No. 22-30333

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PRESS ROBINSON, et al.,
Plaintiffs-Appellees,

v.

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana,
Defendant-Appellant,

CLAY SCHEXNAYDER, et al.,
Intervenor Defendants-Appellants.

EDWARD GALMON, SR., et al.,
Plaintiffs-Appellees,

v.

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana,
Defendant-Appellant,

CLAY SCHEXNAYDER, et al.,
Movants-Appellants.

On Appeal from the Middle District of Louisiana
Case Nos. 3:22-cv-211, 3:22-cv-214
The Honorable Shelly D. Dick

Supplemental Brief for Appellants

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INTRODUCTION

Appellants filed this appeal more than a year ago to challenge "a flawed view of §2" of the Voting Rights Act (VRA) "that conflicts with the Fourteenth Amendment." Opening Brief for Appellants 23. Since then, the Supreme Court has twice rejected the principles underpinning the district court's preliminary-injunction order and confirmed the merits of this appeal.

First, *Allen v. Milligan*, 143 S. Ct. 1487 (2023), held that the "requirements" of §2 are "exacting," that §2 suits are (and should be) "rarely . . . successful," and that "[f]orcing proportional representation is unlawful." *Id.* at 1509-10. The Court affirmed a likelihood-of-success finding under §2 only because the district court found that the challengers' illustrative plans united a recognized community of interest—defined in non-racial terms—and Alabama's contrary communities-of-interest assertions were based on the word of "[o]nly two witnesses." *Id.* at 1505.

Allen's teachings apply here as a study in contrasts. Only one lay witness testified in support of Plaintiffs' proposal that the rural Delta Parishes be combined with urban and suburban East and West Baton Rouge Parishes to create a second majority-Black district. By contrast, a fulsome legislative record—which the district court completely ignored—establishes the Louisiana Legislature's compelling reasons for not combining those distinct communities and instead grouping rural regions

into CD5 and urban and suburban regions into CD2 and CD6. Plaintiffs point to socioeconomic analysis showing, at most, statewide socioeconomic differences between Black and white residents. But that analysis disregards socioeconomic differences between rural and urban Louisianans of all races. Ignoring these differences, Plaintiffs propose a statewide concept of community defined in starkly racial terms—a white community and a Black community. *Allen* rejected, rather than condoned, that unconstitutional approach, as well as Plaintiffs' explicit demand for "racial proportionality in districting," *id.* at 1508.

Second, in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023) (*SFFA*), the Supreme Court confirmed that "[e]liminating racial discrimination means eliminating all of it." *Id.* at 2161. The district court's order fails in each respect that the affirmative-action plans failed in *SFFA*. Whereas *SFFA* held that "outright racial balancing is patently unconstitutional," *id.* at 2172 (citation and edit marks omitted), the district court ordered Louisiana to draw down Black voting-age population (BVAP) in one district (CD2) to crank it up in another (CD5). Moreover, *SFFA* condemned the idea "that there is an inherent benefit in race *qua* race—in race for race's sake." *Id.* at 2170. But §2 is wielded here to replace the recognized divide between rural and urban interests with an invidious concept of a statewide divide between white and Black communities. And, while *SFFA* held that race-based government action "must end," "no end is in sight" to the racially

predominant redistricting imposed here. *Id.* at 2166. The district court has compelled Louisiana into the very race-based districting choices that—30 years ago—a federal court twice found unwarranted under §2. *See* Opening Brief for Appellants 7-9. As far as constitutional rights are concerned, the district court's decision takes Louisiana in the wrong direction.

This is, in sum, not "the most extraordinary case," *SFFA*, 143 S. Ct. at 2163, "where the excessive role of race in the electoral process denies minority voters equal opportunity to participate," *Allen*, 143 S. Ct. at 1510 (citation and edit marks omitted), such that "race-based redistricting" qualifies as a constitutional "remedy" under §2, *id.* at 1516. The district court's contrary order stands twice condemned by intervening precedent and should be reversed.[1]

[1] This brief responds to the Court's invitation for supplemental briefing concerning *Allen* "and any other developments or caselaw" that have emerged since this case was held in abeyance. CA5 Dkt. No. 242. This brief does not repeat distinct arguments made in prior briefing, including that this appeal is moot, *see* Reply Brief for Appellants, CA5 Dkt. No. 248 at 5-9, that Plaintiffs are unlikely to establish the third *Gingles* precondition, *id.* at 9-20, and that a new redistricting plan with a novel configuration is improper provisional relief, *id.* at 24-31. Appellants stand by their prior arguments, and nothing in this focused brief should be deemed a waiver or forfeiture of any argument.

ARGUMENT

I. Illustrative Maps That Combine Far-Flung Communities With Nothing in Common but Race Do Not Satisfy the First Precondition.

A. Plaintiffs' Proposed Districts Are Not Reasonably Configured.

Allen confirmed that the first *Gingles* precondition is satisfied only where "the minority group" is "sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." 143 S. Ct. at 1503 (citation omitted). *Gingles* contemplates a majority-minority district "only when, among other things, (i) a State's redistricting map cracks or packs a large and 'geographically compact' minority population *and* (ii) a plaintiff's . . . proposed majority-minority district [is] 'reasonably configured . . . .'" *Id.* at 1518 (Kavanaugh, J., concurring) (citation omitted; emphasis added).

To satisfy the "reasonably configured district" requirement, Plaintiffs must produce hypothetical districts that "comport[] with traditional districting criteria" and are configured in accordance with the State's "traditional" communities of interest. *Id.* at 1503-05 (citation omitted); *see also id.* at 1518 (Kavanaugh, J., concurring) (reiterating that §2 does not compel states "to group together geographically dispersed minority voters").

The Court upheld a finding that the first precondition was satisfied only because Alabama's communities-of-interest contention lacked

evidentiary support and the plaintiffs' contention found that support. *See id.* at 1505. In particular, "[o]nly two witnesses testified" in support of Alabama's assertions regarding communities of interest, and the district court found substantial evidence that the plaintiffs' illustrative plans "joined together a different community of interest called the Black Belt." *Id.* Because "[t]here would be a split community of interest in both" Alabama's plan and the illustrative plans, the district court did not clearly err in finding the illustrative plans reasonably configured. *Id.* But this holding did not present a free pass to future plaintiffs to establish §2 liability without proving that the relevant minority population is itself compact. The Court explained that §2 cases are "rarely . . . successful," *id.* at 1509, and Justice Kavanaugh's concurrence reflecting the decisive fifth vote emphasized that "courts must rigorously apply the 'geographically compact' and 'reasonably configured' requirements," *id.* at 1518 n.2 (Kavanaugh, J., concurring) (citation omitted). The district court did not apply a rigorous analysis in this case, and §2 liability is unavailable. This scenario is the opposite of Alabama's. No competent evidence supports the configuration Plaintiffs propose, and only the Louisiana Legislature's configuration respects the State's traditional communities of interest.

1. The Delta Parishes and East Baton Rouge Share No Cognizable Interests.

Plaintiffs' six illustrative plans all share the same core design "that connects the Baton Rouge area and St. Landry Parish with the delta parishes along the Mississippi border," 180 miles away. ROA.6644; *see also* ROA.6659 ("Cooper's illustrative maps all take roughly the same shape, reaching from East Baton Rouge and St. Landry Parishes in the south to the Delta Parishes along the Louisiana-Mississippi border."); ROA.6665 (same for Fairfax plans); *see also* Opening Brief for Appellants 31-34. This is because there is no other known way to draw a second majority-Black district in Louisiana. *See* ROA.3727-28.

But no community of interest unites residents of the Delta Parishes with those of East and West Baton Rouge Parishes. The district court's discussion of the first precondition contains no finding that a community of interest exists between these regions, *see* ROA.6724-6740, and its findings of fact identified only one lay witness, Christopher Tyson, whose testimony would support such a finding, ROA.6671-72; *see* Opening Brief for Appellants 36-37. If "[o]nly two witnesses" cannot establish a community of interest, *Allen*, 143 S. Ct. at 1505, surely *one* cannot. That is especially so where another lay witness Plaintiffs sponsored repeatedly called East Baton Rouge Parish part of "south Louisiana," which is the opposite of northeast Louisiana. ROA.5064-71; Opening Brief for Appellants 36-37.

Plaintiffs' demographic experts effectively admitted that no community of interest unites these regions. One demographic expert found "that the Louisiana delta region is characterized by unique communities of interest of culture and tradition" and acknowledged East and West Baton Rouge Parishes are "not part of the Louisiana delta region." ROA.5042-43. The other acknowledged "significant differences" between both Black and white populations of these disparate regions. ROA.4968. Both experts' analyses showed marked differences in household income, educational attainment, and poverty levels of Black residents in East Baton Rouge Parish as compared to Black residents of the Delta Parishes. *See* ROA.4973-78; ROA.5052-56. Based on this, the district court found "that poverty is much higher in East Carroll Parish, with much lower median income for the Black population, and that educational attainment was likewise much lower in East Carroll Parish," as compared to East Baton Rouge Parish. ROA.6663-64; *see* § I.A.3, *infra*. Neither the district court nor Plaintiffs have articulated any discrete interest these regions hold in common, except that Plaintiffs' experts could find "neighborhoods that were overwhelmingly Black" in each, ROA.6663, which Plaintiffs stitched into districts barely above 50% BVAP, *see* ROA.6658, 6665.

By contrast, the preliminary-injunction record proves the Legislature purposefully did not combine these urban and rural areas because they are dissimilar. It configured CD5 for the purpose of

"connecting the rural parts of our state." ROA.12929. "Things that are important" to residents of northeast Louisiana's rural territory include "access to health care and education," "broadband," and "the Louisiana agricultural economy." ROA.12929-30. "Nearly half of all [of] Louisiana's agriculture sales come from" CD5, and its incumbent serves on the House agriculture subcommittee. ROA.12929. CD5 "keeps the delta region together, ensuring that their shared agriculture economies have a strong advocate in congress who can provide the focus and develop the expertise needed to effectively represent and advocate for the agricultural needs of" Louisiana. ROA.12929. According to the Legislature, "these rural communities should have the opportunity to continue to serve as the backbone of the fifth district." ROA.12930; *see also* ROA.14570 (explaining that the enacted plan "ensure[s] that Louisiana's agriculture heritage" is preserved "by maintaining a primarily rural and agricultural based district."); ROA.14256.

At the same time, the Legislature intended "that the greater Baton Rouge area remain[] intact and that the suburban parishes that are closest to the City of Baton Rouge, like West Baton Rouge, Ascension, Livingstone [sic], continue to be located within the same congressional district," because "[t]housands of residents from these suburban parishes work, send their children to school and attend church in Baton Rouge, and it's important that we keep these communities of interest connected," which was accomplished in CD6. ROA.12934-35. Likewise, the

Legislature found it important to "anchor[] the two largest urban areas, New Orleans and Baton Rouge," in CD2, given that these places share interests "such as having a vibrant tourism industry, affordable housing, [and] safe neighborhoods." ROA.12936.

A plan combining these urban interests with rural residents in the State's northeast border and Delta Parishes undermines these goals by diluting both the rural and urban voices, and it does violence to the State's traditional notion of community. The only historical precedent for a district of the basic design Plaintiffs propose was invalidated as a racial gerrymander. *See Hays v. Louisiana*, 839 F. Supp. 1188, 1199 (W.D. La. 1993).

The Legislature did not arrive at its community goals in a vacuum. Residents appearing at legislative hearings exhorted their representatives that "we don't need to go from Baton Rouge to Monroe to Ruston to Grambling to call it a district that has anything in common other than race," because "[w]e're a rural community black and white" that should be "left to work together," ROA.11421; "that district 5 [should] stay[] in Northeast and North Central Louisiana with our rural area" because "we have the same interest," ROA.11410; and that "rural concerns are not the same thing as urban or suburban concerns," ROA.11415. This public outpouring militated against a configuration of

CD5 that joined new suburban and urban areas in and around Baton Rouge with the rural Delta Parishes.[2]

2. The First Precondition Cannot Be Satisfied on This Record.

Appellants' opening brief (at 30-34) demonstrated that §2 liability is not legally permissible in these circumstances, and *Allen* ratifies this argument. "[T]here is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (*LULAC*). To the contrary, §2 cannot be read to require that states "group together geographically dispersed minority voters" into majority-minority districts, given that it prohibits only a "map [that] cracks or packs a large and 'geographically compact' minority population." *Allen*, 143 S. Ct. at 1518 (Kavanaugh, J., concurring). But

[2] Plaintiffs' approach is infirm for the additional reason that most of their illustrative plans place portions of Lafayette Parish—which is even further removed from the Delta region than East and West Baton Rouge Parishes—into CD5 and, in addition, divide Lafayette Parish so that the remainder is in CD3. *See* ROA.6656-57 (citing GX-1, p. 26; *Id.* at p. 28; *Id.* at p. 30; GX-29, p. 6); ROA.6664 (citing PR-15, p.5; PR-86, p.4). They place into CD5 those portions of Lafayette with comparatively higher BVAP. *See, e.g.*, ROA.7302, 7313, 7318. But residents urged their representatives that "keeping the heartland of Cajun country together" was important and that Lafayette and Lake Charles should remain whole in one district (CD3). *See* ROA.12925, ROA.12931.

Plaintiffs' illustrative configurations of CD5 join urban with rural areas where "the only common index is race." *LULAC*, 548 U.S. at 435.

These proposals are no different from a Georgia congressional district the Supreme Court invalidated because it "connect[ed] the black neighborhoods of metropolitan Atlanta and the poor black populace of coastal Chatham County, though 260 miles apart in distance and worlds apart in culture," *Miller v. Johnson*, 515 U.S. 900, 908 (1995), and another Georgia district the Supreme Court found equally flawed because "it connected the south DeKalb County urban black population with the mainly rural east Georgian minority population," *Abrams v. Johnson*, 521 U.S. 74, 88 (1997). And it is far less reasonably configured than an illustrative district this Court rejected, which combined "two areas of highly-concentrated African-American population, which are roughly 15 miles apart from one another." *Sensley v. Albritton*, 385 F.3d 591, 597 (5th Cir. 2004).

Plaintiffs' proposals stand in contrast to a Georgia district the Supreme Court approved, which grouped residents who, "being an urban minority population, [have] a sufficiently strong community of interest to warrant being a majority-minority district," *Abrams*, 521 U.S. at 94 (citation omitted), and the illustrative configurations accepted in *Allen*, which united Alabama's "Black Belt" region (so named "for its fertile soil") on the basis that the residents of the proposed district "share a rural geography, concentrated poverty, unequal access to government services,

lack of adequate healthcare, and a lineal connection to the many enslaved people brought there to work in the antebellum period," 143 S. Ct. at 1505 (quotation and edit marks omitted).

The dividing line falls between configurations having "a sufficiently strong community of interest," *Abrams*, 521 U.S. at 94, defined in a "*nonracial*" way, *LULAC*, 548 U.S. at 433 (emphasis added), and those that are "miles apart in distance and worlds apart in culture," *Miller*, 515 U.S. at 908. *Allen* amplified these principles, clarifying that §2 does not, and cannot, require districts that are unreasonably configured in this way. *See* 143 S. Ct. at 1508-09 (discussing *Miller* and other precedents for this proposition); *see also id.* at 1518 (Kavanaugh, J., concurring) (citing same precedents). Because the Delta Parishes, East and West Baton Rouge Parishes, and Lafayette Parish are geographically dispersed and have no commonalities in culture or political interests, Plaintiffs' proposed configurations fall plainly in that latter category. "If a § 2 violation is proved for a particular area, it flows from the fact that individuals in this area," "not somewhere else," suffer vote dilution, and the remedy is a majority-minority district in that area. *Shaw v. Hunt*, 517 U.S. 899, 917 (1996) (*Shaw II*). Accordingly, if a second majority-minority district were possible in south Louisiana, the enacted plan might be shown to "crack[] or pack[] a large and 'geographically compact' minority population." *Allen*, 143 S. Ct. at 1518 (Kavanaugh, J., concurring). But Plaintiffs cannot satisfy the first precondition by

seeking voters in other regions of Louisiana to achieve the 50% BVAP mark.

3. Plaintiffs Do Not Justify Their Improper, Race-Based Configurations.

Plaintiffs' appellee briefs do not adequately address the deficiencies in their showing under the first precondition and only demonstrate that Plaintiffs are unlikely to establish §2 liability. Galmon Br. 20-37; Robinson Br. 40-46. Both appellee briefs confirm that only one lay witness testified to a community of interest between East Baton Rouge Parish and the Delta Parishes. *See* Robinson Br. 42; Galmon Br. 27-28. Other than references to Mr. Tyson, the Court will search in vain for evidence in either brief identifying actual shared interests between these different regions. As noted, one person's testimony cannot justify imposing an unprecedented and counter-intuitive configuration of CD5 on almost five million people over the objection of their elected representatives. *Cf. Allen*, 143 S. Ct. at 1505.

Rather than address this fatal weakness in their case, Plaintiffs point to an assortment of information that bypasses the legal question.

a. Plaintiffs say their experts "examined (and preserved) Core Based Statistical Areas" as "defined by the Office of Management and Budget," which are "comprised of urban centers and the surrounding areas." Galmon Br. 29-30 (citation, quotation, and edit marks omitted). Even assuming Plaintiffs' plans do this, it does not overcome their

problem under the first precondition. A district could quite easily preserve urban centers and still combine "two farflung segments of a racial group with disparate interests." *LULAC*, 548 U.S. at 433. For example, a skilled cartographer would have little trouble preserving an official government-designated area "in and around Austin" and another "near the Mexican border," but that would be no defense to grouping those places *together* into one congressional district. *See id.* at 434-35. Likewise, even if Plaintiffs' experts avoided splitting Core Based Statistical Areas, that is no justification for grouping the Delta Parishes with East and West Baton Rouge Parishes.

The same deficiency plagues Plaintiffs' assertion that their plans sometimes preserved "political subdivision boundaries," Galmon Br. 26-27 (quoting ROA.6733-34), which might be necessary, but is not sufficient. A district would not be reasonably configured under the first precondition merely by maintaining political subdivisions. If those subdivisions were not united by common interests and were geographically distant, §2 could not plausibly be read to compel such a configuration. If the law were otherwise, Plaintiffs could demand bizarre districts—such as district maintaining Dallas and Houston whole but *together*—under a myopic focus on maintaining political-subdivision lines.

b. Plaintiffs insist their experts "sought to preserve communities of interest by combining areas with like socioeconomic characteristics."

Robinson Br. 41. But their analyses are nothing but an elaborate race-based index, and—taken on their own terms—they only demonstrate regional differences, not similarities.

First, the socioeconomic information Plaintiffs highlight, *see, e.g.*, Robinson Br. 21, 41, 43; Galmon Br. 29-30, is an examination of "whether or not there are disparities *between the races* with respect to socioeconomic well-being statewide as well as at the local level." ROA.3588 (emphasis added); *see also* ROA.3625 (William Cooper testifying that his analysis was "[j]ust to determine whether or not the black population and white populations have disparate measures in terms of socioeconomic well-being"); ROA.10681 (materially identical assertion from Mr. Fairfax). Plaintiffs' expert Mr. Cooper relied on data "depicting socioeconomic disparities" between white and Black residents in Baton Rouge and New Orleans that "form[ed] the building blocks for the two majority-Black districts" in Plaintiffs' illustrative plans ROA.9667; *see* ROA.9665-68 (socioeconomic analysis comparing white and Black populations statewide). Thus, when Plaintiffs reference "shared interests, history, and connections" between the regions they would group together, they refer exclusively to the "ties" of "Black people." Robinson Br. 41-42.

Ultimately, the district court credited Plaintiffs' expert's opinions on this point, ROA.6663-64, ROA.6668, but the question under the first precondition is not whether Black residents of the Delta Parishes and

East Baton Rouge fare comparatively worse than white residents of those respective regions. The question is whether residents of *all* races in the Delta Parishes share common interests with residents of *all* races in East and West Baton Rouge Parishes. *LULAC*, 548 U.S. at 433 (holding that §2 looks to "nonracial communities of interest"). The district court made no finding of community in the legally relevant sense, and none could be made.

Second, even taken by their own terms, the analyses of Plaintiffs' experts shows *differences* between the Baton Rouge and Delta regions. According to data compiled by Galmon Plaintiffs' expert, William Cooper, about 50% of Black residents in East Baton Rouge Parish have post-high school education, ROA.3652-55, compared to about 22% of Black residents in East Carroll Parish, ROA.3659, and about 41% of Black residents in Ouachita Parish, Dist.Ct.Dkt.212 at 119; ROA.3661. The median income of Black households in East Baton Rouge Parish is $42,643, ROA.3656, compared to $14,800 for Black households in East Carroll Parish, ROA.3658, and $25,644 for Black households in Ouachita Parish, ROA.3660-61. Just 16.6% of Black households fell below the poverty line in East Baton Rouge Parish, ROA.3656, compared to 58% of Black households in East Carroll Parish, ROA.3657, and 38.7% of Black households in Ouachita Parish, ROA.3660. Despite grouping these areas together into illustrative CD5, Mr. Cooper admitted he did not compare

the differences in socioeconomic conditions of their respective Black (or white) populations. ROA.3649-51.

The socioeconomic analyses of Robinson Plaintiffs' expert also reveal differences (not similarities) between the Baton Rouge and Delta regions. ROA.3732-40. Their expert, Anthony Fairfax, claimed that areas in his illustrative CD5 share common socioeconomic characteristics, and he overlayed this data onto his illustrative maps. *See* ROA.14911. Yet these maps display much higher concentrations of population without high school education, with lower median household income, and with higher "disaster risk factors" (indicated by darker shading) in the Delta region than in East and West Baton Rouge. ROA.14911; ROA.3732-35; ROA.14913; ROA.3736-37; ROA.14914; ROA.3739-40. Despite these differences, Mr. Fairfax included all of West Baton Rouge Parish and nearly half of East Baton Rouge Parish in illustrative CD5, ROA.3740, even though he acknowledged this is not part of the Delta region. ROA.3726.

The district court's only findings concerning Plaintiffs' socioeconomic data are findings of socioeconomic differences. *See* ROA.6663-64; ROA.6669 (depicting stark differences between East and West Baton Rouge Parishes and the Delta Parishes). Plaintiffs' briefs articulate no data point suggesting similarity between these regions.

c. Plaintiffs look to compactness measurements for their illustrative plans and contend that their illustrative districts are

"regularly shaped" according to "visual inspection." Galmon Br. 22 (quoting ROA.6726 & 6733); *see also id.* at 23-24; Robinson Br. 30-31. But as Appellants' opening brief demonstrated (at 35), Plaintiffs are confusing the issue by focusing on the wrong kind of compactness; the "first *Gingles* condition refers to the compactness of the *minority population*, not to the compactness of the *contested district*," *LULAC*, 548 U.S. at 433 (citation omitted; emphasis added), and it does not refer to mathematical scores taken on a plan-wide basis.[3]

Robinson Plaintiffs insist (at 29) their abstract "mathematical measures" are "relevant" to the first precondition, even as the Galmon Plaintiffs admit (at 24) that "*LULAC* indicated that this inquiry might not alone be dispositive." But *LULAC* went even further, holding that "the relative smoothness of the district lines . . . is *inapposite*." 548 U.S. at 432 (emphasis added). It explained the first precondition "embraces *different* considerations" from the "focus[] on the contours of district lines to determine whether race was the predominant factor in drawing those lines." *Id.* at 433 (emphasis added). And relevance would not in any event equal sufficiency. "The mathematical possibility of a racial bloc does not make a district compact." *Id.* at 435. Galmon Plaintiffs (at 26 n.7) call this holding "a distinction without a difference," but *LULAC* found the

[3] Plaintiffs' expert prepared his plans with the understanding that "compactness legally relates to the geography, not population and geography." ROA.3731.

difference so significant that it reversed a trial court for failing to apply it, 548 U.S. at 432-35.

d. Plaintiffs repeat the district court's clear error in insisting Appellants submitted no evidence below concerning "communities of interest." ROA.6735; *see* Robinson Br. 20 and 43 n.7; Galmon Br. 30. That is simply wrong. As described, Appellants submitted testimony of legislators and members of the public on the legislative record, and it was admitted into the preliminary-injunction record. *See, e.g.*, ROA.12929-30; ROA.12934-36; ROA.14570; ROA.14256; ROA.11410; ROA.11415; ROA.11421. The district court completely ignored it, and Plaintiffs do as well.

To the extent the district court believed a live "witness" is the sole vehicle for communities-of-interest evidence, ROA.6735, it erred as a matter of law. The legislative record developed when the Legislature deliberated over the challenged plan was admitted in evidence, it is competent to establish the State's neutral criteria, and it is the *most* probative evidence possible because it supplies "the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Bethune-Hill v. Va. Bd. of Elections*, 580 U.S. 178, 189-90 (2017). To the extent the district court simply "ignored the evidence," its finding are "clearly erroneous." *Georgia v. Ashcroft*, 539 U.S. 461, 486 (2003); *see also Myers v. United States*, 652 F.3d 1021, 1036 (9th Cir. 2011) (finding clear

error where "the district court simply ignored" probative evidence); *United States v. Wooden*, 693 F.3d 440, 455 (4th Cir. 2012) (similar); *Berger v. Iron Workers Reinforced Rodmen, Loc. 201*, 170 F.3d 1111, 1132 (D.C. Cir. 1999) (per curiam) (similar).

B. *Allen* Condemns Plaintiffs' Quest for Proportionality.

The district court's errors in construing the first *Gingles* precondition were not mere technicalities. They go to the heart of what *Gingles* requires. The district court erroneously read *Gingles* to resist "meaningful constraints on proportionality," but *Allen* reorients the "framework" to reject "racial proportionality." 143 S. Ct. at 1508. *Allen* found that §2 raises no constitutional concerns because "proportional representation of minority voters is absent from nearly every corner of this country despite § 2 being in effect for over 40 years," and, "in case after case," courts "have rejected districting plans that would bring States closer to proportionality when those plans violate traditional districting criteria." *Id.* at 1510 n.4; *see also id.* at 1517-18 (Kavanaugh, J., concurring). The plain text of §2 itself disclaims a proportional-representation standard. *See* 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"). But Plaintiffs in this case openly demand proportionality. *See* Opening Brief for Appellants 31-32. And if the district court's order is affirmed, proportionality will be the law of this Circuit, in spite of *Allen*.

From the beginning, proportionality has been the clarion call of Plaintiffs' cause. Even before this case was filed, Plaintiffs and those coordinating a strategy with them insisted to the Legislature that "[i]t is fair, necessary, and logical that Black Louisianans" have "[a]n additional majority-minority opportunity district" because they "comprise nearly one-third of Louisiana's residents, according to 2020 Census data." ROA.7827; *see also* ROA.7892 ("In Louisiana, that disparity is even more severe: the population is 33.1% Black, but only one of the six districts in the current congressional map is majority-Black (16.7% of seats)."); ROA.8132 (opposing proposed plans because "Black Louisianans—who comprise over 33% of Louisiana's population—would only have an opportunity to elect candidates of choice in one out of six (16.7%) of Louisiana's congressional districts").

That position became the legal theory in this §2 suit. The Robinson Complaint explained that "[e]ven though Louisianans who identify as any part Black constitute 31.2% of the state's voting age population, Black voters' [sic] control only around 17% of the state's congressional districts" and that §2 is offended because, "whereas approximately one out of three voting age residents of Louisiana is Black, Black voters have an opportunity to elect the candidate of their choice in just one out of six congressional districts." ROA.65-66. The Galmon Complaint likewise alleged that "Louisiana has the second-highest proportion of Black residents in the United States, comprising nearly one-third of the state's

population. But Black Louisianians have the opportunity to elect their candidates of choice in only one of Louisiana's six congressional districts." ROA.15157. Plaintiffs' briefing below asserted the State "falls far short of what the VRA requires" because its Legislature "fail[ed] to adopt a congressional map with two majority-Black districts" when "Black voters represent nearly one-third of Louisiana's voting age population." ROA.458; *see also* ROA.1039 (arguing a second majority-Black district is "*required*" because "Louisiana has six congressional districts and a Black population of over 33%—one-third of the state's population.").

Plaintiffs persisted in this demand for proportional representation throughout the proceedings. During the preliminary-injunction hearing, Plaintiffs argued for a second majority-Black district on the ground that "Louisiana's made up of a third of African-Americans." ROA.3553-54. In their proposed findings, Plaintiffs renewed their argument that "Black representation in HB 1 is not proportional to the Black share of the statewide population," ROA.6124, and that, "[g]iven that Louisiana's statewide population exceeds 33 percent, the present disproportionality in the congressional map weighs in favor of a finding of vote dilution." ROA.6158. The district court adopted this line of argument, holding that "Black representation under the enacted plan is not proportional to the Black share of population in Louisiana" because "[a]lthough Black Louisianans make up 33.13% of the total population and 31.25% of the

voting age population, they comprise a majority in only 17% of Louisiana's congressional districts." ROA.6774.

Plaintiffs have since argued for affirmance on this same ground, using their first page of substantive text in this Court to demand a second majority-Black district on the basis that "Black citizens . . . constitute approximately 33% of the State's population," Robinson Br. 3, and repeating the same refrain throughout, *see id.* at 8 ("Black citizens represent approximately 31.2% of the State's voting age population."); *id.* at 11 ("[U]nder the [enacted] plan, only 31% of Louisiana's Black population lives in a majority-minority district, while 91.5% of the White population lives in a majority-White district."); Galmon Br. 2-3.

This is all just a variation on the "conviction that the greater the departure from proportionality, the more suspect an apportionment plan becomes." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2499 (2019) (citation omitted). But, while a §2 plaintiff cannot reasonably ask for *more* than proportionality, *see Johnson v. DeGrandy*, 512 U.S. 997, 1017 (1994), the absence of proportionality cannot be the basis of relief: "Forcing proportional representation is unlawful and inconsistent with this Court's approach to implementing § 2." *Allen*, 143 S. Ct. at 1509; *see also id.* at 1518 (Kavanaugh, J., concurring) ("*Gingles* does not mandate a proportional number of majority-minority districts."). In this case, Plaintiffs' demand for proportionality fails, given that the only way to achieve proportionality is to join disparate communities lacking "actual

shared interests." *Miller*, 515 U.S. at 916; *see* § I.A.2, *supra*. Indeed, it is highly improbable that §2 would demand proportionality under these facts when it "is absent from nearly every corner of this country," *Allen*, 143 S. Ct. at 1510 n.4, and when Louisiana's past attempts at this goal were found to be racial gerrymanders, *see* Opening Brief for Appellants 7-9.

As Plaintiffs would have it, Louisiana's voluntary efforts to achieve proportionality 30 years ago were infirm, but a federal court in 2023 can achieve that very result in contravention of the State's conception of traditional communities of interest. The Supreme Court in *Allen* held that this is exactly backwards: "Reapportionment . . . is primarily the duty and responsibility of the States, not the federal courts. Properly applied, the *Gingles* factors help ensure that remains the case." 143 S. Ct. at 1510 (citation, quotation and edit marks omitted). The Court should ensure that remains the case here.

II. Plaintiffs' Illustrative Plans, Which Compel Racial Gerrymandering, Cannot Form an Appropriate §2 Baseline.

Appellants' opening brief demonstrated (at 40-59) that illustrative plans prioritizing race over traditional districting criteria cannot be appropriate §2 comparators and that Plaintiffs' illustrative plans do precisely that. *Allen* confirms the merit in Appellants' position.

A. Illustrative Plans Resulting from Racial Predominance Do Not Satisfy the First Precondition.

1. Read correctly, *Allen* confirms that a §2 illustrative plan does not establish the first *Gingles* precondition if "it rationally can be viewed only as an effort to segregate the races for purposes of voting," *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (*Shaw I*), or—to be more precise—if it fails the predominance standard the Supreme Court announced in *Miller* and developed in *Bethune-Hill* and *Cooper v. Harris*, 581 U.S. 285 (2017). *See* Opening Brief for Appellants 40-48.

In *Allen*, eight Justices "appear[ed] to agree that the plaintiffs could not prove the first precondition of their statewide vote-dilution claim . . . by drawing an illustrative map in which race was predominant." *Allen*, 143 S. Ct. at 1527 (Thomas, J., dissenting) (describing *Allen*, 143 S. Ct. at 1511-12). A section of the Chief Justice's opinion that garnered four votes held that the Alabama plaintiffs could "satisfy the first step of *Gingles*" only because they "adduced at least one illustrative map" in which race did not predominate. *Allen*, 143 S. Ct. at 1512 (plurality opinion). Four dissenting Justices agreed that an illustrative plan in which race predominates cannot be reasonably configured under *Gingles*, but concluded that race predominated under the facts at bar. *See id.* at 1527-30 (Thomas, J., dissenting). Justice Kavanaugh joined neither opinion and did not explain his abstention. *See id.* at 1517-19 (Kavanaugh, J., concurring).

But that omission carries no consequence when eight of nine Justices agreed on the relevant legal holding—that an illustrative comparator cannot satisfy the first precondition if race predominates. Where at least "five Justices found common ground in [a] proposition," even in separate opinions, that proposition becomes the law of the land. *O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 718 (1996); *see also, e.g.*, *Big Time Vapes, Inc. v. Food & Drug Admin.*, 963 F.3d 436, 447 (5th Cir. 2020); *Cobb v. Miller*, 818 F.2d 1227, 1234 (5th Cir. 1987); *Snead v. Redland Aggregates Ltd.*, 998 F.2d 1325, 1334 (5th Cir. 1993); *cf. Marks v. United States*, 430 U.S. 188, 193 (1977) (acknowledging that holdings arise from a "rationale" that "enjoys the assent of five Justices").

Allen's understanding on this point is evident in portions of the Chief Justice's opinion that did garner five votes. In holding that "§ 2 never requires adoption of districts that violate traditional redistricting principles," *Allen*, 143 S. Ct. at 1510 (quotation and edit marks omitted), the Court referred back to its racial-gerrymandering precedents, including *Shaw I*, *Miller*, and *Bush v. Vera*, 517 U.S. 952 (1996), explaining that, in each, the first precondition was not satisfied by illustrative districts in which race predominated. *See* 143 S. Ct. at 1508-10. In this discussion, the Court cited and quoted portions of those decisions applying the predominance standard, and it reiterated its prior observation that reading §2 to compel racial considerations to predominate over neutral criteria would "raise[] serious constitutional

concerns," *id.* at 1508; *see* Opening Brief for Appellants 43 (making the same point).

2. To be sure, the Court in *Allen* rejected Alabama's argument that §2 requires employment of a "race-neutral benchmark." *Allen*, 143 S. Ct. at 1506. But the Court did not conflate race-neutrality as Alabama defined it with racial predominance as the Court's equal-protection precedents define it. The Court was precise in explaining that the theory it rejected depended upon a "'race-blind'" baseline comparison. *Id.* It understood the "race-neutral benchmark" advocated by Alabama to be "the median or average number of majority-minority districts in the entire multimillion-map set" that is produced by "modern computer technology" that "can now generate millions of possible districting maps for a given State" without consideration of race. *Id.* The Court was clear in rejecting *that* proposed §2 comparison.

But, when it discussed the predominance test, the plurality explained "that there is a difference 'between being aware of racial considerations and being motivated by them,'" *id.* at 1510 (quoting *Miller*, 515 U.S. at 916), and found that difference to be the salient one under the first precondition, *id.* at 1510-12. As noted, four dissenting Justices concurred in that holding, for a total of eight.

3. *Allen*'s holding that *Gingles'* first precondition cannot be satisfied by illustrative districts drawn predominantly on the basis of race is the *only* holding that could plausibly "vindicate the Constitution's

pledge of racial equality." *SFFA*, 143 S. Ct. at 2161. Just three weeks after issuing *Allen*, the Supreme Court held that "[e]liminating racial discrimination means eliminating all of it." *Id.* The Court that said this could not have intended to ratify redistricting plans that "bear[] an uncomfortable resemblance to political apartheid." *Shaw I*, 509 U.S. at 647. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *SFFA*, 143 S. Ct. at 2162 (citation omitted). There is no redistricting exception to that fundamental doctrine.[4] *See Shaw I*, 509 U.S. at 643 (holding that redistricting plans configured for predominantly racial reasons are "by their very nature odious") (citation omitted); *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (same).

The district court held that racially predominant configurations can satisfy the first precondition. ROA.6749. But that construction of §2—both in principle and as applied here—fails in every respect that the affirmative action plans failed in *SFFA*.

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[4] Robinson Plaintiffs understandably object to the term "segregation" as applied to the redistricting configuration they demand. Robinson Br. 9. But a plan that looks like segregation, and is motivated by the intent of segregation, is a plan of segregation. *See* Opening Brief for Appellants 51-52 (visible segregation). The predominance test defines what amounts to segregation in redistricting, *see Miller*, 515 U.S. at 911, and that shoe fits here, *see* § II.B, *infra*.

First, the Court in *SFFA* held that "outright racial balancing is patently unconstitutional," 143 S. Ct. at 2172 (citation and edit marks omitted), but the district court applied §2 to compel racial balancing by purposefully shifting BVAP down in one district (CD2) to ratchet it up in another (CD5), as Plaintiffs candidly proclaim, *see* Galmon Br. 35 ("moving Black voters from a packed district to an illustrative Black opportunity district remedies the dilution of Black voting strength"); *see also* Robinson Br. 2-3 (similar assertion). That would be the ordinary result of §2 suits if racial predominance were held to satisfy the first precondition.

But, in *SFFA*, the Court found it damning that "the Harvard admissions process reflect[s] this numerical commitment" by "a tight band of" minority percentages "of the admitted pool" that were not likely the product of neutral admissions criteria. *See* 143 S. Ct. at 2170-71. That is exactly how §2 is applied here, to compel states to adopt (and courts to impose) districts that skate just a smidgen above the numerical quota of 50% BVAP, *see* Opening Brief for Appellants 53-54 & n.9, that was "freely admitted" to have driven the line drawing, ROA.6872-73.

Second, the affirmative-action college admissions plans failed in *SFFA* because they were built on "stereotyping" under the theory "that there is an inherent benefit in race *qua* race—in race for race's sake." 143 S. Ct. at 2170. Likewise, §2 is wielded here to override the recognized divide between rural and urban needs and interests, which the State has

traditionally distinguished, with an invidious concept of statewide communities that Plaintiffs define in racial terms as white and Black. *See* § I.A.3, *supra*. But "[t]he entire point of the Equal Protection Clause is that treating someone differently because of their skin color is not like treating them differently because they are from a city or from a suburb." *SFFA*, 143 S. Ct. at 2170. Thus, Louisiana's choice to group rural areas into CD5 and urban and suburban areas in CD6 and CD2 cannot yield to a theory of "community" defined according to supposed statewide commonalities of Black residents in opposition to white residents. Properly construed, §2 asks whether the residents of different areas—of any and all races—share similarities, not whether disparities between members of different groups can be found in places that otherwise have nothing in common.

Third, the district court's reading of §2 to compel racially predominant redistricting "lack[s] a logical end point." *Id.* (quotation marks omitted). "At some point," the Supreme Court held in *SFFA*, race-based state action "must end." *Id.* at 2165. Insofar as "race-based redistricting" can be compelled "as a remedy for state districting maps that violate § 2," *Allen*, 143 S. Ct. at 1516-17—and to the extent this entails racial predominance—then §2 itself "must have reasonable durational limits," *SFFA*, 143 S. Ct. at 2165 (citation omitted). Justice Kavanaugh cast the decisive vote for the judgment in *Allen*, and he explained that "the authority to conduct race-based redistricting cannot

extend indefinitely into the future." 143 S. Ct. at 1519 (Kavanaugh, J., concurring).

But, here, "no end is in sight," *SFFA*, 143 S. Ct. at 2166, more than 30 years after a federal three-judge court twice rejected Louisiana's effort to voluntarily create a second majority-minority district. Opening Brief for Appellants 7-9. Congress's findings in support of the effects test it adopted in 1982 do not speak to "current conditions." *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 550 (2013). And the district court expressly disclaimed any need to find ongoing discrimination in examining the totality of the circumstances, *see* ROA.6766 ("Senate Factor 1 explicitly calls for an inquiry into any *history* of voting-related discrimination"), and relied on a 48-page expert report that does not address the past 15 years until page 47, *see* ROA.10536-10584. Moreover, there is sufficient white crossover voting in Louisiana congressional elections that majority-Black districts are unnecessary to ensure equal Black electoral opportunity. Opening Brief for Appellants 59-69.

Accordingly, this is not "the most extraordinary case," *SFFA*, 143 S. Ct. at 2163, "where the excessive role of race in the electoral process denies minority voters equal opportunity to participate," *Allen*, 143 S. Ct. at 1510 (citation and edit marks omitted), such that "race-based redistricting" qualifies as a constitutional "remedy" under §2, *id.* at 1516. Even if §2 could compel racially predominant redistricting in some cases, it cannot here.

B. Race Predominated in the Illustrative Plans.

The district court therefore erred in finding a likelihood of success based on illustrative plans created with race as the predominant factor. There can be no serious question that "race was the predominant factor motivating" the "decision to place a significant number of voters within or without" the two majority-Black districts in Plaintiffs' illustrative remedies. *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (quoting *Miller*, 515 U.S. at 916). As a result, the illustrative districts do not satisfy the first precondition. *See* § II.A, *supra*. As Appellants' opening brief explained, the illustrative plans were designed to achieve a new, second district of at least 50% BVAP from a benchmark plan that only contained one, and Plaintiffs' experts had little choice but to move significant numbers of Louisiana residents on the basis of their race to achieve this goal. Opening Brief for Appellants 48-59. Controlling precedent holds this to be racial predominance in the Equal Protection context.[5] Plaintiffs attempt to dress up their contrary position as a fact-

[5] *Allen* produced no holding on the predominance standard because four Justices joined the Chief Justice's plurality opinion on that point, and four Justices dissented from that opinion's application of the predominance standard. *See Allen*, 143 S. Ct. at 1510-11 (plurality opinion of Roberts, C.J., joined by Kagan, Sotomayor, and Jackson, JJ.); *id.* at 1527-31 (dissent of Thomas, J., joined by Alito, Gorsuch, and Barrett, JJ.). On that question, then, *Allen* "yielded no controlling opinion at all." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1403 (2020) (plurality opinion); *see United States v. Brown*, 553 F.3d 768, 783 (5th Cir. 2008)

bound question under a deferential standard, but the decision below misapplied the law. *See Bethune-Hill*, 137 S. Ct. at 800 (remanding for application of "the proper standard").

1. Robinson Plaintiffs concede predominance occurs where 1) "the map-drawer had a specific racial target" and 2) "the target 'had a direct and significant impact' on the configuration of the district." Robinson Br. 47 (quoting *Cooper*, 137 S. Ct. 1469); *compare* Opening Brief for Appellants 49. But they ignore that standard's import for their illustrative plans. They admit "the plaintiffs' map-makers sought to satisfy that standard" "supplied by the Supreme Court in *Bartlett*," Robinson Br. 47, but seem oblivious that this occurred in *Cooper* and was found to qualify as predominance. In *Cooper*, the mapmaker was directed to ensure that "African–Americans should make up no less than a majority of the voting-age population" of a new majority-minority district because of *Bartlett*. 137 S. Ct. at 1468, 1471-72. The same was found in *Covington v. North Carolina*, 316 F.R.D. 117, 134-35 (M.D.N.C. 2016), which the Supreme Court unanimously affirmed without argument, *North Carolina v. Covington*, 137 S. Ct. 2211 (2017). The fact that the Supreme Court's VRA precedent supplies the 50% standard does not make it any less a racial target. *See, e.g.*, *Cooper*, 137 S. Ct. at 1468-69;

(finding the "precedential value" of an evenly split decision "unclear outside of the narrow factual setting of that case").

Bethune-Hill, 137 S. Ct. at 796-97; *Miller*, 515 U.S. at 917-18*; Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 262-63 (2015).

Undeterred, Galmon Plaintiffs attempt to distinguish *Cooper* on this element because the mapmakers there "'were not coy in expressing' their race-based goal" of a 50% BVAP target. Galmon Br. 43 (quoting *Cooper*, 137 S. Ct. at 1468-69). But that is no distinction at all. Plaintiffs' mapmakers were equally candid. As the motions panel recognized in stay proceedings in this case, based on the record and district court's findings, Plaintiffs' demographer "freely admitted that the plaintiffs had 'specifically asked' him to draw maps with two minority-majority districts." ROA.6872-73; ROA.3630 (Cooper testifying that he was "specifically asked to draw two [majority-minority] districts by the plaintiffs."). Appellants' opening brief recounts (at 50) the specific, direct evidence of purposefully achieving a 50% BVAP target, and Plaintiffs (like the court below) are wrong to accuse Appellants of "misconstruing any mention of race by Plaintiffs' expert witnesses as evidence of racial predomination." Robinson Br. 47 (quoting ROA.6750). The point is that what happened in *Cooper* happened here, and *Cooper* found it to be racial predominance.

2. The direct-and-significant-impact element is also met. Again, the direct evidence standing alone establishes this. Plaintiffs' experts testified to using a 50% threshold for the purpose of "pulling in Black population for these [majority-minority] districts," ROA.5031-32; and to

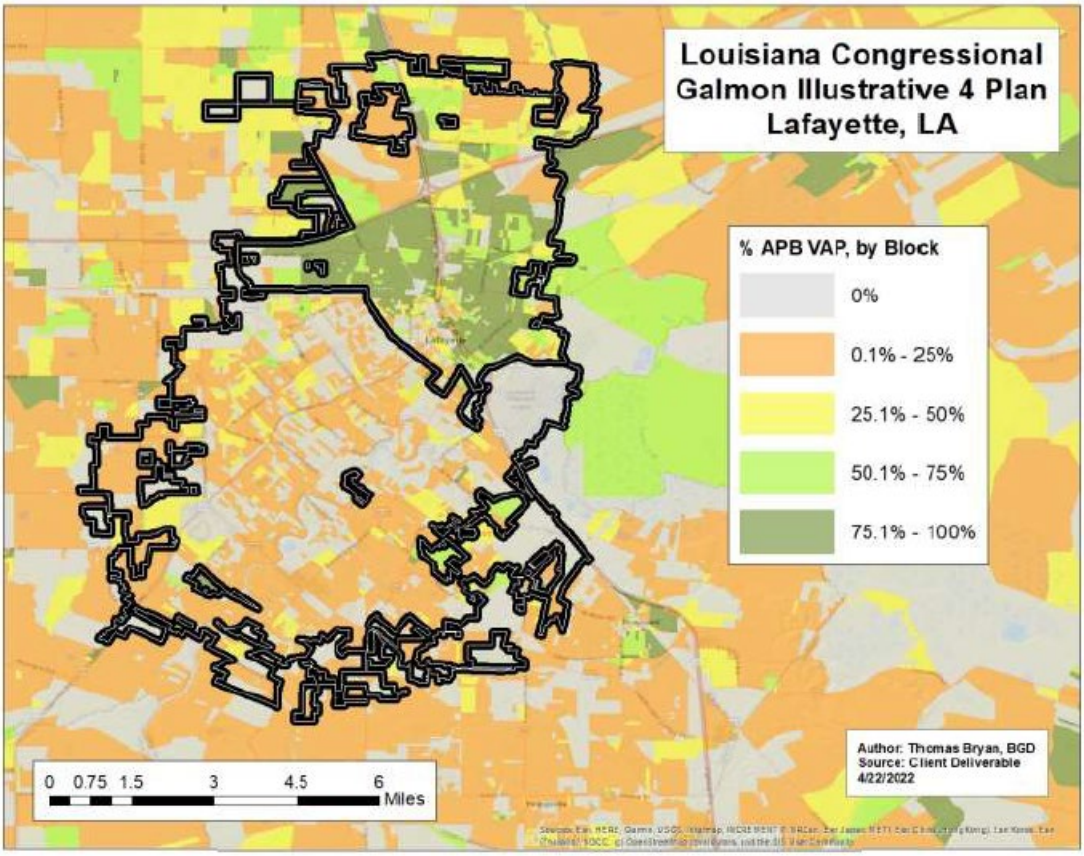
consulting racial data at the outset of map-drawing "to get an idea where the Black population is inside the state," because "you can't draw a plan in an area where Black population doesn't exist," ROA.5033. Robinson Plaintiffs agree "that Plaintiffs' experts consulted race data in the map-drawing software to get a general sense of where in the state it might be possible to create a majority-Black district and that they periodically returned to that data to determine if their districts . . . were above or below 50% BVAP." Robinson Br. 48. Inexplicably, they say this "does not imply that the racial target had a significant impact on the district configuration," *id.*, but it does: if race had not been consulted, the location of the districts would have been different, as would all downstream details of the resulting map. This is not merely awareness of race, *id.* at 39, but predominance.

Again, Plaintiffs describe what occurred in *Cooper*. The map-maker "moved the district's borders to encompass the heavily black parts of Durham (and only those parts), thus taking in tens of thousands of additional African-American voters." 137 S. Ct. at 1469. Here, Plaintiffs' experts testified that they *began* with the prior decade's districts but altered them radically to achieve a second 50% BVAP district. ROA.3688, ROA.3719. This is in all respects like *Cooper*. And contrary to Plaintiffs' view that *Cooper* depended on a "body of evidence" establishing a departure from traditional districting principles, Galmon Br. 43, *Cooper*

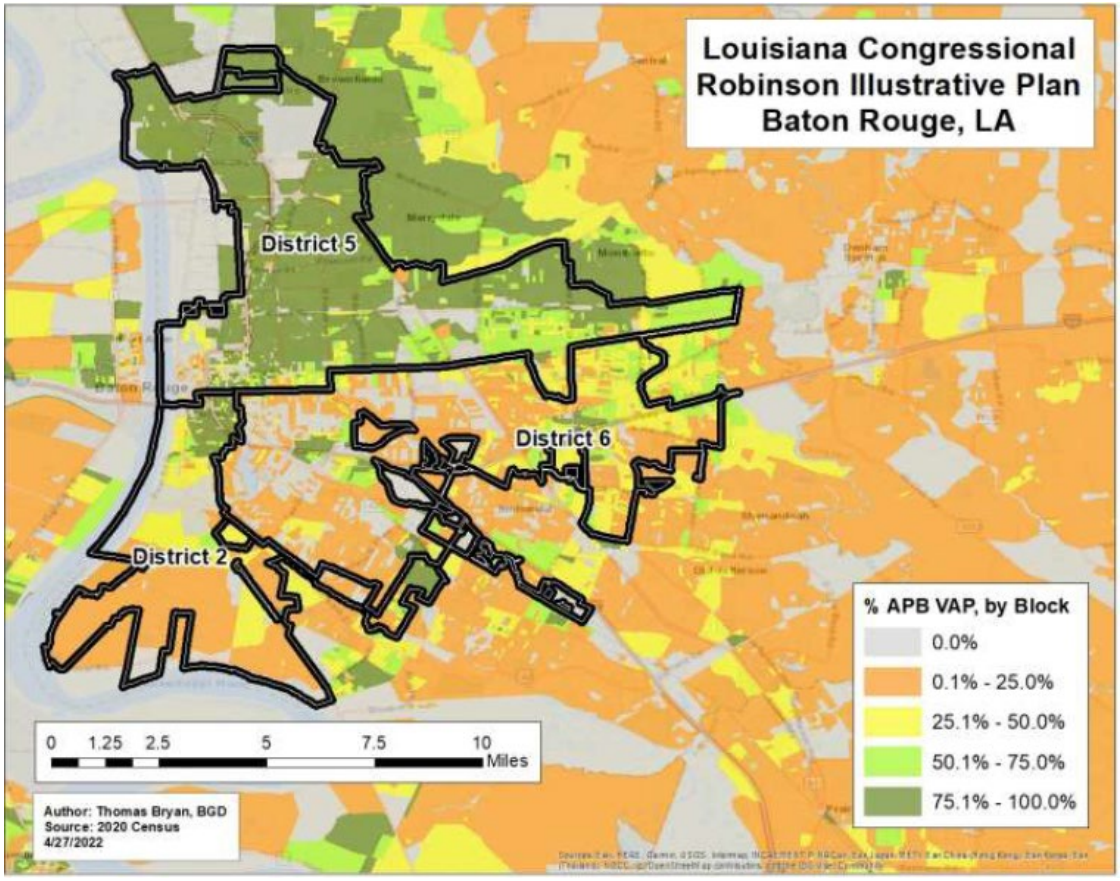
explained that such evidence was unnecessary to its decision, *Cooper*, 137 S. Ct. at 1469 n.3.

Plaintiffs ignore other aspects of their plans that exhibit predominance. One is that the experts drew down BVAP from CD2 to transfer it to CD5—a point Plaintiffs' appellee briefs admit and even tout. Robinson Br. 42; Galmon Br. 35. The Supreme Court has made clear that predominance occurs where a map-maker draws down the minority population in one district to bring it up in others. *Wis. Legislature*, 142 S. Ct. at 1248-49 & n.1; *see also Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 173-74 (E.D. Va. 2018) (three-judge court) (finding predominance where some districts served as "donor" district of BVAP to others to spread out Black voters). Another is that there is only one basic district configuration in Louisiana that achieves a 50% BVAP target, and Plaintiffs experts found it.

Yet another is that the Court can see racially coded maps—which are not alleged to be inaccurate—that show clean and consistent tracking of racial housing patterns in Plaintiffs' illustrative plans. For example, one of Galmon Plaintiffs' illustrative plans cleaves the northern part of Lafayette (with 68.3% BVAP) into CD5 from the rest of the city (with 31.7% BVAP), which was placed in CD3:



ROA.7302, 7313, 7318. Likewise, the higher-BVAP northern portions of East Baton Rouge (63.85% BVAP) are assigned to CD5 and severed from the lower-BVAP southern portions assigned to CD2 and CD6 (12.67% and 23.48% BVAP):



ROA.7183, 7200, 7238. Surgical divisions of cities at the census-block level to achieve racial targets is not a traditional redistricting principle.

In short, this *is* a "textbook" case. Galmon Br. 13. It is a "textbook example" of racial predominance. *Cooper*, 581 U.S. at 301 (citation omitted). And because racial predominance cannot form the basis of §2 liability, Plaintiffs are unlikely to succeed on the merits and are not entitled to provisional relief.

CONCLUSION

For reasons stated above and in Appellants' prior briefing, the Court should vacate or reverse the preliminary injunction and remand

this matter to the district court with instructions to conduct a trial on the merits in time for the 2024 congressional elections.

Dated: August 7, 2023

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing is 8,472 words, excluding the parts that are exempted under Fed. R. App. P. ("Rule") 32(f), and is in compliance with the Court's June 28, 2023 Directive, CA5 Dkt. No. 242, and the type-volume limitation of Rule 32(a)(7)(B) for principal briefs. It complies with the typeface and type-style requirements of Rule 32(a)(5) and Rule 32(a)(6) because it is printed in 14-point Century Schoolbook font, a proportionally spaced typeface with serifs.

Dated: August 7, 2023

/s/ Richard B. Raile
RICHARD B. RAILE

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2023, a true and correct copy of the foregoing was filed via the Court's CM/ECF system and served via electronic filing upon all counsel of record in this case.

Dated: August 7, 2023

/s/ Richard B. Raile
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No. 22-30333 Robinson v. Ardoin
USDC No. 3:22-CV-211
USDC No. 3:22-CV-214

Dear Mr. Raile,

You must submit the 7 paper copies of your supplemental brief required by 5th Cir. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1. The copies must have durable tan covers on front and back.

Sincerely,

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