up another town that’s heavily black. Meanwhile, if you look at District 2, there is not only lines that are grabbing up places

like Thibodaux and parts of Houma that qualify, you also see the district lines – you know, flip this around, the district lines are often avoiding pockets, heavily-white pockets, large pockets of white voters.

MR. GREIM: I wonder if we could pull up Rapides. This will be Plaintiffs' Demonstrative 3. It should be the very next – this is Report Figure 13.

Q. (BY MR. GREIM) Now, looks to me like this is actually, may have been rotated. And I wonder if this is a way to remove those markings. Looks like they stick to the screen.

A. I won't do that again.

MR. GREIM: Your Honor?

JUDGE JOSEPH: I think you tap in the corner of it, right?

MS. LACOMBE: It's done.

MR. GREIM: Oh, it's done. Wonderful. Thank you.

Q. (BY MR. GREIM) So do you recognize this as Rapides [96] Parish? Maybe just tilted at 90 degrees.

A. Yes, I do.

Q. Okay. And can you show us where – what does this demonstrative represent?

A. Right. So this time we switch to the colors, which I used, but people felt wasn't, you know, that wasn't as clear. The blue areas represent the majority black precincts, the darker blue ones. As you move through yellow, those are the ones that have a lower black population. Red is predominantly white.

So to illustrate the point I just made, what you can see is how the line – I'm assuming this can be deleted again – the line tracks along specifically in a way that's

unmistakable to pull into one district the central city and to leave in the other district the much heavily – much whiter areas.

Q. All right. I'll take you – We won't run through all the examples in your report, but maybe let's look at Caddo, Shreveport.

MR. GREIM: And I'll just have my team flip over – keep going. Let's go ahead and put this one up. This is also from Plaintiffs' – from Voss's Report Figure 13. We will call this Plaintiffs' Demonstrative 4.

Q. (BY MR. GREIM) Do you recognize this geography, Dr. Voss?

[97] A. Yes. That one is a little clearer in zoom. And once again, what you can see is the district line just hugging the precincts based on race in a fairly jagged way.

I actually walked to my hotel and then here from the Greyhound bus station, and I like to know where the places I am walking through and visiting appear on the map. So I tracked my route, and it turns out that just that two-part walk, I crossed congressional district borders four times. I walked from one district to another, then into another, then –

Q. Four districts?

A. The four times I crossed just from the walk from the station to the hotel to here.

MR. GREIM: Thank you. We can remove that map.

Q. (BY MR. GREIM) Now, let me ask you – so we looked at the shape and some of the individual splitting. You talked about twists and tendrils. Let me ask you, did you consider parish splits?

A. Yes. If you – if you compare how many parishes were split and how many parishes were split more than once by Senate Bill 8, compared to either past plans or compared to the other proposals that were considered in the

Special Session where Senate Bill 8 was adopted, it split more parishes than most. It also multi-split, split into three at two parishes. Put those together. It's [98] crossing parish lines and breaking up parishes more than anything else that I was able to look at it or consider.

Q. I'm going to show you what we have previously marked as Report Table 4. We'll call this Plaintiffs' Demonstrative 5. And is this a table you prepared, Dr. Voss?

A. Yes, it is.

Q. What have you analyzed here?

A. Okay. So partly, it illustrated what you just asked me. The "2024 enacted," that's Senate Bill 8. As you can see, it splits 16 parishes. Only one of the other maps at which I looked split 16 parishes. And while it's true there was one that split 17, that particular plan, the Echols Plan, didn't split any parishes into three.

Senate Bill 8 fractures, two parishes – that's yet another time – for a total of 18 splits. That's the most of any.

Now, the next column, "population affected," is just a way for the Court, for you to see whether these tended to be smaller parishes and which might be towns that don't have a lot to do with each other, other than they're under the same parish government. Or is it hitting the more populous areas and taking communities of interest, large cities, and dividing them up,

divvying them up across congressional districts. So percent population affected, [99] it's how many people live in those parishes that got split. And Senate Bill 8 especially was cracking fairly populous places, especially was breaking apart fairly populous parishes. So it has the largest number on that metric.

And then the others just – the other metrics only added to it, but they're telling you how many counties are split by districts, how many districts are split by counties. It's another metric that showed Senate Bill 8 doesn't perform very well, but not metrics on which I relied as much.

Q. So far we have covered then the actual lines, the tendrils and twists in the district. We've talked about parish splits. I think you've also mentioned compactness. Did you consider the compactness of SB8 compared to other real life maps?

A. Yes. So are we going to have the demonstrative up there?

Q. Yes. I mean, if – I think there is a demonstrative that might help you here. Let's put up Report Table 1, which will be Plaintiffs' Demonstrative 5.

A. Anyway, I'll start answering the question, though, while that comes up.

Compactness, like racial gerrymandering, is a highly conflicted concept. The quantitative analysis on [100] compactness have dozens of measures that can be used to judge this thing. Each one capturing something slightly different, some refinement or the other in terms of what is compactness.

Furthermore, as I understand it, there's no nice, scientifically precise definition of "compactness" from the legal community that I can look for. What we can

use compactness measures to determine is how one set of maps differ from another. If you're comparing it relatively \rightarrow the same way there is no border between hot and cold, but we can talk about something getting hotter or colder. Compactness is like that.

Q. So let me ask you, then, I see you have chosen three criteria. Can you just briefly tell us what each criterion is and why you chose it?

A. All right. So one consensus within the quantitative community, I think I can say – there are very few – but one is that you should not only look at a single compactness measure, because they are capturing different things, and you can gain one while performing poorly on the others.

Now, two of the most frequently used are the one that's in the middle there – I'll start with that because it's the oldest, the Reock score. And what it's asking is: How close to a circle is the district? So a really [101] oblong one, to draw a circle around it, you're going to have a whole lot of the area of that circle outside the district. That would look not very good. Something that's closer to a circle, if you put the circle that can encompass that, most of the district is in the circle. Okay. So that's what that one gets.

Q. And before we move on, then, what's the scale on the Reock score?

A. Well, as I said, it's a relative measure.

Q. Well, in terms of the actual figures that you've calculated, though, for example, 2022 enacted is .35. What's the scale?

A. I see. So let's take the perfect case, although it wouldn't be perfect in real life, of a district that's exactly a circle. If you drew a circle around that, the

entire circle would be the district and vice versa. That would be a one.

And as you go down from there, you're getting worse. That means more and more of the circle needed to capture the whole district is outside the district. So you could have a very smooth in an otherwise compact district, but that circle would be very large and, therefore, that number would be low.

Q. Tell us about the Polsby-Popper Score.

A. Okay. Polsby-Popper is intended to capture a [102] different type of non-compactness. When you get all these jagged edges and stabs in and out of places in order to try to fine-tune and control who's in and who's out of the district, it's similar to the circle measure in that you then draw a circle around that district that's meant to have a perimeter equal to the perimeter of the district you drew. So the more of these little segments and the more of the jagged edges you have, the wider that circle would have to be to have the same perimeter; otherwise, though, it's giving you the same basic thing. Once you have drawn that circle, the one that has the same size as the district lines, in terms of perimeter, how much of the circle is the district, how much of the circle is not the district? Big scores are very good. You know, if you have a circle that is entirely the district, it would be a one because 100 percent of the circle is the district. But the more you have those jagged lines that the circle expands, expands, expands and leaves the little farming district behind, the smaller that number gets.

Q. Now, you've also got a third one up there. It's an abbreviation. It's – I believe it stands for “know it when you see it.” Am I right?

A. That's right. That phrase was taken from obscenity law: I don't know what obscenity is, but I know it when I see it. And the developers of that method said that lack [103] of compactness was similar, that people have fairly complex ways they judge this, that just the Reock, just the Polsby-Popper, even both of them cannot capture.

So that method was derived through showing different sets of people. I was a little hazy on this during the deposition, so I went back and looked. I wasn't sure whether it was a representative sample of people, to see what they thought a compact versus a non-compact district was, or a group of people with more specialized knowledge. The reason I was confused is because they can be both. They took people, from your judges and attorneys, who study redistricting or focus on redistricting, but they also used Mechanical Turk in an attempt at a representative sample of people.

What they then did is they showed them a series of shapes. They said: Do you consider this a compact district or not? And as people gave them those answers and they looked at the patterns, they trained the statistical model to capture numerically the features that real people exhibited in judging these shapes as being good or ugly. And so it used to be subjective. It was built from people's "I know it when I see it" impressions. But it is now objective. You feed a district into the software, it gives you a number, where somebody would look at that and say, yeah, that's gerrymander, you know, [104] that's a non-compact district – I know it when I see it – versus not.

Q. Now, I see that you've – rather than measuring individual districts, you've measured entire plans here. Why did you do it that way?

A. So you get a bit of a debate over whether you should look at these scores that summarize over a plan versus look at them individually per district. I did both. I didn't think that there were enough differences to need to report both, so I went with what would keep the report shorter and keep the exhibits smaller. But, you know, I can talk about the district scores if you would like, especially the ones in question in Senate Bill 8.

So – and a second reason is that if you draw one district that's compact, that might actually force another district to be less compact. But not necessarily. If you draw one district with very jagged edges and tendrils, that might create jagged edges and tendrils in another district. So if you only look at one district and ignore what impact the rest of the plan might have had or what impact it had on the rest of the plan, I don't think you get the full picture.

Q. So what did you conclude from your plan level analysis?

A. What this particular table illustrates is that [105] Senate Bill 8 performed worse than either the map that was active in 2022, or the map that it replaced from the previous decade across all three of these distinct measures of compactness. It is worse on the Polsby-Popper that gets the jagged edges and the tendrils. It was worse on the Reock that gets how roughly circular is it. It was worse on the “know it when you see it,” which is to say the sort of people who developed that measure, who we used to develop that measure, would look at these districts and say “huh” or say something to that; they would scoff at it.

MR. GREIM: Let's, if we could, put up Plaintiffs' Demonstrative 6, which is Voss Report Table 7.

Q. (BY MR. GREIM) Now, Dr. Voss, do you recognize this as a table you prepared?

A. Yes, I do.

Q. What analysis were you performing here?

A. Okay. So, once again, it's using those measures relatively to compare them to other options. This time, though, I am comparing the enacted plan to the other ones that had been considered at some point. Most of them represent proposals that were considered during the legislative session, the Special Session, that generated the 2024 map. The exception is the one called "Robinson." That's the map that was offered as a possible substitute [106] in the Robinson case.

Q. So as we look at this table, it looks like your first three columns are the overall plan scores, which we have already talked about, right?

A. Correct.

Q. And the second three columns are entitled "Second Black." What were you trying to designate there?

A. So all of these plans created two majority black districts; therefore, this table is not helping you judge in any sense the cost or the effect on traditional redistricting criteria of a decision to do that. It's evaluating the way Senate Bill 8 met that goal and the cost in terms of compactness compared to what the other proposals would have cost in terms of compactness.

Q. So, Dr. Voss, what did you determine from this analysis?

A. So the slash district, as it's come to be called – I'm looking at the rightmost three columns – is worse

on the Polsby-Popper Score than the second majority black district in the other plans. It is worse on the Reock score than the other plans that created a second majority black district. And it is – it's a very low score. It is worse on the "know it when you see it" than the other plans and the majority black districts they proposed.

Q. In fact, Dr. Voss, in your analysis, did you find any [107] district in any plan that scored worse on Polsby-Popper than District 6 in the 2024 plan in SB8? I know you don't have all your numbers up here, but can you find –

A. Would you ask it again? I'm sorry.

Q. Sure. Did you find any individual congressional district that scored worse on Polsby-Popper than did the second black district, District 6, in Senate Bill 8?

A. I see. No, no. It – Senate Bill 6 is the worst in its plan and it has a worse score than any of the districts in the plan it replaced or the one that that one replaced.

Q. Okay. So before we move on to your next opinion, then what conclusion did you draw from looking at all of these different factors with respect to Senate Bill 8 in District 6?

A. That Senate Bill 8 did not produce compact maps when judged in comparison to everything else that I had available in the record. That, in particular, the way it chose to draw its majority black districts were especially non-compact compared to even other plans that would have accomplished that same goal.

Q. Let's move on to your second opinion, and I am just going to ask you: Under that opinion, you considered whether political motives could be the

primary explanation for Senate Bill 8's lack of compactness.

[108] And so let me just ask you: Why do you dismiss political motives as the primary explanation of SB8's lack of compactness?

A. As we'll probably discuss again later, disprove – proving that something is impossible is not something that you really can do with quantitative analysis. You can prove that something is possible. You can make it – you can provide lots of evidence that something is probably not possible, but you can't pin that down.

What I can speak about, using both the analysis we have talked about so far – and we can get to it again if you would like later when we introduce my other analysis – is whether the political goals I knew about that people had been discussing, whether those could explain Senate Bill 8.

So, for example, one thing we heard earlier today was protecting Representative Julia Letlow, okay? If you're not trying to draw a second black majority district, it is very easy to protect Representative Julia Letlow. Even if you are, it's not super difficult to protect Representative Julia Letlow. Do you want to show the -

Q. Sure.

MR. GREIM: If we could put up Rebuttal Report Figure 3, and we'll call this Plaintiffs' Demonstrative 8 – I'm sorry, 7.

[109] COURTROOM DEPUTY: It's 8.

MR. GREIM: Oh, it is 8.

THE WITNESS: Now, understand, I do not know where these people live and, therefore, I was given

from counsel information as to which precincts contain the residences of each of Louisiana's members of Congress. I take that on faith. My analysis contingent on those data being true.

MR. CHAKRABORTY: Your Honor, we would object because these figures, you know, this line of questioning has not come up in Dr. Voss's initial report, his rebuttal report, his deposition. There has not – there has been no foundation laid as to his ability to talk about this, and also no sort of record of why this is coming in at this stage.

JUDGE JOSEPH: Okay. If you'll lay a foundation and then allow time for voir dire if he wants to challenge Dr. Voss's qualifications and his opinion.

Q. (BY MR. GREIM) Let me back up. So in preparing your rebuttal report, did we ask you to determine whether a map could be drawn that protected Julia Letlow?

A. Yes, you did. You also asked me – well, I don't want to talk about the simulations yet.

Yes, you did.

Q. And did you actually prepare such a map?

[110] Or I'm sorry. Did you perform an analysis to answer that question?

A. I need you to ask that again. I'm sorry.

Q. Sure. Let me back up. So did we ask you, for purposes of your rebuttal report, to determine whether it was possible to protect Representative Letlow without Senate Bill 8?

A. Yes, you did.

Q. And did you proffer an opinion on that in your rebuttal report?

A. Yes, I did.

Q. And did you prepare the demonstrative on the left as evidence of your opinion?

A. That was part of that written material, yes.

Q. And what did you consider in preparing this map?

What analysis did you perform?

A. It was merely to illustrate for the reader why I could assert that the political goal of protecting Representative Letlow, or if you wanted to target Representative Graves, why neither of those was a special challenge that should have had much effect on the compactness of the districts.

MR. GREIM: Your Honor, this was disclosed in the rebuttal report. These are straight from the rebuttal report.

[111] JUDGE JOSEPH: Okay. Well, then I am going to ask the Robinson intervenors: Do you have any voir dire about this expert's qualifications to testify as to the subject matter?

MR. CHAKRABORTY: Not at this time.

JUDGE JOSEPH: Please proceed, Mr. Greim. Dr. Voss is qualified to testify.

Q. (BY MR. GREIM) Dr. Voss, what did you determine with respect to Representative Letlow?

A. Yeah. These amounts were supposed to illustrate very simple points. One, Letlow's precinct, as it was expressed to me, was Richland 12. That's the yellow one on the right-hand side. And what it's

supposed to show is that she is on the other side of Richland Parish, from the Delta parishes. She is in what historically is called the Macon Ridge, which is those – that strip of parishes that include Richland. And given where she is located, it is not hard to get her into a heavily Republican, heavily white district.

Q. And was it your opinion that could be done, even with drawing two majority-minority districts?

A. Yes, it could be done and draw two majority-minority districts.

Q. And let me ask you about Garret Graves. What is the map on the left with the red circle on the bottom? What [112] does that indicate?

A. So like the state as a whole, Baton Rouge has something of a north-south divide in terms of the race of its population. All of the majority black districts, the second ones, the one outside of the Greater New Orleans area, all of them had Baton Rouge as its main starting point or seed or heavy black population. The precinct that I was told represents Garret Graves' home is right on the border of that heavily-black East Baton Rouge community, pulling him into that and therefore pulling him into the second majority black district. If you drew one, it was not hard.

Q. And I take it, it did not require Senate Bill 8? The purpose was to target Graves. Is that your analysis?

A. That is correct. You do not need Senate Bill 8 to put Representative Graves in a majority black district.

Q. Let's turn to your third opinion.

Dr. Voss, how did you determine whether the black population was sufficiently large and sufficiently

compact to form two black majority districts consistent with traditional redistricting principles?

A. I simulated a handful of possible sets of districts, using various rules for how districts might have been constructed.

Q. And what did you try to test with the simulation?

[113] A. Okay. So one of the best practices when simulating –

MR. CHAKRABORTY: Objection, Your Honor.

Counsel hasn't laid the foundation for Dr. Voss to be an expert in talking about simulations.

JUDGE JOSEPH: Why don't you lay a foundation. Sustained.

Q. (BY MR. GREIM) So, Dr. Voss, have you used the simulation method that you are about to talk about here before as an expert in a case?

A. I just used it two years ago in the Kentucky case.

Q. And how did you use the simulation method in that case?

A. There I was a rebuttal witness. Professor Kosuke Imai of Harvard had come in using the redist package to analyze the districts drawn both for Congress and also for the state house in Kentucky. The bulk of his testimony was related to analysis he had done using redist. I was asked to evaluate his work as someone from outside that particular community, applying his software first as he did, and then later to incorporate important features of Kentucky's political geography. And also to implement it using rival

interpretation of the law to see what the effect the interpretation of the law had on the resulting districts.

[114] (Reporter clarification.)

Q. (BY MR. GREIM) That's right where I going to go, actually, Dr. Voss. What is this "redist" simulation package?

A. It's a method that uses sequential Monte Carlo simulation in order to put together what hopes to be, what you hope will be, a representative sample of districts that could have been drawn or that could emerge from a smaller number of considerations than take place in the real world. Not because you pretend that legislators operate from a completely blank slate, but because being able to compare their handiwork to what you would get from people drawing districts or from, in this case a machine drawing districts, from a completely blank slate what it would produce. And you can look at the real thing, compare it to these lab-grown, sort of theoretically pure versions, and try to get a sense of the effect of decisions that were made during the redistricting process. It's a way not to know what was in the heads of the people who drew the district or, you know, what they might have been told by another court, but to infer what motivated them based on their work, based on the actual maps they produced. It's a method of – it sets up an inference.

Q. Well, I am just going to explore that for a second. You say it sets up an inference. But why are you [115] comparing the results of the simulation with the real live enacted map? What are you trying to determine?

A. Right. So as you move across the different simulations I created, you can judge two things: One is are there naturally occurring, sort of organic majority black districts –

Q. But, now, my question – we are qualifying you, okay?

So I want you to limit your testimony, if you could, Dr. Voss, to how the process works in general.

A. Oh, okay. Okay. I understand. So how this works broadly. If you look at the map of all precincts in Louisiana and look at their borders, imagine putting a dot in the middle of each of these precincts, okay? And then within each parish you can connect a precinct to all the precincts around it, connecting their dots.

Now, when you stop there, there are all these different routes you can take to move from precinct to precinct. But then the method comes behind and starts knocking out, ignoring those non – those redundant connectors until what's left is like a maze that you get in a newspaper. Indeed, the algorithm used to produce the simulations is like the algorithm used to create mazes for people to do in maze books.

When you get to the point that now there is only one route to get to each precinct, like a maze – call this a [116] spanning tree – the simulation then can go crack some of those – now they're not redundant, some of those necessary connectors that hold the whole thing together to look at the branches that break off.

Q. Let me stop you right there. Just so the record is clear, you are describing for us now the way the algorithm actually works in the sequential Monte Carlo simulation, right?

A. I am describing the sorts of simulations I ran, correct.

Q. Okay. So let's just – we won't go too much further; we're just laying the foundation. But let me

ask you: What is the purpose of the algorithm cracking? What is it doing when that happens?

A. So when it starts cracking off those first branches, the goal is to generate a sample of possible first districts into which the state could have been cut up, okay? So we are – depending on how many simulations you requested, that’s going to determine how many versions of a first district eventually you will get. In my first report, I did 10,000. But in reacting to the criticism, I upped the number of simulated map plans of each type to 20,000.

Q. Let me ask you just a couple of other foundational questions. So you used this same redist software, which [117] uses the same algorithm in the Kentucky case, right?

A. Yes and no. The first analysis I did in my initial report was the same version of the software, the same redist package version that Professor Imai had used in his testimony, because the point was to see how his analysis changed. Now, when I started out here, I also used the same version of the software because I had used it before. It was less demanding on the computers, given the time frame, than the other option. I produced with my initial report the simulations using the exact same software I had previously used.

Q. And was your testimony in the Kentucky case accepted by the Court?

A. Yes, it was.

Q. Now, one difference – I want to make sure the record is clear – the Kentucky case was partisan gerrymandering; in this case it’s racial gerrymandering, right?

A. That is correct.

Q. Now, in your opinion, is the simulation software, or the SMC, sequential Monte Carlo algorithm, any less useful in a racial gerrymandering case than a partisan gerrymandering case?

A. Exactly how you would use a method like this will depend on the question you're asking; it should depend on the question you're asking. But insofar as the goal is to [118] have a purer set of maps generated under simpler rules against which to compare the real thing, you can compare the simulated maps to what has been called, alleged to be a partisan gerrymander. You can compare the simulated set of maps against what has been called or alleged to be a racial gerrymander, and people have done both.

Q. Okay. I want to now skip ahead – this is my last question on laying the foundation, but I am going to skip ahead to the point where simulations have been run. You have a body of simulations, you've got diagnostics and data on those, and you are now comparing it to the enacted map. Okay. What sort of opinion are you able to render when you compare those two things?

A. You need to ask that again.

Q. Sure. I'm asking you: At the end of the day, after you have run the simulations and you've got the output from the redist software, what sorts of opinions are you able to render about the enacted map based on those simulations?

A. You can judge whether the parameters or constraints under which you created the simulations explain the deviations that you see in a real map

compared to what you saw in the simulations. I can give examples, but I --

Q. Well, let's keep it general. How then does that help inform an opinion about whether racial gerrymandering may [119] have occurred with the enacted map?

A. You can compare the racial makeup of the districts that are formed under rules we know, under constraints, limitations that we know because there were posited in advance, and compare what you got under those known instructions to what you got from the hazier political process where you may not know all the considerations that went into the drawing of those maps.

MR. GREIM: All right. I think with that, I would ask that the witness be qualified to testify in the simulation matter.

JUDGE JOSEPH: Any voir dire of this witness --

MR. CHAKRABORTY: No voir dire, Your Honor.

JUDGE JOSEPH: -- as to qualifications?

Dr. Voss, I do have one question. Is this redist software widely used by demographers?

THE WITNESS: By the --

JUDGE JOSEPH: -- demographers. By demographers.

THE WITNESS: Oh.

JUDGE JOSEPH: Where did the software come from? Who made it, et cetera? How often is it used?

THE WITNESS: It comes from people in -- I mean, you're asking me other people's qualifications, but mathematics --

[120] JUDGE JOSEPH: No, I'm not. I'm asking you –

THE WITNESS: – statistics –

JUDGE JOSEPH: You are using the software. I'm asking you what the basis of the validity of the software is. So answer the question.

THE WITNESS: Right. Sorry, Your Honor.

The people I know – okay, it's a large team – come from statistics and political science. That's the main two fields that I believe are represented by that team. It draws on insights from mathematics though. So if you expand how you define the people whose work led to it, you would include mathematicians. I don't know of any demographers involved, but there may be. There may be.

JUDGE JOSEPH: How widely is it used other than the Kentucky case that you mentioned?

THE WITNESS: It's fairly new software, especially in its – in its sophisticated form. It won a software award in just 2022, and the version that intervenors said I should have been using is – emerged right around that year. So it's only a few years old. It has been used in multiple legal cases related to redistricting, including racial redistricting in those years, in those recent years.

JUDGE STEWART: I've got two questions. One, is the redist software, is that a commercial product? And [121] the question is who's the maker, if you will, of the soft – you know, whoever makes it. That's the first question.

Then, secondly, am I understanding you to say in the Kentucky case – I know you said you were a rebuttal

witness, so my question is – I don't know if I have his name right, Professor Imai –

THE WITNESS: Imai, I-M-A-I.

JUDGE STEWART: My only question is: Was his testimony in direct, did he use the software in direct and then you used the software in your rebuttal? Or in his direct, did he have some other kind of methodology and then you used or introduced the redist in the rebuttal? Do you follow what I'm saying?

I'm not asking the answers to whatever was said, but I'm just trying to understand if the software was used first in the rebuttal, as opposed to he used it in his direct and then you used it to counter what he said. You following?

THE WITNESS: Yes, Your Honor. One of the virtues – I'm answering your first question. One of the virtues of this redist package is the algorithm itself. What I used is freely available to the public. It is also what's called "open source." So that's what allowed me to learn what I learned about exactly what it did. You [122] know, usually you cannot tell such things just from a description of software. But if you can actually see the steps they went through, then you really understand what they're doing.

JUDGE JOSEPH: And you did that, Dr. Voss? You're saying you did that?

THE WITNESS: I did do that, yes. I walked through it. Now, I should be clear. Certain portions of it rely on other people's algorithms; it becomes sort of a tree in and of itself, and I did not follow every trail.

JUDGE JOSEPH: But using your expertise in this area, you looked at it to check and make sure you thought it was good software?

THE WITNESS: Yes, that is correct. Now, it runs as part of what I'll call a "statistical software package," although that's not a great way to describe it, called "R," just the capital letter "R." The reason R has become increasingly common in what we do, but also in statistics, economics and demography, lots of fields, is because it also is free and easily available to students, to graduate students, and analysts. So this is a use of R, which is free, building on R, which is free.

As to the other question, the bulk of Professor Imai's direct involved the simulations he ran. And what I was asked to do was to evaluate whether he was either [123] using it in a way that did not fit the Kentucky context, or was describing what he had done in a way likely to mislead laypeople or to mislead the Court. You know, what did he miss that might not have been obvious if all the Court had heard was his testimony and not a rebuttal.

JUDGE STEWART: Thank you.

JUDGE JOSEPH: All right. Dr. Voss is qualified to testify as to the redist software and its application in this case.

Q. (BY MR. GREIM) Dr. Voss, let's move in to the actual test simulations that you ran in this case. What are your inputs into the redist software?

A. Okay. So before you start telling redist the rules under which you want it to make the sims, you need to feed it certain data. If those data are no good, nothing else that follows will be any good; garbage in, garbage out.

One thing it needs are the shapefiles that the mapping data – that would have been available or that comes as close as possible to being what was available

to the district drawers. These shapefiles, if you open them up, they would make no sense to people, that they're in machine language, I guess it is. They're able to be read by Geographic Information System software and R has some GIS-related compatibility that allows those shapefiles to be worked on in R as well. You can make maps with R.

[124] And in terms of those maps, I trusted that what was available to me – for the most part from the State, from the State's redistricting web page – were the right shapefiles, both for districts that had previously been drawn and also for the precincts. The only exception is the Robinson map, which was not available to me that I could see, or it was not available from the State. And that was provided to me by counsel.

Q. So we talked about data. What about – I mean, I guess we should ask about the simulations themselves.

A. Oh, I'm sorry. I didn't talk about the rest of the data.

Q. Go ahead. I'm sorry.

A. That was just the map shapes. We also have available the voting behavior and the demographics of those low-level units of those precincts. They are embedded within – some of that data is embedded within the shapefiles; it comes with it. But others came to me in the form of spreadsheets reporting how people had voted or information about each of those precincts that, again, were provided to me by counsel.

However, that's – those data are so critical, that I didn't basically trust that the data I had received were a sufficient basis or foundation for analysis. So I then

separately downloaded from the State Secretary of State [125] page the similar election data, broken down by parish, that I was supposed to have been given and compared parish returns, according to the Secretary of State, to what was in the data and made sure that these numbers were adequate.

Q. Okay. I didn't mean to interrupt your data discussion. But let me ask you now, Dr. Voss: How did you design the simulations themselves? What principles did you use?

A. Okay. So the first choice I made is not just to try to pick what I thought was the perfect dream simulation and offer, you know, would be a one-trick pony, offer one and only one sort of package of simulations to the Court and to the contending sides. One of the best practices for conducting simulations is to move around some of the constraints, the parameters you're putting on it, to make sure that the main conclusion you are drawing is fairly stable. Stability is considered a virtue in simulation.

So one decision I made was to give a host of different types of simulations with different rules just to make sure that the main conclusions weren't going away or weren't, you know, a quirky result of one set of choices.

In choosing what that span or spectrum of simulations would do, though, I chose them with a purpose [126] in mind. Each one is supposed to allow you to test a particular hypothesis, either about why majority black districts were failing to form on their own, because if there is a naturally occurring, organic majority black district out there, you ought to be able to find it through simulation.

And the second one was to see whether some of the other redistricting criteria that Louisiana had set

aside as important to it could explain the loss of compactness. So did protecting parishes cause very non-compact districts? Did protecting metropolitan statistical areas as community of interest and economic community of interest cause a problem with the compactness that explains the numbers I'm seeing? So do I get majority black districts? Do I get non-compact districts?

Q. Now, did you – when you considered your constraints, did you also take a look at the constraints or at least – I shouldn't use this phrase – at the criteria that Louisiana uses in drawing congressional districts?

A. I did. I had Joint Rule 21 available to me.

Q. And we'll see in a moment – I know some of your criteria involved compactness. Is compactness actually in Joint Rule 21?

A. No, it is not.

Q. But is there a reason that you used compactness [127] anyway as one of your constraints?

A. Leaving aside the district compactness has long been a federal priority for the drawing of congressional districts, I knew that one of the questions that the Court needed to settle was whether the black population is large and sufficiently compact.

Now, there may be other ways to judge the compactness of a population, separate from the compactness of the districts drawn to encompass that population, but that latter question, you know, how much does it mess with compactness in order to draw a majority black district, is the one that this sort of analysis could inform.

Q. Now, are you aware of any reason that the simulations of the kinds that you ran would be

appropriate for judging partisan but not racial gerrymandering?

A. No. There is – as I said earlier, there is no reason why this method is solely useful for judging partisan gerrymandering. People have written at length about specifically why it's good for judging racial gerrymandering. And as I said, I know – although I don't know the details of those cases, I know it has been used in prior litigation successfully.

Q. Before concluding your opinion and presenting your results, did you review the work of anyone else who has used this same software on Louisiana congressional [128] districting?

A. I, in particular, along the way of producing the rebuttal report especially, consulted the work of Dr. Cory McCartan and his team, the ALARM team – all capitals, A-L-A-R-M, the ALARM team. They ran a Louisiana simulation as part of their hopping across the country simulating districts in multiple states.

Q. And so they used the same software that you did in your rebuttal report?

A. They used the same version, I guess, or – well, it was not the same version. Correction. They used a version closer to the one I used in the rebuttal report, as I understand it, than the one I used in my initial report.

Q. And did you look at the constraints that Mr. McCartan's team, the team that he led, ran in Louisiana?

A. So to be clear, we haven't talked about constraints yet; but in shorthand, that's the rules, either hard or soft, given to the simulation to shape the hypothetical maps that it's going to draw. One of

them that came up as a matter of contention is how much to encourage compactness? How much to encourage performing well on those scores we previously discussed? I used – and this is just going to be a number floating out there – I used [129] a compactness constraint of one. Dr. McCartan and his team used a compactness constraint of one. I did not actively try to protect municipalities because, in my judgment, that would not have helped with the purpose at hand. They did not actively restrict it not to break apart Louisiana's municipalities.

Now, that analysis used something that they called a VRA constraint. I mostly did not use that, but I did try the VRA constraint, so I had a version and I used it. It made very little difference so I did not report it.

There was really only one major difference between, to my mind, what I had done and what the ALARM team had done, a difference that I addressed in the rebuttal report.

Q. All right. We'll come to that later.

MR. GREIM: But I think without further ado, if we could put up Rebuttal Table 1. This will be Plaintiffs' Demonstrative 9.

I wonder if we can blow that up just a little bit. Thank you.

Q. (BY MR. GREIM) Now, is this a report that you prepared, Dr. Voss, of the results of your simulations?

A. That is the table at the end of the rebuttal report.

It reports – it does not report the simulations done in the original report because by this point I had done them [130] all better.

Q. Ask me about – I’m sorry. Don’t ask me. Let me ask you about the two major groups here. You’ve got one category called race-neutral, another one called race-conscious. Just generally speaking, what were you trying to accomplish with each set?

A. Okay. So the race-neutral simulations are to give you an idea of what would emerge from this process, as a random sample of possible congressional district plans if, in a direct way, the information of each precinct’s racial mix is used. So in that sense, it’s race-neutral. The simulation package hasn’t even told the racial breakdown and the places to take it into account in any way, shape, or form. Now, that doesn’t mean, to be clear, that it’s 100 percent race neutral because some of the things that on the surface are race neutral aren’t necessarily in practice. They may be correlated with race. But, if so, the software is working indirectly. It does not have direct information about race.

Q. And then what about the race-conscious? What were you trying to accomplish there?

A. Okay. So in some way, shape, or form information that clearly was directly or indirectly racial was used in the simulation. Either the simulation package was encouraged to try not to break apart certain black [131] populations, or it was instructed to try to avoid breaking apart the districts that were drawn and that I knew were drawn with the intention of being majority black.

Q. Just on that last point, which of those race-conscious simulations is the simulation that tried to avoid breaking up Senate Bill 8, the Senate Bill 8 districts?

A. Okay. So that is the very last of the simulations. So the final row – and it’s called 7-1 – protect enacted

cores. What we did with that simulation, in addition to other things we haven't discussed yet, is we used the method the ALARM team had used, that Professor McCartan's team had used to try to protect Louisiana's old districts, the 2022 ones, I guess that would be.

Q. I see. It's not Senate Bill 8. 2022. I'm sorry, Dr. Voss. I think I misunderstand you. You used the method that Dr. McCartan's team used to protect the 2022 map on the 2024 map?

A. We used it on the 2024 map, on Senate Bill 8. And so the idea is, if those districts, if the center, the biggest portions of those districts are the foundation of the majority black nature of the districts or the majority white nature of the districts – we're talking about the other four – and we're telling the simulation: Do everything not to break into the core of those districts, [132] but you can simulate around the edges, you can move around the edges, change the edges, and see what you get. Okay?

If we've told it, try to protect the core of Congressional District 2, the majority black district in the New Orleans area; and try to protect the core of District 6, which is the one that grows out of East Baton Rouge; and also try to protect Julia Letlow's, you know, faded district in the northeast; and the Speaker's faded district in the northwest; and Scalise's district and, you know, your Cajun Triangle, what happens to the racial makeup of the districts?

Now, one of two things could be true. If they are really kind of centered around a majority black population, then the one around the edges should make very little difference and we should keep simulating majority black districts. If, instead, the perimeters of those districts were heavily shaped by

race and that tendrils were shaped by race and that bulge was shaped by race, if the edges – race is what's defining where the edges are – then allowing the software as it simulates and tries to draw compact districts to nibble around the edges could change the racial makeup of the districts fundamentally.

Q. Let me ask you now – now you've kind of outlined your test, and I won't take you through each simulation here on direct – but let me ask you: Did your [133] diagnostics, after you run these, show that each of these simulations had run properly?

A. How high or low a diagnostic score ought to get is another thing that tends to shift around. But I compared my diagnostic scores – and there are four of them.

It's the middle – the big column in the middle. I compared them both to what had been recommended by the software developers as targets, and I also compared them to the scores that were returned when we replicated

Dr. McCartan's Louisiana analysis. And across the board, my simulations met the standards that they indicated in this neutral setting proper simulations ought to meet.

Q. And then the next two columns to the right, what do those indicate?

A. Okay. So that's the average splits column. So it's looking at, for each of these sets of districts simulated under the different sets of rules, how many parishes were split in the formation of the districting plans.

Now, you may notice that with only two exceptions, either those numbers are low, they're bouncing around

the number five, or they're very high, they're splitting around 30 parishes.

Q. Why is that, Dr. Voss?

A. With a baseline use of the software, if you – you have a choice. You either break five parishes, more or [134] less, or you tell it: Don't worry about where the parishes are. Those are the choices. And it's a setting you toggle on or off. So all the ones that have the very low number, it was toggled on. All the ones that have the very high number, it was toggled off.

Now, the reason why it's not exactly five is a quirk of Louisiana geography. Louisiana has a parish,

St. Martin, that's not contiguous. And the nature of the method is that if you split St. Martin only by breaking off the not-contiguous part, the simulation doesn't count that against its budget of five. So it's either a very strict or a very loose; you know, like loose to nonexistent frame.

Q. Are there other methods you can use with the software that even though you've got the five-parish split toggled on, you can still basically encourage additional parish splits?

A. Yes. You can allow the simulation package to fall in between, but that always involves some degree of choice. In other words, specifying ahead of time: Break these parishes, or don't break those parishes. So you can freeze things, you can specifically set out areas that cross parish lines to protect.

Dr. McCartan and his ALARM team did that in Louisiana when they said "try to protect the core of the 202 [135] districts," right? So since those 2022 districts crossed parish lines, that opened up more possibilities to break some parishes apart.

The two of mine that fell between the extremes – the protect MSA cores and the protect enacted cores – once again, I’m choosing which parishes are on the chopping block versus which ones aren’t. In the first case, I am saying you can nibble around the edges of a metropolitan statistical area, but try to hold the main city together. In the protect enacted core one, I am saying you can nibble around the edges of the Senate Bill 8 districts but try to keep the core areas of the Senate Bill 8 districts together. So I’ve chosen some – I have put on the chopping blocks some parishes.

Q. Dr. Voss, as you add additional constraints to your model, what does that do to the universe of possible plans, generally speaking?

A. The more constraints you add, the harder it becomes for the simulation to generate legitimate maps that are contiguous and that have equal population, and also that meet whatever compactness parameter you have given it. As you add additional constraints, it just gets harder and harder for it to find its way to legitimate maps. It squeezes it more and more into repetition of the same sorts of patterns, like you see with the real plans. I mean, [136] there’s only a couple of ways to get those two majority black precincts, and most of the plans that I analyzed looked fairly similar to one or the other of the solutions here.

Q. Dr. Voss, at the end of this, what did you conclude regarding number of average districts that the simulations yielded that were majority black?

A. Yes. If you do any of these race-neutral sorts of simulations that I ran, you’re not getting two majority black districts. Not even once, okay, for most of these methods did I get two majority black districts through these more clean-slate simulation methods. And it was

actually quite rare to get even one. Even the one based around Orleans Parish gets pretty hard these days because of the changes in the population, the growth in Hispanic population, the growth in the Asian population. Often I would get zero majority black districts.

Q. And I see the same thing happened even with race-conscious simulations; is that right?

A. Yes. Now, there – one of the rebuttals to my sims was that I was not pushing race –

(Reporter clarification.)

THE WITNESS: Simulations, S-I-M-S. I'll try not to do that again. One of the complaints with my simulations was that I was not pushing race hard enough. [137] You know, given that just today, we've heard some very different definitions of racial gerrymandering, trying to decide the right amount of race consciousness in a way the Court would want was not possible to me as a nonlawyer.

So what I was instead trying to do is offer forms of race consciousness that might have been mild, might have been modest, but that I could describe in a way that would make sense to laypeople. So they at least knew what I had told it and what I had not told it, in terms of trying to draw majority black districts.

Q. Let me ask you about the final column. You flipped over, it looks like, to a partisan criterion. Why did you do that and what did you find?

A. My understanding, that I was trying to produce results that would help the Court deciding, is that while we talk about forming majority black congressional districts, often what people want to know is: Are you forming districts in which black

voters would get their representative of choice. And, therefore, since in Louisiana that tends overwhelmingly to be a democratic candidate, showing you how democratic the district was might have been a metric of interest to people trying to understand the lay of the land, the political geography of the state.

Secondly, insofar as one of the goals, as I [138] understood it, was to protect Representative Julia Letlow, who is a Republican – whether she was put in a Republican district or a Democratic district seemed directly relevant to that political explanation for what’s going on in this map.

Q. Did you have any understanding, Dr. Voss, as to whether a second black voting age population majority district would have to be a Democrat-electing district?

A. In no way did I run these race-conscious simulations with party or such political factors as a direct influence on what resulted.

Q. Did you find any plans that randomly yielded two Democratic seats?

A. No, I don’t believe I did.

Q. Yet that’s what Senate Bill 8 does; is that right?

A. That is correct.

Q. In conclusion, Dr. Voss, if you could point to maybe just one of these simulations that best encapsulates your conclusions, what would that be?

A. I think it’s that last one that we already talked about. I think it’s that simulation 7-1 where I used basically the same trick as Dr. McCartan and his ALARM team to try to protect the cores of the Senate Bill 8 districts. Because, you know, the question that you folks seem want answered is, you know: Are the

tendrils [139] predominantly influenced by race? Are the bulges predominantly influenced by race? Is the stretched, non-compact nature of the district reflective of the fact that race was the overriding priority in the shaping of the districts?

So what it allows you to assess is if we simply ask: Within the population of districts that could have been formed around each of these cores, okay, do you continually get, in these simulations, two majority black districts? If so, then the tendrils are about something else, the bulges are about something else. Or do you no longer get majority black districts if it's able to take away the tendrils and the bulges. And what the results clearly showed is that when you simulate districts that are going to mess around the edges of these majority black districts, they stop being majority black districts.

Q. So at the end of the day, as a result of this simulation analysis, Dr. Voss, what did you conclude about your question regarding the compactness of the black population in Louisiana?

A. That the non-compact features of Senate Bill 8 are predominantly explicable by the racial considerations that shape the district.

Now, there is one thing you did not ask me about that relates to that conclusion, though, that I would like to [140] make sure I add. You know, protecting incumbents has been offered multiple times as an explanation as well. And so for me to say that race is predominant, I only need to show that, when you stop thinking about race, those two districts go away. There is also the question of: Do the incumbents go away? Do you lose the incumbency protection feature of Senate Bill 8 when you do that as well? And the answer is no.

My simulations, pretty much across the board, were leaving Julia Letlow in a safely Republican district. Now, not all of them kept her away from the Speaker of the House, but a substantial number did. And if you have 20,000 choices, you can pick. They kept her away from the Speaker of the House. Garret Graves was never as safe, never in such a nice position as Julia Letlow was across these simulations. Maybe the hardest part is keeping Steve Scalise away from Congressional District 2, but there were simulations that kept him safe as well. So while I wouldn't say the average not necessarily protected Steve Scalise, options were there.

In sum, pursuing the political goals ascribed to Senate Bill 8, my simulations could meet. Pursuing the racial goal that apparently the Court handed down and that the maps were supposed to accommodate, my simulations could not meet.

MR. GREIM: No further questions.

* * *

[150] about whether it's appropriate to apply map simulation techniques to a racial gerrymandering context, are you?

A. I am certainly aware of articles on the use of simulation with regard to racial redistricting. The question of which ones were peer-reviewed, I cannot do off top of my head.

Q. So sitting here today, though, you are not currently aware of any peer-reviewed articles or literature about whether it's appropriate to use map simulation techniques in the racial gerrymandering context, are you?

A. Oh, I'm sorry. In the general sense, I know. Not this redistricting package. There are general articles that deal with simulation and racial redistricting, yes.

Q. With respect to the redist package?

A. No, I am not.

Q. Thank you.

A. Thank you.

Q. And you're not familiar with any other expert applying these map simulation techniques in the racial gerrymandering context, are you?

A. Well, I know that Dr. Imai has done --

Q. Sorry. You're not familiar with their work in a -- I think you just said Dr. Imai did it in a partisan gerrymandering context, right?

A. No. My understanding is he has used it in racial [151] gerrymandering cases.

Q. And you're saying you've looked at that work?

A. No. I know it exists. I've read about it. I did not go probe specifically what he did in those cases.

Q. Got it. Thank you.

So turning to the algorithm itself, or the package itself, the number of possible simulations that the algorithm can generate for a map like Louisiana are close to infinite, right?

A. With no constraints, yes.

Q. With no constraints. And your analysis consisted of generating several thousand of them for your report, right?

A. Yes. The rebuttal report, it was 20,000 per set of conditions.

Q. And as you were saying on direct, in designing your simulations, you've put into place a number of simulation constraints, right?

A. That is correct.

Q. And these simulation constraints, they're effectively inputs affecting the kinds of maps that the simulation will produce, right?

A. That is right. They set the boundaries under which the simulations take place.

Q. And so naturally if you change the simulation

* * *

[170] A. Yes. And I would add, though, that at least one of them represented a hypothesis that seemed worth testing. I knew that there had been accusations that the 2022 map resulted in part from splitting the black – cracking is the – you know, the sort of jargon term – cracking the black vote. So one of them specifically imposed an additional constraint to protect the majority black portions of each parish. The idea being if the problem with the old map, if the problem with the simulations, the reason they are not generating majority black districts is because the black communities are getting cracked.

Maybe not on purpose. Again, I don't – I'm not judging motives; I'm inferring outcomes. Maybe for accidental reasons, even, if that black vote, that black community in each parish is getting divided and, therefore, cracked, I wanted a set of sims where the method was told: Leave those groups together. They go in one district or they go in the other. You don't get to split them apart.

So it had a second purpose, which was to test the hypothesis: Is this cracking of the black communities

within parishes part of what's going on, part of what's causing the lack of majority black districts to form.

Q. But directing you back to my question, Dr. Voss, as you explained on direct, the way in which you picked the metrics were so that – you used these because they were

* * *

[172] important those things were compared to the Joint Rule 21. I can't give you the weights of all of these different criteria that they thought they were using, chose to use. When something emerges out of a legislature, you know, a legislature doesn't have one mind. It doesn't have one goal. The legislative record usually is in conflict all by itself.

Q. Right. So that's a "yes" to my question, you don't know if the mapmakers who drafted SB8 relied on your specific metrics to take into account race when drafting maps?

A. And my maybe too-lengthy answer is: I know what I can infer from what I see, but I have no inside knowledge.

Q. Great. Thank you.

MR. CHAKRABORTY: No further questions.

JUDGE JOSEPH: Dr. Voss, a quick point of clarification. You testified that you did not include municipal lines in your simulations. What would have been the effect on the outcome of your simulations had you included those lines?

THE WITNESS: Okay. First, insofar as I am using the simulations to see if I can get majority black districts to form in some kind of organic sense, it would have only made it harder, okay, only made it harder.

Second, you know, I looked at that Louisiana
ALARM

* * *

[175] A. And let me say, so all of my analysis was contingent on that having been the target.

Q. Okay. The redist algorithm, does it allow you to include other constraints beyond the compactness and the splits that you imposed? In other words, are there pieces of that algorithm that you could have chosen to add in that you didn't?

A. Yes, indeed. One of them is to protect double bunking, as it's called, of incumbents, to prevent two incumbents from appearing in the same district.

Q. Okay. And does it allow you to specify which incumbents not to pair?

A. Perhaps. I did not explore it to that level. And the reason is, in thinking about whether to use that parameter, I decided it would be inappropriate.

Louisiana has only one Democrat right now. The rest are Republicans. So instructing the algorithm to protect incumbents would for sure have made it harder, not easier, to produce two majority-black districts. And since that was the primary question, once again, as with the municipalities, I didn't add additional burdens to the simulation method that would have made it even harder to come up with the target, which was two majority-black districts.

Q. Got it. So the simulation wasn't able to, for

* * *

[214] and give the rest of them to Lisa.

MR. TORCHINSKY: Your Honor, I think, because we're taking this witness out of order, I'm fine if Mr. Greim wants to go before me but I'd like a few minutes to question the witness perhaps after Mr. Greim as long as that's okay with the Court. It's out of order traditionally because we're on the same side of the V as the intervenors, but I'd like to – I'm happy to let Mr. Greim go first.

JUDGE JOSEPH: You can go first. In the meantime, do you have a copy of the deposition transcript of Dr. McCartan?

MS. ROHANI: No, I do not.

JUDGE JOSEPH: You don't have one?

MS. ROHANI: I do not have a printed one. Sorry, Your Honor.

JUDGE JOSEPH: I think he has enough for everybody so we'll hand you one. And we'll let the State go ahead and –

MR. TORCHINSKY: I just have a few questions.

CROSS-EXAMINATION

BY MR. TORCHINSKY:

Q. Dr. McCartan, I'm Jason Torchinsky. I represent the State. Are you a demographer?

A. No.

[215] Q. Have you ever been hired by a legislature?

A. No.

Q. Have you ever drawn a map that's been enacted by any legislative body anywhere?

A. No.

Q. How much have you studied Louisiana's political geography?

A. Could you be more specific about "political geography?"

Q. Have you examined where white and black population live in the state of Louisiana?

A. Some, yes.

Q. Do you know if there is enough black population in Southeast Louisiana to draw two black districts that are concentrated there?

A. I haven't drawn such a map. I think – so I couldn't answer definitively one way or another.

Q. Okay. So other than the ALARM project – I want to be clear – you didn't run your own simulations in Louisiana for this case at all?

A. That's right.

Q. And the ALARM simulation had – I want to understand: When you ran the ALARM simulation and you said you included a Voting Rights Act constraint, what exactly did that require the simulations to do?

* * *

[223] the Legislature and the Governor of the State. So we were kind of testing and pressing both.

JUDGE JOSEPH: Very well. Thank you.

JUDGE STEWART: Gotcha. We know what Mr. Greim is.

MR. GREIM: Before I began, I sort of forgot where we were with the transcripts. Should I just deposit them –

JUDGE JOSEPH: You handed them to who needed them among counsel, correct? And then if you hand a couple of copies to Lisa that you don't need in case we want to look at it. I don't know that we'll really look at it. We'll rely on you to do that.

MR. GREIM: I'll just hand them up to Your Honor. I will give one to the witness.

CROSS-EXAMINATION

BY MR. GREIM:

Q. Dr. McCartan, good afternoon. You might remember me, Eddie Greim. I took your deposition last week.

Dr. McCartan, you've admitted you don't know what racial gerrymandering is, correct?

A. I don't have a – I'm not a lawyer. I don't have a legal understanding of that term, correct.

Q. And you have never devised a test to detect racial gerrymandering on a given map, right?

[224] A. Not in a legal context.

Q. You haven't done academic work on racial gerrymandering?

A. Nothing published.

Q. And you haven't given any thought about the extent to how simulations can test for the presence of racial gerrymandering in any particular state, right?

A. I have not focused on what simulations can do as far as legal conclusions about racial gerrymandering.

Q. And I just want to make sure I understand. I'm not sure I got an answer, but I'm not sure I actually heard everything. Just for the record, you haven't

given any thought about the extent to which simulations can test for the presence of racial gerrymandering in any particular state, right?

A. So by “racial gerrymandering,” if we’re still talking in a legal context, then that statement is right. The reason I pause is because we are currently working on a project that’s not published that thinks about race and redistricting in an academic context. But as I said, I’m not a lawyer. I don’t have a test of racial gerrymandering from a legal perspective, and so I haven’t given thought as to the role of simulations as far as that legal question in any particular state.

Q. What is the project you’re working on right now?

* * *

[226] testimony on direct, right?

A. That’s right.

Q. And you led the 50-state simulation project, right?

A. Yes.

Q. And in each state of that project, including Louisiana, you primarily had in mind preparing a baseline to detect the presence of partisan gerrymandering, right?

A. To the extent to which partisanship played a role in drawing the maps, and then, if so, what those effects were.

Q. And you wouldn’t deny here today that your simulations can also be useful for detecting maps that are extreme racial outliers, would you?

A. Sorry. Could you be more specific about what you mean by “racial outliers.” That’s an outlier compared to what specifically?

Q. Let’s just do this.

MR. GREIM: If we could put up McCartan Exhibit 3. And if we could – well, let’s start here.

Q. (BY MR. GREIM) Do you recall I showed you this 50-state simulations FAQ from your ALARM project website, Dr. McCartan?

A. I think we looked at this in my deposition, yes.

Q. Yes, we did.

MR. GREIM: And if we could, let’s go to page 2, [227] top of page 2.

Q. (BY MR. GREIM) And you see at the bottom of the first paragraph your project website states: The comparison of an enacted plan with these sampled alternative plans can reveal the extent to which the enacted plan is likely to yield extreme partisan, racial, or other outcomes. I read that correctly, didn’t I?

A. Yes, you did.

Q. And, in fact, you wrote a research paper, you were the lead author on a research paper that reported the results of the 50-state simulations project, didn’t you?

A. Yes.

Q. And in that paper also, you state that the 50-state simulations are well suited to assess what types of partisan or racial outcomes could have happened under alternative plans in a given state. You said that, right?

A. I’ll take your word for it, yeah.

Q. I mean, do you agree with that?

A. With that statement?

Q. Uh-huh.

A. Yeah. I think when those statements refer to outliers or extreme, that's in reference to the distribution or the representative set that we're trying to recreate with simulations. How you design that set, what counts as representative for a particular study,

* * *

[230] and bring that up but I –

A. Oh, I'm sorry.

Q. We don't have time to have you to give an explanation. You'll have a chance. You'll have a chance.

MS. ROHANI: Your Honor, he asked a question. I think to permit the witness to answer would be appropriate.

JUDGE JOSEPH: You can answer, but try to be brief.

THE WITNESS: I will try to be brief.

A. So when you're doing 50 states' worth of simulations, we have a template that helps our team produce this. We have a whole team that ran the simulations, not just me. So that team – the template basically says: Paste here the link to, you know, the PDF that you can find that explains the criteria.

And so, yes, it is a mismatch between the criteria that we have inferred are relevant to designing our simulations and what's listed there in English. And I'll take ownership over that, that misstatement. But to be clear, those five bullet points reflect our understand-

ing of what criteria we were going to follow in our simulations for this academic project.

Q. (BY MR. GREIM) And you did not impose any kind of requirement for natural or geographic boundaries, correct?

[231] A. Correct.

Q. That you just criticized Dr. Voss for that, right?

A. I don't think that – I think that Dr. Voss's failure to include that is a limitation of his analysis, yes.

Q. And you criticize Dr. Voss for imposing too high of a compactness restraint, correct?

A. That's not how I'd characterize my criticism.

Q. You criticize him for using a 1.0 on his compactness measure on the software, right?

A. That's not how I'd characterize my criticism.

Q. Not today? Well, let me just ask you: Is 1.0 the compactness requirement that your team used in your ALARM simulation?

A. Louisiana, I believe so. I believe so in Louisiana.

Q. And that's what you used in most states, right?

A. Yes.

Q. And that constraint is a nudge towards compactness, correct?

A. It represents a fairly strong preference for compact districts.

MR. GREIM: Can we pull up McCartan Exhibit 3, please. And if we could go to page 3 under – one moment. I think I've got a mistake in my outline here.

Q. (BY MR. GREIM) Dr. McCartan, do you recall that at your deposition, I asked you about a description, your own [232] description of your method, which stated that: Unless otherwise noted, the algorithm nudges towards compactness by an adjacency graph base measure of compactness, the fraction of edges kept.

Do you remember I asked you about that?

A. I don't remember that question specifically, but I believe that, yeah, that question was asked to me.

Q. Do you recall that I asked you if that was true and your quibble with that statement was the second part of the statement, about the fact that fraction of edges was the method you were using. Right?

A. I don't remember that exchange, but I believe that that's what I said.

MR. GREIM: Well, I'm sorry. I need to have a better reference here to do this properly with the witness. I am going to move on and circle back before we're done.

Q. (BY MR. GREIM) Now, in Louisiana, the purpose of your constraints was to try to mimic the Louisiana legal constraints, right?

A. Yeah. We attempted to incorporate the criteria that we saw the Legislature using and in Joint Rule 21 to the extent possible to help us answer that question about partisan effects.

Q. Now, your team did not include a communities of [233] interest constraint either, did they?

A. Lacking a definition from the legislature specifically about which communities of interest are important to protect, we did not incorporate that information specifically.

Q. Now, you did testify you included the Voting Rights Act constraint. And I think we heard today for the first time what that constraint was. You said that you tried to maximize BVAP in two districts; is that correct?

A. Not exactly. "Maximize" suggests that we're taking steps to make that higher, basically if the algorithm happened to draw randomly a district that had a higher BVAP score that fell in that sort of range, near 50 percent, then that plan was sort of given preferential treatment, if you will, but there was no maximization, per se.

Q. And your analysis, like Dr. Voss's, also generated plans that were more compact than the enacted plan, right?

A. I believe so.

Q. In fact, the enacted plan was far off on the end, the noncompact end of the distribution of your Polsby-Popper scores for your ALARM run, right?

A. I have to double-check the exact position, but I believe that's true.

Q. And your analysis did not report your measure on the [234] number of black majority-minority districts you created, but you did report some partisan metrics, didn't you?

A. Sorry. When you say our analysis, sorry, what are you referring to there?

Q. The 50-state simulation analysis.

A. The reason I ask is, for example, the number of typical seats a Democrat would win, or the typical demographics of a district were all included in the data we produced as far as that analysis, and that's

available publicly at the website that sort of summarize some of the key parts of these. Simulations may or may not have included one of those particular, but there is an extensive collection of numerical summaries that were produced as part of the analysis and are available publicly.

MR. GREIM: Can we pull up McCartan Exhibit 9.

Q. (BY MR. GREIM) And we'll kind of scroll through here.

Do you recognize this as your Projects Louisiana Redistricting Analysis?

A. This is an automated summary that gets sent to the website from part of the analysis.

MR. GREIM: Let's move back up, if we could, just right there. Let's try to keep the – let's try to go to the top of the third page. Scroll on down. That's fine. Let's stop right there.

[235] Q. (BY MR. GREIM) We discussed this at your deposition, didn't we?

A. This top paragraph, yes.

Q. Now, you report your partisan results as: We expect the enacted plan to yield 1.0 Democratic seats on average, which is more than 100 percent of all simulated plans. That's what the website says, correct?

A. You read that correctly.

MR. GREIM: And then let's scroll down a little bit further so we can see the map.

Q (BY MR. GREIM) Now, each bar on this map represents the – for each simulated district, the partisan split of that district for one of the simulated maps, right?

A. Each dot – yeah.

Q. Right. And there should be 5,000 dots in each little bar?

A. That's right.

Q. And then the black square is the enacted plan. The enacted plan's partisan split, right?

A. That's right.

Q. And so it looks – and a correct interpretation of this chart is that the 6th District almost always comes out to be heavily Democratic, right?

A. For this set of simulations and that set of constraints, yes.

[236] Q. And then the 5th District tends to be Republican, but it starts to shift up towards even, right, a few dots?

A. That's right.

Q. And I think we counted – I'm sure it's not clear on the screen, but I think we counted that there were actually 10 blue dots above the even line, right?

A. I remember counting, yes.

Q. Right. We sat and we looked closely. So those 10 blue dots represent that 10 out of these 5,000 randomly generated plans, using your criteria, yielded a second Democratic seat, right?

A. That's right.

Q. Now, I do have a question for you. Do you see a red dot on six that's below even?

A. So, to be honest, I'm actually – I'm actually color-blind, so I see a dot there, but I couldn't tell you the color.

Q. Okay. Well, if it's red, what does that represent?

A. Well, that would represent a plan that even in the most Democratic district had less than a 50 percent predicted, you know, Democratic vote margin.

Q. Now, these 10 randomly generated out of 5,000 second Democratic seats that we just talked about, you don't know if any of those were a second black majority-minority district, do you?

[237] A. Of those 10, no, I haven't checked.

Q. And, in fact, you don't know if any of your plans generated a second black majority-minority district, do you?

A. I know that a number of them produced a second minority-majority district. We did not separately calculate any part black number, so I don't know about that.

Q. Now, you testified I think – I think you've told us you did not review your team's Louisiana constraints or simulation design before you critiqued Dr. Voss, right?

A. Beyond what I recollected myself, that's right.

Q. And you didn't review your team's Louisiana sim diagnostics before criticizing Dr. Voss, correct? A. Are you referring to the software's diagnostic measures?

Q. (Nods head.)

A. No, I did not.

Q. I want to ask you a couple of other questions here. I think very early in your cross, you testified that a simulation that did not include the incumbent protection was no longer representative and could

therefore not be relied upon to determine the presence of racial gerrymandering. Did I understand that correctly?

A. Not quite.

[238] Q. What did I get wrong?

A. I think we were talking about a hypothetical, which, say, we knew that a legislature did consider a criterion like incumbent protection. And if you knew that and then ran simulations, how it didn't include that, what would the role of those simulations be as far as providing a comparator. I don't recall specifically if that was referring to establishing, you know, racial gerrymandering specifically. I think that was more about the overall usefulness of simulations as a comparator.

Q. And so you're not here to tell us that adding incumbent protection would tend to trigger a black majority-minority district to be drawn, correct?

A. Correct.

Q. You haven't done that analysis?

A. Correct.

MR. GREIM: You know, I don't think we have it, but I wonder if I could prevail upon my friends, the Robinson intervenors, to put up the – I think it was the second or third demonstrative exhibit with the core protection. Are you able to do that? I'm sorry to --

JUDGE JOSEPH: Which one?

MR. GREIM: It's the blue and yellow one. There it is. Okay.

JUDGE JOSEPH: Just for the record, the witness

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[248] CERTIFICATE OF OFFICIAL REPORTER

I, DIANA CAVENAH, RPR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Louisiana, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Diana Cavenah
DIANA CAVENAH, RPR
Federal Official Court Reporter

[1] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. 3:24-cv-00122

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,
Plaintiffs,

vs.

NANCY LANDRY, in her official capacity as
Secretary of State,
Defendant.

PRELIMINARY INJUNCTION HEARING
CONSOLIDATED WITH BENCH TRIAL
OFFICIAL TRANSCRIPT OF PROCEEDINGS,
VOLUME II
BEFORE THE HONORABLE CIRCUIT JUDGE
CARL E. STEWART
THE HONORABLE DISTRICT JUDGE
DAVID C. JOSEPH
AND THE HONORABLE DISTRICT JUDGE
ROBERT R. SUMMERHAYS
APRIL 9, 2024
SHREVEPORT, LOUISIANA

DIANA CAVENAH, RPR
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[257] having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. BODAMER:

Q. Please state your full name for the record.

A. Michael Charles Hefner, H-E-F-N-E-R.

Q. Mr. Hefner, what do you do for a living?

A. I am a demographer. I do private and also governmental work, along those lines.

Q. Can you give the Court some examples of the projects and governmental work that you do?

A. For private work, many times it's marketing studies, site location analysis, things along those lines. Most of my work, though, is now governmental dealing in the areas of redistricting after each decennial census. And in between that, I do a lot of precinct management work for various parish governments.

Q. I was going to say, who do you do that work for?

A. I do – for redistricting, it's at the municipal, school board and parish levels. And then for precinct management, that's done at the parish level.

Q. How long have you been a demographer?

A. I've been actually in this particular field since 1990, doing some work prior to that as part of my [258] marketing studies when I was a graduate at U.S.L. or University of Louisiana Lafayette.

Q. Where do you live?

A. I live just outside of Lafayette, Louisiana.

Q. How long have you lived in Louisiana?

A. Born and raised.

Q. Would you briefly tell the Court your educational background.

A. I received my Bachelor of Science in – bachelor of business administration actually in 1978 from, at that time, it was U.S.L., the University of Southwestern Louisiana, which is now University of Louisiana at Lafayette. And from there I later received my juris doctorate in 2008. I went through Concord, which is part of Purdue Global Law University now.

Q. So you're a licensed lawyer?

A. Yes.

Q. Do you practice law?

A. Very rarely. It's mostly to support my work that I do in redistricting.

Q. It sounds like you went to law school sometime after you had gotten into the world of demography. Is that right?

A. Yes. After the 2000 census cycle and finishing up redistricting, I realized that between school [259] desegregation cases, which I've been involved in a number of them in Louisiana, and the redistricting cases that probably 98 percent of my work was being reviewed by attorneys and the Courts, so I figured I might as well learn to think like them. So at 48 years old, I went to law school.

Q. Do you intend to offer any legal opinions in this matter today?

A. No.

MR. BODAMER: If I might, Your Honor, I would like to offer into evidence Mr. Hefner's CV, which is Plaintiffs' Exhibit 13. It was an exhibit to his report, his initial report. And just for the record, we'd like for that to be part of the information you have before you, without wasting any more time here.

JUDGE SUMMERHAYS: Any objection?

MR. NAIFEH: No objection, Your Honor.

JUDGE SUMMERHAYS: It's admitted.

MR. BODAMER: Thank you.

Q. (BY MR. BODAMER) So, Mr. Hefner, how can a demographer help the Court and us in a matter such as this?

A. Demography is generally a – it's the study of the people and the characteristics that define them. So when you're looking at redistricting, I like to say that it's [260] the numbers and the geography that tell you the story. It tells you what you need to do and it defines how those various plans come out. So demographers can assist by not only looking at the total population, which is a very important part of redistricting because it's a one-man, one-vote issue, but also the characteristics that underlie those total populations. So that's where demography can help out.

Q. As a demographer, have you testified in other cases?

A. Yes.

Q. Can you give me some idea how many?

A. Probably three dealing with redistricting. And then some involving – several years ago – with some population projections for some municipalities.

Q. The three redistricting cases you've testified in, were you testifying as an expert witness?

A. Yes.

Q. Has any court ever told you that you weren't qualified to testify as an expert in matters involving demography?

A. No.

Q. In this particular case, what were you asked to do by the plaintiffs or plaintiffs' counsel?

A. I was asked to evaluate the recently enacted Senate Bill 8 plan and also to evaluate a plan that was submitted [261] by the plaintiffs, which I refer to in my reports as Illustrative Plan 1. And also the previously enacted plan, which was House Bill 1, which was used in the last congressional election.

Q. In doing that, did you prepare several reports?

A. Yes.

Q. How many reports did you prepare?

A. I did an initial report February 7th and then a more robust report on March 22nd and then a rebuttal report on April 1st.

Q. That's all done in a relatively short period of time, correct?

A. Yes. It – you know, we really had to shoehorn it into my workflow because I had a very, very packed spring schedule, so yes.

Q. Are you working on any other matters other than this one at this time?

A. I have several precinct matters and projects going on. I have six active school desegregation cases

going on, plus two private client marketing studies and site location analysis projects going on.

Q. Busy man. With respect to this case, can you please summarize your methodology and the technical specifications you used in considering the issues you were asked to address.

[262] A. Well, the first thing was to examine the district boundaries which were provided to me in what we call shapefiles. They're electronic map files that you load into a geographic information system software that will then display those boundaries. And then my calculations were based off these 2020 Census P.L. 94-171 census file, which is a file that we're required to use for redistricting.

Q. Did you use any particular redistricting software to assist you in creating maps?

A. Yes. I typically use Maptitude for redistricting. I've been using that since the late '90s when they first came out with it. That's what I do my heavy lifting with. And then I do some final map preparations publishing through ArcMap, which is put out by ESRI.

MR. BODAMER: Your Honor, at this time I would ask that you allow Mr. Hefner to testify as an expert witness in this case.

JUDGE SUMMERHAYS: Counsel, any voir dire or objections to this witness?

MR. NAIFEH: Yes, sir, I have some voir dire.

JUDGE SUMMERHAYS: You may proceed.

VOIR DIRE EXAMINATION

BY MR. NAIFEH:

Q. Good morning, Mr. Hefner. I am Stuart Naifeh.
I am

* * *

[271] requirements to opine under Rule 702. As far as the matters in the other cases that were raised on voir dire, those matters go to the weight of his testimony and not the admissibility. The panel will weigh that testimony according. You may proceed.

CONTINUED DIRECT EXAMINATION

BY MR. BODAMER:

Q. Mr. Hefner, you intend to offer several opinions in this case, correct?

A. Yes.

Q. Do you intend to offer an opinion as to whether the African-American population is compact enough to create a second majority-minority district without sacrificing traditional criteria?

A. Yes.

Q. And what is your opinion?

A. Based on the analysis that I've looked at with the geographic distribution and concentration of the African-American population of the state of Louisiana, it's – you can't create a second majority-minority district and still adhere to traditional redistricting criteria.

Q. Number two, in reviewing Senate Bill 8, that map, do you have an opinion as to what impact, if any, race had in taking that in consideration versus the other more [272] traditional criteria?

A. Yes, I offered an opinion on that.

Q. And what's your opinion?

A. My opinion is that race predominated in the drafting of Senate Bill 8 plan. That's evidenced by the lack of compactness, that the plan had the excessive dividing of communities of interest, the deviation of – radical deviation from the traditional core districts within the state. I did not review incumbency but the fact that those redistricting criteria were not followed led me to the conclusion that the only reason that the districts were drawn the way they were in Senate Bill 8 was because race was a predominant factor or criteria in drawing the plan.

Q. And we're going to get into more detail. Then the third opinion I am going to ask you about: Do you have an opinion as to whether there is a – whether a reasonable plan can be drawn in a race-neutral manner that adheres to use of traditional redistricting principles and preserves more communities of interest, provide more compact election districts, and preserves the core election districts, and balance the population within each district?

A. Yes.

Q. And what plan is that?

[273] A. The plan that the plaintiffs provided, which was Illustrative Plan 1, met all of that criteria.

MR. BODAMER: So can we pull up Joint Exhibit 14, please?

Q. (BY MR. BODAMER) Mr. Hefner, are you familiar with Joint Exhibit 14?

A. Yes.

Q. We lost it.

Map of Louisiana. What is this? What does this show?

A. The map that's before me is the 2024 congressional districts that were – looks like it's following Senate Bill 8 plan.

MR. BODAMER: Are the colors better on your screen than they are shown up at the top?

JUDGE JOSEPH: We see it very clearly on ourscreen.

JUDGE SUMMERHAYS: Yeah, the colors are clear.

MR. BODAMER: They're better, okay. I had trouble yesterday, too. I thought I was color-blind on some of it.

Q. (BY MR. BODAMER) So this is the enacted map, correct?

A. Yes.

MR. BODAMER: And then can we also pull up Plaintiffs' Illustrative Plan 1, which is Plaintiffs' [274] Exhibit 14.

Q. (BY MR. BODAMER) This is a map of the illustrative plan that you were referring to just a minute ago?

A. Yes. This is a map that I created from the shapefiles that were sent to me.

Q. And, again, I notice there is no second majority-minority district reflected on this map; is that right?

A. That is correct.

Q. And again, why is that?

MR. NAIFEH: Objection. There is no foundation that he knows why this plan doesn't contain the second majority-minority district.

MR. BODAMER: That's a good point. That's a good point. Let me withdraw that.

JUDGE SUMMERHAYS: I will sustain the objection and, Counsel, you can lay your foundation.

MR. BODAMER: Thank you.

Q. (BY MR. BODAMER) Have you tried to draw a map in which you could create a second majority-minority district in the state of Louisiana?

A. I've done –

MR. NAIFEH: Objection. He has no opinions in his report on himself trying to draw a map that contains a second majority black district.

[275] JUDGE SUMMERHAYS: Counsel?

MR. BODAMER: I think it's inherent in that what we've been doing here. But that's okay. I'll withdraw.

JUDGE SUMMERHAYS: You offered testimony that he was going to testify as to the ability to create a second district, correct?

MR. BODAMER: That's true. And the Illustrative Map Plan 1 has been admitted – or, you know, it's been present in, throughout the preparation for the trial and through the trial itself.

JUDGE SUMMERHAYS: You know, I'm inclined to overrule the objection as long as we lay a foundation on the preparation of the map that's on the screen there.

MR. BODAMER: All right.

JUDGE SUMMERHAYS: The objection is overruled.

JUDGE STEWART: Why don't you back up and sort of reformulate exactly the question you are asking.

MR. BODAMER: Sure.

JUDGE STEWART: It's not clear to me exactly what you were asking.

MR. BODAMER: Thank you.

Q. (BY MR. BODAMER) Let me just ask it this way. What does Plaintiffs' Illustrative Plan Number 1, Exhibit PE-14, what does that represent?

A. That plan is a congressional plan that preserves [276] District 2 as a traditional majority-minority district. It generally follows what has been in place for the past couple of census cycles. And the division of the rest of the state into districts largely follows. It's somewhat similar to the traditional boundaries that have been used in the past. Some deviations, but generally overall it follows that general configuration.

Q. Based on your review of this map, does it adhere to traditional redistricting principles?

A. In my opinion it does.

Q. And what about, does it preserve more communities of interest than the Joint Exhibit 14, the 2022 map?

A. Yes. It splits fewer parishes and municipalities.

Q. Does Plaintiffs' Illustrative Map Number 1, Exhibit 14, what impact, if any, does it have on compact election districts compared to SB8?

A. The two most popular compact analysis are the Polsby-Popper and Reock scores. Polsby-Popper measures the perimeters of the districts and comes out with a

score, a score of 1 being perfect. Reock measures the area of the districts. And again ideal would be a 1 on that. So under – running both of those compact score analysis for Illustrative Plan 1, it comes in with a higher score, the mean score getting closer to 1 than the enacted Senate Bill 8 plan.

[277] Q. What is compactness?

A. Compactness is basically a unity of representation. The more compact a district is made, the more the people within that area will share the same ideas, values, and legislative needs.

Q. So do you want – with respect to those interests you just described there, do you want a district that's more compact rather than less?

A. Yes.

Q. And the higher the score means what?

A. The higher the score means it's more compact.

Q. So you want higher scores rather than lower scores?

A. Correct.

Q. And I'm going to get into that a little bit more in a minute, but let me ask you, the basis for your conclusion that race was the primary criterion or the predominant reason for the creation of SB8. Okay?

MR. BODAMER: Can we pull map – let's see it will be Exhibits 15 and 16, but let's do 15 first.

Q. (BY MR. BODAMER) What does map – again, this would be Exhibit 15. I know it says Map 14. That's from your report, correct?

A. That is correct.

Q. Okay. But it's Exhibit 15.

MR. NAIFEH: May I just correct? I think this [278] is a demonstrative. I don't think this is an exhibit in evidence yet, Your Honor.

JUDGE SUMMERHAYS: This is one of the exhibits that's going to – that y'all are conferring and introducing?

MR. NAIFEH: I think it may be. I just want the record to be clear about what we're looking at. I'm not objecting to the use of the map.

JUDGE SUMMERHAYS: It's not an exhibit; it's a demonstrative until the parties can review it and come to an agreement on admitting it as an exhibit. But, you know, I think I speak for all three of us: We need a complete record in this case for the reviewing court. And the preference is to admit these documents that are being used and testified to by the expert as well as subject to cross-examination.

JUDGE JOSEPH: So if you can admit it through this witness, do that.

MR. BODAMER: Well, thank you. That's what I actually intended to do. Whether to do it one at a time or to do it at the end, and I'll handle it however you want, but, yeah, it is our intent to offer this as an exhibit.

JUDGE SUMMERHAYS: Well, let's do it now.

MR. BODAMER: Okay.

[279] JUDGE STEWART: Yeah. It not only changes it – even though it's going to come in, you still need for the record that you lay the foundation. I mean, you touch first, second, and third, you know, so at least the record is clear that he knows something about the piece, where it came from and so on. It doesn't take a

whole lot of questions to do that. That just keeps it sequential. You know what I'm saying?

MR. BODAMER: Yes, sir, I do.

JUDGE SUMMERHAYS: That helps.

Q. (BY MR. BODAMER) Can you tell us what Map 14 from your report, Exhibit 15, for purposes of this hearing –

A. It's a form of a heat map. Heat, H-E-A-T. What it does is it demonstrates concentrations –

Q. Excuse me, to interrupt you, but before you do that. Did you prepare this map?

A. Yes.

Q. And again, tell us what it does.

A. It shows a concentration of the African-American voting age population across the state and based on the 2020 census.

MR. BODAMER: Your Honor, I would move for the admission of Exhibit 14 – excuse me – Exhibit 15.

JUDGE SUMMERHAYS: Any objection to 15?

MR. NAIFEH: No objection, Your Honors. I just [280] want to be clear what exhibit number we're talking about because I think they've already admitted an exhibit with the number 15, although I may be wrong.

MR. GREIM: We have not admitted an Exhibit 15. Our original 1 through 17 became joint exhibits, so that opened up all those numbers and there will be a new list that are going to replace those.

JUDGE SUMMERHAYS: Very good. So this is 15 that you are offering?

MR. BODAMER: That's my understanding.

JUDGE SUMMERHAYS: There is no objection to that?

MR. NAIFEH: No objection.

MR. GORDON: No objection from the state, Your Honor.

JUDGE JOSEPH: Ms. LaCombe, are you tracking the –

MS. LACOMBE: Yes, sir.

JUDGE SUMMERHAYS: Lisa was on top of it. It's admitted.

MR. BODAMER: Thank you, Your Honor.

Q. (BY MR. BODAMER) So again, you started to get into this. But I'm seeing hot spots or whatever on the map. Can you explain to the Court again what this map reflects.

A. Yes. It ranges on a high end of red being a very [281] high concentration of African-American voting age population to, into blue and the shades of purple. Purple representing the lower end of the concentration.

What's useful about using this type of analysis is it shows a concentration of a – actually here it shows a concentration of African-American voting age population across the state. You'll see that in Orleans Parish, New Orleans area, it's – it's very dense. It goes into red, to yellow, to blues. And then the next largest area of concentration is the East Baton Rouge area, which is indicated by the light to medium blue colors. After that, it gets somewhat dispersed across the state until you get to the next largest concentration, which is up in Caddo Parish, or in the Shreveport area. And that's indicated by the light to darker blues.

Q. Could you create a second majority-minority district without conducting those areas of concentration of Orleans up to Baton Rouge?

MR. NAIFEH: Objection. There is no foundation for him to know if it's possible.

MR. BODAMER: I'm sorry?

MR. NAIFEH: There's no foundation for Mr. Hefner to know if it's possible to draw a majority-minority district without connecting those areas.

JUDGE SUMMERHAYS: Counsel, do you want to [282] reformulate your question and lay a foundation?

MR. BODAMER: Sure.

JUDGE SUMMERHAYS: All right. Sustained.

Q. (BY MR. BODAMER) Have you attempted to form or create a second – a map that would include two majority-minority districts?

MR. NAIFEH: Objection. He hasn't laid a foundation that he has attempted to draw any such map.

JUDGE SUMMERHAYS: I think he is trying to lay a foundation.

MR. BODAMER: That's what I asked him.

MR. NAIFEH: He's trying to lay the foundation but there was no opinion, so it's beyond the scope of the opinions that were disclosed in the Rule 26(a)(2) disclosures. The report included no maps that Mr. Hefner drew.

JUDGE SUMMERHAYS: I think we've covered this. I think we addressed the ability to form a second majority-minority district. Unless my colleagues dissent, I am going to overrule the objection.

THE WITNESS: As part of my review, I always like to, for my own edification, I like to see what's possible because I need to let my clients know there are some issues that may be possible. I did try to create a second majority-minority district and follow traditional [283] redistricting criteria, and I was unable to do so.

There were different ways of trying to connect those areas of concentration, but in doing so, it violated at least one, or if not more of the traditional redistricting criteria and therefore I was unable to come up with one that had a second majority-minority district.

MR. BODAMER: We've looked at Exhibit 15. Can we now pull up Exhibit 16.

Q. (BY MR. BODAMER) Can you tell us what Exhibit 16 is?

A. Yes. I'm sorry. Yes. This is Map 15 from my report. This takes that heat map and it overlays the Senate Bill 8 districts on the – over that heat map to show where those concentrations lie within the Senate Bill 8 plan.

From a demographer standpoint, it was very clear to me what the mapmaker did in creating Senate Bill 8, in that once you took the minority population in District 2 from Orleans to East Baton Rouge, he then had to try and build that second district. And the way that they did that was to come across the state toward Caddo, toward the Shreveport area, where that next largest concentration is outside of East Baton Rouge. In doing so, particularly like in Lafayette Parish – that's a real good example – you'll notice that they dip down and they carved out the northeast part of Lafayette Parish. They picked up those [284] precincts that are predominantly African American and then it popped back up and took in St. Landry Parish where

Opelousas has a relatively large population of African-American populations. And then it narrowed itself down until it got to the African-American population concentration in Alexandria, which is there in the center of the Rapides Parish area. Carved right around that and then worked its way up, picked up Natchitoches, which is the population center for Natchitoches Parish or where most of the people live. It has a relatively large African-American population. And then it picked up Mansfield, which has a large population in DeSoto Parish and then went further north. Went around Stonewall in the north part of DeSoto. That's where it turns in there just as it comes into Caddo, and it picks up that bright blue spot up in Caddo Parish, which is where that concentration of African-American populations they were trying to pick up.

So they tried to connect the two largest populations between East Baton Rouge and Caddo with the African-American voting age population. And in doing so, they tried to pick up as much African-American population as possible without picking up too much total population, because they needed room in the total population in order to be able to get there so they didn't exceed a plus or [285] minus 5 percent deviation.

MR. BODAMER: Can we look at or pull Exhibit 17?

JUDGE SUMMERHAYS: Are you going to introduce

—

MR. BODAMER: I am.

JUDGE SUMMERHAYS: But after 17?

MR. BODAMER: Yeah, that was my plan.

JUDGE SUMMERHAYS: You may proceed.

MR. BODAMER: And again, this was Map 16 in his report, but it's marked as Exhibit 17 for purpose of this trial.

Q. (BY MR. BODAMER) What are we looking at here with Exhibit 17?

A. This is the Map 16 from my report. It's another way of analyzing the distribution and concentration of the population. Each one of those dots represents 100 voting age population people from the 2020 census. The white dots represent white voting age population. The red dots represent black or African-American voting age population. And the green dots represent those of all the other races combined. So this shows the distribution of the voting age population throughout the state and it overlays the Senate Bill 8 plan on there, because, from a demographer standpoint, it's very demonstrative to me to see how the concentration of red dots fell within particularly CD-6, which was the second majority-minority district and how [286] the sparse population in those populations – in those parishes between those concentrations allowed them to take in the whole parish but not affect the total population much on that district.

So you'll see a lot of those red clusters that generally align with that heat map, but you'll also, with this, you'll be able to see that it encompasses sparsely populated parishes. But when it got to more concentrated, you'll see that district narrowing down to carve it out. One area is it's only like 1.3 miles that connect – the width, that connects different parts of the district. So it indicates to me that they are very careful on how they selected the populations.

MR. BODAMER: Your Honor, at this time I would offer into evidence Exhibits 15, 16, and 17.

JUDGE SUMMERHAYS: I think we've already admitted 15.

MR. BODAMER: I'm sorry. Thank you.

JUDGE SUMMERHAYS: 16 and 17.

MR. NAIFEH: No objection from the Robinson plaintiffs.

MR. BOWEN: No objection from the State.

JUDGE SUMMERHAYS: 16 and 17 are admitted.

MR. NAIFEH: I misspoke. We're Robinson intervenors, not the Robinson plaintiffs.

[287] JUDGE SUMMERHAYS: Very good. 16 and 17 are admitted.

Q. (BY MR. BODAMER) Look at Exhibit 18, please. Can you tell us, Mr. Hefner, what Exhibit 18 is.

A. Exhibit 18 –

Q. Map 21 of your earlier report?

A. Yes, Map 21 from my original report. This shows the Shreveport area in Caddo Parish. The colorations are the voting age population, the black voting age population by precinct. The black outline is the CD-6 district under Senate Bill 8, and this concentrates up in that Shreveport area. So we –

Q. Was this the very northern portion of CD-6?

A. Yes.

Q. And so what's this tell us?

A. If you take a look at the populations that have a high black voting age population, which is represented in red, that's 61 to 100 percent, and then the yellow, which is 50 to 60 percent, you'll see that this CD-6 boundaries, they follow – it follows the exact

perimeter that you needed in order to pull those precincts into CD-6 in order to get the high black voting age population.

Q. So this is the northwestern tip and then it extends all the way down to Baton Rouge?

A. Yes. This is the north – this would be the [288] northwest end of that long district. East Baton Rouge would be on the southeast end.

Q. So how far is it from East Baton Rouge to this northwest point?

A. About 251 miles.

Q. Is that consistent with traditional redistricting criteria?

A. No, it's not – it's not compact. If it was compact, it would be far less distance from one side of the district to the other.

MR. BODAMER: I apologize, sir, on the phone.

JUDGE SUMMERHAYS: Make sure all electronics are off. It disrupts the hearing, but also it can interfere with electronics.

MR. BODAMER: I understand. I warned everybody yesterday and then didn't mind my own –

JUDGE JOSEPH: We're used to it.

MR. BODAMER: Can we pull up Exhibit 19, which I believe is Table 5 from your report. I'm sorry, I didn't offer, I don't think, Exhibit 18 into evidence.

JUDGE SUMMERHAYS: You are offering Exhibit 18? Any objection?

MR. NAIFEH: No objection from the Robinson intervenors.

MR. BOWEN: No objection from the State.

[289] JUDGE SUMMERHAYS: It's admitted.

Q. (BY MR. BODAMER) Now, let's look at Exhibit 19.

What is Exhibit – this is Table 5 from your report. A lot of information, a lot of detail here. Can you explain to the Court what this indicates?

A. I take a look at the parish-level precincts and identified those that had a 40 percent or higher voting age population for blacks and I took a look at what they had parishwide and also which of those were assigned to CD-6. The area in particular interest to me was the area that's shaded in yellow. For example, if we look at Avoyelles Parish, in CD-6 they had, out of the total parish with 40 percent any part black voting age population, they had twelve precincts. Out of those twelve, eight were assigned to CD-6. Or 67 percent of the 40 percent or higher black voting age population were assigned to CD-6 in Avoyelles Parish.

Another example would be East Baton Rouge. Following that same methodology, there were 115 precincts that had a 40 percent or higher any part black voting age population. Of that 115 in that parish, 112 were assigned to CD-6. Or 97 percent of those that had a high black voting age population were carved into CD-6.

The area in the purple on the right just showed an indication of the total number of precincts that were in [290] each parish. And then the total that were assigned to CD-6 and then what that percentages were. But what was illustrative to me was that in the majority of these parishes, as indicated in the gold area on the table, the mapmaker was very deliberate

in picking up as many of those 40 percent or higher any part black voting age populations into CD-6 in order to help get those numbers up to a higher black VAP.

JUDGE SUMMERHAYS: Let me stop you there. Counsel.

MR. NAIFEH: I would like to move to strike the testimony about what the mapmaker deliberately did. He hasn't laid a foundation that he knows what the mapmaker deliberately did or what the mapmaker's state of mind was.

JUDGE SUMMERHAYS: Counsel?

Q. (BY MR. BODAMER) Can I just the question: What does this chart state or show to a demographer?

A. From a demographer standpoint, in my opinion, it shows that it was very carefully crafted to bring in as many black voting age population precincts into CD-6 as you could.

JUDGE SUMMERHAYS: I'm reading and you're objecting to the testimony that the mapmaker was very deliberate in picking up as many of those 40 percent or higher? Is that what your –

[291] MR. NAIFEH: That is exactly the question.

JUDGE SUMMERHAYS: You know, as long as we clarify that that is, from his point of vantage as a demographer, it doesn't seem to be going into the state of mind of the mapmaker. It seems to be his opinion based on reviewing the map. With that limitation, I am going to allow it. I am going to overrule the motion to strike.

MR. BODAMER: Which is why I asked that follow-up question. Yeah, no one is saying that he talked to the mapmaker here.

Q. (BY MR. BODAMER) You're basing your testimony on your review of what another mapmaker did based on redistricting criteria; is that right?

A. Yes. Based on my past work as a demographer doing redistricting plans.

MR. BODAMER: Oh, I'm sorry. Let me move for the admission of Exhibit 19, so I do that.

JUDGE SUMMERHAYS: 19, any objection?

MR. NAIFEH: No objection from the Robinson intervenors.

MR. BOWEN: No objection from the state.

JUDGE SUMMERHAYS: 19 is admitted.

Q. (BY MR. BODAMER) Mr. Fairfax I think is – has also issued a report. You've reviewed that report and you've issued a rebuttal report, correct?

[292] A. Correct.

Q. Do you recall that Mr. Fairfax analyzed the distribution of black voters at the parish level? How did you analyze the distribution of black voters?

A. As far as my opinion of using Mr. Fairfax's methodology?

Q. Yeah.

A. I did not find it very useful because it doesn't give you a complete picture on the – on where the black voting age population is located within a parish.

Q. Is that why you used the dot density maps and the heat maps?

A. Yes. If you use Mr. Fairfax's approach, what you're looking at is just on a parish level, you're looking at the percentage of the black voting age population as a percentage of the total voting age population. You can have a very – you can have a parish with a very low population and it would show up red if you had the majority of those were black voting age population, but numerically it would be very low. Percentage-wise it would like impressive. But when you're drawing a plan, you've got to go for numbers. And so it's not a matter of what that ratio is or that percentage is in a parish; it's where it's located in the parish that you have to look at. And that's one reason if you lay those heat maps on, you [293] can see where they actually divided some parishes in order to carve where the black population was and didn't take the parish as a whole.

Q. Let me move on into traditional redistricting criteria. I think you mentioned earlier that you looked at communities of interest, compactness, and preservation of core districts; is that right?

A. Yes.

Q. Are there additional criteria that can be considered?

A. Yes. Incumbency can be considered as to not putting incumbents against each other. Preservation of political entities. It's similar to communities of interest but some specified as political entries, which would be parishes, precincts, municipalities, those that have political boundaries. Also, too, race plays a factor as well, because that's part of what the Voting Rights Act calls attention to for consideration. So those are some of the other criteria that we generally take a look at as we're drafting redistricting plans.

Q. Why did you focus on communities of interest, compactness, and preservation of core districts?

A. Well, contiguity is one of them. The district needs to be contiguous. It needs to all be in one piece. While this plan is contiguous, it's rather tenuous. As I testified a moment ago, in some parts that district is [294] only 1.3 miles across. Other areas it's 54 miles across. So it's using very small connectors to piece together some of the district. It's contiguous, but it's barely contiguous. But I didn't evaluate that as one of the criteria necessarily because it is contiguous. It meets that criteria.

I didn't look at the incumbency. I don't even have them located on my map. What I was looking at were the districts themselves and not the incumbency.

The political boundaries generally are rolled into the communities of interest. And then also you have your traditional core districts.

So the ones that I saw the issues with were the ones that I evaluated with, which was compactness, core districts, and communities of interest.

Q. Maybe you addressed this earlier, but why are communities of interest an important criterion or consideration?

A. From a representation standpoint, communities of interest are generally, at whatever level, are going to share some shared issues, concerns, history, culture, things that may drive with their legislative interests, maybe, with their representatives. From a representative standpoint, having a district that's a bit more homogenous in its needs, in its – and its population makes it a [295] little easier to be able to represent them. You don't have as much opposition, opposing

sides tugging at you as a representative. It's generally more homogeneous so you can generally represent them better.

Q. So how does SB8's redistricting map impact communities of interest? Can you give us some examples?

A. Well, my concern was the number of parishes that the plan split.

Q. Why does that matter?

A. Because when you start dividing up parishes, if you're looking at them as communities of interest, which they are, then when you start dividing them up between two or more congressional districts, then you tend to weaken that split part of the parish, their voice, the strength of their voice, with those that may be in that district or that may be whole parishes or more populated areas, so they don't have quite the voice of representation that a whole parish would, that can speak as one voice.

Q. Did the SB8 also split municipalities?

A. Yes, it split a number of municipalities.

Q. What's the problem with that?

A. The problem with that is a municipality is a community of interest. In fact, they have generally been formed from a community of interest as part of their history. Citizens in that area get together, they have [296] shared ideas, and they form a municipality.

It's the same thing but at a little bit different is that now a municipality, some of the residents having to go to one congressional member for help issues and the rest of them go to a different one, instead of speaking as a unified voice.

Q. You just talked about splitting of municipalities and parishes, but SB8 also brought together some disparate communities, did it not?

A. Yes, it did.

Q. What's that tell you?

A. That, when you bring in different communities of interest, you're bringing in perhaps maybe some conflicting ideas, issues, cultural approaches, histories. It makes it be more difficult for that district to speak as one voice to its representative and for its representative to be able to represent the interests of those people. East Baton Rouge, for example, may have different issues and ideas than, say, Shreveport does. They're both municipalities. They're both large municipalities, but also different parts of the State. They have different issues and different cultures and different backgrounds, and sometimes those can conflict. And when you have that conflict within a single congressional district, it's difficult for the people to [297] compete for the attention of their representative and also for their representative to serve their communities.

Q. Let's look at CD-6, the second majority-minority district, from a community of interest perspective.

What about culturally? You kind of hit on this I think. But culturally, is there a community of interest in CD-6?

A. You have a diversity of cultures in CD-6.

Q. Did it make sense from a demographer's perspective to remove Shreveport from traditional CD-4 and join it with Baton Rouge?

A. No.

Q. What about economically? Did you look at the economic aspect as a community of interest in this matter?

A. Yes.

MR. BODAMER: Can we look at Exhibit 20 which was your Map 10.

Q. (BY MR. BODAMER) Why did you include Exhibit 20 in your report? What's this tell us?

A. In looking at the SB8 plan, what I'm trying to find is: Was there any pattern or anything that might guide the creation of the districts in SB8. Since, particularly CD-6, but also the others, 4 and 5, somewhat of 3, those congressional districts, they are largely rural. Agriculture is generally going to be one of the main economic activities in those rural parishes. So I took a [298] look at what the gross domestic product was in Louisiana based on parish level.

Q. Did you find any homogeneous economic activity as a reason to combine Baton Rouge and Shreveport?

A. No.

Q. From an agricultural perspective, did the central part of CD-6 have more dependence on agriculture than either urban Shreveport or urban Baton Rouge?

A. Yes.

Q. What about education? Is there a common educational attainment justification for CD-6?

A. In the maps that I – the analysis that I ran, I did not see any.

Q. What about socioeconomically? Did you look at that and, if so, what factors did you look at?

A. We took a look at, of course, the gross domestic product on agriculture. We took a look at education, those that had attained a high school degree and didn't go any further, and then those that had a high school and some form of post-secondary education. Those were the main ones that I took a look at from socioeconomic.

I did provide some other analysis, though, on poverty rates, renters, those that – I'd have to probably go look back through my maps. But some of the – there were about two or three other factors that I looked that Mr. Fairfax [299] took a look at. Said, well, let me see what they look like statewide, because he kind of focused on the East Baton Rouge area.

And so I took a look at each of those from a statewide standpoint because I was more interested in seeing what patterns developed that might have guided the development of these SB8 districts.

Q. Did you see any patterns that might have guided the mapmaker from a community of interest perspective?

A. From demographer standpoint –

Q. Yes, sir.

A. – in my opinion, no.

MR. BODAMER: Your Honor, I would move for the admission of Exhibit 20.

JUDGE SUMMERHAYS: Any objection?

MR. NAIFEH: No objection from the Robinson intervenors.

MR. BOWEN: No objection from the State.

JUDGE SUMMERHAYS: Exhibit 20 is admitted.

Q. (BY MR. BODAMER) You mentioned just a second ago there about Mr. Fairfax. As you said, he specifically looked at socioeconomic criteria, preservation of municipalities, landmarks preserved. Again, how did those impact your opinion, if at all, in your analysis?

A. In his report he specifically was citing the fact [300] that the SB8 plan, particularly CD-6, was following municipal boundaries and wasn't splitting any there. And he named several of them and – Shenandoah and Central and as far as landmarks, the LSU campus area.

Yes, they were following the boundaries of Central, which is the second largest city in East Baton Rouge. But they were following it to exclude it from East Baton Rouge. And if you look at the demographics of the Central, it was probably in the 80 percentile regarding majority white voting age population. So you had a large total population, being the second largest city in East Baton Rouge, but you also had a very large population of white and not black voting age population. If you look at Shenandoah and some of the other census-designated places, they're not official municipalities but the Census Bureau recognizes them as a community of interest. Those also too had a high white population.

Q. What's that say to a demographer?

A. From a demographer's standpoint, it's doing two things. Because when we're drawing a plan, we're trying to accomplish two things. Here, we're trying to balance out the total population for the one-man, one-

vote, so we only have a certain number that we can work within. So we're not trying to overload that. But when you're looking at what the characteristics of the population [301] are – and here with CD-6 they're trying to get the African-American voting age population above 50 percent, so you have to be careful which population you put in as part of that total. So if you add in a large total population and you're not paying attention to the characteristics of it, then you're going to run out of total population before you get to that concentration in Caddo Parish in this particular case. So it was real important to keep your total population as low as you can on the East Baton Rouge end and try to keep it as favorable toward building that second majority-minority district so you had enough room with the total population to be able to work your way across the State and reach that total population of African-American voters in Caddo Parish in the Shreveport area. So they were trying to balance two things. So they were very careful on how they did that in East Baton Rouge.

Q. Let me move to compactness. We talked a little bit about this. You mentioned Polsby-Popper a minute ago. And yesterday there's been some testimony about this. But looking at compactness from a score perspective, you used Polsby-Popper; is that right?

A. Yes.

Q. And just briefly, because the Court's heard some of this, but what is Polsby-Popper's purpose and why did you [302] use that?

A. I used Polsby-Popper because I was looking at the configuration of the districts with SB8 and the rather awkward, strung out CD-6 district boundaries. Polsby-Popper is a measurement of the perimeter of a

district. And with that shape of 6 in particular, I wanted to see how that scored based on shape. So that's why I initially went with Polsby-Popper. I wanted to see how did the SB8 score when you're measuring the perimeter of the various districts.

Q. Well, how did CD-6 score under a Polsby-Popper analysis?

A. Very, very low.

Q. Was it the lowest of all six districts?

A. Yes.

Q. And that indicates what?

A. That it's not compact at all.

Q. Now, Mr. Fairfax criticized you for not using the Reock compactness score. How is Reock different than Polsby-Popper?

A. Reock measures the area of a district, not the perimeter but the area. Say a circle being ideal. That would be a 1. The area of a circle equals a 1 under Reock. If you look at the – if you scored it on area under Reock, SB8 didn't do any better. It had very low [303] scores under Reock as it did under Polsby-Popper. It offered no advantage doing a Reock analysis.

Q. And you looked at Reock as well as Polsby-Popper in your rebuttal report; is that right?

A. Yes.

MR. BODAMER: Can we pull up table 9 which is Exhibit 21?

Q. (BY MR. BODAMER) Is this from your report?

A. Yes.

Q. And does this – can you just point out here – I don't want to take much time on this. Does this basically substantiate the testimony that you just gave?

A. Yes. You can look at – if you want to look at what the plan scored on average, that would be the end at the plan mean. I prepared the one that – the plan HB1 that was used in the last congressional election, it came out to a .14. Remember that .1 – 1.0 is ideal. SB8 was a .11, and the illustrative plan was a .23. But in particular, SB8 under CD-6 had a .05 score on that.

Very, very low. Very strung out.

Q. So whether you look or use Polsby-Popper or Reock compactness scores, it looks to me that SB8 enacted plan 2024 is the lowest under either or both, correct?

A. Whether you use Polsby-Popper or Reock, it was the lowest scoring plan.

[304] MR. BODAMER: Can we pull up Joint Exhibit 14 again?

Your Honor, I would move for the admission – thank you – of Exhibit 21.

JUDGE SUMMERHAYS: And that's table 9. Any objection?

MR. NAIFEH: No objection from the Robinson intervenors.

MR. BOWEN: No objection from the State.

JUDGE SUMMERHAYS: Exhibit 21 is admitted.

Q. (BY MR. BODAMER) The bottom line on this, Mr. Hefner, is Senate Bill 8 Congressional District 6 reasonably compact?

A. No.

Q. Again, what does that indicate to a demographer?

A. The first question I would ask as a demographer is: Why would you be drawing a district like this in the first place that would be connecting two parts of the State 250 miles apart from each other? For what purpose would that be, that would drive such a configuration?

MR. BODAMER: Can we pull up Joint Exhibit 14 again?

Q. (BY MR. BODAMER) What's your reaction to the shape of CD-6?

A. Under this map here?

[305] Q. Yeah.

A. It's very – it's very elongated. It's rather contorted. Actually, to be quite honest with you, it's somewhat bizarre when you compare it to some of the other districts. It's a rather awkward and bizarre shape of a district. It's not compact whatsoever. And it splits a number of parishes as you can see with the parish boundary overlays.

Q. Is a picture worth a thousand words here?

A. From a demographer's standpoint, this tells me a lot.

Q. And what's it tell you?

A. It tells me that there was something that was driving the creation of this plan other than traditional redistricting criteria.

Q. The last item I want to ask you about is preservation of core districts. How does Senate Bill 8 impact core district?

A. It turns several of the districts on its head. 6 traditionally comes down around the St. Mary, Lafourche, Terrebonne area, south of the East Baton Rouge area. Now you turn around and you're running it across the state. And in doing so, you're coming up and almost bisecting CD-4. CD-5 doesn't have a whole lot of change, but it does have some effect on it as it comes into that little narrow gap where the north part of the state turns to come [306] in on the Felicianas at – Feliciana Parishes at Pointe Coupee. A very little narrow gap right there.

Because of the way 6 was drawn, it affected how 3 had to change from a traditional – its traditional area that it covered. It changed how District 2 was because it gave up some of its minority population to 6. But 5, 4, 3 and 6 are the ones that were changed the most from be it traditional configuration based on our previous congressional plans.

Q. Has the configuration of CD-6 ever reached this far into the northwest part of the state of Louisiana?

A. Not on any enacted congressional plan that I'm aware of.

Q. You said any enacted plan. Was there a previous proposed plan that was struck?

A. After the 1990 census was released, there was a congressional plan that was enacted by the Legislature that created a second majority-minority district that looked very, very close to what I see here in District 6 under the SB8 plan.

MR. BODAMER: Let's pull up Exhibit 22.

Q. (BY MR. BODAMER) Are you familiar with Exhibit 22?

A. Yes.

Q. What does this represent?

A. This is the post-1990 congressional plan that was [307] adopted by the Legislature in – around the 1992 time frame which created a second majority-minority district which was represented by the black district here on the map that is labeled as 4, District 4.

Q. What happened to this particular scheme?

A. I'm sorry?

Q. What happened to this particular scheme? You said it was passed by the Legislature.

A. As I was looking through some history on this as part of my review of the case, this was challenged in the Hays litigation and the Court found this to be a racial gerrymander and struck it down.

MR. BODAMER: Let's look at Exhibit 30, please.

Q. (BY MR. BODAMER) Can you tell us what Exhibit 30 is, map 23? Yeah, what is this?

A. Map 23 is from my report. What I wanted to look at was the comparison between the plan that was struck down in '94 in the Hays litigation and how did the Senate Bill 8 plan, particularly CD-6, how closely aligned was that to – between each other. And it was, from a demographer standpoint, it was rather illuminating. It was a very, very close parallel between those two districts.

Q. So, again, illuminating in what way?

A. In not only the geographical boundaries but also from the population boundary – from their population numbers. [308] The – I calculated the Hays plan, the 1994 plan, I calculated it with the 2020 census population so I could compare it to the SB8, CD-6 2020 population so I have an apples-to-apples comparison.

Between the Hays plan and the Senate Bill 8 Plan, CD-6 under the SB8 plan share 70 percent of the total population of the old Hays plan District 4 and 82 percent of the black population between the senate bill CD-6 and the District 4 under the Hays plan.

Q. What does that say to the demographer?

A. From a demographic standpoint, it's almost parallel, too parallel not only geographically but population-wise. Those two districts are very closely aligned with each other.

Q. So SB8 basically replicates, from a mapmaker's perspective, the plan that was stricken in the Hays case in '94; is that right?

A. Yes.

MR. BODAMER: Your Honor, I think that's all I have. But I would like to offer, if it isn't already in, Plaintiffs' Exhibit 14, which was the Plaintiffs' Illustrative Plan 1.

JUDGE SUMMERHAYS: Any objection?

MR. NAIFEH: No objection.

MR. BODAMER: I would like to also offer [309] Exhibit –

JUDGE SUMMERHAYS: State?

MR. BOWEN: No objection from the State, Your Honor.

JUDGE SUMMERHAYS: 14 is admitted.

MR. BODAMER: I'd also like to offer Exhibit 22, which is the 1994 scheme.

JUDGE SUMMERHAYS: Any objection?

MR. NAIFEH: No objection.

MR. BOWEN: No objection.

MR. BODAMER: And then I would like to offer Exhibit 30, which is the SB8 comparison between CD-6 and the 1994 plan.

MR. NAIFEH: No objection.

MR. BOWEN: No objection.

JUDGE SUMMERHAYS: It's admitted.

MR. BODAMER: That's all I have. Thank you.

JUDGE JOSEPH: Mr. Hefner, I have a couple of questions, then I think it's time for our morning break, follow-up questions to what you testified.

You mentioned the different cultures in CD-6 of SB8. Now, of course, the judges on this panel all live in Louisiana and we're all aware of the cultural differences in our very unique culturally and otherwise State. But for the record – I want to make a record – what are [310] those different cultural differences in SB8?

THE WITNESS: For that, I relied on my report on the Louisiana folklife criteria because that was done in collaboration with the State and the various universities around the State. And they established several areas, five areas, and identified some cultural and historical areas that those areas represented. I use that because that's probably about as quantitative a definition of those areas that I think would be useful here. And so I took a look at how each of those districts bisected those regional areas and offered some opinion as to whether I felt, from a demographer standpoint, whether they were appropriate or not. So that was the criteria that I used.

JUDGE JOSEPH: And just, your report is not into evidence, so that's why I am asking my question. Can you explain what the different cultures are that are encompassed in SB8, Congressional District 6?

THE WITNESS: Yeah, for the detail I really would like to be able to refer to my report. But generally District 1 is the –

JUDGE JOSEPH: Any objection to him having a copy of his report up there to refresh his recollection?

MR. NAIFEH: No objection.

MR. BOWEN: (Shakes head.)

THE WITNESS: And just for accuracy purposes.

[311] JUDGE JOSEPH: We're going to give you one. We're going to give you a copy.

Go ahead and give him a copy.

THE WITNESS: This would be in my rebuttal report for April 1st of 2024. The Louisiana Regional Folklife Program, five areas that they identify:

Region 1 is in like in the Quachita area, Monroe area, northeast corner of the state. And generally they define that as mostly British and African American and what they call upland and lowland south culture. Basically North Louisiana culture and South Louisiana culture.

Region 2 is this area here, in the Shreveport, Natchitoches area, and coming down the Sabine River. They kind of call it the "no-man strip" because that was historically an area in dispute between the French and the Spanish and the United States. So that area takes in the Red River from basically Shreveport all the way down to where it meets up with the Mississippi River at the Old River Lock's there by

Pointe Coupee Parish and Avoyelles, near that intersection. But a large part of that comes in, over and includes Shreveport, Natchitoches, and Alexandria, all the way over to the Sabine River. And then that comes down to Region 3, which is the Calcasieu Parish, Lake Charles area, and into the Acadiana area of Louisiana. That's the heart of the Cajun culture, a large

[312] French heritage in that area. A very unique culture. It historically has been, together and aligned, maybe some with St. Mary Parish and down into Lafourche area. That's where that general pathway for those people were.

Then you have Region 4, which is the Feliciana area, Baton Rouge, that area. That one is really a rather interesting area because it's a rather – it's a –

JUDGE JOSEPH: Florida parishes, right?

THE WITNESS: Florida parishes, yes. I mean, it was its own republic for a short period of time. So it had a lot of different cultures there: Italian, Hungarian, British, American, and Indian, as well as French and Spanish. So it's kind of melting pot in that area.

And then Region 5 is the New Orleans area. And that's a very complex one because that was the main port of entry for centuries. So they had a lot of French, African, Spanish, Caribbean influences into those areas. So each of those areas has its unique history and its culture as identified with the Louisiana Folklife.

JUDGE JOSEPH: CD-6 of SB8 pulls in how many of those areas into one district?

THE WITNESS: It splits three of them in CD-6. It splits – it splits part of 4, 3, and Region 2.

JUDGE JOSEPH: You mentioned a thing that might [313] be important in figuring out communities of

interest would be agriculture, rural versus urban, and agriculture based.

Also, we are aware of this here on this panel, but for the record, are there big differences between what type of crops are grown in North Louisiana versus South Louisiana?

THE WITNESS: From an agricultural stand -

JUDGE JOSEPH: Hold on one second.

(Off the record.)

JUDGE JOSEPH: Okay.

THE WITNESS: From an agricultural standpoint, it's really just what crop you're growing, whether you're growing pine trees or you're growing rice. They aggregate that all together as far as the activity goes. That's what the gross domestic product indicated that was generated by the Bureau of Economic Analysis.

But, generally speaking, as you're moving north above say where the 31st parallel is, which is basically the border with the Florida parishes, a lot of that becomes timber because that's higher ground. Trees grow better there. South of that and then along the River Delta, Mississippi River Delta, a lot of those are row crops because they're generally lower line, they're great for rice, sugar cane, those types of things. Not as productive for timber. So you will normally see timber [314] more in the north part of the state, western part of the state, grow crops more on the eastern and then on the southern end. As you get down toward the - from Baton Rouge, going down toward New Orleans along the river there, there's a lot of sugar cane production in that area, so - and you're getting more of that in South Louisiana now. Sugar cane's become a really big crop in that area. But generally north of

Evangeline Parish and that area, moving north, it's more timber.

JUDGE JOSEPH: Timber, soybeans, cotton, those type crops, correct?

THE WITNESS: Yes.

JUDGE JOSEPH: South Louisiana is more sugar cane crops?

THE WITNESS: (Nods head.)

JUDGE JOSEPH: Do each of these agricultural industries have their own lobbies in congress?

THE WITNESS: Yes, they do.

JUDGE JOSEPH: All right. You mentioned the split parishes and municipalities in CD-6 of SB8. Look at the map. It appears that the four biggest parishes of CD-6 are split. And that would be Caddo here, where we are now, Rapides, Lafayette, and East Baton Rouge. Correct?

THE WITNESS: That is correct.

[315] JUDGE JOSEPH: Are any of those parishes so big that they would have to be in two congressional districts from a population standpoint?

THE WITNESS: Not in my opinion. That they would have to be split?

JUDGE JOSEPH: In other words, are they so big that they would have to be in two districts –

THE WITNESS: That they would have to be in two districts?

JUDGE JOSEPH: – from a population standpoint?

THE WITNESS: Probably not. I don't see a reason why you would split them the way you split them.

JUDGE JOSEPH: Not for – I'm asking from population. In other words, is Caddo so big that it has to be in two congressional districts in order for it to maintain the one-man, one-vote principle?

THE WITNESS: I think Illustrative Plan 1 probably would answer that question in that you have that whole corner of the parish, including Caddo, in its entirety, is in that – is in that District 4. It's not having to be split there.

So, to answer your question, I don't believe that you would have to split Caddo for population purposes alone, just like you wouldn't have to split Lafayette Parish for population purposes alone or Rapides Parish for population [316] purposes. East Baton Rouge, if you threw that in with those others, you would probably have – you would probably hit your limit on your total population, ideal population. You would hit that long before you got to Caddo Parish if you included East Baton Rouge in one district because of its numerosity.

JUDGE JOSEPH: All right. We want to take a break. Do y'all have any other questions?

JUDGE SUMMERHAYS: I don't have any questions. We are going to go ahead and take our morning break. We'll come back in 15 minutes. Thank you.

(Recess.)

JUDGE SUMMERHAYS: We are going to go back on the record. Let me ask you, as far as cross, what we were planning on doing was just after 11:00 is going to about 12:30 and then breaking for lunch. I'd like to time it so we can get it in, as much or all of your cross. Are you going to need that much time, or do you think you can wrap it up by 12:30?

MR. NAIFEH: I am almost certain I can wrap it up by 12:30. I think we may even have some extra time. I don't plan to go an hour and a half. It may be long, but it's not going to be an hour and a half.

JUDGE SUMMERHAYS: Well then we'll play it by ear and we may break early for lunch. We'll go no later

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[339] MR. BOWEN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BOWEN:

Q. Mr. Hefner, I'm going to keep this short because I'm the least popular man in this courtroom standing between everybody and lunch.

In your earlier testimony, you said that SB8 is very, very close to the Hays map that was struck down; is that right?

A. Yes. From a demographer standpoint, yes.

Q. And I think I recall correctly from your expert report that part of the reason you say that is that the census population for Louisiana has remained fairly constant since the '90s; is that right?

A. Yes. The distribution changed a little bit, the overall population relatively.

Q. And by "distribution changed," do you mean that certain population areas have spread out to other parts of the State?

A. Actually become more integrated over time. You don't have the larger concentrations of African-American populations that you did several years back because society has gotten more integrated with a wide variety of programs: Fair Housing Act, Community

Reinvestment Act. Those types of things encourage society's integration. [340] So – and school desegregation cases, that drives a lot of that as well. So overall, the population hasn't changed a whole lot, but the degree of concentration of some African-American populations has.

Q. And in addition to those wonderful advancements in integration, there has also been some events such as Hurricane Katrina, correct?

A. Yes.

Q. And has that contributed to the spreading of black population say from the New Orleans area to Baton Rouge and other areas?

A. It's been an accelerant. Some of those changes have been taking place for – I know since the '90s, 1990 census, because that's when I've been kind of tracking some of that. But Katrina definitely was an accelerant.

Q. And it wasn't until after Hurricane Katrina that we saw the first majority-minority district that spanned from New Orleans to Baton Rouge; is that right?

A. My recollection of CD-2 is mostly taking in that black population along that river corridor between Baton Rouge and New Orleans. If you look at the old numbers for the CD-2, the African-American percentages have been dropping over each census. Each decennial census has been dropping in its concentration because of that distribution. I don't know if I'm answering your

* * *

[351] on the exhibit list.

JUDGE SUMMERHAYS: Counsel?

MR. GREIM: Yes, Your Honor, we don't have any objection to those either, to the amendments.

JUDGE SUMMERHAYS: They're admitted. Those are 31 through 46.

MR. NAIFEH: All right. And then we have Robinson Exhibits 114 to 124. Those are expert reports that were admitted into evidence in the Robinson litigation. And they have been – they have objected to them on hearsay, relevance and prejudice. We are not offering them for the truth of the matter, so I don't think the hearsay objection applies. We were offering them as information that was part of the court record that the Legislature had before them when they adopted SB8.

MR. GREIM: Well, Your Honor, we do object. I mean I think there has to be a foundation laid that the Legislature actually believed the VRA, you know, required these districts and that they relied on these. That they're in the court record is one thing. It might get us past judicial notice on the fact of these, but I don't think the contents all just come into this case.

JUDGE SUMMERHAYS: So your argument is that there is no foundation that they relied on these specific expert reports that saying to introduce?

[352] MR. GREIM: That's right. And I mean I take it that the contents are not going to come in as substantive evidence of what they're testifying to. But I don't think we even have the other ground either, so...

JUDGE SUMMERHAYS: Counsel?

MR. NAIFEH: There were – legislative leadership were intervenors in that case. They were aware – leadership were aware of these documents. I think – I don't have the transcript from yesterday in front of me, but I believe that some of the legislators who testified

here yesterday were aware of those documents – testified that they were aware of those documents in the court record –

JUDGE SUMMERHAYS: That they reviewed the expert reports?

JUDGE JOSEPH: No one testified to that.

JUDGE SUMMERHAYS: I don't recall that either.
MR. NAIFEH: Okay. Then we can potentially move these in through one of our other witnesses.

JUDGE SUMMERHAYS: I'll leave it open if you wish to, if you wish to try to – again, it would be admissible if you were to do that. Only first you would have to establish foundation that it was relied upon by those witnesses, that the Legislature relied upon it in connection with the passage of Senate Bill 8. But it [353] would only be admissible for the limited purpose that this was something that they reviewed and relied on.

Any dissents from –

JUDGE JOSEPH: No. That's correct.

JUDGE SUMMERHAYS: All right. You may proceed. At this point I am going to reserve –

JUDGE STEWART: The only question I have with respect to that, not putting cart before the horse because of the order going, but just sort of one allowed given the State's answer to the lawsuit and some other aspect that it's adverted to about the Robinson case. Just sort of a little curious as to whether this piece was something the State was going to be – you follow my – based on the answers in the State's answer, i.e., Robinson lawsuit, et cetera, et cetera, there are some other things coming out. I guess I am circling back to

where we were earlier about pieces of this coming in for one person and pieces for something else, and we're kind of doing it on the front end before anybody's testified.

So it's a little awkward trying to get a real grasp on where it fits in. You know what I'm saying? I mean, we're just starting this case and then we have got documents, they're not joint, we've got objections.

The other stuff they did, they were all agreed to.

So I am just wondering. But anyway, this is your [354] offer; it's not a joint with the State, correct?

MR. GORDON: Your Honor, I mean, we have slightly different take on some of these documents and I was going to raise that after Mr. Naifeh finished.

JUDGE STEWART: Okay. Got you. But I don't have any dissent with what the Court has said. I merely was trying to get clarity simply because looking at the answers filed, there's a lot in there in the State's answer about the Robinson case, et cetera, et cetera. And so given that, and there being other testimony, whether this – was this prepared, something the State was putting in? So we need all that foundation. That was just a clarification, not a suggestion about what should or shouldn't. But basically just leaving it open subject to foundation.

JUDGE SUMMERHAYS: Did the State want to make a statement or take a position at this point?

MR. GORDON: So I think the State's position – and we can refer to the State's exhibit list if you'd like. But we believe these – the separate list of what we have labeled as exhibits that are in reference to certain expert reports and the Robinson preliminary injunction decision, as well as the Fifth Circuit's decision

upholding that in part, are material to which the Court can take judicial notice of and should take judicial [355] notice of because it's not offered for its truth or really for any of the content or fact-finding therein, just for its mere existence.

JUDGE SUMMERHAYS: Counsel?

MR. GREIM: Sure. And they cited a case on judicial notice but that only gets us past one hurdle.

I think the problem is this. The State – just going to the evidence we've heard so far, the State – we've heard nobody from the State saying that we have a belief that the VRA requires it. Here is where it came from, these materials in this other case, but we reviewed them and we think that they made a pretty good case. Instead, testimony has been something different.

And so I don't think it can come in even for that limited purpose unless there is somebody who can say that. And we have – not to go too far now, but in discovery we asked the State for, you know, the purposes behind the bill, et cetera, et cetera, and the State said, well, that's something that the Legislature has. We don't have access to that. I don't think the State can take that position in discovery but then come in here and say, well, we offer this. It's something the Legislature considered. I mean, there has to be a person who can say that.

JUDGE SUMMERHAYS: Yeah. And again, I think this goes to foundation. I'm going to reserve, subject to [356] dissent from my colleagues, reserve ruling on the admissibility of those documents until a foundation has been laid. And that includes consideration of judicial notice, which is the State's alternative approach.

MR. GORDON: If I could be heard just one more moment, Your Honor –

JUDGE SUMMERHAYS: Yes.

MR. GORDON: – on this issue and then we can certainly take it up later. Is that the rules state that the Court must take judicial notice if it's properly offered. And I will refer to a case from the Fifth Circuit: That a court may take judicial of a document filed in another court, not for the truth of the matter as asserted in the other litigation, but rather to establish the fact that such litigation and related filings.

And that's merely what we wish to do here, Your Honor.

JUDGE JOSEPH: Is there an objection to just to – to admitting it for the purpose of saying it exists?

MR. GREIM: Well, the problem is, you know, saying it exists has to be relevant in this case.

JUDGE JOSEPH: Okay.

JUDGE SUMMERHAYS: It's not relevant without a foundation.

MR. GREIM: That's right. I mean, judicial [357] notice, that's the Hornbook law. No one's going to fight that you can take judicial notice of the records of another court or this court. That's not at issue. It's what Judge Joseph said, that basically there's a relevance objection and that's really foundational here.

JUDGE SUMMERHAYS: And again, I'll rule on the judicial notice as well as foundation once a foundation has been laid. You can reassert your request for judicial notice. You can reassert your request that the documents be admitted.

Unless there is dissent, I am going to reserve ruling on the objection until a foundation has been laid.

MR. GREIM: Your Honor –

JUDGE SUMMERHAYS: Yes, sir.

MR. GREIM: – if I could add one more thing, I would just say that in the Rule 26 disclosures in the discovery, no witness has been identified who can come in and actually do that thing, who has been proffered as someone who can do it. But I don't want to get ahead of myself. I just – I'll leave it there.

JUDGE SUMMERHAYS: Very good. So that's 31 through – that's 114 through 124. The Court will reserve ruling on those documents that you may try to lay a foundation. What else do you have?

MR. NAIFEH: All right. We have Robinson 125 [358] and 126, which are hearing transcripts from the Robinson preliminary injunction hearing. I gather the objection is going to be the same, although there is no hearsy objection to those for obvious reasons. There is a relevance objection.

JUDGE JOSEPH: There is no hearsay objection for what reason?

MR. NAIFEH: Well, I think because it's a court record. It's a –

JUDGE JOSEPH: The plaintiffs were in that case.

MR. NAIFEH: They were not in that case.

JUDGE JOSEPH: So that matters.

MR. NAIFEH: They didn't raise a hearsay objection.

JUDGE SUMMERHAYS: Counsel?

MR. GREIM: My notes show that we did raise a hearsay objection and there would be hearsay within hearsay as well. But unless I – my notes say that we've raised hearsay, relevance, and prejudice.

JUDGE STEWART: Yeah. I mean, I think the comfort level is reserving the ruling on it despite you've worked well, but, you know, with all trials obviously you're not agree on everything. So we're not pointing to that. Although we have the threshold on this. You fleshed out sort of where you're coming from and [359] you've alerted to that. You know, my preference would be: Whatever we can get started doing, turn to testimony and so on and so forth, that would do that and not bog down here on evidentiary stuff without anybody being prejudiced to your position. It may well be that you'll need to burn some midnight oil in terms of providing a basis for whatever your proposed offer is for us to do something different. Now that you've been alerted to it, weave it in. If you've got some case or cases that support what you want to do, you or somebody may have to burn some oil in terms of that so we're not just dealing with argument of counsel. We got the rule books up here, but this is a nuanced case and everybody realizes that. So just know that that's an issue there. We can proceed with some testimony. We get to the end of the day and that's an issue. Since we know we're going to be here tomorrow, you'll know what you got to do or whenever, we can get around to it. Then, you know, we can rule on it.

JUDGE SUMMERHAYS: We will reserve judgment on 125 to 126.

MR. NAIFEH: Shall I proceed or is it Your Honor's suggestion that we go ahead with witnesses and take that –

JUDGE STEWART: No. I was only suggesting if you continue down, you know, testimony, transcript, that [360] kind of thing. I don't know what else...

MR. NAIFEH: Well, we definitely got some other –

JUDGE JOSEPH: Let's go ahead and admit the ones that are going to be agreed to and then save argument for when a witness is on the testimony and the exhibits have been offered into evidence for those that just not agreed to.

JUDGE SUMMERHAYS: Because I think our concerns are going to be the same on all of the documents that are related to the Robinson Middle District case.

MR. NAIFEH: That's all I have for that category of documents, so...

JUDGE SUMMERHAYS: Okay.

MR. NAIFEH: Next I have 127 through 150, and 194 and 195. Those are bills and amendments containing congressional maps with two majority black districts that were introduced and considered in the 2022 First Extraordinary Session, which is when HB1 was adopted. That's the prior congressional map that SB8 replaced. The plaintiffs have objected to those on relevance and prejudice grounds.

Our position – well, shall I –

JUDGE SUMMERHAYS: You can finish. You can finish.

[361] MR. NAIFEH: Our position is one of the issues in this case is that whether it's possible to create a congressional map with two majority black districts that complies with traditional redistricting principles. There are numerous examples from the legislative record that are maps that contain two majority black

districts, and so our position is that those are relevant to that issue in the case.

JUDGE SUMMERHAYS: Counsel?

MR. GREIM: A couple of things, Your Honor. First of all, at this – at the liability phase, we’re asking whether Senate Bill 8 is a racial gerrymander. We’re not asking whether some other district exists that’s not Senate Bill 8 that would not have been a racial gerrymander. And so that might be relevant if there is a remedial phase, but that doesn’t seem relevant today.

The other problem is that this is a different legislature. In the 2022, that’s not the same legislature that enacted these districts. And we’ve already heard insinuations about, you know, Joint Rule 21 may not bind future legislatures.

So it’s just that’s 60 exhibits, like just 60 exhibits. We don’t know anything about how any of it’s going to be used. And it just seems like en masse it is not relevant, it’s a lot of evidence that is not really [362] targeted to what we’re here about today. And so we don’t think it’s – we think it’s cumulative and irrelevant.

JUDGE SUMMERHAYS: Let me ask you, Counsel: Is this going to be the subject of the testimony of any of the witnesses in your case?

MR. NAIFEH: Yes, Your Honor.

JUDGE JOSEPH: Then offer them at that time.

MR. NAIFEH: Okay.

JUDGE SUMMERHAYS: We’ll reserve ruling on the objection to 127 to – the admissibility of 127 to 150, and 194 and 195.

MR. NAIFEH: And then the remaining – well, not all of the remaining, but we have several more categories that are similar that are bills introduced in other sessions. And then the final category – and I think I have an issue with the numbers. Maybe I could raise those letter on.

JUDGE SUMMERHAYS: So are these all exhibits that are going to be the subject of testimony with witnesses?

MR. NAIFEH: I believe so, Your Honor.

JUDGE SUMMERHAYS: Then let's raise it with those witnesses so that we have some context so that we know that you're going to be able to lay a foundation and we can more readily judge relevancy at that point.

[363] MR. NAIFEH: Thank you, Your Honor.

JUDGE SUMMERHAYS: Okay. Are you prepared to call your first witness?

MR. HESSEL: Good afternoon, Your Honors. My name is Daniel Hessel. I represent the Robinson intervenors in the matter. And intervenors call Representative Mandie Landry.

JUDGE SUMMERHAYS: If you'll approach and be sworn in.

MR. GREIM: I'm sorry to interrupt, Your Honor It's Mr. Greim. But I'm informed that the witness was in the room during the discussion just now about what was going to be brought in through witnesses and the relevance of legislative drafts.

JUDGE SUMMERHAYS: I left it up to Counsel to instruct witnesses about the Rule. Why was that not followed?

MR. HESSEL: Inadvertent error, Your Honors. My apologies.

JUDGE JOSEPH: Well, the problem is, we're talking about – directly about evidence which may or may not be admissible based on what – this being one of the witness's testimony. That's a problem. That's why we have the Rule of Sequestration.

MR. HESSEL: I understand, Your Honor. It was [364] my error, of course. I thought it was about live witnesses. If I could confer with my co-counsel about this briefly, I'd appreciate it.

JUDGE SUMMERHAYS: Yes.

MR. HESSEL: Your Honor, we don't intend to move any of these exhibits in through Representative Landry, if that makes things better. And again, my apologies.

JUDGE SUMMERHAYS: What about any – even if you're going to move – not move them in with her, are you going to ask questions that would lay a foundation for those documents in her testimony?

MR. HESSEL: We will eliminate those questions, Your Honor.

JUDGE SUMMERHAYS: Okay. Counsel?

MR. GREIM: Well, that may resolve the issue, but I think if there is a question – we'll just have to listen to the questions and if we hear something we'll object.

JUDGE SUMMERHAYS: I mean, obviously if something comes up that you believe would prejudice you as a result of the violation of the Rule, then you can object timely.

MR. GREIM: Thank you, Your Honor.

JUDGE SUMMERHAYS: With that, we'll have the witness re-approach and we will swear you in.

[365] JUDGE JOSEPH: And, Counsel, if you would just reconfirm that no other fact witnesses for plaintiff intervenors or the State are present in the courtroom during this testimony.

JUDGE SUMMERHAYS: Counsel, you may proceed when ready.

REPRESENTATIVE MANDIE LANDRY,

having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. HESSEL:

Q. Good afternoon, Representative Landry. Thank you for joining us.

Please state your name, and spell your name for the benefit of the court reporter, please.

A. Mandie Landry. M-A-N-D-I-E, L-A-N-D-R-Y.

Q. Where do you live, Representative Landry?

A. New Orleans.

Q. What do you do for a living?

A. I am a lawyer and a state legislator.

Q. What district do you represent?

A. House District 91 in New Orleans.

Q. Do you belong to a political party?

A. Yes, I'm a Democrat.

[366] Q. When were you first elected to the State House?

A. I was elected in November 2019 and sworn in January of 2020.

Q. Have you faced reelection since then?

A. Yes. I was reelected in October and sworn in this January.

Q. Are you familiar with the case that was filed in 2022 challenging HB1?

A. Yes.

Q. What is your understanding of the nature of that case?

MR. TYLER: Objection, Your Honor. This is exactly what we were referring to with the evidence.

JUDGE SUMMERHAYS: Sustained.

Q. (BY MR. HESSEL) Representative, when were you sworn in for your second term?

A. January 8th.

Q. Of which year?

A. This year.

Q. What was the first legislative item of your second term?

A. We had a special session on redistricting about a week later.

Q. Are you familiar with Senate Bill 8?

A. Yes.

[367] Q. When did you first see Senate Bill 8?

A. Either the first day of session or the day before.

Q. Was that the day that Governor Landry addressed chambers?

A. The first day of session, yes, was the day he addressed chambers.

Q. Did you attend that address?

A. Yes.

Q. What did you understand the Governor's goals to be for the special session?

A. To make sure we passed a new congressional bill that would be accepted by the courts.

Q. Did you ever have an impression of why the Governor wanted to pass this bill?

A. A few reasons –

MR. TYLER: Objection. Foundation.

JUDGE SUMMERHAYS: Overruled.

Q. (BY MR. HESSEL) Did you form an impression of why the Governor had this call?

A. Yes. So after two years, it was time to put this to rest after so much litigation. There was fear among Republicans that if they didn't do this the Court –

MR. TYLER: Objection. Foundation.

JUDGE SUMMERHAYS: Overruled.

MR. TYLER: And hearsay. Sorry.

* * *

[379] data, and those realms.

Q. And did you submit a report in this case?

A. Yes, I did.

Q. How many reports did you submit?

A. I submitted one report.

MS. SANDASIVAN: Your Honors, pursuant to Federal Rule 702, I'd like to qualify or proffer Mr. Fairfax as an expert witness in redistricting and demography.

JUDGE SUMMERHAYS: Any voir dire?

MR. GREIM: Your Honor, we have no objection to his qualification in demography and demographics in the area of redistricting.

MR. BOWEN: Nothing from the State, Your Honor.

JUDGE SUMMERHAYS: You may proceed.

MS. SANDASIVAN: Thank you.

Q. (BY MR. SANDASIVAN) So let's turn to your role in this case, Mr. Fairfax. What were you asked to do in *Callais v. Landry* by the Robinson intervenor defendants?

A. I was asked to review the expert reports of Mr. Hefner, Dr. Voss, and Dr. Sadow in regard to congressional district plan SB8, review their analysis, come up with any opinions or conclusions, and develop a report.

Q. And were you asked to offer opinions on whether race [380] was the predominant motive of the Legislature in drawing the SB8 plan?

A. No, I was not.

Q. Let's turn to your methodology. How did you go about reviewing and offering opinions on the reports of Mr. Hefner and Dr. Voss?

A. I first began to obtain the appropriate data. I downloaded the plans that were on the legislative websites, including HB1, SB8, the Plan A3. I also included or accessed data that I had previously

created, for example, CVAP data, socioeconomic aspects or indicators that I used previously in court. And there was one plan that I forgot. That's why I hesitated. The sell points plan. I couldn't think of that. I downloaded that as well. I also was sent the plan from Mr. Hefner, the Illustrative Plan 1. I apologize for the brain fog.

MR. GORDON: I'm sorry to interpret, Your Honors. I notice that on the monitor there is a projection of the courtroom that has one of the – I believe of Your Honors' monitors on it. I don't believe it's readable at all, but I just wanted to bring that to the Court's attention in case that was a concern for anybody.

JUDGE SUMMERHAYS: I think the – which one is it?

* * *

[407] the actual size of population as well as its placement, correct?

A. That's correct.

Q. And I want to turn to the three parishes you mentioned – well, first of all, your map does not account for the actual size of the population, right?

A. That's correct.

Q. Nor does it account for where within those parishes people live, right?

A. That's correct.

Q. And so by looking at your map, we can't tell, for example, whether there is a huge population, a huge metropolitan area in the bottom of Tensas County that has 500,000 black residents, right?

JUDGE STEWART: Where you from, Mr. Greim?

JUDGE JOSEPH: You said Tensas County. It's Tensas Parish.

MR. GREIM: Tensas? Okay.

JUDGE JOSEPH: You got both of those words wrong.

MR. GREIM: That's like Arkansas. Listen, I'm Kansas City-ian.

JUDGE STEWART: You just outed yourself.

MR. GREIM: It's probably obvious already.

Q. (BY MR. GREIM) So, Mr. Fairfax – well, I think I got [408] an answer. The answer was yes, right?

A. Can you repeat the question just in case?

Q. Well, I think, I'll move on. I think the point is made.

Did you know what the size of the black population actually is in the three red counties up there in the northeast of the State?

A. No, not offhand, I don't.

Q. Now, we heard you testify that you have used traditional redistricting criteria to create maps with two majority-minority districts, right?

A. That is correct. Can I address the previous question?

Q. About Tensas County?

A. Yes, about the population in there. And what I wanted to follow up is to say that that's not the purpose of this map. The purpose of the map that I would add full response is to show that black population in Louisiana inside the parishes exists in many, many, many different parishes, not in just the

few locations as what's seen in the heat map. It gives a completely different prospective of where the black population exists. That's all.

Q. Right. But there simply may not be, in terms of raw numbers, very many blacks living in those three counties, correct?

[409] A. Correct. But when you're drawing a plan, you're looking – if anything, you're not going to create areas where there aren't any black population. I mean they are not going to create majority black districts in areas that don't have a significant amount of black population. And so what I am showing is that you can create different many places using many different parishes. That's all.

Q. Right. You're going to be trying to draw towards the red areas, right?

A. That's one option.

Q. And in fact, when you drew your Robinson maps, you consciously drew those districts at right around 50 percent because that's what you thought you needed for Gingles, right?

MS. SADASIVAN: Objection, Your Honor.

Mr. Fairfax hasn't testified about the maps he drew for the Robinson case or what he was intending to do or his map-drawing process in that litigation.

JUDGE SUMMERHAYS: Response?

MR. GREIM: Well the response is that we learned that one of these maps was a slight tweak on the Robinson map. And we heard the witness testify that you can come up with his maps using traditional redistricting criteria. I think we need to explore whether that's true.

JUDGE SUMMERHAYS: I'm going to overrule the [410] objection. You may proceed.

Q. (BY MR. GREIM) So how – I'll start again here, Mr. Fairfax. You consciously drew those districts at right around 50 percent because that's what you needed for Gingles, right?

A. No. No. That would be using a target. And so I didn't consciously look at 50 percent. I looked at it as a minimum threshold because that's what Gingles says, but that wasn't a target that I was looking at.

Q. Mr. Fairfax, do you recall testifying about this very topic when you presented your maps in court?

A. I believe so.

MR. GREIM: Could we pull up the Robinson hearing transcript, please.

Q. (BY MR. GREIM) And I'm presenting you, Mr. Fairfax, with your testimony presenting one of your maps before Judge Dick. And I am going to take you to page 217. If we could scroll to that. There we go. And the questioner here is Mr. Strach who was here. He was sitting behind me for much of the day in the courtroom. You can't see that. But Mr. Strach was questioning you.

And you'll see he asked you, line 9: At least we know that the CD-5 could have ended up at 50 percent – 50 percent to 60 percent DOJ black.

Your answer: I don't know if it would be that high. [411] Yeah, I don't know it would be that high.

Question: All right.

Then he goes on – and then you go on. You see at line 15: But certainly there is a possibility it could be

higher than what it is here if that's what you are getting to.

You follow me so far, Mr. Fairfax?

A. Yes.

Q. And you do recall giving testimony in that case, right?

A. Yes.

Q. Line 18, question: Okay. So you consciously drew the district right around 50 percent because that's what you needed for the first Gingles precondition, right?

Answer: That's right. It satisfied – it satisfied that first precondition.

I read that correctly, didn't I?

A. Yes, you did.

Q. Let me also –

MR. GREIM: Can we put up Plaintiffs' Exhibit -- I'm talking to the technician to work on putting up a new exhibit.

(Off the record.)

THE WITNESS: Let me respond to that.

MR. GREIM: I'm sorry, Doctor. I'm just

* * *

[413] anyone?

A. No, I did not.

Q. So before the break we were talking about your past drawing of maps and I'm going to ask you to take a look at what we've shown here on the screen. This is

Plaintiff's Exhibit 22. Do you recognize this as the map that was invalidated in the Hays case?

MS. SADASIVAN: Objection, Your Honors.

Mr. Fairfax hasn't testified at all about the Hays case or the Hays map. It's totally outside the scope of the direct.

JUDGE SUMMERHAYS: Counsel?

MR. GREIM: This is directly relevant to the point we were just covering, but I – I hate to say it like this, but I have to connect it up.

MS. SADASIVAN: If it's outside the scope of the direct, though, Your Honors, it – just because it's relevant –

JUDGE SUMMERHAYS: I'm going to allow it. The Court can control the order and I will allow this exploration. You may proceed.

Q. (BY MR. GREIM) And I'm sorry, Mr. Fairfax. Do you recognize this map?

A. It does appear to be the Hays map.

Q. And in drawing your own maps you would never draw a [414] map like this, correct?

A. I would not draw a map like that, that is correct. But can I address the last question? Or I won't be able to address when we left?

Q. Mr. Fairfax, we have a system, a back and forth system here and I can't let you just talk during my – you can answer my questions, but –

JUDGE SUMMERHAYS: I'll just have the – I have the expert – Mr. Fairfax, if you would just answer the question that's asked.

Counsel, you may proceed with your question.

Q. (BY MR. GREIM) Now, you testified about – well, I think we called it Robinson Illustrative Plan 2 and Map A3 which you had drawn in 21, right?

A. Correct.

Q. And I think you testified that the differences between those two maps and Senate Bill 8 seemed to be for political considerations. Right?

A. It could be.

Q. Well, you have no way of knowing, right?

A. That is correct. It could be. There is a possibility that it could be for political reasons.

Q. And you've done nothing to compare the racial performance of SB8, A3, the Robinson Illustrative Plan 2, and the other map that you considered in your report,

* * *

[417] on cross.

JUDGE SUMMERHAYS: Redirect?

MS. SADASIVAN: Your Honor, I would like to offer – Your Honors, I would like to offer Exhibits 117, 118 and 122. Those are the Fairfax reports in the Robinson case, into evidence. And then as well, I believe it is Robinson 125, which is the transcript of the preliminary injunction hearing in Robinson.

JUDGE SUMMERHAYS: Is this the one that he was – the witness –

MS. SADASIVAN: That Mr. Greim was just using and referring to.

JUDGE SUMMERHAYS: Counsel?

MR. GREIM: I was using that to impeach the witness's testimony in this case. The purpose for which these were going to be offered, foundation has not been laid. But the witness had inconsistent testimony in a prior proceeding and that's the only thing he was questioned on. I can't believe that all of his reports and an entire day of testimony now comes in for that reason.

JUDGE SUMMERHAYS: Yeah, I am disinclined subject to any discussion with my colleagues, to allow expert reports from a different proceeding into the case unless a foundation can be laid. And the foundation would [418] be if this was considered by the Legislature in formulating a plan. And that's what it was represented as. And I have not heard that testimony at this point.

As far as the transcript, to the extent this is impeachment with prior inconsistent statements, the prior inconsistent statement is read into the record, but it's not independently admitted as an exhibit. And unless the parties agree to admit it, but I hear that there is an objection.

MS. SADASIVAN: Your Honor, respectfully, the way that the transcript was offered, it wasn't an inconsistent statement, because he hadn't any offered any opinion yet and it was on traditional redistricting principles. Mr. Greim was exploring a new area of testimony that he demonstrated the relevance of.

JUDGE SUMMERHAYS: Yeah. I thought I heard him ask a question and a different answer that he highlighted under the transcript.

Counsel, am I incorrect?

MR. GREIM: Your Honor, I asked a question that was worded almost exactly like the question that the

witness was asked, and I believe I impeached him by showing a prior inconsistent statement with almost the exact same words.

JUDGE SUMMERHAYS: It appeared to be valid [419] impeachment to me. And again, unless counsel agrees, I do not admit the actual statement as independent – as an independent exhibit. It can be read into the record, but it's not – and it is in the record – independent basis.

Any disagreement? The objection is ->

JUDGE STEWART: No, I don't disagree about the transcript itself. I'm trying to recollect, because Mr. Greim had asked a question and felt, I guess, the answer was nonresponsive in terms of what was in the report then sought to put on the screen the paragraph and the two questions and say is this what you said? And my recollection the witness said affirmative to what was asked. Is that – wasn't that tracking? You asked him the question – whatever it is, paragraph number 7, it's just that portion is what you put on the screen?

MR. GREIM: Well, Your Honor, I didn't put anything on the screen. What I had done, the witness had testified that he drew other maps consistent with traditional redistricting principles. I then asked him if he consciously drew the maps to get to 50 percent BVAP. He said no. I then asked him – I guess, we did put it on the screen. We did.

JUDGE STEWART: Well, I know. I mean –

MR. GREIM: Yeah.

JUDGE STEWART: – we saw it here.

[420] MR. GREIM: I'm sorry. My short-term memory is fading, but – I'm sorry, Your Honor.

JUDGE JOSEPH: I guess regardless of whether it was successful impeachment or not, which we can debate about I think, the purpose of the questioning was for impeachment, not to admit it for the truth of the matter asserted, therefore, it's not admitted into evidence.

MR. GREIM: That's right. We are not moving to admit the other transcript. I attempted to impeach his statement that he did not consciously use race to draw those districts.

JUDGE STEWART: My only reticence – I don't disagree with that – is that if counsel on redirect or something is seeking – in other words, he read paragraph whatever it was, he needed to read the paragraph ahead of it and afterwards to show it in its completeness, that is proper redirect on an impeachment attempt. That's why I was saying we're talking about a segment. So on redirect, if she was seeking to do that, to show it in context as opposed to one answer, that's proper redirect on it. That's separate and apart from admitting the whole document into evidence. And I don't think Mr. Greim disagrees with that. Right?

MR. GREIM: I don't.

MS. SADASIVAN: Thank you, Your Honors. I will [421] do that. Would you –

JUDGE SUMMERHAYS: So you're going to point the witness to add the additional statements on redirect that were not highlighted up on the screen?

MS. SADASIVAN: Yes, Your Honor.

JUDGE SUMMERHAYS: And we're not going to – you're not going to introduce the entire exhibit?

MS. SADASIVAN: No.

JUDGE STEWART: To be clear, we're all in agreement you don't get the whole exhibit, so don't take anything I said as license for that. We're all in agreement that part doesn't come in. Just clarification of what Mr. Greim said he was doing in terms of that impeachment if it were the case on the paragraph. That doesn't mean that's a green light and you have to do that. We have the testimony in the record, you know, and that's the best evidence what he is saying.

MS. SADASIVAN: Thank you, Your Honors. Do you mind if just I consult with my –

JUDGE SUMMERHAYS: Yes. Absolutely.

MS. SADASIVAN: I apologize, Your Honors. But with respect to the expert reports of Mr. Fairfax, he was asked about his map drawing process in that case and whether or not he was able to draw two majority black districts that complied with traditional redistricting [422] principles, which Mr. Greim – because he was asking about it, clearly thinks is relevant. So we're not offering it or wouldn't ask for it to be admitted for the purposes of, you know, its relevance to the Legislature. But clearly if the ability to create two majority black districts in compliance with traditional redistricting principles is relevant in Louisiana and his ability to do so, then those reports explaining his map-drawing process – and Mr. Greim asked extensively about his map-drawing process – then those two – that's why we were seeking to offer them into evidence.

JUDGE SUMMERHAYS: I don't recall getting into the contents of his reports. These were questions that were asked of the witness. Again, to say that he testified on those subject matters that may overlap with the expert reports to say that that allows hearsay

expert reports from a different proceeding, I have a problem with, unless –

JUDGE JOSEPH: No. Yeah.

JUDGE SUMMERHAYS: – my colleagues have a different view, I –

JUDGE JOSEPH: We don't even let expert reports in for this case, and now you're asking us to put expert report from a different case, so no.

JUDGE SUMMERHAYS: I'm going to sustain the [423] objection and I'm not going to reconsider it.

MS. SADASIVAN: Thank you for your indulging me. Apologies, Your Honors.

JUDGE SUMMERHAYS: Thank you.

MS. SADASIVAN: So if we can pull up the transcript from the preliminary injunction hearing which Mr. Greim just showed at 235. And actually while you're pulling that up –

REDIRECT EXAMINATION

BY MS. SADASIVAN:

Q. Mr. Fairfax, what did you want to say when you asked if you could respond further about the question about your map-drawing process?

MR. GREIM: Objection. I'm afraid there – I think that question sort of calls for a narrative. I think if there is a way to develop it, fine, but I don't think he can just say – answer what you wanted to say is a question.

JUDGE SUMMERHAYS: He is an expert. You know, again, I am going to allow it. And if it gets out of control, at that point the Court will step in. But I'm going to allow the question. The objection is overruled.

Q. (BY MS. SADASIVAN) Sorry, Mr. Fairfax. Again, what did you want to say when you were asking if you could respond further to Mr. Greim's question about the BVAP in

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[425] demographics. I am familiar now with being able to draw a plan. The plan is going to be most likely in the 50's, in the low 50's.

Q. Thank you, Mr. Fairfax. And on the screen I have more of your testimony from the preliminary injunction hearing. Do you remember being asked when you were talking about Congressional District 5 earlier and that was the subjective of Mr. Greim's question, about the number or the black voting age population fluctuating, you weren't trying to achieve any particular racial target. And what was your answer?

A. The answer was no. No, I am just trying to satisfy that first precondition. And that's, in essence, what I was saying. I knew I had to reach 50 percent in order to satisfy it. In the previous questions, as I was mentioning, I know from being familiar with the state, I am not going to get to 60 percent. That's just the reality. And so, most likely, if I can satisfy it, it's going to be around 50-ish, the low 50's.

Q. Thank you, Mr. Fairfax.

MS. SADASIVAN: That's all I have, Your Honors.

JUDGE SUMMERHAYS: Counsel?

MR. GORDON: Your Honor, I think I need to raise one additional point here and this isn't to be overly pedantic. And I'm certainly not asking for a [426] reconsideration of the ruling on the admissibility of the Fairfax reports. I am circling back to our request

that judicial notice be taken of the Robinson proceeding as well as – and in this case the Fairfax reports. I don't think you can reasonably question, now that plaintiffs has asked questions about Fairfax's reports and about the proceedings in the Middle District, that the Court not take judicial notice of those.

JUDGE SUMMERHAYS: I am just not sure what you're requesting judicial notice of. The fact of the reports? Because even the standard that you articulated would say the Court doesn't take judicial notice of disputed facts. And whatever is in those reports is highly disputed. I would imagine it's one side of a proceeding. And if the argument is that judicial notice – that those reports were filed, it has to be relevant. What's the relevance of that?

MR. GORDON: That there existed certain -- certain facts, if you want to call them, or testimony, that there existed something in the world that the State had in its possession that said VRA districts may have been required. Not that that is in fact true, but that the mere existence of the report is all we're seeking the Court's acknowledgment of and the mere existence of the proceeding in the Middle District.

[427] JUDGE SUMMERHAYS: I don't think you have laid a foundation or a predicate for the relevancy of that.

Judicial notice, you correctly stated the standard, and it's a – it is required – it's a "shall," the Court shall take judicial notice. But that doesn't overrule all the rules of evidence as far as relevancy. And I don't see the relevance, and I am going to overrule the – I'm going to overrule your request to take judicial notice,

unless my colleagues have a different view on that with respect to the expert reports.

MR. GORDON: And with respect to the existence of the proceeding in the Middle District, I believe you heard significant testimony as to the fact that the Legislature thought that the Middle District wasn't somehow requiring them to draw a second majority-minority district.

JUDGE SUMMERHAYS: But why – if we have that in the record already, why do we need to – why does the Court need to take independent judicial notice of that proceeding?

MR. GORDON: And I guess that sort of begs the question why. Perhaps I'm being overly pedantic about this, Your Honor, and I – that's all I was seeking to clarify.

JUDGE JOSEPH: It's public record. It's public [428] record –

MR. GORDON: Yes.

JUDGE JOSEPH: – in the case. The existence of that case, that ongoing litigation is public record.

MR. GORDON: That's correct, Your Honor, and that's all. We're just seeking acknowledgement of it.

JUDGE SUMMERHAYS: And I'm sure counsel will be able to cite it in their legal memoranda that they're going to be submitting after the close of trial. So I am going to deny the motion or the request that the Court take judicial notice.

JUDGE STEWART: And I come back to the point I raised earlier, because we went out of – we went out of convention. The State is an intervenor of right. These intervenors came in permissibly. So ordinarily I might

expect the State to have been after the plaintiffs. And that's why I heard this morning, earlier when this came up, about the import or not of those other proceedings.

But the point is the State is yet to put its case on. So, I mean, you know, we're not even there. So I agree with the ruling. I am saying you're raising it kind of hooked on to the intervenors who we're dealing with. We haven't even gotten to the point of whatever the State chooses to do or not do.

So in addition, you're asking us to do something; [429] we're not even at your case yet. Whatever the state – the answer to us, was: We'll observe what transpires and determine our flow and so I guess we're about to get to that point, maybe, or at some point.

MR. GORDON: Understood, Your Honors. Thank you.

JUDGE SUMMERHAYS: Thank you.

JUDGE JOSEPH: If I can beg the indulgence of my colleagues for a minute.

I am curious. Mr. Fairfax, what – and I understand from the questions and your answers that you were involved in this Robinson litigation. Other than that, what experience do you have in Louisiana specifically with respect to being able to evaluate communities of interest? Have you lived here? Have you done a lot of work here? What qualifies you to be able to determine communities of interest in the state of Louisiana?

THE WITNESS: I have assisted some organizations, the Power Coalition during that redistricting process that helped them work with different organizations. Of course, I looked at the socioeconomic aspects of the state. In that Robinson case I did look at the regions

that existed and their multiple regions that exist and cultural regions and geographic regions that exist in the state. And so I tried to familiarize myself [430] adequately during the Robinson case. Of course, I don't live here, but many times map-drawers don't live in the state of the jurisdiction that they draw in developing plans for.

JUDGE JOSEPH: So outside the Robinson matter, you haven't done any work here on districting?

THE WITNESS: Once again, I've helped and assisted with the Power Coalition and some of their jurisdictions that they were helping and assisting in redistricting. So I have worked looking at plans in East Baton Rouge, I believe. Probably a couple of others that actually escape my mind right at this particular time. But there were – there were other redistricting plans, smaller jurisdictions that I've worked and helped with.

JUDGE JOSEPH: All right. Thank you, Mr. Fairfax.

Any follow-up questions based on that question from counsel?

MR. GREIM: Your Honor, I have nothing on that question but I wanted to make a record on the very end of the redirect about the text that was shown up there. I want to make sure we don't miss that.

JUDGE JOSEPH: What?

MR. GREIM: Well, we didn't get a page number.

* * *

[500] CERTIFICATE OF OFFICIAL REPORTER

I, DIANA CAVENAH, RPR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Louisiana, DO HEREBY

CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Diana Cavenah
DIANA CAVENAH, RPR
Federal Official Court Reporter

[501] UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action

No. 3:24-cv-00122

PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL,
ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR,
JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA
WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES,
ROLFE MCCOLLISTER,

Plaintiffs,

vs.

NANCY LANDRY, in her official capacity as
Secretary of State,

Defendant.

PRELIMINARY INJUNCTION HEARING
CONSOLIDATED WITH BENCH TRIAL
OFFICIAL TRANSCRIPT OF
PROCEEDINGS, VOLUME III
BEFORE THE HONORABLE
CIRCUIT JUDGE CARL E. STEWART
THE HONORABLE
DISTRICT JUDGE DAVID C. JOSEPH
AND THE HONORABLE
DISTRICT JUDGE ROBERT R. SUMMERHAYS
APRIL 10, 2024
SHREVEPORT, LOUISIANA

DIANA CAVENAH, RPR
FEDERAL OFFICIAL COURT REPORTER
300 FANNIN STREET, SUITE 4203
SHREVEPORT, LOUISIANA 71101
(318) 934-4754

* * *

[541] experts on this, I got a -- I gained a level of comfort with SB8 that -- that it was more for me about complying with the order of the Court and adopting a map that would be compliant.

Q. And Senate Bill 8 had a higher percentage of black voting age population than Senate Bill 4 did, didn't it?

A. I believe it did have a slight higher percentage, yeah. I don't disagree with that.

Q. No more questions.

A. Yes, sir.

JUDGE JOSEPH: Any redirect?

MS. McTOOTLE: Nothing, Your Honor.

JUDGE JOSEPH: Thank you for your testimony, Senator. You may be released.

THE WITNESS: Thank you.

JUDGE JOSEPH: Secretary of State, no questions?

MR. STRACH: None from us, Your Honor.

JUDGE JOSEPH: Thank you. I'll just rely on you to tell me if you do, okay?

MR. STRACH: I will, Your Honor.

MS. WENGER: Good morning, Your Honors.

JUDGE JOSEPH: Good morning.

MS. WENGER: Victoria Wenger with the Legal Defense Fund on behalf of the Robinson intervenors. We would like to call Davante Lewis.

* * *

[585] (Recess.)

CROSS-EXAMINATION

BY MR. TYLER:

Q. Mr. Lewis, this is a map of the Louisiana PCS districts?

A. Correct.

Q. And District 6 in SB8 crosses through how many different PSC districts?

A. It would cross through -- it would cross through four in this current map, yes.

Q. So four different PSC districts out of how many total?

A. Five.

MR. TYLER: No more questions.

JUDGE JOSEPH: Any redirect?

MS. WENGER: No redirect.

JUDGE JOSEPH: State? Nothing?

MR. BOWEN: Nothing from the State, Your Honor.

JUDGE JOSEPH: Secretary?

MR. STRACH: None, Your Honor.

JUDGE JOSEPH: All right. Commissioner, you are free to go. Thank you for your testimony.

MR. NAIFEH: Your Honors, the Robinson intervenors have no further witnesses.

JUDGE JOSEPH: And all the exhibits I think have [586] been taken care of, right?

MR. NAIFEH: Yes, Your Honor.

JUDGE JOSEPH: Okay. Thank you, Mr. Naifeh.

MR. GORDON: Your Honor, we don't have any witnesses. We do have about 10 minutes of our video excerpts we would like to play for the Court now before the defense closes its case.

JUDGE JOSEPH: Okay. And this has been admitted previously?

MR. GORDON: This has been admitted. These are from Joint Exhibits 19 and then 18.

JUDGE JOSEPH: Okay. Good. Just for the record we are playing Joint Exhibits 18 and 19 or at least portions thereof right now.

MR. GORDON: Yes, Your Honor. Do we have our computer turned on?

THE REPORTER: Are we off the record?

JUDGE JOSEPH: Is it all Joint 18 and 19 or not?

MR. GORDON: It is not all Joint 18 and 19. It's our excerpts that were not played by the plaintiffs already, because some of our excerpts are also there.

JUDGE JOSEPH: Okay. Well, then we better have it on the record.

(The following excerpts played:)

SPEAKER: The U.S. Supreme Court can (audio [587] interference) or not taken our case. They took our -- they stayed our case last summer, while the Alabama

case went forward and was litigated. They said you just wait. They thought we had made a good case for a stay and so they paused our case while they decided that one.

But they did something -- and this is kind of a term of art, but I mean they granted cert in advance of judgment. That means they actually took our case and then after they decided the Merrill case, the Alabama case, they just vacated their own grant and sent it back to us.

So in a way they took our case and then they vacated their own decision to take our case and they sent it back down to the Fifth Circuit and to Judge Dick. And so it's back in the hands of the district court judge who is supervised by the Fifth Circuit Court of Appeals.

And so there has been some litigation between August and really through the summer since the *Merrill* case came out all the way through the time that the opinion was issued in November, I think, from the Fifth Circuit where a panel of the Fifth Circuit said you need to go draw a map by February 15th. So they actually suggested we should have done this before -- before we legally really or -- I think it was practically possible to even get it done.

But, you know, here you are. I think the Governor [588] heeded that call, that demand. I mean, we've had it reviewed by a number of judges. They have had nothing to say about our arguments. It's been radio silence.

And so the only decision that remains in front of us right now is Judge Dick's and so Judge Dick has set a timeline for us to have a trial. They did say we get to have a trial. But we don't get to have that trial until after you go through this exercise and, you know, she

will do it for you. The job of (audio interference) it's not mine and I -- what I believed have been a defensible map and if you draw a new map, I will defend that map. Judge Dick has put us in a position and the Fifth Circuit, the panel that reviewed that decision, and the whole court, when I asked them to go en banc, by declining to go on en banc, have put us in a position pus of where we are today where we need to draw a map. So I'm here to tell -- I'm not here to you to tell don't draw a map. I mean, I think we do have to draw a map and I will defend that map. We (audio interference) a fact-finding mission. That's what's always happens and made fact-findings regarding the map. She issued an injunction. That injunction is not currently in effect for reasons that I can explain to you, but I think the bottom line is it is not currently in effect because the deadlines for the election that it enjoined are over.

[589] The Courts, never the less, have told us to draw a new map. And they have indicated that we have a deadline to do that or Judge Dick will draw the map for us. So you have an opportunity now to go back and draw the map again and I think that it is not an easy task because the United States Supreme Court is not made it an easy task. They have given you some directives that seem to be -- to not give you a lot of clear lines for doing your job. I apologize on their behalf, but, you know, we tried. I mine I am defending that map, and so you won't hear me say that I believe that that map violated the redistricting criteria. I am defend --

GOVERNOR LANDRY: It is time to stop averting the issue and confront it head-on. We are here today because the federal courts have ordered us to perform our job. Our job which is not finished. Our job that are

own laws direct us to complete and our job that our individuals promise we would perform.

To that end, I ask you to join me in adopting the redistricting maps that are proposed. These maps will satisfy the Court and ensure that the congressional districts of our state are made right here in this legislature and not by some heavy-handed federal judge. We do not need a federal judge to do for us what the people of Louisiana have elected you to do for them. [590] You are the voice of the people and it is time that you use that voice. The people have sent us here to solve problems, not exacerbate them. To heal divisions, not to widen them. To be fair and to be reasonable. The people of this state expect us to operate government officially and to act within the compliance of the laws of our nation and of our courts even when we disagree with both of them. And let me say this, I know that many of you in this Legislature have worked hard and endured the -- and tried your very best to get this right. As Attorney General, I did everything I could to dispose of this litigation. I defended the redistricting plan adopted by this body as the will of the people. We sought a stay in the Fifth Circuit. We successfully stayed the case at the United States Supreme Court for more than a year allowing the 2022 elections to proceed.

Last October we filed for a writ of mandamus which was granted in the Fifth Circuit which would again allow us one more chance to take care of our business. However, when the Fifth Circuit panel ruled against us later in the fall we filed for an en banc hearing which they denied. We have exhausted all legal remedies and we have labored with this issue for far too long. I recognize the difficulty of getting 144 people to agree on anything. My wife and I don't agree on

everything. She has kept me [591] for 21 years. But I sincerely commend you for the work you have done so far. But now, once and for all, I think it's time that we put this to bed. Let us make the necessary adjustments to heed the instructions of the Court, take the pen out of the hand of a nonelected judge and place it in your hands. In the hands of the people. It's really that simple. I would beg you, help me make this a reality in this special session for this special purpose on this special date.

MR. GORDON: That concludes the presentation, Your Honor. The State rests.

JUDGE JOSEPH: State rests. Okay. Thank you, Counsel.

MR. STRACH: No witnesses for the Secretary. The secretary rests.

JUDGE JOSEPH: No evidence heater?

MR. STRACH: No. No, Your Honor.

JUDGE JOSEPH: All right. Have the plaintiffs made a decision about whether to call their rebuttal expert?

MR. GREIM: We have. We are not going to call him.

JUDGE JOSEPH: Okay. So the plaintiffs rest their entire case then?

MR. GREIM: We do.

* * *

[621] is not a racial gerrymander. Accordingly, this court should deny plaintiffs' motion for preliminary injunction and enter judgment in favor of the defendants and the Robinson intervenors on the merits. Thank you.

MR. ENSIGN: Good afternoon, Your Honors. Drew Ensign on behalf of the State of Louisiana.

SB8 here passes constitutional muster here for two overarching reasons. First, race did not predominate the drawing of its contours. As the Supreme Court has explained, race predominance only exists, quote, when race-neutral considerations come into play only after the race-based decision has been made and that's from *Milligan*.

Here, three other factors motivated the Legislature to act rather than race. First, a desire to comply with federal court orders as to what the VRA likely requires and, thereby, forego expensive and protracted litigation; second, a desire to preserve assemblance of the State's sovereign prerogative to draw maps itself; and, third, political considerations such as preserving incumbents and avoid pitting them against each other and in particular protecting Representative Letlow.

That race did predominate is further demonstrated by the chronology here. The State initially enacted HB1 which maintain Louisiana's long history of having a [622] single majority black district that had prevailed for over 40 years. This was the Legislature's first preference, and, absent the Robinson litigation, it is undisputed that it would be the map in place here.

But the evidence shows that the Legislature was compelled against that express preference in the drawing of a second majority black district. That sequence shows that race was not the Legislature's predominant intent here. Without Federal Court's effectively mandating that they do so, it would not have done so. You know, put simply, the Robinson court decisions are the but-for cause that led to SB8 and not race.

Second, even assuming the Plaintiffs have satisfied their burden of showing racial predominance, Plaintiffs' constitutional claims still fail because SB8 satisfies strict scrutiny. As to compelling interest, Plaintiffs do not appear to even genuinely contest that complying with the VRA and further complying with decisions construing the VRA is a compelling state interest. And even if they had contested that, here it's even more compelling than just merely complying with the VRA because you have the additional factor of both the Middle District and the Fifth Circuit holding that it was likely a violation of the VRA to fail to draw a second majority black district.

The State also satisfies the strong basis in evidence [623] test the Supreme Court initially set forth in the *Alabama Legislative Black Caucus* and then reiterated it again in *Cooper* and *Bethune-Hill*. That test, quote, insists only that the legislature have a strong basis in evidence in support of the race-based choice it has made and that's from *Bethune-Hill*. Here the State readily satisfies that standard.

The State had exceptionally strong evidence in the form of federal court decisions including a precedential decision of its regional circuit affirming a legal determination that the lack of a majority -- a second majority black district likely violated VRA which the Fifth Circuit declined to hear in en banc without even holding a vote.

It's true that the Robinson cases did not squarely hold that the failure to draw a second majority black district would violate the VRA. Only that they would likely do so. But the strong basis in evidence standard expressly give the states, "breathing room," to navigate, "the competing hazards of liability under the Voting Rights Act and the Equal Protection Clause,"

and that's from *Bethune-Hill*. Here that breathing room should include reading the thirdly obvious writing on the wall. Under the district court's opinion, it was clear to the State that prevailing at trial on HB1 was incredibly [624] unlikely and the consequence of making that likely futile attempt would be that a map would be imposed on the State and it would lose its opportunity to draw districts whatsoever and it would be imposed on the State whole cloth by the Middle District. And so, within that breathing room, the State exercised, you know, the remaining semblance of its sovereign prerogative to draw its maps, and that's what have here.

And for that reason it was also not necessary for the legislators to parse the nuances of expert reports themselves. The reason to consult experts is to make predictive judgments as to how federal courts are likely to rule as to, you know, whether or not a map or a particular challenge practice would violate the VRA.

But here, there is no need to do so because we have that information from the horse's mouth themselves. Here we have federal courts specifically holding that the failure to draw a second majority black district likely violated the VRA and it did so based on that weighing of all the Gingles' factors. So there is no need for the Legislature to engage in doing that Gingles' analysis itself when the Courts have already done so for it and have done so in a precedential decision that will bind future proceedings.

Those actual rulings of federal courts readily supply [625] the strong basis and evidence here. You know, and, finally, I would add a quick note about Plaintiffs' Arlington Heights' claim, which we haven't heard much about, but is is nonetheless part of this case. You know, the Arlington Heights' standard here is sub-

sumed within the *Shaw/Bethune-Hill* predominance inquiry which is a more refined test specifically applicable for the redistricting context.

But even if it had any separate application here, it would do Plaintiffs little good. Even if Plaintiffs could satisfy the Arlington Heights' factors, that would only get them to strict scrutiny, and for the reasons that we've already discussed previously, SB8 is constitutional under that strict scrutiny analysis. And I'm happy to answer any questions, if the Court has any otherwise.

JUDGE JOSEPH: Thank you, Mr. Ensign.

MR. ENSIGN: Thank you, Your Honors.

MR. STRACH: Your Honor, nothing from the Secretary. We had yielded our time to the other parties on our side of the V.

JUDGE JOSEPH: Ms. LaCombe, I don't think the Plaintiffs have any more time for rebuttal, do they?

MS. LACOMBE: No, sir.

JUDGE JOSEPH: I do note that Mr. Greim wore an LSU tie today, it looks like, to make up for his

* * *

[629] CERTIFICATE OF OFFICIAL REPORTER

I, DIANA CAVENAH, RPR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Louisiana, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Diana Cavenah
DIANA CAVENAH, RPR
Federal Official Court Reporter

UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF LOUISIANA MONROE DIVISION

Case No. 3:24-CV-00122-DCJ-CES-RRS

PHILLIP CALLAIS ET AL

versus

NANCY LANDRY

THREE-JUDGE COURT

SCHEDULING ORDER

Having issued our ruling on the merits, the Court now turns to an expedited schedule for the remedial phase of the case. “It is well settled that ‘reapportionment is primarily the duty and responsibility of the State,’” *Miller v. Johnson*, 515 U.S. 900, 915 (1995); that “it is the domain of the States, and not the federal courts, to conduct apportionment in the first place,” *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993); that each State has a “sovereign interest in implementing its redistricting plan,” *Bush v. Vera*, 517 U.S. 952, 978 (1996); that “drawing lines for congressional districts is one of the most significant acts a State can perform to ensure citizen participation in republican self-governance,” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006) (citation omitted); and that because “the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful,

legislatively enacted plan should be preferable to one drawn by the courts.” *Id.*

Even when a federal court finds that a redistricting plan violates federal law, Supreme Court precedent dictates that the state legislature have the first opportunity to draw a new map. *See, e.g., North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018); *White v. Weiser*, 412 U.S. 783, 794–95 (1973). Only when “those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, [does] it become[] the unwelcome obligation of the federal court to devise and impose a reapportionment plan pending later legislative action.” *Wise*, 437 U.S. at 540 (opinion of White, J.).

The Court notes that the Louisiana Legislature is in session through June 3, 2024, and this Court provides it with the opportunity to enact a new Congressional map during that time period. However, given the time limitations outlined by the Secretary of State [Doc. 217], this Court must concurrently proceed with the “unwelcome obligation” of drawing a remedial map to ensure that a compliant map is in place in time for the 2024 congressional election. To be clear, the fact that the Court is proceeding with the remedial phase of this case does not foreclose the Louisiana Legislature from exercising its “sovereign interest” by drawing a legally compliant map.

The Court has considered the arguments from the Louisiana Secretary of State that May 15, 2024, is the deadline by which they must receive a congressional map in order to prepare for the November elections. However, the Court is aware that in oral

arguments in a related case,¹ the same counsel for the Louisiana Secretary of State stated that they could be adequately prepared for that same November election at issue herein if they received a map by approximately the end of May. As noted, the Louisiana Legislature is in session until June 3, 2024, and the Court finds it necessary to permit the Legislature a full opportunity to enact a new map while the Court simultaneously pursues the remedial phase. Accordingly, if the Louisiana Legislature fails to enact a new map by June 3, 2024, the Court intends to order the use of an interim remedial Congressional districting map on June 4, 2024. During the remedial phase, the Court may employ a Court-appointed technical advisor, which will be disclosed to the parties by separate order. After considering the positions of the parties, the Court imposes the following deadlines for the remedial phase of this litigation:

DEADLINE:

May 17, 2024 Each party, intervenor and amici may submit their proposal, which shall be limited to one map per party. The proposal shall include both evidence and argument supporting the map. The proposal and argument supporting the proposal shall be limited to twenty-five pages. Evidence in support of the proposal may be attached as exhibits.

¹ *Robinson v. Ardoin*, Case Number 22-30333, oral argument before the Fifth Circuit Court of Appeals held on October 6, 2023.

- May 24, 2024 Each party may file a single response, responding to one or more of the other parties' proposed maps. Each response shall be limited to twenty-five pages per party.
- May 30, 2024,
at 10:00 a.m. The Court will hold a hearing in Courtroom 1, in Lafayette, Louisiana. No evidence will be introduced at the hearing, but parties may make arguments in support of their proposal and against any other party's proposal. Argument will be limited to forty-five minutes per party.

THUS DONE in Chambers on this 7th day of May, 2024.

/s/ Carl E. Stewart
Carl E. Stewart
United States Circuit Judge

/s/ Robert R. Summerhays
Robert R. Summerhays
United States District Judge

/s/ David C. Joseph
David C. Joseph
United States District Judge