

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE;
DR. ANDREA WESLEY; DR. JOSEPH
WESLEY; ROBERT EVANS; GARY
FREDERICKS; PAMELA HAMMER
BARBARA FINN; OTHO BARNES;
SHIRLINDA ROBERTSON; SANDRA
SMITH; DEBORAH HULITT; RODESTA
TUMBLIN; DR. KIA JONES; ANGELA
GRAYSON; MARCELEAN ARRINGTON;
VICTORIA ROBERTSON**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:22-cv-734-DPJ-HSO-LHS

**STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES, *in his
official capacity as Governor of Mississippi;*
LYNN FITCH, *in her official capacity as
Attorney General of Mississippi;* MICHAEL
WATSON, *in his official capacity as Secretary
of State of Mississippi***

DEFENDANTS

AND

**MISSISSIPPI REPUBLICAN
EXECUTIVE COMMITTEE**

INTERVENOR-DEFENDANT

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION
FOR THE COURT TO TAKE JUDICIAL NOTICE**

INTRODUCTION

Defendants State Board of Election Commissioners, Governor Tate Reeves, Attorney General Lynn Fitch, and Secretary of State Michael Watson (collectively, "Defendants") submit this their Memorandum in Support of their Motion for the Court to take Judicial Notice of the facts and information identified in and attached to the Motion pursuant to Rule 201(b) and 201(c)(2) of

the Federal Rules of Evidence. “The doctrine of judicial notice permits a judge to consider a generally accepted or readily verified fact as proved without requiring evidence to establish it.” *United States v. Berrojo*, 628 F.2d 368, 369 (5th Cir. 1980). Taking judicial notice of Census data is appropriate, relevant for this case, and will streamline the presentation of evidence at trial. *See Shelby County, Ala. v. Holder*, 570 U.S. 529, 535 (2013) (utilizing Census Bureau data to determine that “African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by § 5[.]”); *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571-72 (5th Cir. 2011). While Plaintiffs and Defendants did not reach an agreement to stipulate to these facts, they are appropriate topics for judicial notice under Rule 201. *See* FED. R. EVID. 201.

FACTS TO BE NOTICED

Defendants seek judicial notice of the following facts, as discussed below:

1. Census data from the U.S. Census Current Population Survey’s Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States in 1986, 1988, 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2014, 2016, 2018, 2020, and 2022,¹ which includes:
 - a. According to the 1986 Census Current Population Survey, 45.8% of White Non-Hispanic persons in Mississippi reported voting in the 1986 general election, and 40.2% of Black persons reported voting in the 1986 general election. *See Exhibit A.*
 - b. According to the 1986 Census Current Population Survey, 77.3% of White Non-Hispanic persons in Mississippi reported as registered to vote in the 1986 general

¹ Exhibits A – S are the Tables from the Census Current Population Survey in 1986 through 2022, respectively.

- election, and 75.9% of Black persons reported as registered to vote in the 1986 general election. *See Exhibit A.*
- c. According to the 1988 Census Current Population Survey, 64.2% of White Non-Hispanic persons in Mississippi reported voting in the 1988 general election, and 60.3% of Black persons reported voting in the 1988 general election. *See Exhibit B.*
- d. According to the 1988 Census Current Population Survey, 80.5% of White Non-Hispanic persons in Mississippi reported as registered to vote in the 1988 general election, and 74.2% of Black persons reported as registered to vote in the 1988 general election. *See Exhibit B.*
- e. According to the 1990 Census Current Population Survey, 35.8% of White Non-Hispanic persons in Mississippi reported voting in the 1990 general election, and 32.5% of Black persons reported voting in the 1990 general election. *See Exhibit C.*
- f. According to the 1990 Census Current Population Survey, 70.8% of White Non-Hispanic persons in Mississippi reported as registered to vote in the 1990 general election, and 71.4% of Black persons reported as registered to vote in the 1990 general election. *See Exhibit C.*
- g. According to the 1992 Census Current Population Survey, 69.4% of White Non-Hispanic persons in Mississippi reported voting in the 1992 general election, and 61.9% of Black persons reported voting in the 1992 general election. *See Exhibit D.*
- h. According to the 1992 Census Current Population Survey, 80.2% of White Non-Hispanic persons in Mississippi reported as registered to vote in the 1992 general election, and 78.5% of Black persons reported as registered to vote in the 1992 general election. *See Exhibit D.*

- i. According to the 1994 Census Current Population Survey, 46.2% of White Non-Hispanic persons in Mississippi reported voting in the 1994 general election, and 41.7% of Black persons reported voting in the 1994 general election. *See Exhibit E.*
- j. According to the 1994 Census Current Population Survey, 74.6% of White Non-Hispanic persons in Mississippi reported as registered to vote in the 1994 general election, and 41.7% of Black persons reported as registered to vote in the 1994 general election. *See Exhibit E.*
- k. According to the 1996 Census Current Population Survey, 59.3% of White Non-Hispanic persons in Mississippi reported voting in the 1996 general election, and 48.8% of Black persons reported voting in the 1996 general election. *See Exhibit F.*
- l. According to the 1996 Census Current Population Survey, 75% of White Non-Hispanic persons in Mississippi reported as registered to vote in the 1996 general election, and 67.4% of Black persons reported as registered to vote in the 1996 general election. *See Exhibit F.*
- m. According to the 1998 Census Current Population Survey, 41.1% of White Non-Hispanic citizens in Mississippi reported voting in the 1998 general election, and 40.4% of Black citizens reported voting in the 1998 general election.² *See Exhibit G.*
- n. According to the 1998 Census Current Population Survey, 75.8% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 1998 general election, and 71.3% of Black citizens reported as registered to vote in the 1998 general election. *See Exhibit G.*

² From 1986 through 1996, the referent population was “persons ages 18+” rather than “citizens ages 18+”. From 1998 until present, the referent population is “citizens ages 18+.” This revision has no bearing on the appearance or magnitude of a racial difference between Black and White voters in Mississippi.

- o. According to the 2000 Census Current Population Survey, 61.9% of White Non-Hispanic citizens in Mississippi reported voting in the 2000 general election, and 58.5% of Black citizens reported voting in the 2000 general election. *See Exhibit H.*
- p. According to the 2000 Census Current Population Survey, 72.6% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2000 general election, and 73.7% of Black citizens reported as registered to vote in the 2000 general election. *See Exhibit H.*
- q. According to the 2002 Census Current Population Survey, 44.6% of White Non-Hispanic citizens in Mississippi reported voting in the 2002 general election, and 40.2% of Black citizens reported voting in the 2002 general election. *See Exhibit I.*
- r. According to the 2002 Census Current Population Survey, 72.1% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2002 general election, and 67.9% of Black citizens reported as registered to vote in the 2002 general election. *See Exhibit I.*
- s. According to the 2004 Census Current Population Survey, 60% of White Non-Hispanic citizens in Mississippi reported voting in the 2004 general election, and 66.6% of Black citizens reported voting in the 2004 general election. *See Exhibit J.*
- t. According to the 2004 Census Current Population Survey, 73.6% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2004 general election, and 76.2% of Black citizens reported as registered to vote in the 2004 general election. *See Exhibit J.*

- u. According to the 2006 Census Current Population Survey, 39.9% of White Non-Hispanic citizens in Mississippi reported voting in the 2006 general election, and 50.5% of Black citizens reported voting in the 2006 general election. *See Exhibit K.*
- v. According to the 2006 Census Current Population Survey, 71% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2006 general election, and 72.2% of Black citizens reported as registered to vote in the 2006 general election. *See Exhibit K.*
- w. According to the 2008 Census Current Population Survey, 68.4% of White Non-Hispanic citizens in Mississippi reported voting in the 2008 general election, and 73.1% of Black citizens reported voting in the 2008 general election. *See Exhibit L.*
- x. According to the 2008 Census Current Population Survey, 75% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2008 general election, and 81.9% of Black citizens reported as registered to vote in the 2008 general election. *See Exhibit L.*
- y. According to the 2010 Census Current Population Survey, 47.7% of White Non-Hispanic citizens in Mississippi reported voting in the 2010 general election, and 48.1% of Black citizens reported voting in the 2010 general election. *See Exhibit M.*
- z. According to the 2010 Census Current Population Survey, 74.2% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2010 general election, and 73.6% of Black citizens reported as registered to vote in the 2010 general election. *See Exhibit M.*

- aa. According to the 2012 Census Current Population Survey, 71.8% of White Non-Hispanic citizens in Mississippi reported voting in the 2012 general election, and 82.7% of Black citizens reported voting in the 2012 general election. *See Exhibit N.*
- bb. According to the 2012 Census Current Population Survey, 82.4% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2012 general election, and 90.8% of Black citizens reported as registered to vote in the 2012 general election. *See Exhibit N.*
- cc. According to the 2014 Census Current Population Survey, 40.3% of White Non-Hispanic citizens in Mississippi reported voting in the 2014 general election, and 46.6% of Black citizens reported voting in the 2014 general election. *See Exhibit O.*
- dd. According to the 2014 Census Current Population Survey, 72.8% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2014 general election, and 83.2% of Black citizens reported as registered to vote in the 2014 general election. *See Exhibit O.*
- ee. According to the 2016 Census Current Population Survey, 67.7% of White Non-Hispanic citizens in Mississippi reported voting in the 2016 general election, and 69.2% of Black citizens reported voting in the 2016 general election. *See Exhibit P.*
- ff. According to the 2016 Census Current Population Survey, 78.8% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2016 general election, and 81.3% of Black citizens reported as registered to vote in the 2016 general election. *See Exhibit P.*

- gg. According to the 2018 Census Current Population Survey, 51.7% of White Non-Hispanic citizens in Mississippi reported voting in the 2018 general election, and 59.8% of Black citizens reported voting in the 2018 general election. *See Exhibit Q.*
- hh. According to the 2018 Census Current Population Survey, 71.8% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2018 general election, and 77.9% of Black citizens reported as registered to vote in the 2018 general election. *See Exhibit Q.*
- ii. According to the 2020 Census Current Population Survey, 69.8% of White Non-Hispanic citizens in Mississippi reported voting in the 2020 general election, and 72.9% of Black citizens reported voting in the 2020 general election. *See Exhibit R.*
- jj. According to the 2020 Census Current Population Survey, 79.2 % of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2020 general election, and 83.4% of Black citizens reported as registered to vote in the 2020 general election. *See Exhibit R.*
- kk. According to the 2022 Census Current Population Survey, 47.6% of White Non-Hispanic citizens in Mississippi reported voting in the 2022 general election, and 47% of Black citizens reported voting in the 2022 general election. *See Exhibit S.*
- ll. According to the 2022 Census Current Population Survey, 74.3% of White Non-Hispanic citizens in Mississippi reported as registered to vote in the 2022 general election, and 72.2% of Black citizens reported as registered to vote in the 2022 general election. *See Exhibit S.*
- mm. Pursuant to Federal Rule of Evidence 1006, Defendants include, as Exhibit T, a table summarizing the data above.

ARGUMENT AND CITATION OF AUTHORITY

This Court can take judicial notice of adjudicative facts not subject to reasonable dispute.

See FED. R. EVID. 201.

Federal Rule of Evidence 201 provides that a court may take judicial notice of an “adjudicative fact” if the fact is “not subject to reasonable dispute” in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.

Amos v. Cain, No. 4:20-CV-7-DMB, 2020 WL 6688864, *1 (N.D. Miss. Nov. 12, 2020) (quoting *Doe v. Mckesson*, 945 F.3d 818, 833 (5th Cir. 2019) (quoting FED. R. EVID. 201(b)), *vacated on other grounds*, No. 19-1108, 2020 WL 6385692 (U.S. Nov. 2, 2020)). An “adjudicative fact” is defined as “[a] controlling or operative fact, rather than a background fact.” *Allied Home Mortgage Capital Corp. v. Blues Alley Estates Ltd. P’ship*, No. 2:06-CV-161-SA, 2008 WL 11342878, at *1 (N.D. Miss. Sept. 9, 2008) (quoting BLACK’S LAW DICTIONARY 629 (8th ed. 2004)). These facts should be adjudicative, meaning they are “facts which are relevant to the disposition of the case.” *Amos*, 2020 WL 6688864, at *1 (citing *Usery v. Tamiami Trail Tours, Inc.*, 531 F.2d 224, 244 n.52 (5th Cir. 1976) (Brown, C.J., concurring) (“Adjudicative facts are the peculiar facts relevant to the particular case in controversy. . . .”)).

This Court’s inquiry in these cases requires a review of “the totality of circumstances” to determine whether the “plan deprived black voters of the equal opportunity to participate in the political process and to elect representatives of their choice.” *Fairley v. Hattiesburg, Miss.*, 584 F.3d 660, 667 (5th Cir. 2009); *see also Allen v. Milligan*, 599 U.S. 1, 18 (2023). United States census data in relation to voter turnout is relevant to these issues. *See Shelby County*, 570 U.S. at 535. For instance, in *Shelby County*, the Court utilized data from the United States Census Bureau’s “Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States”—specifically

Table 4b –to determine that Black voter turnout exceeds White voter turnout in five of the six states, including Mississippi, originally covered by Section 5. *Shelby County*, 570 U.S. at 535. Likewise, the District Court in *Ala. State Conf. of NAACP v. Ala.* utilized the “Reported Voting and Registration, by Sex, Race, and Hispanic Origin, for States” table in its determination that “registration and turnout rates among African-Americans and whites have reached parity.” *Ala. State Conf. of NAACP*, 612 F. Supp. 3d 1232, 1290 (M.D. Ala. 2020) (citing *Shelby County*, 570 U.S. at 548). This is the exact same data Defendants propose this Court judicially notice. Accordingly, the Court “*must* take judicial notice if a party requests it and the court is supplied with the necessary information.” FED. R. EVID. 201(c)(2) (emphasis added).

The facts discussed above are properly the subject of judicial notice. First, “United States census data is an appropriate and frequent subject of judicial notice.” *Stringer v. Whitely*, 942 F.3d 715, 722 n.23 (5th Cir. 2019) (taking judicial notice of United States Census Bureau ACS Data) (quoting *Hollinger*, 654 F.3d at 571-72); *League of United Latin American Citizens (“LULAC”) v. Abbott*, 617 F. Supp. 3d 622, 631 n.2 (W.D. Tex. 2022) (taking judicial notice of United States Census Bureau ACS Data); *see also Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F. Supp. 2d 758, 773-74 (S.D. Miss. 2012) (taking judicial notice of United States Census survey data). The Census records are official government public records frequently used in Section 2 cases and are generally the subject of judicial notice under Rule 201. *See LULAC*, 617 F. Supp. 3d at 631 n.2 (citing *Hollinger*, 654 F.3d at 571-72). These records are collected by the United States Census Bureau and the United States Bureau of Labor Statistics, both government agencies. These facts are not subject to reasonable dispute. FED. R. EVID. 201; *See Cannon v. Nash*, No. 3:17-CV-488-DPJ, 2019 WL 2110594, *1 (S.D. Miss. Apr. 29, 2019) (citing *Denius v. Dunlap*, 330 F.3d 919, 927 (7th Cir. 2003) (permitting judicial notice of governmental records readily available in the

public domain, such as the internet, because the fact of record keeping is not subject to reasonable dispute and the accuracy could not reasonably be questioned)).

Likewise, if the Court takes judicial notice of the Census data above, the table summarizing the Census data is admissible pursuant to Federal Rule of Evidence 1006. *See United States v. Spalding*, 894 F.3d 173, 185-86 (5th Cir. 2018). “A party ‘may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court.’” *Spalding*, 894 F.3d at 185 (quoting FED. R. EVID. 1006). The voluminous records the table summarizes are attached as Exhibits A – S of the Motion for Judicial Notice. Should the Court take judicial notice of the voluminous Census Bureau data, it will be appropriately before the Court. Plaintiffs have been provided a copy of the Census data—that cover from 1986 to 2022. *See* FED. R. EVID. 1006. Without the summary table, the data “cannot be conveniently examined in court” by the three-judge panel. FED. R. EVID. 1006. And, since this is a bench trial, the Court sits as the trier of fact and there is no concern of improper use by a jury.

CONCLUSION

For these reasons, the Defendants respectfully request that the Court grant Defendants’ Motion for Judicial Notice.

THIS the 7th day of February, 2024.

Respectfully submitted,

STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES, IN HIS
OFFICIAL CAPACITY AS GOVERNOR OF
MISSISSIPPI; LYNN FITCH, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
MISSISSIPPI; MICHAEL WATSON, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
STATE, DEFENDANTS

By: /s/ Tommie S. Cardin
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CERTIFICATE OF SERVICE

I, Tommie S. Cardin, one of the attorneys for the Defendants, do hereby certify that I have this day filed the above and foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

This the 7th day of February, 2024.

/s/ Tommie S. Cardin

Tommie S. Cardin

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