UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL

Plaintiff

Civil Action No. 3:12-cv-657
BAJ/RLB

and

BYRON SHARPER

Intervenor-Plaintiff

v.

STATE OF LOUISIANA, et al.

Defendants

PLAINTIFFS' POST-TRIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. This action is brought by African-American voters in Baton Rouge, Louisiana, to challenge the method of election for judges to the Baton Rouge City Court. Plaintiffs claim that the election system violates Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301 ("§ 2"), because it dilutes African-American voting strength in the city.

Plaintiffs

2. Plaintiff Kenneth Hall is an African-American resident of and registered voter for Election Section 2 of the Baton Rouge City Court. 8/4/14 Tr. at 83-87; P. Ex. 124.

3. Intervenor-Plaintiff Byron Sharper is an African-American resident of and registered voter for Election Section 2 of the Baton Rouge City Court. *Id.* at 106-10; P. Ex. 125.

Procedural History

4. Plaintiff Kenneth Hall brought this action on October 18, 2012, alleging that the

method of electing judges to the Baton Rouge City Court results in unlawful dilution of minority voting strength in violation of § 2. The Complaint also alleged violations of Section 5 of the Voting Rights Act, 52 U.S.C. § 10304 (§ 5) and intentional discrimination in violation of the Fourteenth and Fifteenth Amendments. The named defendants were the State of Louisiana, Governor Piyush "Bobby" Jindal, Attorney General James "Buddy" Caldwell, and Secretary of State Tom Schedler. The Complaint sought a preliminary injunction of the November 6, 2012 election of judges to the Baton Rouge City Court. (Doc. 1.)

5. Plaintiff Hall filed amending and supplemental complaints (with permission where required) on October 28, 2012 and January 10, 2013, which, *inter alia*, added claims under the 1st Amendment and the 1871 Civil Rights Act, as amended, 42 U.S.C. §§ 1983 and 1986, and added the City of Baton Rouge; the Parish of East Baton Rouge; Mayor-President Melvin "Kip" Holden; the Baton Rouge City Court; City Court Judges Suzan Ponder; Alex "Brick" Wall, and Laura Davis; the Louisiana House of Representatives; and the Louisiana Senate as defendants. (Docs. 13, 73-76.)

6. On November 2, 2012, the Court declined to issue a preliminary injunction enjoining the November 6, 2012 election of judges to the Baton Rouge City Court. (Doc. 45.)

7. On December 31, 2012, Intervenor-Plaintiff Byron Sharper filed a motion to intervene. (Doc. 68.) On May 1, 2013, Magistrate Judge Richard L. Burgeois, Jr. granted Intervenor-Plaintiff Byron Sharper's motion to intervene, and Sharper filed his Complaint on May 13, 2013, alleging violations of § 2, § 5, the Fourteenth and Fifteenth Amendments, the constitutional "right of majority rule," and 42 U.S.C. § 1983 against the same defendants as Plaintiff Hall (including those added by supplemental pleadings). (Docs. 127-28.) Intervenor-Plaintiff Sharper subsequently filed a supplemental complaint on May 20, 2013, which alleged

additional facts. (Doc. 133.)

8. On September 27, 2013, the Court dismissed Plaintiffs' claims under § 5 in light of the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. __ (2013). (Doc. 173.)

9. On September 30, 2013, the Court dismissed, with respect to Plaintiff Hall: (1) the 42 U.S.C. § 1983 claims against the State of Louisiana; (2) all claims against the Baton Rouge City Court; (3) all claims against sitting judges of the Baton Rouge City Court; and (4) all claims against the Louisiana Legislature. (Docs. 174, 176-78.) The Court subsequently dismissed the equivalent claims asserted by Intervenor-Plaintiff Sharper. (Docs. 208, 214, 216.)

10. On October 9, 2013, with leave of the Court, Plaintiff Hall filed a Fourth Amending and Supplemental Complaint and Intervenor-Plaintiff Sharper filed a Second Amending and Supplemental Complaint. (Docs. 180-81.)

11. On April 14, 2014, the Court dismissed Plaintiff Hall's claims under the Privileges and Immunities Clause of the 14th Amendment. (Doc. 240.)

12. On June 2, 2014, the parties filed cross-motions for summary judgment. (Docs. 288-91.) On July 29, 2014, the Court denied Plaintiffs' motion for partial summary judgment. (Doc. 460.) On July 30, 2014, the Court denied Defendants Jindal and Caldwell's motion for summary judgment. (Doc. 473.) On the same date, the Court dismissed the following claims against Schedler: First Amendment, Fourteenth Amendment vote dilution, Fifteenth Amendment vote dilution; the Court denied summary judgment on the § 2 and § 1983 claims. (Doc. 474.)

Trial

13. The Court conducted three days of trial on August 4, 5, and 6, 2014. At the time of trial the following claims remained: § 2; Fourteenth Amendment (fundamental right to vote, vote dilution, and due process); Fifteenth Amendment (vote dilution); and 42 U.S.C. §§ 1983 and

1986. On August 6, 2014, trial was recessed due to a medical emergency. Trial concluded after three days of additional testimony and summation on November 17, 18, and 19, 2014.

14. At trial Plaintiffs called three expert witnesses. Nancy Jensen testified as an expert in demography. Dr. Richard Engstrom testified as a political science expert in the areas of racially polarized voting and minority electoral opportunities. Dr. Raphael Cassimere testified as an expert on the history and impact of racial discrimination in Louisiana. The Court accepted each as an expert witness and a report from each was admitted into the record.

15. At trial Plaintiffs called 11 fact witnesses: both plaintiffs, Charles Jones, Ernest Johnson, Judge Trudy White, Rep. Michael Jackson, Tiffany Foxworth, City Councilor Denise Marcelle, Judge John Guidry, Bernard Taylor, and Rep. Alfred Williams.

16. At trial Defendants called three expert witnesses. Michael Beychok testified as an expert in political campaigns in Louisiana. Bruce Adelson testified as an expert on the Voting Rights Act and related voting areas.[1] Dr. Ronald Weber testified as a political science expert in the areas of vote dilution, voter participation, and racially-polarized voting. The Court accepted each as an expert witness and a report from each was admitted into the record.

17. At trial Defendants called five fact witnesses: Rep. Erich Ponti, Kyle Ardoin, Angele Romig,[2] former Judge Michael Ponder, and Elaine Lamb.

The Current Baton Rouge City Court Election System

18. The Parish of East Baton Rouge and the City of Baton Rouge are subject to a joint plan of government and share a single governing body, the Metropolitan Council. D. Ex. 186 at

[1] Mr. Adelson's testimony largely consisted of legal opinions based on his experience as an attorney, which was very limited as to § 2. He also did not possess specialized expertise in other relevant areas. Therefore, the Court declines to place substantial weight on his opinions.

[2] Ms. Romig was proffered as an expert witness, but the Court declined to allow her to testify as such because Defendants had indicated that they did not intend to elicit expert opinion testimony from her. 11/18/14 Tr. at 10-18. Nonetheless, her declaration was admitted into evidence, with the exception of some opinions expressed therein, which were redacted. D. Ex. 1.2.

007537. Nonetheless, there exists a City Court that, although overseen by the Metropolitan Council, exists only within the City of Baton Rouge. *Id.* at 007574-75.

19. The jurisdiction of the Baton Rouge City Court is coterminous with the geographical boundaries of the City of Baton Rouge, and citizens and voters within the city are the only qualified electors to vote for judges on the City Court. Pre-trial Order (Doc. 359) at ¶¶ 210, 214-15.

20. The Baton Rouge City Court is composed of five judges elected to six-year terms. *Id.* at ¶¶ 191, 209. The most recent City Court election was in 2012, and the next scheduled City Court election will occur in 2018. *Id.* at ¶ 211. Prior to 1993, City Court judges were elected from the City of Baton Rouge at-large to designated positions. *Id.* at ¶ 189. Prior to 1993, only three African-American judges—Freddie Pitcher, elected in 1983, and Ralph Tyson and Curtis Calloway, elected in 1988—had been elected to the City Court. P. Ex. 23; 8/4/14 Tr. at 186-90; *see also* 8/5/14 Tr. at 309-10 (noting unsuccessful black candidates).

21. The current districting scheme for the Baton Rouge City Court was enacted, via Act 609, by the Louisiana legislature in 1993. Pre-trial Order at ¶¶ 200-04. The districting scheme in Act 609 replaced the at-large system and was intended to ensure that African Americans would have the opportunity to elect candidates of choice roughly proportional to their proportion of the city's population at that time (about 40%). 8/5/14 Tr. at 192-94.

22. While the Baton Rouge City Court was not directly at issue in *Clark v. Edwards*, 725 F.Supp. 285 (M.D. La. 1988), the 1993 legislation was adopted against the backdrop of that litigation and the findings by Judge Parker of this Court that numerous judicial districts in Louisiana diluted African-American voting strength in violation of Section 2 of the Voting Rights Act. 8/5/14 Tr. at 192-94.

23. Baton Rouge City Court judges are presently elected from two separate election sections. Pre-trial Order at ¶ 204. Two judges are elected from Election Section 1, and three judges are elected from Election Section 2. *Id.* at ¶¶ 205, 207.

24. Each judgeship is elected from a separate division. In other words, voters cast separate votes for each judicial contest in their election section that is being contested in a given election, often called a numbered-post or "place" system. P. Ex. 60 at ¶ 5.

25. In order to win election to the City Court, a judicial candidate must win a majority of the votes cast in the contest. If no candidate wins a majority of the votes cast in the primary, the top two vote-getters advance to a run-off election. Pre-trial Order at ¶ 213.

Population Data

26. According to the 2010 Census of Population, the City of Baton Rouge has a total population of 229,493, of whom 54.5% are black alone, 39.4% are white alone, and 6.1% report a different racial/ethnic descent.[3] P. Ex. 147. As of the 2010 Census, Baton Rouge's voting-age population is 177,987, of whom 78,216 (43.9%) are white alone and 89,085 (50.1%) are black alone. D. Ex. 185 at 003067-68.

27. As of the 2010 Census, Election Section 1 had a population of 87,783, 75% of whom were African-American, and a voting-age population of 66,826, 70% of whom were African-American. D. Ex. 1.2 at ¶ 87.

28. As of the 2010 Census, Election Section 2 had a population of 141,615, 51% of whom are white (43% were African-American), and a voting-age population of approximately 111,098, 55% of whom are white (39% are African-American). *Id.*

[3] The figures for the white and black total and voting-age population in this paragraph include Hispanics who are also categorized as black or white, but not people who are of two or more races. The persons in the other category include those of American Indian or Alaska Native, Asian, Hawaiian or Pacific Islander, and other descent, and persons of two or more races.

Voter Registration Data

29. As of January 1, 2014, 136,334 persons were registered to vote in the City of Baton Rouge, of whom 56,775 (41.6%) were white and 73,219 (53.7%) were African-American (6,340, or 4.7%, were listed as "other"). D. Ex. 1.2 at ¶ 90.

30. As of January 1, 2014, 49,205 persons were registered to vote in Section 1 of the Baton Rouge City Court, of whom 8,048 (16%) were white and 39,312 (80%) were African-American (1,845 were listed as "other"). *Id.*

31. As of January 1, 2014, 87,129 persons were registered to vote in Section 2 of the Baton Rouge City Court, of whom 48,727 (56%) were white and 33,907 (39%) were African-American (4,495 were listed as "other"). *Id.*

Endogenous Elections: Baton Rouge City Court Election History

32. Since the enactment of Act 609 in 1993, every judge elected from Election Section 1 has been African-American, and every judge elected from Election Section 2 has been white. Pre-trial Order at ¶¶ 206, 208.

33. The only contested elections for City Court Judge since 1993 were: the 1993 election for Division 1B, the 1995 elections for Divisions 1B and 1D, the 1999 elections for Divisions 1B and 2C, the 2000 election for Division 2A, the 2009 election for Division 1B, and the 2012 elections for Divisions 2C and 2E. D. Ex. 1.9.

34. The only contested elections for City Court Judge involving both black and white candidates ("biracial contests") since 1993 were: the 1993 election for Division 1B and the 2012 elections for Divisions 2C and 2E. *Id.*

35. During the most recent City Court election, in 2012, there were three biracial contests involving Divisions 2C and 2E in Election Section 2.

36. In Division 2C, African-American candidate Joel Porter ran against a white candidate, Judge Alex "Brick" Wall, in the November 2012 election. Judge Wall defeated Porter 60.55% to 39.45%. P. Ex. 59 at ¶ 13; P. Ex. 77.

37. In Division 2E, African-American candidate Tiffany Foxworth ran against two white candidates, Judge Suzan Ponder and "Cliff" Ivey, in the November 2012 election. P. Ex. 59 at ¶ 15. Judge Ponder received the most votes (44.84%), but fell short of the majority required to win the election, and Foxworth advanced to a run-off by receiving the second-most votes (43.16%). P. Ex. 77. In the December 2012 runoff election, Judge Ponder defeated Foxworth 63.05% to 36.95%. P. Ex. 78.

Illustrative Additional Majority-Black District

38. At trial, Plaintiffs' expert demographer, Ms. Jensen, presented two illustrative plans for the Baton Rouge City Court that would create an additional majority-black district. 8/5/14 Tr. at 117-19, 130; P. Exs. 62, 64-65.

39. In creating her plans, Ms. Jensen relied on 2010 Census data and followed traditional districting principles, and she ensured that the majority-black districts had a sufficiently large percentage of African Americans to provide the opportunity to elect candidates of choice. P. Ex. 64-65; *see also* P. Ex. 60 at ¶¶ 7-9.

40. Ms. Jensen's Plan A keeps the current district lines for the two Election Sections, except that it creates a subdistrict within the boundaries of current Election Section 2, which would elect a single City Court judge. P. Ex. 60 at ¶ 7. African Americans comprise a clear voting-age population majority (65.69%) in this additional district. P. Ex. 64. The additional district and the other two districts are contiguous and compact and follow traditional districting principles. P. Ex. 60 at ¶¶ 7-9; 8/5/14 Tr. at 142; 8/6/14 Tr. at 24; 11/17/14 Tr. at 151-53.

41. Ms. Jensen's Plan B is identical to Plan A, except that it takes a precinct that was previously split between the two City Court election sections and places it in the new minority subdistrict within Election Section 2 (66.07% black voting-age population). P. Ex. 65.

42. None of the election sections in either illustrative plan deviates from the ideal population size by more than 5%. P. Exs. 64-65.

43. Defendants did not dispute at trial that Ms. Jensen's illustrative plans create an additional majority-black district and did not present any evidence that suggests that an additional majority-black district could not be drawn.

Racially Polarized Voting Analyses

44. The statistical experts for both Plaintiffs and Defendants agree on most points concerning the appropriate methods for assessing cohesion and racially-polarized voting. Both Dr. Engstrom and Dr. Weber agree that black vs. white (biracial) elections are the relevant elections to analyze. P. Ex. 59 at ¶ 4; 11/19/14 Tr. at 108. They both agree that elections for City Court ("endogenous" elections) are the most probative elections, followed next by other ("exogenous") judicial elections, which are in turn more probative than exogenous non-judicial elections. 11/19/14 Tr. at 108, 140-41. They both agree that the use of King's Ecological Inference – which allows political scientists to obtain estimates of racial voting preferences based on precinct-level data for two variables: (1) the number of ballots cast by African Americans and non-African Americans; (2) the number of votes for a particular candidate or set of candidates – is the best statistical method for measuring racially-polarized voting. 11/17/14 Tr. at 109-25; D. Ex. 1 at ¶ 10. Their statistical results are similar, as shown below. The Court adopts their testimony on each of these points of agreement.

45. As discussed in greater depth below, Dr. Engstrom and Dr. Weber part ways on a

limited number of issues. First, they disagree on whether or not racial polarization occurs when white voters divide their support among multiple white candidates, such that no single candidate wins 60% of the white votes. Second, while Dr. Weber does not dispute that the seven judicial election contests Dr. Engstrom analyzed are sufficient to determine the existence of racially-polarized voting, Dr. Weber analyzed an additional nine exogenous non-judicial contests.

Endogenous Elections

46. Recent biracial contests for Baton Rouge City Court carry the greatest weight in assessing the existence and extent of cohesion and racially polarized voting for this case.

47. There is no basis to give lesser weight to any recent biracial contest for Baton Rouge City Court.

48. Plaintiffs' expert Dr. Engstrom analyzed voting patterns in recent biracial contests for Baton Rouge City Court. Based upon King's EI, Dr. Engstrom concluded that for each such election African-American voters were politically cohesive and that voting was racially polarized. 11/17/14 Tr. at 141-44. His results were as follows. P. Ex. 59 at 13.

Contest	**African-American Candidate**	**Black Vote %**	**Non-Black Vote %**
Nov. 2012 Section 2C	Porter	58.4 (56.1 – 60.5)	17.1 (15.5 – 18.8)
Nov. 2012 Section 2E	Foxworth	85.7 (83.1 – 88.3)	14.9 (13.7 – 16.6)
Dec. 2012 Section 2E	Foxworth	92.7 (91.1 – 94.5)	12.1 (10.8 – 13.5)

49. The estimates of support reported by Dr. Engstrom show, to a statistically significant degree, that in biracial contests black voters support black candidates at high levels, and that black candidates receive low levels of support from non-black voters.[4]

[4] The above table (and the table showing Dr. Engstrom's results in exogenous judicial elections), shows the best

50. Defendants' expert Dr. Weber also reported estimates of support in these three contests based upon King's EI. D. Ex. 1 at 47-49 (Tables 10-1, 10-2 & 10-3).

Contest	**African-American Candidate**	**Black Vote %**	**Non-Black Vote %**
Nov. 2012 Section 2C	Porter	62.2	22.3
Nov. 2012 Section 2E	Foxworth	84.9	13.8
Dec. 2012 Section 2E	Foxworth	92.6	11.8

51. Dr. Engstrom testified that Dr. Weber's estimates of support in these contests did not differ materially from his own. 11/17/14 Tr. at 145.

52. Dr. Weber concluded that black voters were cohesive in each of the three contests and that voting was racially polarized in each of the three contests. 11/19/14 Tr. at ¶¶ 48-50, 58.

53. Both Dr. Engstrom and Dr. Weber concluded that vote dilution had occurred in the elections for Baton Rouge City Court. 11/17/14 Tr. at 143-44; 11/19/14 Tr. at 81 (Weber: "Turning first to the City Court elections, cohesion for African-Americans, racial polarization, consequential results – vote dilution").

Exogenous Judicial Elections

54. Voting patterns within Baton Rouge in recent biracial contests for exogenous judicial offices carry the second-greatest weight, next to endogenous biracial City Court contests, in assessing the existence and extent of cohesion and racially polarized voting for this case.

55. There is no basis to reduce the weight given to any recent biracial contest for exogenous judicial office held within Baton Rouge.

56. Dr. Engstrom and Dr. Weber analyzed recent exogenous biracial judicial elections

estimates, as well as confidence intervals (95% confidence that the true value falls in the range), of black and white support. 11/17/14 Tr. at 114-17. The differences between the estimated levels of black and non-black support are statistically significant if the confidence intervals for black and non-black support do not overlap. D. Ex. at 125-26.

that included all or part of Election Section 2. These were the 2012 primary and runoff contests for a judgeship on the 1st Circuit Court of Appeals (which includes a part of Election Section 2), and the 2012 primary and runoff contests for an open seat on the Louisiana Supreme Court, District 5 (which includes all of Baton Rouge).

57. The Court of Appeals contest featured two African-American candidates in the November primary, Gideon Carter and Judge Trudy White, who faced a white candidate, incumbent Judge "Mike" McDonald. P. Ex. 59 at ¶ 18. Carter and Judge McDonald advanced to a runoff. *Id.* at ¶ 20. Judge McDonald emerged as the victor. P. Ex. 159.

58. The November 2012 primary election for the Supreme Court position included one black candidate, Judge John Michael Guidry, and seven white candidates; Judge Guidry was the top vote-getter in the primary and advanced to a December 2012 runoff against Judge Jeff Hughes, but lost. P. Ex. 59 at ¶¶ 22-23; P. Exs. 160, 161.

59. The results of Dr. Engstrom's racially-polarized voting analysis within Baton Rouge precincts for these contests are as follows. P. Ex. 59 at 13-14.

Contest	**African-American Candidate**	**Black Vote %**	**Non-Black Vote %**
Nov. 2012 1st Cir. Appeals	Carter + White	98.7 (98.2 – 99.0)	30.2 (28.1 – 32.4)
	Carter only	64.3 (61.7 – 66.8)	16.7 (15.1 – 18.4)
Dec. 2012 1st Cir. Appeals	Carter	96.8 (95.4 – 98.2)	14.2 (11.9 – 16.1)
Nov. 2012 Supr. Ct.	Guidry	79.7 (78.5 – 80.9)	4.5 (3.5 – 5.4)
Dec. 2012 Supr. Ct.	Guidry	99.1 (98.6 – 99.5)	30.5 (27.6 – 33.4)

60. The values reported by Dr. Engstrom show statistically significant differences in the respective levels of support of black and non-black voters. *See* fn. 4, *supra*.

61. Dr. Engstrom concluded that black voters were cohesive in all four contests and that voting was racially-polarized. 11/17/14 Tr. at 141-44.

62. Dr. Weber reported very similar results for the same contests as did Dr. Engstrom. D. Ex. 1 at 67-71 (Tables 13-1 to 13-4).[5]

Contest	**African-American Candidate**	**Black Vote %**	**Non-Black Vote %**
Nov. 2012 1st Cir. Appeals	Carter + White	98.8	29.4
	Carter only	63.3	16.0
Dec. 2012 1st Cir. Appeals	Carter	96.5	13.4
Nov. 2012 Supr. Ct.	Guidry	77.1	4.8
Dec. 2012 Supr. Ct.	Guidry	97.9	30.7

63. Dr. Weber concluded that black voters were cohesive in both Court of Appeals contests and both Supreme Court contests, and that both Court of Appeals contests and the Supreme Court runoff were racially-polarized. *Id.* at ¶¶ 48-50, 58.

64. Dr. Weber expressed his opinion that he did not consider voting to have been racially polarized in the Supreme Court primary. He based this opinion upon the fact that the estimates he reported showed that non-black voters did not coalesce at a level of 60 percent or greater behind a single candidate, but rather spread their votes among a number of candidates. 11/19/14 Tr. at 110-11; D. Ex. 1 at ¶ 31. On cross-examination, however, Dr. Weber acknowledged that this rule has never been accepted by any federal court or other expert witness and has been explicitly rejected by at least one federal court. 11/19/14 Tr. at 111-16; *United*

[5] Dr. Weber's results were also similar when he looked exclusively at votes cast within Election Section 2. D. Ex. 1 at 87-90 (Tables 17-1 to 17-4).

States v. Vill. of Port Chester, 704 F.Supp.2d 411, 430 (S.D.N.Y. 2010)[6]; *see also Large v. Freemont Cnty., Wyo.*, 709 F.Supp.2d 1176, 1215 (D. Wyo. 2010) (rejecting Dr. Weber's "arbitrary threshold approach" and noting that it has been rejected by the Eighth and Ninth Circuits). The Court rejects Dr. Weber's "60 percent rule" and finds that the voting was racially polarized in this contest because more than 95 percent of non-black voters voted against the preferred candidate of black voters. *See* 11/19/14 Tr. at 134-36.

65. Together with the endogenous contests, these four exogenous judicial contests constitute the entire universe of relevant judicial contests in Baton Rouge since Act 609 became law in which black and white candidates faced off in Election Section 2.[7]

66. These seven contests are a sufficient basis for this Court to assess the existence and extent of cohesion and racially polarized voting. 11/17/14 Tr. at 168; 11/19/14 Tr. at 53 (Dr. Weber testified during direct examination that he was "not gonna assert as an expert that the seven contests that Dr. Engstrom had is insufficient").

67. African American voters were cohesive in each of the seven judicial contests.

68. Voting was racially polarized in each of the seven judicial contests.

69. The candidate of choice of African-American voters was defeated in each of the judicial contests analyzed.

Exogenous Non-Judicial Elections

70. Dr. Weber reported estimates of black and non-black support for nine additional biracial contests in Baton Rouge from 2000 to the present. Specifically, he looked at six separate contests for Mayor-President of East Baton Rouge Parish (all involving current Mayor Melvin

[6] Dr. Weber claimed that he did not mention in his report that his decision rule was rejected in *Port Chester* because he "did not remember." 11/19/14 Tr. at 113-15.

[7] This does not include a 2008 Juvenile Court election where the black candidate received under 10% of the total vote. D. Ex. 1.4 at 00249; 11/18/14 Tr. at 176-77. Neither Dr. Engstrom nor Dr. Weber analyzed this election.

"Kip" Holden), one contest for City Constable (involving Constable Reginald Brown),[8] and two contests for President of the United States (both involving Barack Obama).

71. There is no reason to accord equal or greater weight to any of these non-judicial exogenous contests than to any of the seven judicial contests analyzed by Dr. Engstrom and Dr. Weber. Indeed, these contests should receive significantly less weight, as judicial contests are more probative in evaluating judicial districting schemes than non-judicial contests. 11/17/14 Tr. at 146-47; 11/18/14 Tr. at 218-19; 11/19/14 Tr. at 108, 140-41.

72. Dr. Weber reported EI estimates within Baton Rouge for these exogenous non-judicial contests as follows. D. Ex. 1 at 52-59 (Tables 11-1 to 11-6), 62 (Table 12-1), 74-75 (Tables 14-1 to 14-2).[9]

Contest	**African-American Candidate**	**Black Vote %**	**Non-Black Vote %**
2000 Primary Mayor-President	Holden	91.6	2.9
2000 Runoff Mayor-President	Holden	99.5	23.0
2004 Primary Mayor-President	Holden	87.0	11.1
2004 Runoff Mayor-President	Holden	99.0	38.2
2008 Primary Mayor-President	Holden	82.0	68.6
2012 Primary Mayor-President	Holden	93.3	43.5
2000 Primary City Constable	Brown	98.3	38.0
2008 U.S. Pres.	Obama	99.2	21.9
2012 U.S. Pres.	Obama	97.7	22.7

[8] Dr. Weber's report also contained an analysis of the 2012 primary for City Constable. However, Dr. Weber conceded on cross-examination that this contest should not have been included because it was not a biracial contest. 11/19/14 Tr. at 108-09. Dr. Weber further noted that he had been aware of this mistake at the time he submitted his report, but he left it in because he did not learn of the error until "very late in the process of report writing." *Id.*

[9] Dr. Weber's results were similar when he looked exclusively at results within Election Section 2. D. Ex. 1 at 78-83 (Tables 15-1 to 15-6), 85 (Table 16-1), 91-92 (Tables 18-1 & 18-2).

73. Dr. Weber concluded that black voters were cohesive in all nine contests. D. Ex. 1 at 95 (Table 19).

74. Dr. Weber's results also show racial polarization in all but two of these exogenous non-judicial contests. 11/19/14 Tr. at 137-38. The 2008 Mayor-President contest was the only contest where Mayor Holden was the candidate of choice of both black and non-black voters; the 2012 Mayor-President contest, where non-black voters slightly preferred Holden's white opponent, was ambiguous. D. Ex. 1 at 58-59 (Table 11-5 & 11-6).[10]

Vote Total Analysis

75. Dr. Weber identified exogenous elections in which an African-American candidate received the most votes in Section 2 notwithstanding racially-polarized voting.

76. The vote total analysis showed that, while Judge Guidry won 32% of the votes in Election Section 2 during the November 2012 primary for state Supreme Court, he garnered 53% of the votes in Election Section 2 during the runoff. D. Ex. 1.2 at ¶¶ 63-64, 69-70. Judge Guidry's support within Baton Rouge (including Election Section 2) likely reflected the fact that he is a resident and judge in Baton Rouge and is well-known in the community, whereas his opponent hailed from Livingston Parish. *See* 8/5/14 Tr. at 175, 178-79; 11/18/14 Tr. at 169-70. The results bear this out: (1) in the primary, Judge Hughes could afford to do relatively poorly in East Baton Rouge Parish, as he finished in fifth place there (and in Election Section 2); (2) in the runoff, Judge Hughes won 89% of the vote in his home parish, and Judge Guidry won his home parish, albeit by a smaller margin, with 55% of the vote there. D. Ex. 1.2 at ¶¶ 60, 63-64, 71. A

[10] Dr. Weber had concluded that the 2000 and 2004 Mayor-President primary elections were not polarized because white voters were not cohesive behind a single candidate, as they split their vote among multiple white candidates. D. Ex. 1 at ¶¶ 35, 37. Dr. Weber acknowledged on cross-examination, however, that it was his classification rule, which the Court rejects, that led to that conclusion. 11/19/14 Tr. at 116-17; *see also* 11/19/15 Tr. at 134-39 (Engstrom rebuttal).

similar situation could not arise in City Court elections, as fifth-place primary finishers cannot advance to a runoff, and City Court judges must be residents of the city. *See* LA. REV. STAT. § 13:1873 (setting residency requirements for city court judges).

77. With respect to the elections for Mayor-President, Mayor Holden did not receive the most votes in Election Section 2 in the 2000 runoff, which he lost. D. Ex. 1 at 78-79 (Tables 15-1 & 15-2). In the 2004 primary, Holden was the third choice of Election Section 2 voters and so he would not have advanced to the runoff if the election had been held exclusively in Election Section 2. *Id.* at 80 (Table 15-3); D. Ex. 1.2 at ¶¶ 23-24. He received the most votes in Election Section 2 in the 2004 runoff, where strong anti-incumbent, rather than pro-Holden, forces played a large role.[11] D. Ex. 1 at 81 (Table 15-4). Holden received the most votes in Election Section 2 in the 2008 and 2012 primaries. *Id.* at 82-83 (Tables 15-5 & 15-6).

78. Barack Obama did not receive the most votes in Election Section 2 in 2008, but did in 2012. *Id.* at 91-92 (Tables 18-1 & 18-2). In the 2000 City Constable election, Constable Brown received the most votes in Election Section 2. *Id.* at 85 (Table 16-1).

79. This evidence does not outweigh the votes cast in actual contests within City Court Section 2. Beyond the fact that these contests have less weight than the endogenous contests and exogenous judicial elections, the Court finds that it cannot reasonably conclude from these results that the outcome would have been the same if the election had been held exclusively within the confines of Election Section 2. Outcomes for elections held exclusively within the jurisdiction at issue are far more probative than elections that extend to other areas, as

[11] Defendants' expert Mr. Beychok acknowledged "a sense…that the parish was moving in the wrong direction," and a large infusion of third-party spending may have made white voters more willing to support Mayor Holden. *See* 11/18/14 Tr. at 117-18, 168-69. The indications of an unusually strong anti-incumbent sentiment, rather than pro-Holden support, are further supported by Holden's third-place performance among Election Section 2 voters in the 2004 primary.

campaign dynamics and strategies stemming from the fact that other areas are included can impact success in the sub-part at issue. 11/19/14 Tr. at 138-39, 143-44.

History of Official Voting Discrimination

80. The extensive history of racial discrimination in voting in Louisiana is well-documented. The Court takes judicial notice of that history insofar as it has been recognized in previous federal court decisions. *See Clark v. Edwards*, 725 F.Supp. at 288-95, *supplemented sub nom. Clark v. Roemer*, 777 F.Supp. 471, 479 (M.D. La. 1991); *Chisom v. Edwards*, 690 F.Supp. 1524, 1527-28, 1534 (E.D. La 1988); *Major v. Treen*, 574 F.Supp. 325, 339-41 (E.D. La. 1983) (three-judge court); *see also* 8-4-14 Trial Tr. at 25-26 (discussing taking judicial notice of the findings in *Clark v. Roemer*).

81. There is a long history of African-American citizens in Louisiana and Baton Rouge facing open discrimination in voting. After slavery was abolished, the state enacted numerous discriminatory voting restrictions, including, *inter alia*: constitutional revisions that added a "grandfather clause," plus education and property requirements to register; poll taxes; voting roll purges; an "understanding clause" that functioned as a literacy test; an all-white primary that denied blacks access to determinative elections; citizenship and morals tests; anti-single shot voting provisions; and a majority-vote requirement for elections. *Major*, 574 F.Supp. at 339-40 (E.D. La. 1983); 11/17/14 Tr. at 54-55, 62-63; P. Ex. 66 at 00956 n.3. Louisiana changed some of these "disenfranchisement techniques" only after the Supreme Court deemed them unconstitutional or after the 1965 Voting Rights Act banned them. *Major*, 574 F.Supp. at 340.

82. Louisiana and Baton Rouge are certainly better today with regard to voting rights; however, voting-related discrimination continues, and both Louisiana and Baton

Rouge have consistently resisted granting blacks equal voting rights until required to do so by federal legislation or court intervention, including in the context of judicial elections. 11/17/14 Tr. at 53, 62-67; P. Ex. 66 at 00959-62.

83. In the 1980s, African-American plaintiffs challenged the election schemes for district, family court, and court of appeal judges across the state (which officials had refused to remedy, P. Ex. 66 at 00959-60), alleging that they diluted black voting strength. *Clark v. Edwards*, 725 F.Supp. at 287. The court concluded that Louisiana's method of election violated § 2 because African Americans in several districts—including residents of Baton Rouge—had less opportunity to participate in the political process. *Clark v. Edwards*, 725 F.Supp. at 302-03; *Clark v. Roemer*, 777 F.Supp. 445, 455-59, 461, 463, 465 (M.D. La. 1990); *Clark v. Roemer*, 777 F.Supp. at 478-79. Even with liability established, the state failed to fashion a remedy in response prior to the next scheduled election. *Clark v. Roemer*, 777 F. Supp. at 474, 484. Additionally, the state tried to conduct judicial elections pursuant to statutes that had not obtained § 5 preclearance; the Supreme Court had to intervene to enjoin the elections. *Clark v. Roemer*, 500 U.S. 646 (1991). It was only after the *Clark* plaintiffs won their case on the merits three times that the legislature redressed the § 2 violations. *See Clark v. Roemer*, 777 F.Supp. at 485 ("plaintiffs won their case on the facts and the law in 1988, won it again in 1990 and again in 1991. They have been waiting for relief ever since").

84. As a result of *Clark*, the number of African-American judges in the state of Louisiana increased from a half-dozen before 1992 to approximately six dozen today, all in majority-black districts. P. Ex. 66 at 00962; 11/17/14 Tr. at 68; 11/18/14 Tr. at 177-78.

85. Plaintiffs in *Chisom v. Edwards*, filed in 1986, similarly asserted that the

method of electing judges from a two-member Supreme Court district that included New Orleans (the other five justices where elected from single-member districts) unlawfully diluted minority voting strength. 690 F.Supp. at 1525. After years of litigation and resistance by the defendants, the parties entered a consent judgment in 1992. *See Chisom v. Jindal*, 890 F.Supp.2d 696, 701 (E.D. La. 2012); P. Ex. 66 at 00960. The *Chisom* Consent Judgment, which the state legislature codified, created a remedy that had two components: (1) Beginning with the 2000 election, the justices would all be elected from single-member districts, including an Orleans-Parish based district; (2) prior to that, the agreement provided for the appointment of a temporary eighth justice to the Supreme Court from the Fourth Circuit Court of Appeals (which is in Orleans Parish), who would "share equally" in all duties, receive the same benefits as all other justices, and receive tenure credit for time serving on the Supreme Court. *See Jindal*, 890 F. Supp.2d at 702-06. Despite the guarantees explicitly set forth by the Consent Judgment, several of Justice Bernette Johnson's white colleagues on the court tried to deny her the position of Chief Justice when she was entitled to the seat based on seniority (arguing that the years she spent as the "eighth justice" did not count). *Id.* at 707-08; P. Ex. 66 at 00961; 11/17/14 Tr. at 66-67. Justice Johnson was forced to seek relief in the federal district court, which held that Justice Johnson was entitled to her seniority under the "clear and unambiguous" language of the Consent Judgment. *Jindal*, 890 F.Supp.2d at 715.

86. In recent years, Louisiana has also failed to comply with public assistance agency voter registration requirements under the National Voter Registration Act (NVRA), a failure that disproportionately impacts minorities due to the socioeconomic factors discussed below. *See Scott v. Schedler*, 2013 WL 264603, at *18 (E.D. La. Jan. 23, 2013),

aff'd in part, vacated in part on other grounds, 2014 WL 5801354 (5th Cir. Nov. 5, 2014); P. Ex. 66 at 00962 n.25; 11/17/14 Tr. at 63, 92-93.

87. Defendants have not presented any evidence disputing this history of voting-related discrimination.

History of Other Official Discrimination

88. Louisiana generally – and Baton Rouge specifically – has a significant past and continuing history of discrimination in education, employment, and other areas, reaching back to the 1800s. 11/17/14 Tr. at 53-62; P. Ex. 66 at 00955-59.

89. De jure educational segregation in Louisiana and Baton Rouge existed from the first year of Reconstruction until *Brown v. Board of Education*, and even the end of legal segregation was met with a policy of official resistance to integration; schools remained completely segregated in Baton Rouge until 1963, nine years after *Brown.* P. Ex. 66 at 00956-58; *see also Major*, 574 F.Supp. at 340-41. Thereafter, public school officials adopted various policies intended to sidestep court-ordered desegregation, such as a freedom of choice plan, magnet school programs, and the creation of attendance districts. P. Ex. 66 at 00958-59. The 1956 to 1981 time period is defined by resistance to desegregation. P. Ex. 66 at 00959. In higher education, LSU refused to admit African Americans into its law and graduate schools until ordered to do so by federal court, and even then the state tried to curtail the number of black LSU enrollees by deflecting them to Baton Rouge's historically black college, Southern. P. Ex. 66 at 00956; 11/17/14 Tr. at 58-59; *see also Major*, 574 F.Supp. at 341 ("A dual university system was operated by the state until 1981, when it was dismantled pursuant to a consent decree.").

90. Louisiana's and Baton Rouge's resistance to integration carries over into the twenty-first century. 11/17/14 Tr. at 55-59. The East Baton Rouge School District did not

achieve unitary status until recently. 8/5/14 Tr. at 245. There is currently a movement that some residents call "secession," which would create a new majority white school district, leaving the bulk of black students in poor, underfunded schools. P. Ex. 66 at 00958; 11/17/14 Tr. at 94. Racial disparities in education persist; for example, in East Baton Rouge Parish public schools, a racial achievement gap exists, even after accounting for socio-economic status: in the 2012-13 school year, African Americans earned test scores that were 15-20% lower than their non-African-American peers. 8/5/14 Tr. at 242.

91. Racial discrimination in employment has also disadvantaged African-American residents of Louisiana and Baton Rouge. Historically, African Americans have had restricted access to higher salaried jobs, and African Americans were often trained in limited disciplines, which resulted in lower salaries. 11/17/14 Tr. at 54, 60-61. Moreover, African Americans have been unable to advance at the same rates as their white peers through the present-day, as ongoing educational disparities have provided them with less access to professional credentials and networks. 11/17/14 Tr. at 58, 60-61.

92. Furthermore, Louisiana and Baton Rouge have historically provided black residents with inferior city services, transit, and police and fire protection. P. Ex. 66 at 00956.

93. Defendants have not presented any evidence disputing this history.

94. This history of discrimination has a significant impact on African-Americans' socio-economic status, as shown below. *See* 11/17/14 Tr. at 55-56.

Socioeconomic Disparities

95. The African American population of Baton Rouge lags significantly behind the City's white population on key measures of socioeconomic status.

96. The following data, which are taken from the 2010 Census, demonstrate the

degree of socioeconomic disparity based on a number of measures. P. Exs. 16-18.

Comparison of Socio-Economic Status of Blacks and Whites in Baton Rouge by Census Data

Socio-Economic Indicator	**Whites**	**Blacks**
Education (2010, among population 25 years and over)**:**[12]		
Less than 9th grade	1.3%	6.3%
9th to 12th grade, no diploma	4.2%	15.7%
High school graduate, GED, or alternative	15.8%	32.6%
Some college (no degree) or associate's degree	26.9%	28.4%
Bachelor's or graduate degree	51.8%	17.0%
Income and employment:		
Median household income (2010)	$48,316	$25,760
Per capita income (2012)	$38,161	$14,391
Percent persons below poverty level (2012)	17.5%	32.3%
Share of total # of households receiving food stamps (2012)	7.6%	87.9%
Housing (2010)**:**[13]		
Owner-occupied (as % of households of that race)	61.1%	40.8%
Renter-occupied (as % of households of that race)	38.9%	59.2%

African-American Political Participation

97. The history of discrimination, along with the lower socioeconomic status of African-American residents of Baton Rouge relative to whites, diminishes the ability of African Americans to compete on equal terms in the political process. This manifests itself in two principal ways with respect to elections. First, the rate of African-American voter turnout as a share of registered voters is consistently lower than the rate for white registered voters. Second, African-American candidates operate under significant fundraising disadvantages.

[12] These figures are calculated by, for each race, adding together the male and female numbers for each category, adding together the constituent categories (where appropriate), and dividing by the total number of people 25 or over. *See* P. Ex. 18.

[13] These figures are calculated by, for each race, adding together the number of owner-occupied and renter-occupied units, then separately dividing each number by that total. *See* P. Ex. 16.

Voter Turnout Rates

98. Dr. Weber's report provided voter turnout data showing the turnout rates among white and black registered voters in ten recent elections. D. Ex. 1 at 21 (Table 2).

White and Black Voter Turnout Rates in Baton Rouge

Election Date	Black Voter Turnout	White Voter Turnout
9/21/1996	47.2%	56.7%
11/5/1996	67.2%	77.5%
10/7/2000	40.3%	48.5%
11/7/2000	59.2%	70.1%
9/18/2004	39.4%	48.1%
11/2/2004	61.7%	73.8%
10/4/2008	37.1%	42.0%
11/4/2008	67.1%	72.6%
11/6/2012	66.6%	70.6%
12/8/2012	18.9%	25.1%

99. Dr. Weber conceded that his analysis provides no empirical basis for concluding that black turnout rates will surpass white turnout rates in the future in the City of Baton Rouge. 11/19/14 Tr. at 98-99.

100. Notably, four of the seven judicial contests analyzed took place on November 6, 2012. This date coincided with President Obama's bid for reelection. 8/5/14 Tr. at 78. As Mr. Beychok acknowledged, the fact that President Obama was on the ballot led to "historic levels of turnout" among African Americans. 11/18/14 Tr. at 182. In addition, Dr. Weber's analysis of turnout information is selectively limited to presidential election years. However, black turnout tends to be higher in presidential election years. *Id.* Thus, the candidates in half of future City Court contests will be run in an environment with lower expected African-American turnout,

including the next regularly-scheduled election in 2018.[14]

Campaign Fundraising

101. Fundamental disparities in black and white candidates' ability to conduct effective fundraising also negatively affect black candidates' ability to compete.

102. Campaign spending is important to the success of candidates in Baton Rouge. D. Ex. 2 at 285-86; 11/18/14 Tr. at 84-86, 158-59.

103. The Court finds that black candidates in Baton Rouge have a more difficult time raising campaign funds than white candidates. *See, e.g.*, 8/4/14 Tr. at 257, 270 ("white judges are able to raise more money than black judges"), 279-81, 315-16 (white opponent raised "at least ten times" as much as the black candidate); 8/5/14 Tr. at 55-56, 101-02, 285-86, 311-12 (noting that black candidates typically are able to raise "much less" than white counterparts, "particularly if [the] African-American candidate is running against a white candidate"); *see also* D. Ex. 2 (noting that, in the four recent biracial judicial contests Mr. Beychok reviewed, white candidates significantly outraised black candidates); 11/18/14 Tr. at 159-61 (fewer financial resources are available from the black community). That is particularly the case in majority-white districts. 11/18/14 Tr. at 166.[15]

104. As a result, campaigns by African-American candidates in Baton Rouge tend to

[14] Dr. Weber points out that African Americans are registered to vote at a higher rate than whites as a percentage of voting-age population (African Americans are registered to vote at a lower rate than whites as a percentage of total population). D. Ex. 1 at 23-24 (Table 3); D. Ex. 1.2 at ¶¶ 87-90. On this basis, he determined that, in the 2008 and 2012 presidential elections, black turnout as a percentage of voting-age population exceeded that of whites by several tenths of a percent, while it lagged behind by 1.8% or more in all other elections. D. Ex. 1 at 23-24 (Table 3). Thus, although the higher rate of voter registration as a percentage of voting-age population on occasion has somewhat reduced the practical degree of the turnout differences, it has not eliminated them.

[15] Given their systematic disadvantages in terms of both socioeconomic status and campaign finance, the Court cannot conclude, as Mr. Beychok asserted, that black candidates for the Baton Rouge City Court in 2012 lost because of "lack of effort," or lack of "smart" campaigning. D. Ex. 2; 11/18/14 Tr. at 89-91, 101-02, 111-16. Moreover, these candidates evidently put in enough effort to convince black voters to make these candidates their candidates of choice, and Mr. Beychok does not explain why the supposed lack of effort did not prevent them from winning those black votes.

focus on direct contact with voters, and it is much more difficult to reach voters in larger-sized districts via in-person contact than other means, such as direct mail, radio, or television. *See, e.g.*, 8/4/14 Tr. at 279-81; 8/5/14 Tr. at 56, 102-04, 182-84. Indeed, Judge Trudy White testified about how campaign finance disparities negatively affect the ability of black candidates to compete: "[w]e just can't cover it because we don't have the resources to get our message out." 8/4/14 Tr. at 280; *see also id.* ("as the district gets larger…it's harder and harder to cover").

105. Moreover, judicial candidates are barred from asking for money personally, so they must rely on surrogates or committees to ask for them, making fundraising very difficult for judicial candidates. 11/18/14 Tr. at 84-85. Furthermore, African Americans suffer from disadvantages in terms of the very sorts of professional networks that are necessary to raise money in this way. 11/17/14 Tr. at 60-61. Therefore, the Court concludes that the fundraising disadvantages African Americans face generally are amplified in judicial elections.

Racial Campaign Appeals

106. Racial appeals were prominent in judicial elections in Baton Rouge in 2012.

107. There was substantial evidence of racial appeals in the Supreme Court election covering Baton Rouge in 2012, specifically in the December runoff contest. Judge Guidry testified that he was "featured rather prominently in [his opponent's] campaign commercials, as well as his mail-outs." 8/5/14 Tr. at 185. Judge Guidry described this approach as "unusual," as the usual "school of thought is that you feature yourself and your qualifications." *Id.* He further described Judge Hughes' campaign as a "throw back to the politics of the past" and that it was "an appeal to bigotry and ignorance." *Id.* at 186.

108. A number of specific examples from the Supreme Court election are striking. First, Judge Hughes ran a television commercial that prominently featured President Obama,

noting that Obama would not appoint Judge Hughes, but the people could elect him. *Id.* at 186-87. Second, Judge Guidry himself was also featured in his opponent's advertising and "got a little darker in those pictures" than he usually is. *Id.* at 187. Third, Judge Hughes described Judge Guidry during the campaign as an "affirmative action Democrat." *Id.* Fourth, Judge Hughes sent targeted campaign materials to parts of the district that linked Judge Guidry to African-American Chief Justice Bernette Johnson of the Louisiana Supreme Court (and included their pictures) and expressed the need to elect Judge Hughes to prevent Chief Justice Johnson from exercising power, which was particularly racially-charged given the recent circumstances of her ascension to Chief Justice. *Id.* at 187-89; *see also generally Jindal*, 890 F.Supp.2d 696.

109. Tiffany Foxworth testified that race played a key role in her election contests. Indeed, she was so concerned about running as an African American in majority-white Election Section 2 that she ran strictly off her resume (and did not provide photographs in white communities). 8/5/14 Tr. at 46-47. Her efforts to run a race-neutral campaign were countered during the runoff, however, by her opponent's campaign literature. While Judge Ponder had promoted herself in the primary, Judge Ponder used a picture of Ms. Foxworth as the face of her own campaign in the runoff, including in three rounds of mailings. *Id.* at 51-52. Those pictures were large in size and in full color, making it clear that Ms. Foxworth is black. *Id.* at 53-54.[16]

110. The biracial Court of Appeals election was not spared. Judge Trudy White testified: "If you look to the campaign literature, you look to the television ads, it's loaded with racist appeals to steer white voters to the conservative side and…to divide our community by

[16] Additionally, white incumbent City Court Judges Wall and Ponder created a direct mailer that touted, complete with pictures, the support for Judges Wall and Ponder among State Representative Alfred Williams, Joe Delpit, and Reverend Leo Cyrus, all respected leaders in the black community. P. Ex. 131; 11/18/14 Tr. at 107-10. These mailers were not sent to the entirety of Election Section 2; rather, they targeted African-American likely voters. 11/18/14 Tr. at 168. While these appeals may not be inappropriate, they demonstrate the great salience of race in Baton Rouge elections.

race." 8/4/14 Tr. at 277. Those appeals manifested themselves in how campaigns were run and campaign messaging. *Id.* More specific to the 2012 election, Judge White characterized the election as "intense," "racist," and "nasty" with regard to race. *Id.* at 273.

African-American Electoral Success

111. The Court received evidence of African-American electoral success both in judicial and non-judicial districts in Baton Rouge.

112. Every current African-American judge in Baton Rouge has been elected from a majority-black district, and African-American judicial candidates have been unsuccessful in recent elections in majority-white districts. 11/17/14 Tr. at 68-69; 11/18/14 Tr. at 177-78.[17] African American candidates are routinely successful within majority-black districts in Baton Rouge and East Baton Rouge Parish.

113. No African Americans serve as elected judges from majority-white districts in the entire state of Louisiana. 11/17/14 Tr. at 68; 11/18/14 Tr. at 177-78.

114. African-American candidates have had limited success within majority-white jurisdictions in Baton Rouge and Louisiana generally. 11/18/14 Tr. at 67-68. Defendants point to one example, current Mayor-President Melvin "Kip" Holden, who was elected from East Baton Rouge Parish, which is majority-white; he lost his election contest in 2000, but he won election in 2004, 2008, and 2012. D. Ex. 1 at ¶¶ 34-40. On the other hand, on the Baton Rouge

[17] Most recently, in November 2014, three African-American candidates ran for judgeships against white opponents in Section 2 of the 19th Judicial District Court, which is partially within the City of Baton Rouge and has about 45% African-American voter registration. 11/18/14 Tr. at 151-55, 157-58; 11/19/14 Tr. at 9. The African-American candidates received about 47%, 45-46%, and 43% in those contests; two lost outright, and the third went to a runoff (all his primary opponents were white). *Id.* at 154-55, 157-58. The candidate who advanced to the runoff subsequently lost. *See* Louisiana Secretary of State, Election Results by Precinct, Unofficial Results for Election Date: 12/6/2014, District Judge – 19th Judicial District Court, ES 2, Div. M, EAST BATON ROUGE, http://staticresults.sos.la.gov/12062014/12062014_17_50399_Precinct.html; *cf., e.g., Dudum v. Arntz*, 640 F.3d 1098, 1101 n.6 (9th Cir. 2011) (taking judicial notice of election results posted on government website); *Ewing v. Monroe Cnty., Miss.*, 740 F.Supp. 417, 422-23 (N.D. Miss. 1990) (taking judicial notice of election results).

Metropolitan Council only African Americans represent majority-black districts and only whites representing majority-white districts. The Metropolitan Council has five majority black districts (Districts 2, 5, 6, 7, and 10), all of which are at least 62% African-American. D. Ex. 3 at 931. The Court takes judicial notice of the fact that these five districts are all represented by African Americans and that the other seven districts are represented by white Council members. The district that comes closest to the racial composition of City Court Election Section 2 is District 1, which is represented by Trae Welch, who is white. *Id.*

Responsiveness of the City Court to African-American Particularized Needs

115. The Baton Rouge City Court has not been responsive to the needs of African-American citizens. Specifically, Judge Trudy White testified that, except on DWI days, the vast majority of individuals coming through the criminal court at the Baton Rouge City Court are poor and African American, such that increasing court fees has a significant impact on the black community. 8/4/14 Tr. at 278. Judge White found that her fellow judges on the Baton Rouge City Court did not share her concerns about how increased fees would harm the black community, and fees were increased "without any direct correlation to whether or not it's related to anything," such that the fees were operating "more like a tax." *Id.* at 278-79; *see also id.* at 249 ("Most of the votes of significance or importance to the black community always came down three-two, three white votes against two black votes.").

116. Meanwhile, Defendants did not present any evidence suggesting that the Baton Rouge City Court *is* responsive to the particularized needs of African Americans.

Recent Efforts to Modify the Current Baton Rouge City Court Election System

117. Despite numerous efforts from members of the African-American community in Baton Rouge to change the districting scheme set forth in Act 609, the Baton Rouge City Court

election sections have remained unchanged since 1993.

118. Following the 2000 Census, which showed that Baton Rouge was 50% African-American and 45% white in total population, bills were introduced in the state legislature (in 2001, 2004, and 2006), that would have changed the method of election so that three judges would be elected from a majority-black election section and two judges would be elected from a majority-white section; those efforts were opposed by the three white judges on the Baton Rouge City Court and were unsuccessful. Joint Exs. 4.4, 4.5, 8-11; 8/4/14 Tr. at 234, 246-47, 284-88.

119. During the 2006 effort, the Chairman of the Committee on House and Governmental Affairs suggested that, instead of seeking to shift the distribution of judges, the city should seek to add a sixth judge to the City Court. Joint Ex. 11 at 002181-82; Joint Ex. 4.4. Thereafter, the Louisiana House called on the Judicial Council of the Louisiana Supreme Court to conduct an expedited evaluation of the need for an additional judge in City Court. Joint Ex. 12. When the Judicial Council conducted the evaluation, however, it determined that an additional judgeship was not warranted, and the City of Baton Rouge would be required to fund any additional judgeship on its own. 8/4/14 Tr. at 255-56; 8/5/14 Tr. at 261-664.

120. In 2013, Representative Alfred Williams introduced House Bill 318, which proposed redrawing the City Court district lines such that Election Section 1 would be majority-black and elect three judges and Election Section 2 would be majority-white and elect two judges, similar to the 2004 and 2006 efforts. Joint Ex. 13. Although the bill passed out of committee unanimously (7-0), it was defeated on the House floor (40-48). *Id.* at 002217, 002222. Of the members from Baton Rouge, every African-American member voted in favor of the bill, and every white member voted against it. 8/5/14 Tr. at 275-76.

121. In 2014, Representative Williams introduced House Bill 198, which was identical

to House Bill 318 introduced the previous year, but the bill failed in committee. Joint Ex. 15.

122. Also in 2014, Representative Erich Ponti, a white legislator representing a majority-white district, introduced House Bill 1151, which would have removed the election sections of the Baton Rouge City Court and resulted in the election of all City Court judges from the entire city at-large. Joint Ex. 14; 8/5/14 Tr. at 279; 11/17/14 Tr. at 227-30, 243-44. House Bill 1151 passed out of committee and the entire House unanimously. Joint Ex. 14 at 002254, 002258. Although some African-American legislators did not support an at-large election scheme, they voted for it because they were hopeful that changes could be made in the state Senate. 8/5/14 Tr. at 279. In the state Senate, House Bill 1151 was amended in committee to provide for two judges to be elected from Election Section 1, two judges to be elected from Election Section 2, and one judge to be elected from the city at-large. Joint Ex. 14. The bill stalled on the Senate floor after impassioned efforts by African-American legislators to amend the bill to create the desired 3-2 black-white split failed. *Id.*; Joint Ex. 2.

CONCLUSIONS OF LAW

1. This Court concludes on the basis of the record before it that the present system for electing the judges of the City Court for the City of Baton Rouge violates the "results test" of Section 2 of the Voting Rights Act.

2. In light of the statutory violation, the Court need not decide the Plaintiffs' constitutional claims.[18]

3. This Court has subject matter jurisdiction over this action pursuant to 42 U.S.C. §§ 1983, 1986 and 1988, 52 U.S.C. § 10308(f), and 28 U.S.C. §§ 1331, 1343 and 1357.

[18] Plaintiffs no longer seek a remedy that would require the state to seek preclearance of future voting changes under Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c), which requires a constitutional violation.

4. Venue in this Court is proper.

5. Plaintiffs Hall and Sharper have established their standing to maintain this action.

6. As amended in 1982, § 2(a) of the Voting Rights Act ("Section 2") prohibits any state or political subdivision from imposing or applying "any standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]" 52 U.S.C. § 10301.

7. Section 2 prohibits all forms of voting discrimination that "result in the denial of equal access to any phase of the electoral process for minority group members." S. Rep. No. 97-417 at 30 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 207 ("Senate Report"). As amended in 1982, a finding of racially discriminatory intent is not necessary to establish a violation. *Chisom v. Roemer*, 501 U.S. 380, 394 (1991). As the Supreme Court explained in *Thornburg v. Gingles*, 478 U.S. 30 (1986), "[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Id.* at 47. While the results standard does not provide an assurance of success for minority-preferred candidates, it does provide a right to "equal political opportunity." *Johnson v. De Grandy*, 512 U.S. 997, 1014 (1994); *see also Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 497 (5th Cit. 1987) ("At the heart of a § 2 vote dilution claim lies the issue of whether minorities have an equal opportunity to elect their candidates of choice.").

8. The "critical question" in a § 2 case is "whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of

their choice." *Gingles*, 478 U.S. at 63 (citations omitted).

9. The framework for evaluating Section 2 vote dilution claims, is well-established:

> First, plaintiffs must satisfy, as a threshold matter, three preconditions. Specifically, the minority group must demonstrate that: (1) it is sufficiently large and geographically compact to constitute a majority in an additional single-member district; (2) it is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to defeat the minority's preferred candidates. Failure to establish all three of these elements defeats a § 2 claim. Second, if the preconditions are proved, plaintiffs must then prove that based on the totality of the circumstances, they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Fairley v. Hattiesburg, Miss., 564 F.3d 660, 667 (5th Cir. 2009) (quoting *Sensley v. Albritton*, 385 F.3d 591, 595 (5th Cir. 2004)).

10. Although *Gingles* addressed vote dilution through the use of multimember districts, the principles also apply with equal force to other districting plans. *See Growe v. Emison*, 507 U.S. 25, 40-41 (1993).

11. Following a finding that the preconditions have been met, courts are required to perform an inquiry into the "totality of the circumstances." The *Gingles* Court looked to the Senate Judiciary Committee Report related to the 1982 amendments to the Voting Rights Act in creating a non-exhaustive list of factors to consider for the inquiry. 478 U.S. at 43-45; *see also Fairley*, 584 F.3d at 672-73. Additional factors may also be relevant, and there is no specific number of factors that must be proved to establish a § 2 violation. *Gingles*, 478 U.S. at 45.

First Gingles Precondition: Illustrative Plans

12. In order to satisfy the first *Gingles* precondition in the 5th Circuit, "plaintiffs have typically been required to propose hypothetical redistricting schemes and present them to the district court in the form of illustrative plans." *Fairley*, 564 F.3d at 669 (citing *Magnolia Bar*

Ass'n, Inc. v. Lee, 994 F.2d 1143, 1151 n.6 (5th Cir. 1993)).

13. There is no dispute of fact in this case that the Plaintiffs have satisfied the first *Gingles* precondition with respect to two alternative districting configurations.

14. Plaintiffs' expert Nancy Jensen provided two illustrative plans that create an additional majority-black single-member district. Plan A is drawn from within the boundaries of the current City Court Section 2 and would provide for three divisions with electorates of 65 percent or more in black voting-age population. Plan B differs only with respect to one precinct and would result in three divisions that are at least 66 percent in black voting-age population.

15. Plan A and Plan B employ district boundaries that are reasonably compact and adhere to traditional districting principles. Both plans comply with applicable state and federal law, including constitutional "one-person, one-vote" standards.

Second and Third Gingles Preconditions: Pool of Elections

16. "Racial bloc voting is the linchpin of a § 2 vote dilution claim, and plaintiffs must prove it." *Citizens for a Better Gretna*, 834 F.2d at 499. In assessing whether plaintiffs have proven the second and third *Gingles* preconditions, courts must carefully consider the pool of elections from which they draw their conclusions.

17. The 5th Circuit has consistently held that, in evaluating racial bloc voting, courts should look to contests where a "viable minority candidate" is running. *Id.* at 503; *see also Magnolia Bar Ass'n.*, 994 F.2d at 1149; *Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1208 n.7 (5th Cir. 1989) ("*Westwego I*").[19] The expert witnesses for both Plaintiffs and Defendants properly restricted their analyses to biracial contests.

[19] For this reason, the parties' experts correctly excluded the 2008 biracial election for Juvenile Court from their analysis.

18. In evaluating racial bloc voting, district courts must look first to results in "endogenous" contests (i.e. the offices that are the subject of the § 2 claim), as those elections are more probative than contests involving other offices. *Magnolia Bar Ass'n*, 994 F.2d at 1149.

19. If there is a question as to whether the pool of endogenous elections is sufficient to make the required determinations concerning the second and third *Gingles* preconditions, *see Rangel v. Morales*, 8 F.3d 242, 246 (5th Cir. 1993) (single endogenous contest insufficient on its own), then "exogenous" elections (*i.e.* contests for other offices in the jurisdiction) should be given due weight. *Citizens for a Better Gretna*, 834 F.2d at 502-03; *see also Westwego I*, 872 F.2d at 1209 ("plaintiffs may not be denied relief simply because the absence of black candidates has created a sparsity of data on racially polarized voting in purely indigenous elections").

20. There is no minimum number of contests that a district court must consider before finding that the second and third *Gingles* preconditions have been satisfied. The Fifth Circuit has upheld a finding of racially-polarized voting based upon four contests (two endogenous and two exogenous). *Citizens for a Better Gretna*, 834 F.2d at 503. In *Magnolia Bar Association*, the Fifth Circuit held that two endogenous judicial contests were sufficient for a district court to decide the third *Gingles* precondition, giving no weight to the exogenous judicial and non-judicial contests that were offered. 994 F.2d at 1148-50 (based upon two endogenous contests, "district court could reasonably conclude that the Plaintiffs did not meet their burden").

21. In determining whether any exogenous election contests should be considered, and deciding what weight should be accorded to the exogenous contests that are considered, district courts are vested with considerable "flexibility." *Citizens for a Better Gretna*, 834 F.2d at 502. Courts must look to the probative value of the proffered exogenous contests as

"indicator[s] of the voting behavior of the relevant polity." *Westwego I*, 872 F.2d at 1209 (citing *Citizens for a Better Gretna*, 834 F.2d at 502-03); *cf. id.* at 1208 n.8 ("evidence from [exogenous] elections should not be deemed irrelevant *per se* to plaintiffs' claims, but must be evaluated according to its particular probative value").

22. As expert witnesses for both Plaintiffs and Defendants agree, judicial contests are more probative than non-judicial contests for purposes of evaluating claims of minority vote dilution in this case. *See Magnolia Bar Ass'n*, 994 F.2d at 1149 (framing inquiry as whether black and white voters "generally prefer different candidates in Mississippi judicial elections"); *see also, e.g., Chisom v. Roemer*, 1989 WL 106485, *4 (E.D. La. Sept. 19, 1989) ("judicial elections are sufficiently different from elections for legislative and administrative offices to warrant caution in making inferences about voter behavior using the techniques employed to analyze voter polarization and vote dilution in those other types of elections").

23. There were seven relevant biracial judicial contests in Baton Rouge between the time that the current City Court election system was adopted and the opening of trial in August 2014. As discussed above, both Dr. Engstrom and Dr. Weber employed the same statistical procedure, and there were no significant differences between the estimates they provided in those contests. Dr. Engstrom testified credibly that these seven contests were a sufficient pool of elections, and Dr. Weber explicitly declined to dispute that conclusion.

24. Because the evidence shows that the pool of seven biracial judicial contests analyzed by Dr. Engstrom are the most probative, the Court will in the first instance review the voting patterns in those contests. To the extent that the evidence regarding those contests demonstrates clear patterns of cohesion and racially polarized voting, the Court will limit the

weight that it accords to any exogenous non-judicial contest.

25. Defendants place undue reliance upon the observation in *Gingles* that "a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election." *Gingles*, 478 U.S. at 57. *Gingles* did not hold or suggest that seven contests in the most recent election cycle was an inadequate pool; it meant instead that courts must look at the patterns within the relevant pool of elections as a whole. The Court has been presented with no authority, nor does it know of any, for the proposition that a finding of racially-polarized may not be based on a clear pattern among multiple elections within one election cycle; this is particularly the case where, as here, the election cycle is the most recent. In addition to the pool of 2012 contests being relatively large (seven), Defendants have presented no evidence suggesting that the November 2012 and December 2012 elections were abnormally poor showings for African American voters. To the contrary, the evidence suggests that African American participation was at a high-water mark in the November 2012 election, as it was in November 2008.[20]

Second Gingles Precondition: Minority Cohesion

26. Both Dr. Engstrom and Dr. Weber testified that African American voters were cohesive in each of the seven relevant biracial judicial contests. It is undisputed that Plaintiffs have satisfied the second *Gingles* precondition of minority cohesion within the relevant pool of elections by "showing that a significant number of [African Americans] usually vote for the

[20] While Defendants argue that a single election cycle is insufficient to establish a pattern of racially-polarized voting, they vigorously objected to the admission of evidence pertaining to the November 2014 elections, which featured a number of biracial judicial contests in majority-white districts within Baton Rouge in which black candidates lost. If it is determined on appeal that the elections analyzed in this opinion are insufficient, the Court is prepared to review these additional results, including any supplemental expert analyses.

same candidates." *Gingles*, 478 U.S. at 56.

27. In four of the seven judicial contests analyzed, African-American candidates were supported by over 95 percent of African-American voters, and African-American support for African American candidates was below 70 percent in only one primary contest. *Cf. Gingles*, 478 U.S. at 59 (describing black cohesion as "overwhelming" where black support for black candidates ranged from 71% to 96%); *Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1397 (5th Cir. 1996) ("*Clark II*") (racially-polarized voting was "beyond question" where analysis showed a "consistent relationship" between race and voting preferences).

28. Dr. Weber also concluded that African-American voters in Baton Rouge were cohesive in the exogenous non-judicial contests for which he reported results.

Third Gingles Precondition: Racial Bloc Voting

29. Plaintiffs need not prove "total" white bloc voting in Baton Rouge in order to satisfy the third *Gingles* precondition; the proper inquiry is whether whites vote "sufficiently as a bloc" to usually defeat minority-preferred candidates. *See Campos v. City of Baytown*, 840 F.2d 1240, 1249 (5th Cir. 1988). There is no genuine dispute in the record here that within the pool of relevant elections white bloc voting was substantial enough to usually defeat "the combined strength of minority support plus white 'crossover' votes." *Gingles*, 478 U.S. at 56.

30. In Election Section 2, voting was racially polarized and white bloc voting defeated the African-American candidate of choice in all three endogenous contests.[21]

[21] *Compare Campos*, 840 F.2d at 1249 (finding that three illustrative elections where (1) minority received 83% of the minority votes but only 37% of the white vote and lost; (2) minority received 63% of the minority vote but only 29% of the white vote and lost; and (3) minority received 78% of the minority vote but only 3% of the white vote and lost, was sufficient to satisfy the third *Gingles* precondition); *see also Fabela v. City of Farmers Branch, Tex.*, 2012 WL 3135545, *12 (N.D. Tex. Aug. 2, 2012) (*Gingles* third precondition satisfied when Hispanic candidate lost

31. In the three endogenous contests,[22] no black candidate received better than 43 percent of the vote in Section 2 (which Tiffany Foxworth received during the November 2012 primary contest). Voting in all three of those contests was racially-polarized, with non-African-American bloc voting preventing African Americans from electing their candidates of choice. Within these three contests the third precondition is indisputably satisfied. *See Magnolia Bar Ass'n*, 994 F.2d at 1148-50 (evidence from two endogenous contests properly formed the basis for district court's findings on the third *Gingles* precondition).

32. Within Election Section 2, voting was racially polarized in each of the four exogenous judicial contests, and the African-American candidate of choice failed to win a majority of the vote within Section 2 in three of the four exogenous judicial contests. The one exogenous judicial contest in which the African-American candidate of choice won a small majority of the vote within Section 2 (the Judge Guidry runoff) involved circumstances that cannot occur in City Court elections, as discussed above.[23]

33. Thus, the Court concludes that Plaintiffs have satisfied the third *Gingles* precondition within the pool of seven most probative contests.

34. The exogenous non-judicial elections show a pattern of racial polarization over time that is consistent with the judicial contests. By a preponderance of the evidence, the non-

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despite 72% Hispanic support and 42% non-Hispanic support).

[22] The Court declines to consider biracial City Court elections conducted under the at-large system in the 1980s. *See Gingles*, 478 U.S. at 76 (appropriate for court to accord "greater weight to blacks' relative lack of success over the course of several recent elections"). In addition to their staleness and the fact that no racially-polarized voting analysis was presented for these contests, special circumstances—namely litigation or the threat of litigation—surrounded the elections of all three judges. *See* 8/4/14 Tr. at 184-85, 188-89, 217; 11/17/14 Tr. at 93-94.

[23] Moreover, the fact that Judge Hughes went from receiving 15.4% of the non-African American vote in the primary (and finishing fifth among eight candidates in East Baton Rouge Parish and in Election Section 2) to 69.8% support among non-African American voters in the runoff (when he was the only remaining white candidate) is highly suggestive of the continued salience of race to voting patterns in Baton Rouge.

judicial elections demonstrate African-American cohesion and racial bloc voting in all but two contests. Although this evidence says little about voting patterns in judicial elections, it on balance supports a finding for Plaintiffs on the second and third *Gingles* preconditions.[24]

35. Just as the exogenous non-judicial elections reported by Dr. Weber say little about voting patterns in judicial elections, the fact that, for example, Kip Holden received a majority of the vote in Section 2 for East Baton Rouge Parish Mayor-President on several occasions (although, as noted, he never would have been elected in the first place in 2004 if he had run exclusively in Section 2), and that Barack Obama carried Section 2 for U.S. President in one of his elections, says little about the electoral prospects for African-American candidates in future City Court elections. The 2012 election results show somewhat greater (but still polarized) white crossover voting in non-judicial contests than in judicial contests, but there is no basis in the record to conclude that the voting patterns in those non-judicial contests provide a more accurate indicator of future voting patterns in Baton Rouge City Court elections than the relevant pool of seven judicial contests. Moreover, as noted, judicial campaigns operate by different dynamics and rules than campaigns for executive offices such as U.S. President or Parish Mayor-President.

36. The Court concludes that non-African American bloc voting usually defeats the candidate of choice among African American voters in City Court and other judicial elections in Election Section 2 in Baton Rouge,[25] and "the white majority votes sufficiently as a bloc to

[24] Indeed, regardless of their relevance, those elections must be discussed here to the extent any of them may provide evidence contrary to the Court's opinion. *See Fairley*, 584 F.3d at 668.

[25] Partisan differences cannot explain away the racial voting patterns in this case. *Cf. LULAC v. Clements*, 999 F.2d 831, 861 (5th Cir. 1993) (*en banc*). First, Defendants' expert Mr. Beychok testified that East Baton Rouge "is a Democratic parish" and most voters in Election Section 2 are "not Republican," so party registration "obviously doesn't play a real part" in outcomes. 11/18/14 Tr. at 186-87. Second, racial polarization occurred even in contests where white and black candidates were both of the same party. In the City Court contest for Division 2C, both candidates ran as Democrats. P. Ex. 77. And in the Court of Appeals primary, African-American Judge Trudy White ran as a Republican. P. Ex. 158. In both instances, the black candidates received minimal white support.

enable it—in the absence of special circumstances—usually to defeat the minority's preferred candidates." *Fairley*, 564 F.3d at 667 (quoting *Sensley*, 385 F.3d at 595).

Totality of the Circumstances

37. "[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of the circumstances." *Clark v. Calhoun Cnty., Miss.*, 21 F.3d 92, 97 (5th Cir. 1994) ("*Clark I*") (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)).

38. Regarding the factors courts must consider in evaluating the totality of the circumstances, plaintiffs need not prove any particular number of factors or that a majority of them point "one way or the other." *Gingles*, 478 U.S. at 45 (citing Senate Report at 29); *see also Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1120 (5th Cir. 1991) ("*Westwego III*") ("No one of the factors is dispositive; the plaintiffs need not prove a majority

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This is a far cry from the situation observed in *LULAC*, where the "white as well as minority voters found themselves not infrequently voting against candidates sharing their respective racial or ethnic backgrounds in favor of their party's nominee." 999 F.2d at 861.

Defendants' argument that voting patterns in black-white judicial contests can be explained by incumbency, not race, is similarly unpersuasive. While the Fifth Circuit has held that defendants may offer evidence that electoral outcomes are caused by partisanship, rather than race, to overcome evidence of racially polarized voting as it relates to the second and third *Gingles* preconditions, the court's decision was dependent on considerations specific to partisanship, and other nonracial explanations for racially polarized voting do not receive the same treatment. *LULAC*, 999 F.2d at 859-63 & n.27. Moreover, while race provides a complete explanation for the voting patterns—in every judicial election analyzed by Dr. Engstrom and Dr. Weber black voters strongly supported black candidates and white voters strongly supported white candidates—incumbency does not. Black voters did not support incumbents in any of these elections and white voters supported white candidates over a black candidate in the 2012 Supreme Court contest where there was no incumbent. Moreover, Defendants presented no evidence as to the degree of any incumbency effect. For example, in the endogenous contests for Baton Rouge City Court, the most successful candidate still came nearly seven points short of the 50% needed to win, and the Defendants did not provide the Court with any basis from which to conclude that incumbency was worth that many percentage points. This is far different than a situation where the preferences of black and white voters were strongly affected by incumbency. *See Rollins v. Fort Bend Indep. Sch. Dist.*, 1996 WL 560295, *19-20 (S.D. Tex. June 30, 1994) (incumbency "alone," not race, "explains why some minority candidates in the FBISD have done well in both minority and Anglo boxes, and have won, and why other candidates have done less well in both minority and Anglo boxes, and have been defeated."), *aff'd* 89 F.3d 1205 (5th Cir. 1996).

of them; other factors may be relevant.").

39. The two most important factors in the totality of the circumstances analysis are (1) "whether the electorate is racially polarized," and (2) "whether, under the challenged electoral practice, the minority group has been able to elect candidates of its choice." *Westwego II*, 946 F.2d at 1122 (citing *Gingles*, 478 U.S. at 48 n.15). If those factors are present, "the other factors…are supportive of, but *not essential to*, [the] claim." *Gingles*, 478 U.S. at 48 n.15 (emphasis in original).

A. Factor 1: History of Voting-Related Official Discrimination

40. First, the Court must look at "[t]he history of voting-related discrimination in the State or political subdivision." *Fairley*, 584 F.3d at 672. The entire history of discrimination must be considered, not just the history since the adoption of the Voting Rights Act. *Clark v. Edwards*, 725 F.Supp. at 295.

41. The history of racial discrimination in voting in Louisiana is discussed above. Based on that history, which is extensive and includes both long-past and some more recent discrimination, this factor favors Plaintiffs. It is particularly notable that in 2012 the state sought to avoid the clear dictates of a federal consent decree in a case involving judicial elections so as to prevent an African-American Supreme Court Justice from being elevated to Chief Justice.

B. Factor 2: Extent of Racially Polarized Voting

42. As discussed above, the statistical results of Plaintiffs' expert political scientist, Dr. Engstrom, and Defendants' expert political scientist, Dr. Weber, both showed substantial racial polarization in each of the judicial elections in Baton Rouge that they analyzed, and Dr. Weber's analysis of non-judicial elections also showed racial polarization in most circumstances.

43. Accordingly, Plaintiffs have demonstrated that voting for the Baton Rouge City Court is racially polarized to a legally significant degree, and therefore the second factor weighs heavily in their favor. *See Westwego III*, 946 F.2d at 1122 (finding racial polarization for totality of the circumstances purposes based on evidence presented on *Gingles* preconditions).

C. Factor 3: Voting Practices or Procedures That Tend to Enhance the Opportunity for Voting Discrimination

44. The Court next considers the third factor, the use of "voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group." *Fairley*, 584 F.3d at 672. This factor also weighs heavily in favor of Plaintiffs.

45. The five Divisions on the Baton Rouge City Court function as designated or numbered posts, such that candidates must declare for a single post, and voters may cast only one vote for each post. Separate-post elections for the City Court prevent minority voters from single-shot voting within a field of candidates for multiple positions.[26] The numbered-post system prevents African-American voters from using single-shot voting to improve their chances of electing candidates of choice in Baton Rouge City Court elections. *See Jones v. City of Lubbock*, 727 F.2d 364, 383 (5th Cir. 1984) (numbered posts "create head-to-head races and promote majority-minority confrontation [and] effectively prevents single shot voting"); *Benavidez v. Irving Indep. Sch. Dist.*, 2014 WL 4055366, *21 (N.D. Tex. Aug. 15, 2014) (existence of place system weighs in plaintiffs' favor).

46. The majority-vote requirement also helps allow white bloc voting to defeat

[26] Anti-single shot provisions were specifically cited in the Senate Report as enhancing the opportunity for voting discrimination. *See Gingles*, 478 U.S. at 37 (citing Senate Report at 28-29); *see also id.* at 38-39 n.5 & n.6 (explaining single-shot voting and how numbered posts can frustrate minorities' ability to use single-shot voting to elect candidates of choice).

African-American candidates of choice in Election Section 2. Even if a candidate has led a field of three or more candidates with a plurality of the vote in the primary, he or she must go on to win a head-to-head runoff election. The majority-vote requirement for judges to win election to the Baton Rouge City Court makes it more difficult for minorities to elect their candidates of choice in majority-white districts. The Fifth Circuit has consistently held that the existence of such a requirement weighs in plaintiffs' favor, as it "permits a white majority that scattered its votes among several white candidates in an election to consolidate its support behind the remaining white candidate in the run-off election…." *See Clark II*, 88 F.3d at 1398; *see also Westwego I*, 872 F.2d at 1212; *Jones*, 727 F.2d at 383. The results of the November 2012 primary election demonstrate the point. In the Supreme Court contest, Judge Guidry would have won election in the primary against his seven opponents but for the majority-vote requirement.

47. Finally, the unique challenges that African-Americans face in raising campaign funds, along with the uncontroverted testimony that campaign spending is particularly important in larger election districts, combines to make it more difficult for black candidates to compete effectively in such districts. Thus, the requirement that candidates run within a three-member district with a population of approximately 142,000, exacerbates the effects of the socio-economic disparities between the races as compared to single-member districts. *See Goosby v. Town Bd. of Town of Hempstead, N.Y.*, 180 F.3d 476, 494 (2d Cir. 1999), *cert. denied*, 528 U.S. 1138 (2000); *United States v. Charleston Cnty., S.C.*, 316 F.Supp.2d 268, 293-94 (D.S.C. 2003).

D. Factor 4: Socio-Economic Disparities That Hinder Minority Ability to Participate Effectively in the Political Process

48. The Court next considers "the extent to which minority group members bear the

effects of past discrimination in areas such as education, employment and health, which hinder their ability to participate effectively in the political process." *Fairley*, 584 F.3d at 672-73. This factor favors plaintiffs when they can show "disproportionate educational, employment, income level and living conditions arising from past discrimination" and that "the level of black participation in politics is depressed"; "[p]laintiffs need not prove any further causal nexus between [the two]." Senate Report at 29 n.114.

49. The evidence shows that significant disparities remain between the respective socioeconomic positions of African Americans and non-African Americans in Baton Rouge. On average African Americans lag significantly behind non-African Americans in each of the standard measures of socioeconomic status, including education, housing and income.

50. The evidence shows that African-American participation in politics is depressed in two ways. First, black turnout rates are consistently lower than non-black turnout rates. Second, and particularly with respect to judicial positions, black candidates face significant disadvantages in terms of perceived qualifications, political connections, and fundraising. Thus, it is especially difficult for African American candidates to compete on an equal playing field. For these reasons, this factor also supports Plaintiffs.

E. Factor 5: Racial Campaign Appeals

51. The evidence, including testimony from Judge Guidry, Judge White, and Tiffany Foxworth, shows that racial campaign appeals functioning to highlight if not to disparage the racial identity of African American candidates have been used recently in Baton Rouge judicial elections. These racial campaign appeals have taken several forms, including white candidates prominently placing images (in at least one instance darkened) of their opponents on their own

campaign materials and calling a sitting appellate judge an "affirmative action Democrat."

52. The evidence is striking and overwhelming, and makes clear that race remains a very salient factor in judicial elections in Baton Rouge. Indeed, the evidence showed racial appeals in three of the four biracial judicial elections in 2012.

53. This factor accordingly strongly supports a Section 2 violation.

F. Factor 6: The Extent to Which African Americans Have Been Elected to Public Office

54. The Court must also look at the level of electoral success for African American candidates in the jurisdiction. *Fairley*, 584 F.3d at 673.

55. The history of black electoral success in endogenous contests discussed above favors Plaintiffs. Since 1993 every judge elected from Election Section 2 (the most relevant jurisdiction for the present case) has been white, and African American candidates have been unsuccessful in each of those elections in which they ran. Meanwhile, the elections prior to 1993, in which all City Court judges were elected at-large, are stale, and the Court accords them minimal weight. This compete lack of success among African-American candidates in Election Section 2 places this factor in Plaintiffs' favor.

56. Exogenous elections, especially those that are non-judicial, have limited probative value. With that in mind, since 1993 every African-American judge in Baton Rouge has been elected from a majority-black district, and in majority-white districts African-American judicial candidates have been uniformly unsuccessful.[27]

57. Exogenous non-judicial elections are the least probative tier. In those elections,

[27] While Defendants point to Judge Guidry's success in East Baton Rouge Parish and Election Section 2 during his losing Supreme Court contest, the fact remains that he was not elected. Moreover, as discussed above, the circumstances under which Judge Guidry obtained a bare majority within Section 2 in the 2012 runoff cannot be repeated in actual City Court elections.

there has been some success by African-American candidates, including some candidates for office within much larger districts who have received a majority of the votes cast in Election Section 2. On the other hand, the racial composition of the Metropolitan Council reflects the usual pattern in Baton Rouge, with the Council member for each of the twelve districts being a member of the majority race (and the district closest in composition to Election Section 2 electing a white Council member). This places in stark relief the continued difficulties faced by African-Americans in majority-white districts. In any event, even if the evidence of success in exogenous non-judicial elections did support Defendants, it would not approach the quantum of evidence that would be needed to rebut the patterns of cohesion, bloc voting, and vote dilution shown in the endogenous and exogenous judicial elections.

58. Finally, the Court also finds probative the current total lack of black success at winning election to judicial positions in majority-white districts throughout Louisiana. While such evidence is less relevant than results in Baton Rouge City Court Election Section 2, it corroborates and supports the statistical evidence discussed herein, by showing that the voting patterns and results in the seven relevant judicial contests are unlikely to be aberrations.

59. The foregoing shows a lack of black success in the endogenous elections, a lack of black success in judicial elections in other majority-white districts, and limited black success in non-judicial exogenous contests. The Court concludes that any success in the non-judicial contests does not outweigh the strong lack of black success vis-à-vis the most probative offices and the complete inability of black judicial candidates in Baton Rouge to win election in majority-white districts. Therefore, this factor favors the Plaintiffs.

G. Factor 7: Responsiveness

60. Responsiveness to the needs of minorities is another relevant, although non-

essential, factor. *Clark II*, 88 F.3d at 1400-01; *Westwego III*, 946 F.2d at 1122. Even where there has been a finding of affirmative responsiveness, courts have consistently held that responsiveness, no matter the degree, is insufficient to counter other factors that support a plaintiff's claims. *See, e.g.*, *Clark II*, 88 F.3d at 1400-01; *Campos*, 840 F.2d at 1250.

61. Judge Trudy White's testimony about increases in court fees, which were driven by the three white judges on the City Court and disproportionately affect African Americans, shows a lack of responsiveness. On the other hand, Defendants presented no evidence showing the Baton Rouge City Court to be responsive to the particularized needs of African Americans. Consequently, the Court finds some support for Plaintiffs on this factor.

H. Factor 8: Tenuousness

62. Federal courts have consistently held that "[t]he weight, as well as tenuousness, of the state's interest is a legitimate factor in analyzing the totality of the circumstances." *Clark II*, 88 F.3d at 1401 (quoting *LULAC v. Clements*, 999 F.2d 831, 871 (5th Cir. 1993) (en banc)). Defendants have failed to set forth *any* non-tenuous justification—let alone a substantial one that could serve to defeat liability, *id.*—for the maintenance of the current method of election.[28]

63. In fact, there appears to be near-universal agreement that the current method of election for Baton Rouge City Court should be changed, as House Bill 1151, which would have changed the method of election, passed unanimously in 2014, and even legislators who have questioned a reapportionment of the City Court have supported a change. *See, e.g.*, Joint Exs. 3.1, 3.2, 4.1, 4.4, 14, 15. At trial, Defendants did not present a single justification for maintaining the current method of election, and in fact called a witness, Rep. Eric Ponti, who

[28] Indeed, the primary justification that had been advanced in favor of the current method of election was that the African-American voting-age population was less than 50% of the population of Baton Rouge. *See, e.g.*, Joint Ex. 4.5. This justification no longer applies (if it ever was viable given that white voters were even further removed from 50%) because the city is now majority black in voting-age population.

advocated for a change (albeit to at-large elections). Rep. Ponti could not name a single legislator who supported the current method of election. 11/17/14 Tr. at 243; *see also* Joint Ex. 3.1 (Rep. Ponti advocated a change because "the population has changed with the latest census"). The only remaining area of disagreement surrounds *how* it should be changed. Therefore, this factor supports Plaintiffs.

I. Factor 9: Proportionality

64. Section 2 of the Voting Rights Act eschews any requirement of proportional representation. 52 U.S.C. § 10301(b) ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population"). However, the analytically different concept of "substantial proportionality" is relevant to the totality of the circumstances. *Fairley*, 584 F.3d at 674.

65. African Americans constitute 54.5% of the population of Baton Rouge, and 50.1% of the voting-age population—compared to just 39.4% and 43.9%, respectively, for whites—which are appropriate figures for the Court to consider in assessing substantial proportionality. *See Fairley*, 584 F.3d at 674 (reliance on "the more solid grounds of population figures…makes good sense in most cases"). But they are currently able to elect candidates of choice for only two of five (40%) judgeships on the City Court. The inverse places the matter in starker relief: whites constitute about 40% of the population, but get to elect three of five judges.

66. Therefore, this factor also favors Plaintiffs. In this case, the lack of proportionality is particularly significant because the system has been structured in a manner that essentially locks in a ratio—of three judges (60%) in a majority-white district to two judges (40%) in a majority-black district—that is markedly out of sync with the African-American share of the citywide population. *See Johnson v. De Grandy*, 512 U.S. 997, 1020-21 & n.17 (1994)

(the "degree of probative value assigned" to proportionality (or disproportionality) may vary based on various factors).

Conclusion Based on the Totality of the Circumstances

67. Based upon the foregoing, the Court finds that, under the totality of the circumstances, the Baton Rouge City Court's method of election violates the results test of § 2.

REMEDY

The Court will issue an order forthwith setting a schedule that will afford the Defendants an opportunity to propose a remedy that will provide a full and complete remedy for the violation, and for the Plaintiffs to respond.[29]

Respectfully submitted,

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**pro hac vice*

[29] As the chief election official in Louisiana, the Secretary of State is necessary for effective implementation of a remedy. Therefore, the Court declines to dismiss the Secretary of State.

CERTIFICATE OF SERVICE

I hereby certify that, on December 10, 2014, I electronically filed the forgoing with the Clerk of Court by using the CM/EMF system, which will send a notice of electronic filing to all counsel of record.

/s/ Alan A. Martinson
ALAN A. MARTINSON