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

PHILIP CALLAIS, LLOYD PRICE, BRUCE ODELL, ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR, JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES, ROLFE MCCOLLISTER,	)	
Plaintiffs,	)	Case No. 3:24-cv-00122-DCJ-CES-RRS
v.	)	District Judge David C. Joseph Circuit Judge Carl E. Stewart District Judge Robert R. Summerhays
NANCY LANDRY, IN HER OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE,	)	Magistrate Judge Kayla D. McClusky
Defendant.	)	

PLAINTIFFS' RESPONSE TO INTERVENORS' OMNIBUS MOTION IN LIMINE

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SUMMARY

The Robinson Intervenors bring a motion for summary judgment wearing the cloak of a motion in limine. Their relevance objection hinges entirely on their own unique version of the law that, if correct, would not only decide this case, but would fundamentally transform redistricting. But the Intervenors' decision to use a "motion in limine" to reveal their true legal position has a benefit. It puts the issue in sharp relief and should demonstrate to the Court that if Intervenors are wrong, they (and the State) cannot prevail. They are indeed wrong.

Intervenors' position boils down to the following: "The question in this case is whether the decisions of the Middle District of Louisiana and the Fifth Circuit in *Robinson* themselves provided the required strong basis in evidence, not whether the courts that issued those decisions correctly evaluated the evidence before them or whether this Court would weigh that evidence differently." **Doc. 144-1, at 6**. That is not the law. It is wrong for several reasons: (1) analysis of the *Gingles* factors and traditional redistricting criteria is critical for Plaintiffs' *Shaw* claim; (2) *Robinson* does not provide a strong basis in evidence that obviates this crucial analysis; (3) the facts and law at issue here were not litigated in *Robinson*; (4) this injury was never adjudicated in *Robinson*; and (5) the "remedy" of SB8 is not tailored to any wrong adjudicated in *Robinson*.

LEGAL STANDARD

Relevant evidence is admissible. Fed. R. Evid. 402. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. Expert testimony must be relevant and based on reliable methods and application of those methods. Fed. R. Evid. 702.

ARGUMENT

I. Analysis of the *Gingles* factors and traditional redistricting criteria is critical.

To begin, Plaintiffs' *Shaw* claim turns on whether Plaintiffs can first show that race predominated in the drawing of the lines in SB8; and then, (a) whether the State had a compelling interest to draw race-based lines and (b) whether the map was narrowly tailored to satisfy that interest. While the State's belief (if actually held) that it must draw the district lines as it did to comply with the Voting Rights Act may be a compelling interest, the State cannot satisfy strict scrutiny by mere invocation of the VRA. Strict scrutiny is, after all, a "demanding one." *Miller v. Johnson*, 515 U.S. 900, 928 (1995) (O'Connor, J., concurring). Rather, the "the State must have a 'strong basis in evidence' for finding that the three *Gingles* preconditions exist." *Clark v. Calhoun County, Miss*., 88 F.3d 1393, 1404 (5th Cir. 1996). This is the key inquiry—a point to which the Robinson Intervenors at least provide lip service. **Doc. 144-1, at 6**. Accordingly, Plaintiffs' evidence of the State's failure to consider, and the State's divergence from, those *Gingles* factors is absolutely relevant to the case because it makes a fact of consequence in determining the action—*i.e.* whether such a strong basis exists—more or less probable. Fed. R. Evid. 401.

This principle is well established. At least as far back as *Shaw* itself, courts have looked to whether a racially gerrymandered map comports with the *Thornburg v. Gingles*, 478 U.S. 30 (1986), factors to determine whether the State has met this demanding strict scrutiny threshold, and whether the requisite strong basis in evidence therefore exists. *Shaw v. Hunt*, 517 U.S. 899, 918 (1996) ("*Shaw II*"); *see also Cooper v. Harris*, 581 U.S. 285, 301-06 (2017); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 430 (2006) ("*LULAC*"); *Bush v. Vera*, 517 U.S. 952, 978-79 (1996) (plurality).

Take *Cooper v. Harris*, 581 U.S. 285 (2017), for example. In that case, the Supreme Court ***only*** heard a Fourteenth Amendment challenge to the North Carolina congressional districts—not a VRA challenge. But there, the Court looked primarily to the *Gingles* factors to determine whether the State had a strong basis in evidence for believing that it needed to draw the majority-minority district where it did to avoid liability under the VRA. *Id*. at 301-06. The Court summarized the legal standard as such: "To have a strong basis in evidence to conclude that § 2 demands such race-based steps, the State must carefully evaluate whether a plaintiff could establish the *Gingles* preconditions . . . in a new district created without those measures." *Id.* at 304; *see also id.* at 302 ("If a State has good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district. *See Bush v. Vera*, 517 U.S. 952, 978 (1996) (plurality opinion). But if not, then not."). Applying that standard, the Supreme Court held that the State's failure to properly analyze the *Gingles* factors for the map doomed the racial gerrymander at the strict scrutiny stage. *Id*. at 306.

Shaw II reinforced and expanded this principle to make clear that the State cannot outsource its analysis or showing, relying on some other authority's analysis. In adjudicating a racial gerrymandering claim, *Shaw II* used the *Gingles* factors to analyze whether the State had a strong basis in evidence to satisfy strict scrutiny. *Shaw II*, 517 U.S. at 916-18. That was true even though the State relied expressly on findings from no less an authority than the Department of Justice, Civil Rights Division, that the State needed two majority-minority districts to satisfy its obligations under the VRA. *Id*. at 911-12.[1] There, unlike here, the State was able to at least show that it was genuinely relying on DOJ as an expert (rather than wielding it for strategic reasons),

[1] The same was also true in *Miller v. Johnson*, 515 U.S. 900, 923-24 (1995) and *Hays v. State of La.*, 936 F. Supp. 360, 372 (W.D. La. 1996).

but *even this* did not provide the requisite strong basis in evidence. *Id*. at 918. The Court concluded that the State had not satisfied *Gingles* prong I and therefore had violated the Constitution. *Id*.

Likewise, in *Bush v. Vera*, the State's failure to satisfy the first *Gingles* prong, evidence of noncompact, bizarrely shaped districts, and deviations from traditional districting criteria, were enough to defeat the State's attempt to satisfy strict scrutiny. 517 U.S. at 979-81.

This case is no different, and the standard remains the same:

> Strict scrutiny remains, nonetheless, strict. The State must have a "strong basis in evidence" for finding that the threshold conditions for § 2 liability are present:
>
> "first, 'that [the minority group] is sufficiently large and *geographically compact* to constitute a majority in a single member district'; second, 'that it is politically cohesive'; and third, 'that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate.' " *Growe v. Emison*, 507 U.S. 25, 40 (1993), (emphasis added) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)).
>
> And, as we have noted above, the district drawn in order to satisfy § 2 must not subordinate traditional districting principles to race substantially more than is "reasonably necessary" to avoid § 2 liability.

Bush, 517 U.S. at 978-79.

Courts specifically examine *the challenged districts* under these *Gingles* factors to ensure compliance with the strong basis in evidence standard. *Id*. at 979. If the Court finds that a district is "bizarrely shaped and far from compact, and that those characteristics are predominantly attributable to gerrymandering that was racially motivated and/or achieved by the use of race as a proxy," such "characteristics defeat *any* claim that the districts are narrowly tailored to serve the State's interest in avoiding liability under § 2, because § 2 does not require a State to create, on predominantly racial lines, a district that is not 'reasonably compact.'" *Id*. (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994)) (emphasis added). Thus, "[d]istrict shape is not irrelevant to the narrow tailoring inquiry." *Id*. at 980; *see also id*. at 979-80 (rejecting the argument "that bizarre shaping and noncompactness do not raise narrow tailoring concerns"). Nor are "deviations from

traditional districting principles." *Id*. at 980; *see also Cooper*, 581 U.S. at 305 ("When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 simply does not apply."); *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (noting that Section 2 "never require[s] adoption of districts that violate traditional redistricting principles").

In *Robinson*, SB8 did not exist, no one found that its population was sufficiently compact to be drafted into a district, and SB8's characteristics were never considered. Mr. Hefner and Dr. Voss are the first to address these questions. Their testimony on SB8's "deviations from traditional redistricting principles" is not just relevant—it is *critical* to Plaintiffs' case both at the racial predominance and at the strict scrutiny stages of their *Shaw* claim. *Bush*, 517 U.S. at 980; *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995). Both analyses supplement the direct evidence to prove that the Legislature lacked a strong basis in evidence to create such districts under the VRA.

II. A prior case does not obviate the necessity of this analysis.

Against the weight of these cases, the Intervenors argue that the *Robinson* preliminary injunction hearing, subject only to clear error appellate review, decides all issues of this case. This Court can then skip strict scrutiny, deciding the case and controversy before it by adopting the preliminary decision of the *Robinson* district court. That analysis is wrong for multiple reasons.

a. *Robinson* has no preclusive effect.

First, *Robinson*'s non-final preliminary findings have no preclusive effect here. The *Robinson* district court only adjudicated part of the case or controversy before it. *See* U.S. Const. art. III. That controversy was different on the facts and the law from the present one. That case dealt with a VRA challenge to HB1, a law that has since been repealed. This case deals with Fourteenth and Fifteenth Amendment challenges to SB8, a map that in no way resembles HB1. That case never went to a full trial on the merits or had a full briefing. That case never had a final

judgment. That case never examined or litigated a map that even resembled SB8 or included a majority-minority district that touched the Northwestern parishes of Louisiana. Plaintiffs were not parties to that case. Simply put, that case has no final, preclusive effect on this one. Therefore, the Intervenors cannot attempt to bind Plaintiffs or this Court to *Robinson*'s preliminary findings.

b. This Court is one of first view.

Second, contrary to Intervenors' implication, this Court does not sit as a court of appeals to review preliminary injunction findings of the *Robinson* district court for clear error review. This Court is one of first view. It hears its own evidence. It is not bound by fact-finding or the undeveloped evidentiary record of the *Robinson* district court. And in fact, this Court is better disposed to deal with this case since it is conducting a full trial on the merits, as opposed to a preliminary injunction hearing.

c. The *Robinson* district court did not decide whether there was a wrong to compel this remedy.

Third, even if the State properly invoked the VRA remedy, the *Robinson* district court did not decide whether there was a wrong that compelled this remedy. To be narrowly tailored, there must be both a wrong and a remedy that is no greater than necessary to remedy that wrong:

> To be narrowly tailored, the remedial district must use race at the expense of traditional political concerns no more than is reasonably necessary to remedy the found wrong. Stated another way, the remedial district must "substantially address" the violation and "not deviate substantially from a hypothetical court-drawn § 2 district for predominantly racial reasons.

Clark, 88 F.3d at 1407-08. And the Supreme Court "has made clear that unless each of the three *Gingles* prerequisites is established, 'there neither has been a wrong nor can be a remedy.'" *Cooper*, 581 U.S. at 306 (quoting *Growe*, 507 U.S. at 41).

Robinson Intervenors fail at the first step—the wrong. Reliance on the *Robinson* opinions writ large will not save them. An honest reading shows that they do not provide a strong basis in

evidence. No court ever finally held based on the evidence and a full trial on the merits that the previous map violated the VRA. The Fifth Circuit cautioned that plaintiffs had yet to prove their case: "The Plaintiffs have prevailed at this preliminary stage given the record as the parties have developed it and the arguments presented (and not presented). But they have *much* to prove when the merits are ultimately decided." *Robinson v. Landry*, 37 F.4th 208, 217 (5th Cir. 2022) (emphasis added). The Fifth Circuit reiterated its wariness after concluding the district court had erred in its compactness analysis. *Id*. at 222. Because neither the *Robinson* district court nor the Fifth Circuit finally concluded that Louisiana violated the VRA, their decisions cannot serve as a "strong basis" to support that there was a wrong. *Cf. Shaw II*, 517 U.S. at 911-12; *Miller*, 515 U.S. at 923-24; *Hays*, 936 F. Supp. at 372.

And even if the holding in *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), *vacated*, 86 F.4th 574 (5th Cir. 2023), were final, it still would not demonstrate the necessary wrong. That's because that case analyzed HB1, a map that has since been repealed and that does not resemble SB8, and then-Robinson-Plaintiffs' Illustrative Maps, none of which resemble the map here or create a majority-minority district that even touches into the traditional District 4 in the Northwest corner of the State. *See generally Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), *vacated*, 86 F.4th 574 (5th Cir. 2023). In fact, the *Robinson* district court's entire analysis of the *Gingles* factors and the VRA turned on the then-Plaintiffs' Illustrative Maps. For example, the analysis of whether there was a sufficiently compact and numerous minority population was based on whether that population existed near the Mississippi Delta—not the opposite corner of the State. Accordingly, the *Robinson* district court never found (or even heard sufficient evidence) that there was a VRA violation in the Northwest corner of the State. Absent evidence of a wrong, there can be no remedy. *Cooper*, 581 U.S. at 306.

As a legal matter, the Court's limited analysis makes sense. After all, the *Gingles* factors assess inherently "local question[s]" based on particular maps, not "generalized conclusion[s]" about the state. *Cooper*, 581 U.S. at 304 n.5. These factors are not meant to make state-wide conclusions. That's in part why "a legislature undertaking a redistricting must assess whether the new districts it contemplates (not the old ones it sheds) conform to the VRA's requirements" in light of the *Gingles* factors. *Id*. at 303-04. Analysis of the particular map enacted in SB8, not the repealed map in HB1 or the illustrative maps raised in the *Robinson* preliminary injunction hearing almost two years ago, matters. *Id*. at 304 n.5. Thus, a new analysis of SB8, a map that was not litigated or enacted at the time, is warranted. **Even now, neither the State—nor Robinson Intervenors—have ever done any such analysis.** Accordingly, they have no evidence of a wrong. And without evidence of a wrong, there can be no remedy for this region. *Id.* at 306.

d. Even if there was a wrong, evidence of a VRA violation somewhere does not compel creation of majority-minority district anywhere.

Robinson Intervenors nonetheless assume that there is a wrong by merely gesturing to the *Robinson* litigation. And then Robinson Intervenors assume that any remedy will do to fix that alleged wrong. In doing so, they rely on a single sentence from *LULAC*, which states: "Section 2 does not forbid the creation of a noncompact majority-minority district." *LULAC*, 548 U.S. at 430. But several errors doom their analysis.

First, their selective citation omits the sentences that immediately follow, **which hold the exact opposite**:

> The noncompact district cannot, however, remedy a violation elsewhere in the State. *See Shaw II*, 517 U.S. at 916 (unless "the district contains a 'geographically compact' population" of the racial group, "where that district sits, 'there neither has been a wrong nor can be a remedy'" (quoting *Growe v. Emison*, 507 U.S. 25, 41 (1993)). Simply put, the State's creation of an opportunity district for those without a § 2 right offers no excuse for its failure to provide an opportunity district for those with a § 2 right. And since there is no § 2 right to a district that is not reasonably

> compact, *see Abrams*, 521 U.S., at 91–92, the creation of a noncompact district does not compensate for the dismantling of a compact opportunity district. . . .
>
> ***Shaw II*, moreover, refused to consider a noncompact district as a possible remedy for a § 2 violation**. 517 U.S. at 916. It is true *Shaw II* applied this analysis in the context of a State's using compliance with § 2 as a defense to an equal protection challenge, but the holding was clear: **A State cannot remedy a § 2 violation through the creation of a noncompact district**. *Ibid*.

Id. at 430-31 (emphasis added). In the context of a racial gerrymandering claim, *Shaw II* made the same points as *LULAC*, holding that a showing of a strong basis in the evidence turns on the *Gingles* factors and that the majority-minority district's compactness and compliance with traditional redistricting criteria remain relevant to satisfy strict scrutiny. *Shaw II*, 517 U.S. at 916-19. Thus, some earlier law's purported VRA noncompliance cannot justify a new, non-compact district. *Bush*, 517 U.S. at 979. The "leeway" afforded States always requires adherence to this rule and only allows for "*reasonable* compliance measures." *Cooper*, 581 U.S. at 293 (emphasis added).

Second, Robinson Intervenors' selective citation does not support that an alleged VRA violation somewhere can support the creation of a majority-minority district anywhere. Such a "remedy" is not narrowly tailored to satisfy strict scrutiny. After all, evidence of a geographically compact minority somewhere in the State does not establish a "strong basis in evidence" of a "geographically compact" minority population "somewhere else in the State" to justify racial gerrymandering. *Shaw II*, 517 U.S. at 916-17. In fact, the Supreme Court has rejected an argument *almost identical* to Robinson Intervenors' that "once a legislature has a strong basis in evidence for concluding that a § 2 violation exists in the State, [the State] may draw a majority-minority district anywhere, even if the district is in no way coincident with the compact *Gingles* district, as long as racially polarized voting exists where the district is ultimately drawn." *Id.* at 916.

Even if there was a wrong, it was tied to then-Robinson Plaintiffs' illustrative maps. *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), *vacated*, 86 F.4th 574 (5th Cir. 2023). Thus, it could not provide a strong basis in evidence for this alleged remedial map across the State. *LULAC*, 548 U.S. at 431; *Bush*, 517 U.S. at 979; *Shaw II*, 517 U.S. at 916. The Legislature had no strong basis to believe that the VRA forced it to draw a district reaching hundreds of miles into the far recesses of the Northwest corner of the State. Accordingly, *Robinson* does not decide this case.

Moreover, even if there were evidence of that part of this population in the two majority-minority districts had been wronged, that would not be sufficient. As the Supreme Court held in *Shaw II*, even a "degree of incorporation" of a "concentration of minority voters that would have given rise to a § 2 claim" into the enacted majority-minority district does not necessarily "substantially address[] the § 2 violation" to show narrow tailoring in compliance with the VRA. *Id*. at 918. In other words, even creation of a majority-minority district to accommodate part of a concentrated minority group who has *actually proven* a violation of the VRA under the *Gingles* factors is not per se sufficient to show narrow tailoring.

e. Robinson Intervenors' position proves too much.

Ultimately, Robinson Intervenors' theory proves too much. It would require this Court to: (a) accept all the findings of an expedited case that has minimal bearing on case before it; and (b) eliminate Plaintiffs' right to introduce evidence of a constitutional injury that has transpired in the critical two years since the *Robinson* district court held its preliminary injunction hearing. It would render the Plaintiffs, who were not parties in the prior case, nonetheless bound as non-parties.

Beyond the scope of this case, if the Intervenors' argument were correct, a State could racially gerrymander **anywhere** based on a non-final preliminary injunction supposing a VRA violation **somewhere**. The VRA does not provide States with an excuse to racially gerrymander.

It requires a narrowly tailored remedy to fix a real violation for those specific people who face such harm. Such a standard was not met here.

III. Plaintiffs' experts' testimony is relevant and should not be excluded.

The Intervenors try to build on their underlying legal argument to assert that the testimony of two of Plaintiffs' experts, Michael Hefner and Dr. Stephen Voss, should be excluded because they are not "relevant" to this case. This argument lacks merit.

> Expert testimony is relevant if it is shown that the expert's reasoning or methodology can be properly applied to the facts in issue. . . . Whether an expert's opinion would be helpful to the trier of fact is a low bar to meet and turns largely on whether the testimony is relevant; questions related to the bases and sources of expert's opinion go to the weight to be assigned to it, rather than its admissibility. The Court's role is not to displace the adversary system[.]

Vallecillo v. McDermott, Inc., 576 F. Supp. 3d 420, 423-24 (W.D. La. 2021). Here, the Intervenors fail to show that Plaintiffs' experts do not even meet this "low bar." To the extent Intervenors feel this Court should not give weight to these experts' testimony, they are free to argue that during cross examination and through rebuttal testimony. *See id*. ("vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate ways" to attack admissible evidence).

a. Michael Hefner's testimony is reliable and relevant in this case.

Intervenors assert in a footnote that this Court should exclude all of Mr. Hefner's testimony. **Doc. 144-1, at 5, n.2**. First, Intervenors again attempt to claim an inconsistency between Mr. Hefner's expert report in the *Robinson* case and his reports in this case, claiming that Mr. Hefner opined that there is a community of interest "running 'from Shreveport to the Mississippi River.'" *Id*. Crucially, the referenced portion of Mr. Hefner's *Robinson* expert report compares two different maps of Louisiana broken down into regions based on various categories—not "communities of interest." *See* **Doc. 103-3, at 9-10** ("The Louisiana Regional Folklife Program briefly describes

each region as follows . . .").[2] At no point did Mr. Hefner opine that there is a community of interest running "from Shreveport to the Mississippi River." **Doc. 144-1, at 5, n.2**.

Moreover, even if this region were a community of interest, the plans in *Robinson* and SB8 both split it, just in different ways. SB8 narrowly carves out its center—the middle of the Red River Valley is assigned to CD6 while the rest is in CD4—while the *Robinson* plan cuts out the middle of the region. If, of course, Intervenors still feel Mr. Hefner has made inconsistent statements, they are free to probe the issue on cross-examination.

Similarly, Intervenors' reference to courts' comments regarding Mr. Hefner are misleading. For instance, the court in *Thomas v. Sch. Bd. St. Martin Par*. did not opine that Mr. Hefner "used 'guesswork.'" Civil Action No. 65-11314, 2023 WL 4926681 (W.D. La. July 31, 2023); **Doc. 144-1, at 5, n.2**. Instead, the court disfavored a certain metric referenced by Mr. Hefner because of its large margin of error. *Thomas*, 2023 WL 4926681, at *28. No court in Intervenors' cited cases excluded Mr. Hefner's testimony.

Next, Intervenors ask this Court to exclude Mr. Hefner's testimony discussing *Hays v. State of Louisiana*, 862 F. Supp. 119 (W.D. La. 1994), asserting that such testimony is irrelevant and presents legal conclusions. **Doc. 144-1, at 9-10**. In doing so, Intervenors identify no supposed legal conclusions but argue that "[t]he political realities governing Louisiana politics in the 1990s are very different from those of today." **Doc. 144-1, at 9**. While Intervenors are free to present evidence to this point, this Court should not simply take their word for it, particularly where—as Mr. Hefner will testify—the racially gerrymandered 1994 map shares 82% of the Black population of SB8. Intervenors also neglect to acknowledge the second question looming over SB8: whether

[2] As noted by Mr. Hefner in his *Robinson* Report, "[o]ne of the purposes [of the Program's Regional Map] is to identify and document folk cultural traditions and artists." **Doc. 103-3, at 9, n.10**. The map does not purport to document "communities of interest."

it passes strict scrutiny. A discussion of *Hays* and its evidentiary basis is relevant to whether the legislature possessed a "strong basis in evidence" to draw district lines predominantly based on race. On the one hand, Intervenors ask this Court to entertain the idea that a mere preliminary injunction in *Robinson* constitutes such a "strong basis in evidence," but on the other hand ignore the final judgment in *Hays* which held that a substantially similar map to SB8 is unconstitutional. Such a false dichotomy is certainly convenient for Intervenors but has no place in this case.

Intervenors also cite various redistricting cases to argue that "[f]ocusing on the Hays case also neglects the decades of precedent since the 1990s that govern racial gerrymandering cases." **Doc. 144-1, at 9**. But Intervenors never identify the "precedent" that casts doubt on *Hays* and therefore casts doubt on Mr. Hefner's present conclusions.

b. Dr. Voss's testimony and simulations are relevant and should not be excluded.

Intervenors likewise assert that Dr. Voss's testimony should be excluded. First, Intervenors claim Dr. Voss's conclusion that it is not possible to draw a sufficiently compact second majority-minority district in Louisiana is irrelevant given that the Supreme Court has instructed that it is necessary only for a legislature to have "good reasons to believe" it must use race to draw district lines. **Doc. 144-1, at 7**; *see also Bethune-Hill v. Va. State Bd. of Elecs.*, 580 U.S. 178, 194 (2017).

But Intervenors fail to apprehend that they must still prove that such "good reasons" or "strong basis in evidence" actually existed for race to predominate. Because, as Dr. Voss shows, it is not possible to draw a second sufficiently compact majority-minority district, the Intervenor-Defendants and Defendant must proffer some other evidentiary basis to justify the Legislature's predominating use of race. Again, Intervenors would like this Court to simply take their word for it and ignore Plaintiffs' statistical data to the contrary, but as shown above, this question is at the core of the present case.

Intervenors also mischaracterize the state of play regarding Dr. Voss's simulations. Specifically, Intervenors argue that Dr. Voss's simulations are irrelevant because they employ a race-neutral benchmark. **Doc. 144-1, at 8**. This is a half-truth. In Dr. Voss's March 22, 2024 report, (attached as Exhibit A), he concludes, among other things, that Louisiana's African-American population is too spread out to support a second majority-minority district and, consequently, "[a] race-neutral approach to mapmaking generally will not produce two districts dominated by African-American voters." Ex. A, at 2. Dr. Voss accordingly provided evidence via simulation showing that the legislature had to consider race in the drawing of SB8. But Dr. Voss did not stop there. He went on to run simulations allowing for various levels of race-consciousness (*see* Section 4.2.2, "Race-Conscious Simulations," Ex. A, at 9-12). Contrary to Intervenors' argument, Dr. Voss acknowledges in the first sentence of this section that, "Subsequent to the *Robinson* decision, drawing race-neutral maps ceased to be the goal, so I did not end with this comparison between the enacted 2024 plan and race-neutral simulation methods." Ex. A, at 9.

Of course, Dr. Voss's conclusion involving even the race-conscious maps is highly relevant: even considering race, the simulations could not create two majority-minority districts. Exhibit A, at 10. This conclusion and the included analysis are directly relevant to the question of whether race had to be the predominant factor in drawing the map enacted by SB8. If, as Dr. Voss explains, drawing a second majority-minority district would be exceedingly improbable (even allowing for a certain level of race-consideration), there is strong reason to corroborate the existing direct evidence that race dominated the legislature's map-making decisions.

Intervenors' citation to *Allen v. Milligan*, 599 U.S. 1, 34-37 (2023) for the proposition that "Section 2 cannot require courts to judge a contest of computers" is likewise misleading. In *Allen*, the State presented the Court with race-neutral simulations to assess whether the State's plan

abridged the right to vote on account of race by unconstitutionally affecting minority voters. *Id*. at 44 (Kavanaugh, J., concurring). While no member of the Court thought race-neutral simulations helped in this narrow way, Justice Kavanaugh specifically addressed the actual situation in this case, noting:

> It is true that computer simulations might help detect the presence or absence of *intentional* discrimination. For example, if all the computer simulations generated only one majority-minority district, it might be difficult to say that a State had intentionally discriminated on the basis of race by failing to draw a second majority-minority district.

Id. (emphasis original). Such is the case here. Dr. Voss's simulations show the legislature acted intentionally in predominantly considering race because neither SB8 nor anything like it emerges from tens of thousands of both race-neutral and race-conscious simulations. *See* Ex. A.

Finally, Intervenors claim without explanation that Dr. Voss's simulation analysis does not accurately represent the districting process in Louisiana. **Doc. 144-1, at 8** (internal citations omitted). They reference generally mention their own expert's report but provide no citation for their allegation. *Id*. This Court need not simply take their word for it, and as the Court may well see when Intervenors' expert testifies at trial, their objection lacks merit.

CONCLUSION

For the foregoing reasons, Intervenors' Motion in Limine, **Doc. 144**, should be denied.

Dated this 3rd day of April, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 3rd day of April, 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Edward D. Greim
Edward D. Greim
Attorney for Plaintiffs

Report

Louisiana Redistricting Analysis for *Callais v. Landry*

Dr. D. Stephen Voss (doubleDenny Consulting)

March 22, 2024

To: Edward Greim (Graves Garrett Greim)
Re: Louisiana's 2024 Congressional Districts

My objective is to evaluate the Congressional districts enacted by S.B. 8, in light of traditional redistricting criteria and Louisiana's broader historical context. In doing so, I draw primarily on my expertise and training in quantitative analysis (including techniques especially relevant to redistricting research) and secondarily on my knowledge of Louisiana politics and history (gained first as a student and journalist in the state, later as an author of peer-reviewed scholarly research pertaining to Louisiana voting behavior).[1]

This Report considers the following questions:

1. Is Louisiana's African-American population sufficiently large and compact to form two majority-black districts?

2. Or instead, due to the dispersed nature of Louisiana's Black population, does the effort to create a second Black district result in egregious racial gerrymandering?

From the perspective of quantitative analysis, these questions are two sides of the same coin: The larger and more compact the African-American population, the easier it becomes to create majority-black districts without engaging in racial gerrymandering. (Similarly, the more compact the Black population, the more that systematic vote dilution would be required to prevent emergence of such districts.) The smaller and the more-dispersed a Black population, on the other hand, the more egregiously mapmakers must work to segregate voters by race if they intend to create additional majority-minority districts.

[1] `https://polisci.as.uky.edu/sites/default/files/cv/Voss_DStephen_00002078_CV.pdf`

1 Executive Summary

The conclusions that I will develop in this report are as follows:

- Outside of New Orleans, Louisiana's African-American population is too small and dispersed to dominate a compactly drawn congressional district. A race-neutral approach to mapmaking generally will not produce two districts dominated by African-American voters. It rarely, if ever, results in one.
- Discarding a race-neutral approach does allow creation of two black-majority districts, including one outside of New Orleans, but because that population is not large and sufficiently compact, the resulting set of maps perform poorly when judged using standard compactness measures.
- Engaging in the racial gerrymandering needed to create to majority-black districts requires defying traditional redistricting criteria. Specifically, creating two Black districts:
  - results in districts that barely meet the contiguity requirement (as they stretch from one African-American cluster to the next);
  - splits more parishes (often to separate the white electorate from African-American voters); and
  - divides communities of interest (gouging central cities out from their metro areas).
- Even if one disagrees in theory with my conclusion that Louisiana cannot support two "compact" black-majority districts, the congressional map enacted by S.B. 8 does not provide such a remedy because the second majority-black district in that plan is remarkably non-compact. The 2024 plan produces such a gerrymandered district partly because it...
  - fails to group together the parishes with greatest Black density (and the deepest history of racial polarization) outside New Orleans, and
  - violates Louisiana's broader redistricting priorities, in a way that is far from race neutral, to a greater degree than the feasible alternatives.

2 Methods for Judging Redistricting Schemes

Four redistricting criteria stand out as enjoying almost uniform support: (1) compactness, (2) contiguity, and (3) single-member districts with (4) equal population. The latter three criteria are mostly objective judgments, so they are of lesser concern here. But the remaining criterion, compactness, is more problematic.

Methodologists have proposed, and analysts have employed, a bewildering array of compactness measures, but none has attracted a consensus - likely because, in practice,

when individuals judge the tidiness of a district, they're balancing a variety of features that no simple metric encapsulates.[2]. Nor do analysts have any consensual cutoff for when a map or a population becomes too spread out to be considered compact; it's a matter of degree rather than kind.

Lacking consensual standards of measurement makes the compound question posed here ("Is Louisiana's Black population insufficiently large and compact to allow creation of a second majority-black district without engaging in egregious racial gerrymandering?") necessarily subjective. What I can offer while remaining objective, however, are comparisons between **the compactness of the 2024 districts** created by S.B. 8 (measured in multiple ways) and the compactness of other districts that could have been constructed. The scientific reporting of such results means that a reader is not dependent on my judgment of compactness, but instead can form an independent opinion based on the scientific evidence I present.

Other criteria used to judge redistricting schemes are not as universal as the compactness criterion, so whether to consider them in an analysis can be ambiguous. In Louisiana's case, however, the state legislature explicitly endorsed certain map-making priorities at the outset of the redistricting process, eliminating such ambiguity.[3] JRULE21 indicated that **parishes should be split as little as possible**. To the extent feasible, identifiable **communities of interest** also should be kept together. In comparing the 2024 map to other districting schemes, my report considers those criteria as well.

Which leaves the question: Compared to what? For purposes of this report, I will compare Louisiana's 2024 congressional districts to two sets of alternatives, each with strengths and weaknesses but compelling in combination:

1. Cutting-edge simulation methods allow the development of thousands of potential maps, each one a districting plan that (a) remains within the same starting parameters but otherwise (b) is constructed randomly. Having so many simulated maps built under the same rules illustrates the full range of what might have been possible, but also portrays what would be most likely when operating under those parameters. Having a full set of simulated hypothetical maps in this case allows two judgments:

    - The less common it is for simulated maps to create two majority-black districts, then the weaker the case that Louisiana's Black population is large and compact enough to justify such an outcome. Also, it would make less plausible any suggestion that the failure to draw two such districts represents systematic vote dilution.
    - The more that a real-life map strays from what's typical in the simulations – whether that's in terms of compactness, in terms of racial or partisan clustering, or in terms of offending other redistricting criteria – the more confident an analyst can be that such a deviation was not accidental but instead resulted from a systematic feature of the mapmaker's approach.

[2]Kaufman, Aaron R., Gary King, and Mayya Komisarchik. 2021. "How to Measure Legislative District Compactness If You Only Know It When You See It." American Journal of Political Science 65 (3):533-50.

[3]`https://www.legis.la.gov/legis/Law.aspx?d=1238755`

2. Simulated maps come with a clear weakness, however, which is that because they are "created in a lab" rather than emerging from a political process, they may not take into account all of the many unique features of a time and a place that mapmakers would want to incorporate. What seems possible in a computer simulation might not have been feasible or even desirable in real life. (Similarly, mapmakers might want to stack the deck to produce outcomes that would not emerge organically from a naive process.) Thus, it helps to be able to reference other real-life maps that might contrast with the enacted version. For this report, I will be comparing the map enacted by S.B. 8 two sorts of real-life maps: (a) others submitted to produce two majority-black districts, and (b) those that were in place in 2020 and 2022.

3 A Note on the Data

For purposes of this analysis, I considered three main types of data:

- Shapefiles for both the S.B. 8 districts and the districts proposed by the plaintiffs in the *Robinson* case;
- Racial composition data for the precincts used to construct those districts; and
- Precinct-level voter stats & election returns spanning from the end of 2018 through 2023.

Although I performed a variety of diagnostic checks on the data you provided – spot checks to ensure that numbers lined up with what was reported by the Louisiana Secretary of State's Office or the Census Bureau – I did not check every single data field, so the analysis below is contingent on those data being accurate.

I subsequently supplemented what you provided with other data available to the public over the Internet: shapefiles for Louisiana's 2020 and 2022 congressional districts, shapefiles for the other redistricting proposals submitted in the 2024 special session that produced the current maps, and the voter statistics and voting returns made available by Louisiana's Secretary of State.

Finally, in using two online software packages commonly employed to evaluate legislative districts – Dave's Redistricting[4] and PlanScore[5] – I indirectly relied on the precinct-level voting data built into their respective systems.

Occasionally, I needed to observe the partisan lean of districts rather than their racial makeup. In a perfect world, I would know racial turnout and partisan voting preferences specifically for U.S. House elections and would use those numbers. The choices available in House races are so heavily influenced by elite-level decision making, however, that we cannot get a reliable picture of how voters would react to a closely contested congressional race.[6] Instead, for most of my analysis, I use the typical partisan lean seen in a district's

[4] `https://davesredistricting.org/`

[5] `https://planscore.org/#!2022-ushouse`

[6] Voss, D. Stephen. 1999. "Racial Redistricting and the Quest for Legislative Diversity." *Extensions of Remarks: APSA Legislative Studies Section Newsletter* 22(July):11-14.

precincts over a large number of statewide races, each of which offers the same candidates to voters everywhere. To produce this "normal vote" for each party, I average first by election date (so that the same elections will not be counted multiple times simply because they have more statewide elections on the ballot), and only do I average across election dates from the 2018 runoff through the 2023 election.

The exception is when I characterize district partisanship as computed by PlanScore. That package seeks to estimate how a precinct specifically would vote in legislative elections using the relationship between such voting and how the precinct voted in presidential races. Ignoring voting behavior in state elections such as the one for governor is not ideal, but it's a compromise necessary to take advantage of a software application built for the entire country.

4 "Large and Sufficiently Compact"

To determine whether Louisiana's African-American population is large and sufficiently compact enough to support two black-majority districts, I compare the map enacted by S.B. 8 with both real and simulated maps. I briefly consider the former, a comparison that may feel more concrete and reassuring because it examines maps previously in use, before turning to the more-sophisticated approach of using simulated districts.

4.1 Comparing to Other Real-Life Maps

One way to judge whether Louisiana's African-American population is sufficiently large and compact to support two black-majority districts is to compare the compactness of the 2024 mapping scheme to past districting schemes employed in real life: the 2022 map and the one used during the previous decade.

The map enacted by S.B. 8 performs poorly regardless of which compactness measure I consult: the traditional Reock[7] and Polsby & Popper[8] metrics or the comprehensive KIWYSI score.[9] In each case, higher scores are better, but as analyzed through Dave's Redistricting site, the S.B. 8 map is the worst.

[7]Reock, Ernest C. 1961. "Measuring Compactness as a Requirement of Legislative Apportionment." Midwest Journal of Political Science 5 (1):70-4.

[8]Polsby, Daniel D., and Robert D. Popper. 1991. "The Third Criterion: Compactness as a Procedural Safeguard against Partisan Gerrymandering." Yale Law & Policy Review 9 (2):301-53.
Polsby, Daniel D., and Robert D. Popper. 1993. "Ugly: An Inquiry into the Problem of Racial Gerrymandering under the Voting Rights Act." Michigan Law Review 92 (3).

[9]Kaufman, Aaron R., Gary King, and Mayya Komisarchik. 2021. "How to Measure Legislative District Compactness If You Only Know It When You See It." American Journal of Political Science 65 (3):533-50.

Map	Compactness of the Entire Scheme (P & P)	(Reock)	(KIWYSI)
2022 Enacted	0.14	0.35	26
2020 Obsolete	0.14	0.33	25
2024 Enacted	0.11	0.30	19

Table 1: The 2024 Map is Less Compact than its Predecessors

So while discarding a race-neutral approach does allow creation of a black-majority district outside of New Orleans, the resulting set of maps perform poorly when compared to older maps using standard compactness measures.

4.2 Simulating Redistricting Maps

The problem with the last, relatively simple, statistical comparison is that Louisiana's previous maps might have been especially compact, in which case even the scores for the 2024 plan could be pretty good. A better approach would be (a) to let a computer construct maps that try to adhere to the compactness requirement, and then (b) to compare the compactness of those simulated maps to what emerged from the 2024 special session.

The method I will use to simulate possible congressional districts for Louisiana was developed by Kosuke Imai of Harvard University along with multiple collaborators. It has been documented technically elsewhere.[10] It also has been used in previous redistricting litigation, including by both Imai and me in Kentucky's 2023 *Graham v. Adams* litigation.[11] So I will not go into technical detail as to how the method works in this report. Rather, I will focus on explaining, in layperson's terms, how I employed the software in this particular instance.

The benefit of this simulation method is that it generates congressional district maps from scratch, building district shapes randomly from the precincts following parameters set by the analyst. Those parameters can be isolated only to the hard restrictions imposed by state and/or federal law, as best understood by or expressed to the analyst – allowing the software to generate whatever sort of districts happen to emerge consistent with those rules – or the simulations can try to conform to additional redistricting goals if the analyst chooses.

Generating ten thousand sample congressional maps within any given set of parameters will give an excellent picture not only of what would be possible, it also indicates what would be likely to emerge from a mapmaker ignoring features of the world not imposed on the simulation process. For example, if the software isn't told how precincts are grouped into counties, the simulations will show how maps might have taken form with county boundaries totally ignored. If the simulations do not take voting returns into account, then the maps would give an indication of what a mapmaker unconcerned with partisan

[10] Cory McCartan. Kosuke Imai. "Sequential Monte Carlo for sampling balanced and compact redistricting plans." Ann. Appl. Stat. 17 (4) 3300 - 3323, December 2023. https://doi.org/10.1214/23-AOAS1763

[11] `https://www.researchgate.net/publication/371867895_Assessment_of_Expert_Witness_Analysis_Reports_for_Graham_v_Adams_2022_Post-Litigation_Version`

outcomes would be likely to draw. And, most important for this report: If the simulations do not take race into account, then the district-drawing process will be race neutral, neither systematically diluting the African-American vote (through packing and cracking) nor intentionally concentrating the African-American vote (to produce majority-black districts artificially).

4.2.1 Race-Neutral Simulations

I have no way of knowing how a judge would want to trade off the various criteria used to assess a good map (e.g., the extent to which one might be willing to downplay or ignore parish borders, to permit the carving up of identifiable communities of interest like metro areas, to tolerate shoestring districts that only barely meet contiguity requirements, and so on.) Most important, I do not know how much violence district maps must do to the compactness requirement before a judge would conclude that the Black population is not large and sufficiently compact enough to warrant imposing a racially skewed congressional district to envelop them. For that reason, instead of arbitrarily selecting which parameters to impose (and not to impose) on the district simulation process, I opted to run a series of such simulations under different mixes of parameters. That way, readers of this report may decide how to trade various districting criteria off against the desire to enhance Black representation. Specifically, I ran simulations that operated under the following sets of constraints (each adding an additional constraint to the ones already there):

Simulation	**Parameters**
Baseline	Pop. equality & contiguity with light compactness pressure
Light Parish Protection	Adds light protection against splitting parishes
Heavy Parish Protection	Tightens up the protection against splitting parishes
Multi-Split Avoidance	Avoids splitting parishes more than once if they must be split

Table 2: Imai-Style Simulations for LA Congressional Districts

As it turned out, the differences across those simulations did not matter for the main question I sought to ask: whether black-majority districts would emerge naturally from a race-neutral mapmaking process. The answer is no: Not once, out of ten thousand simulations conducted under any of these sets of rules, did the simulation software create two black-majority districts. The African-American population simply is not large and sufficiently compact for black-majority districts to emerge organically. Creating two majority-black districts only happens with some degree of active gerrymandering.

Similarly, the simulations almost never produce two districts dominated by Democratic voters of any race. The following graph shows, for the ten thousand simulations produced by the baseline model, the normal Democratic vote percentage in the second most Democratic district each time (see Figure 1).

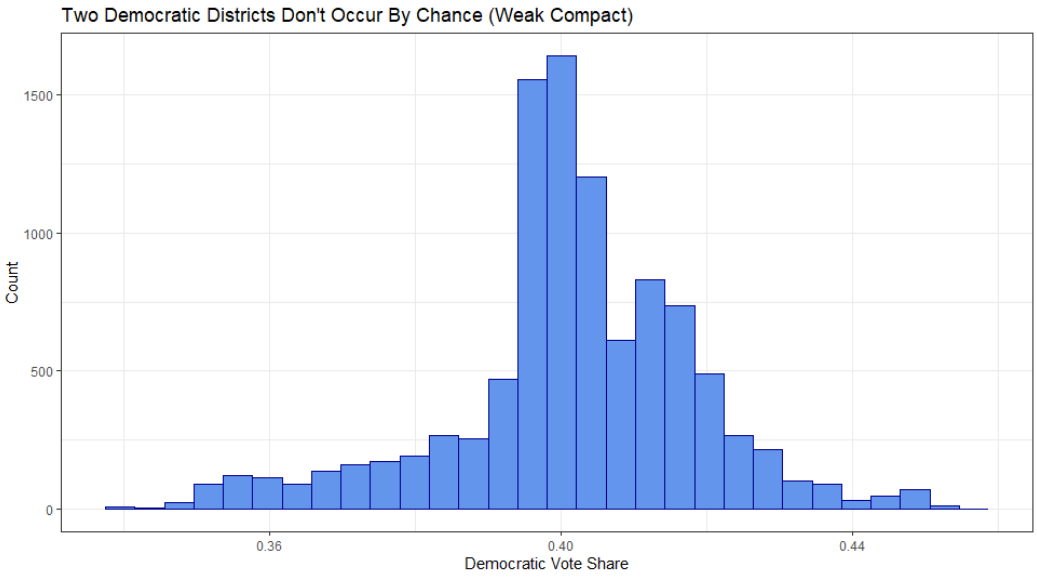

Figure 1: Partisan Lean of 2nd-Most Democratic District: Baseline Simulation

This presentation of partisan lean provides additional support for my conclusion regarding racial gerrymandering: The fact that a second Democratic district fails to emerge only strengthens the conclusion that a second majority-minority district would not emerge without active gerrymandering.

By constructing maps in a race-neutral way, the simulation method consistently produces maps that are much more compact and more respectful of parish boundaries than the maps drawn by political bodies. Even the simplest set of simulations, with no mandate to protect parishes and only a slight preference for compactness, still results in every single simulated congressional map being more compact than S.B. 8 (see Figure 2).

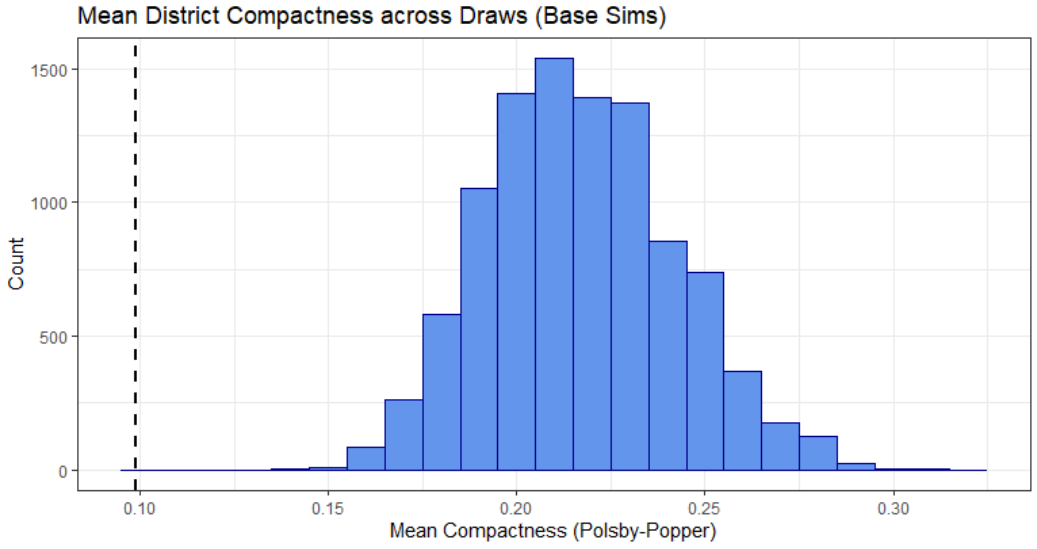

Figure 2: Baseline Simulations Are Consistently More Compact than the 2024 Map

Of course, that set of simulations did not have to respect parish borders. Perhaps simulations that try to keep parishes together will struggle to remain compact, just as the enacted 2024 plan does? No, even actively trying to hold parishes together results in simulated plans much more compact that the 2024 map (see Figure 3). So did pushing the simulations to respect even larger Metropolitan Statistical Area borders (see Figure 4).

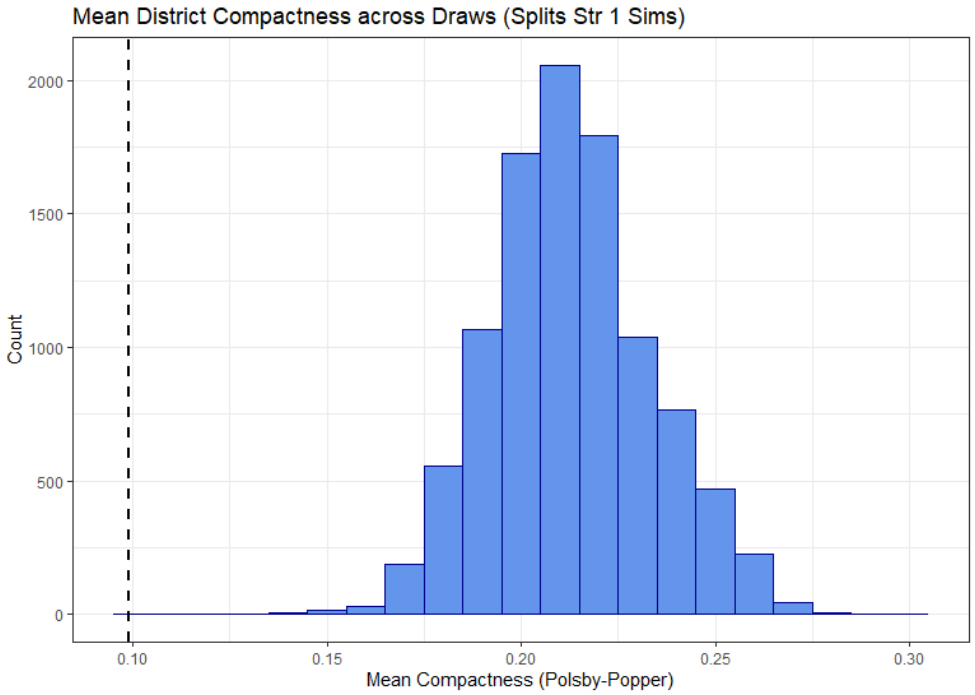

Figure 3: Protecting Parish Borders Doesn't Hurt Compactness Much

4.2.2 Race-Conscious Simulations

Subsequent to the *Robinson* decision, drawing race-neutral maps ceased to be the goal, so I did not end with this comparison between the enacted 2024 plan and race-neutral simulation methods. Instead, I explored adding parameters that would seem to make black-majority districts more likely to emerge – by actively discouraging the method from accidentally cracking African-American population concentrations – without directly imposing a racial gerrymander on the system.

Specifically, for one set of simulations, I treated the African-American population cluster in each parish as a small region that should not be separated. For a second set of simulations, I identified the full set of black-majority precincts across the state, and simulated compact districts that tried to avoid separating those groups. In neither case, though, did this race-conscious attempt to minimize the cracking of African-American populations prove sufficient to lead to a pair of majority-black districts, nor did it harm district compactness to the extent that happens when actively drawing majority-black districts.

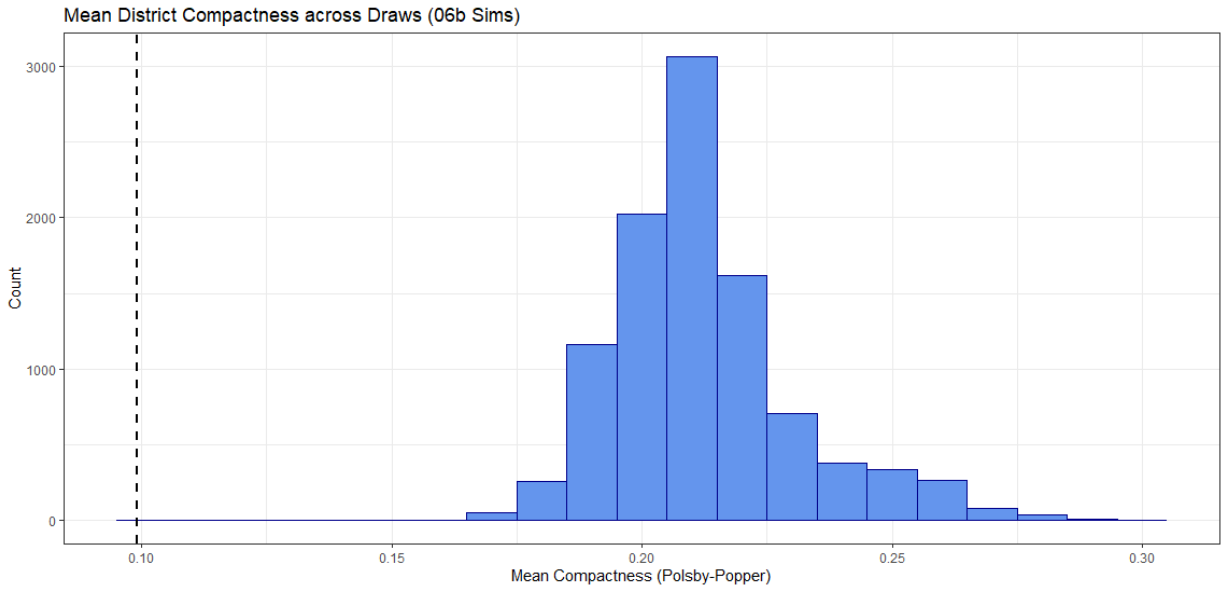

Figure 4: Protecting MSA's as a Community of Interest Still Allows Compact Districts

Simulation	**Parameters**
Parish-Level Clusters	Avoided splitting apart a parish's majority-black precincts
Statewide Clusters	Tried to avoid separating majority-black precincts
Protecting CD2	Protecting the 2nd district from the 2024 enacted plan

Table 3: Race-Conscious Simulations for LA Congressional Districts

Until now, I've been avoiding showing actual maps from these simulations. The problem is that each batch produces the equivalent of ten thousand maps, so any attempt to visualize them runs the risk of cherry-picking results and giving a false impression. Still, not generating two black-majority districts even after trying to prevent cracking of the African-American population might raise the question of how that could happen. For that reason, I put into map form the one simulation from my parish-level cluster approach that came the closest to producing two Democratic majority districts (see Figure 5). What it shows is that the simulation did successfully hold together local clusters of African-American Voters. New Orleans stays together in one district. Shreveport, Ruston, and Monroe stay together in another. The three Mississippi Delta counties in the northeast join with the African-American population in Alexandria. But because no district is stretching across that landscape to stick them all into the same district, no black-majority district emerges.

My final attempt to reach two black-majority districts was literally to force the creation of the first such district. Specifically, I ran simulations blocking off the New Orleans black-majority district, so that all ten thousand simulations would have to include that district every time. As has happened with every batch of simulations, however, even this blunt imposition of a black-majority district results in maps with much better compactness scores than the 2024 plan (see Figure 6). The CD2 also did not lead to to the creation of a second black-majority district. Looking at the 2nd-most-Democratic district across

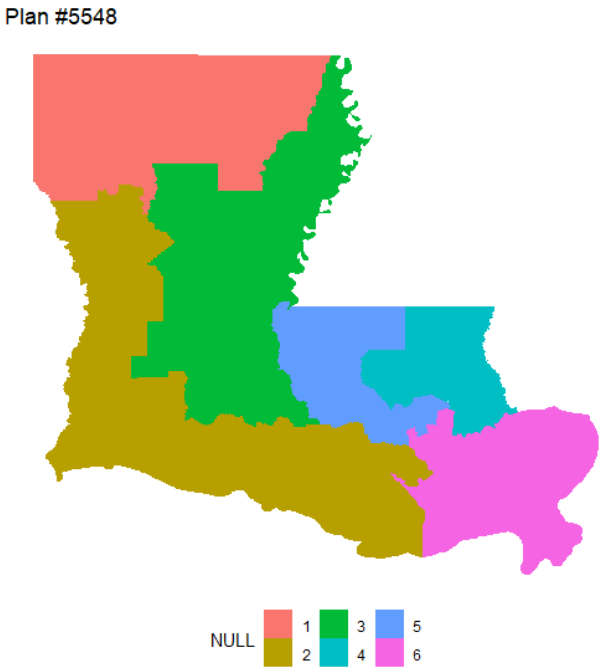

Figure 5: The Best Parish-Cluster Map for Democrats

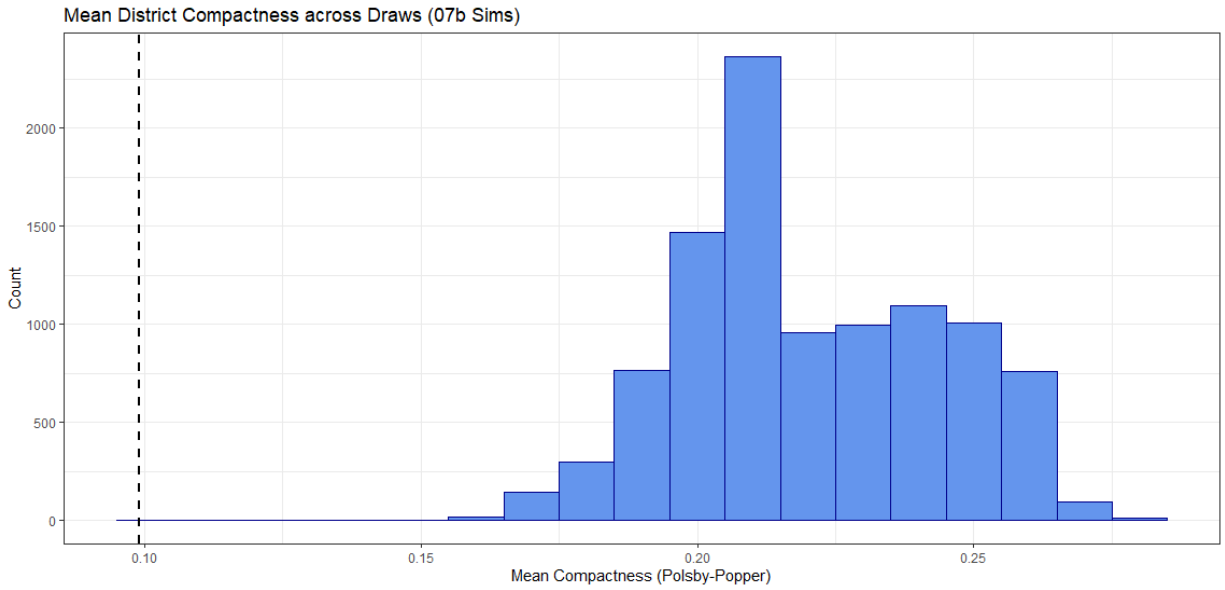

Figure 6: Recreating the 2024 New Orleans District Doesn't Hurt Compactness

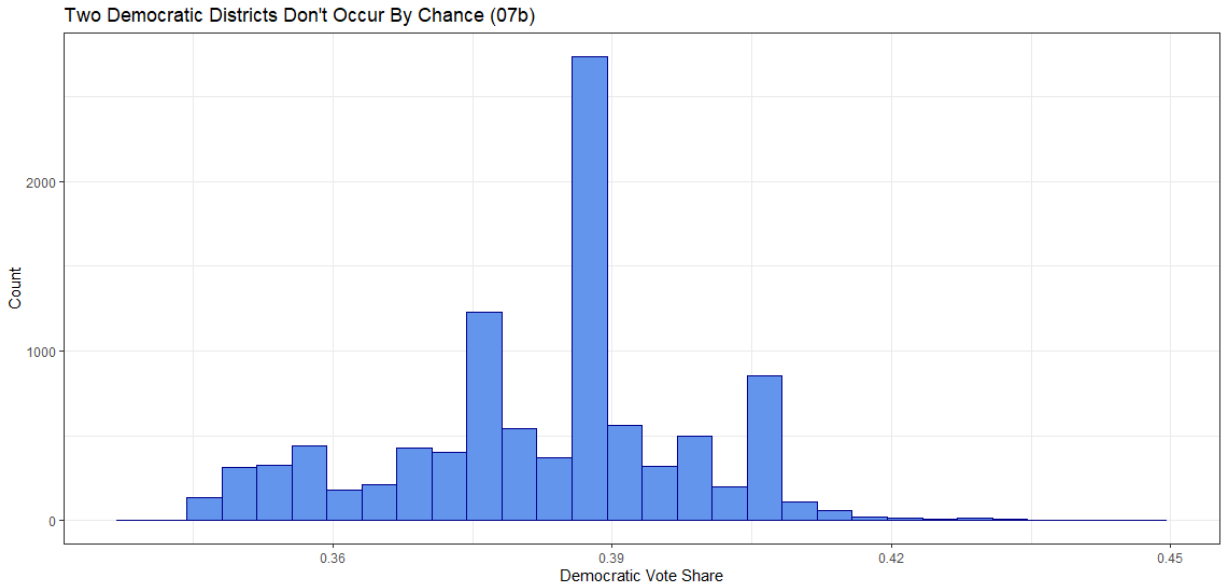

Figure 7: The 2nd-Most Democratic District after CD2

those simulations, usually the closest Democrats come to a second district is one where they constitute about 40% of the electorate (see Figure 7). In conclusion: Louisiana's African-American population is too small and dispersed to dominate two compactly drawn congressional districts. Neither a race-neutral approach to mapmaking, nor a lightly race-conscious approach, produces two black-majority districts.

5 Louisiana's Redistricting Criteria

Louisiana approved a set of redistricting criteria, known as Joint Rule No. 21, intended to shape the drawing of legislative districts. When creating single-member congressional districts, the state set out to (a) build districts "composed of contiguous geography" that (b) respected "the established boundaries of parishes" while (c) not undermining "the maintenance of communities of interest within the same district." Engaging in the racial gerrymandering needed to unite Louisiana's African-American population, however, required jettisoning these other priorities.

5.1 The Contiguity Requirement

Strictly speaking, even the least-compact of Louisiana's 2024 districts remains contiguous. To create the majority-black 6th District, however, the state barely met that key redistricting criterion. The district stretches from Shreveport down to Baton Rouge, a distance of more than 250 miles. (Google Maps indicates that it would take more than four hours to drive from Southern University in Shreveport to a business at the Baton Rouge end of the district.) In doing so, the 6th narrows to only one precinct's width four times. Three of those times, the 4th District appears on both sides of the 6th, because of how it wraps

around it (as shown in Figure 8):

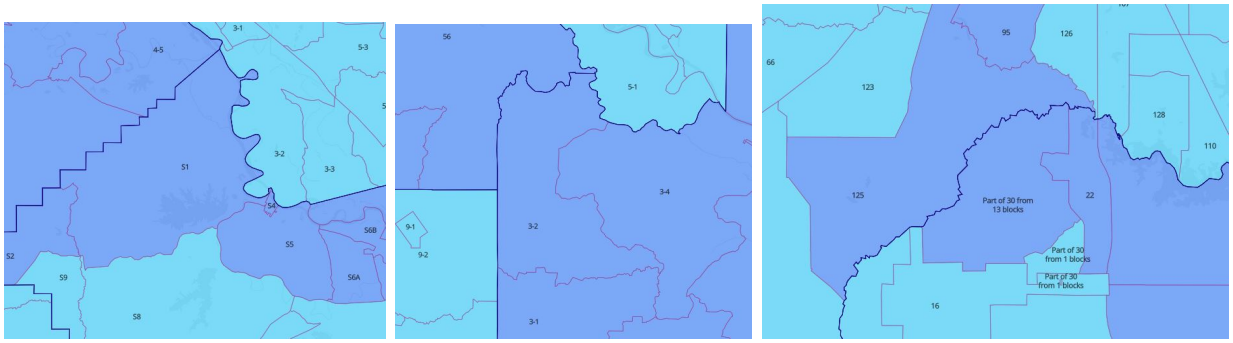

Figure 8: Wrapping the 4th district.

In the final case, the 6th squeezes between the 4th and 5th districts (see Figure 9):

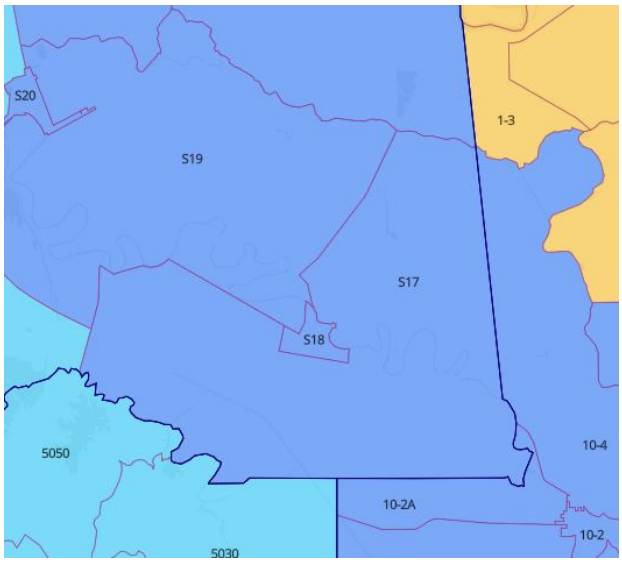

Figure 9: The Last Part of the 6th District Shoestring

Meanwhile, to wrap around the northeastern tip of the other black-majority district, the 6th passes so close to Mississippi that the 5th barely misses being dissected (see Figure 10):

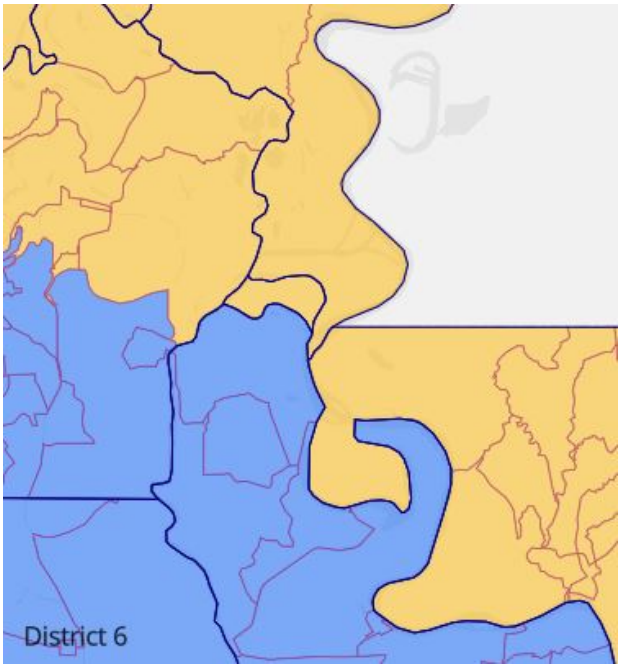

Figure 10: Almost Dissected by Mississippi

The 2024 maps met the letter of the contiguity requirement, but it hardly met the spirit.

5.2 Splitting Political Subdivisions

Parishes matter in Louisiana government, so they represent important political communities of interest. The pressure to create two majority-black districts – or at least the decision to construct the 6th District the way Louisiana did – required discarding that goal. The 2024 maps split 16 of Louisiana's 64 parishes, a couple of them more than once, resulting in the worst split count among every plan analyzed. And while the other real-life maps I analyzed often came fairly close to that raw count, they were less likely to carve up the parishes with more people, so while the discarded 2022 map's parish splits affected less than half of the Louisiana population, the 2024 splits affect more than 60%. That plan split more parishes across districts, and more districts across counties, than any other real-life plan.

	Parishes Split	Splits	Population % Affected	County-Dist. Splitting	Dist.-County Splitting
2022 Enacted	15	15	43.9%	1.16	1.92
2020 Obsolete	15	16	43.7%	1.16	1.95
Price/Marcelle	11	11	52.7%	1.21	1.97
Robinson	14	17	55.2%	1.24	2.14
Carter	15	16	56.7%	1.22	2.15
Echols	17	17	58.1%	1.19	2.18
Womack	15	17	62.1%	1.25	2.25
2024 Enacted	16	18	62.9%	1.25	2.30

Table 4: Disrespecting Political Communities of Interest: Enacted Map is the Worst

Similarly, district simulations can be constructed to respect Louisiana's JRULE21 and try to keep parishes together. Although I did simulate maps with such a constraint, it wasn't really necessary, because even the plainer methods of simulation – both race neutral and race conscious – split far fewer parishes than the adopted maps. Admittedly, that number might be an underestimate of how many parishes a real map would need to subdivide, because the simulation method allows for somewhat greater population deviations than true congressional districts are allowed (an unfortunate compromise to make up for the methods inability to split precincts the way actual mapmakers do). Still, the maps trying to create two majority-black districts run roughshod over parishes as political communities of interest, compared to what simulations typically produce.

5.3 Carving Up Communities of Interest

Other things equal, a geographic system of representation like the one in the United States seeks to give a voice to communities that might share common interests. Those communities of interest can be defined in numerous ways, and some of those shared interests may be known only to politically active locals (such as the state legislators who serve those communities in the state capital). The possibility that mapmakers might be incorporating such haphazard considerations is one reason to supplement simulated maps with real-life ones.

Nevertheless, one important type of community of interest that can be considered in a broader analysis - one that usually spans parish borders, as anticipated by JRULE21 - is urban areas. Each parish in a larger metropolis has its own local government, but when it comes to the economic life of the people in that urban area, parishes will be more integrated, an interest that a member of Congress could represent in D.C.

For that reason, I defined for Dave's Redistricting package each federally defined Metropolitan Statistical Area. MSA's consist of a central-city parish and possibly one or more outlying parishes in the greater metro area, so they are communities easily integrated into an analysis already cognizant of parish borders. Louisiana's MSA's are pictured here (see Figure 11).

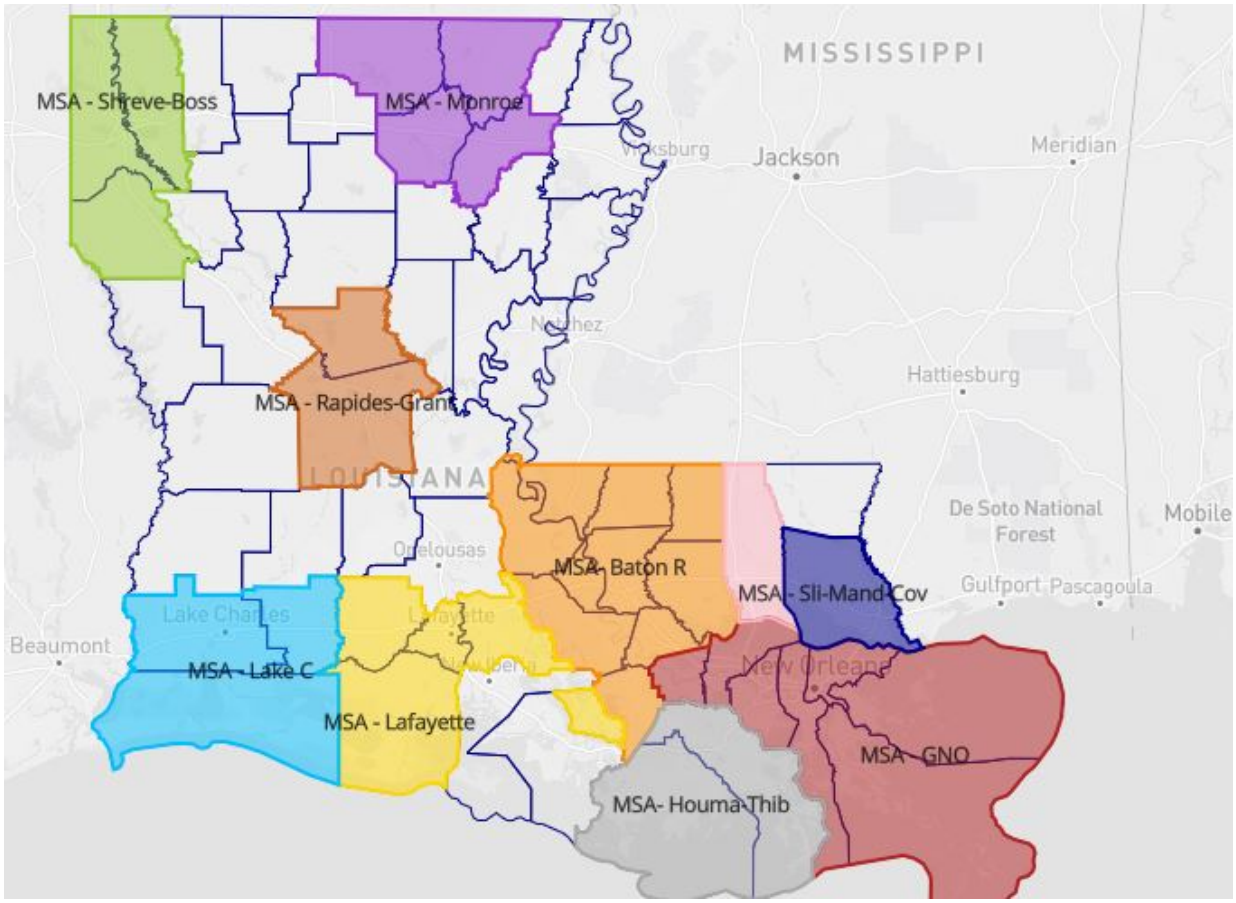

Figure 11: Louisiana's Metropolitan Statistical Areas (MSA's)

What the analysis showed is that the 2024 map proposal - both as originally proposed and as ultimately passed - was the only real-life map that carved up 9 of Louisiana's 10 MSA's in order to accomplish its goals. All of the others, including the 2022 maps and the rival Robinson submission, split only 7. Almost all of the maps intended to create two majority-black districts had to divide up both the Baton Rouge and the Alexandria areas, but the number of total number of splits imposed on each community of interest was not the same. Whereas the 2022 map always kept the number of effective splits under one, the 2024 map pulls the greater Baton Rouge area into multiple pieces, while the other proposed maps significantly divide up at least two metro areas. Drawing two black districts regularly requires breaking apart metro areas as a community of interest.

	Metro Stat'l Areas Split	MSA with Most "Effective Splits"	"Effective Splits"	MSA with 2nd Most	"Effective Splits"
2022 Enacted	7	Houma-Thib	0.99	GNO	0.97
Echols	7	Rapides-Grant	1.36	Baton Rouge	1.07
Carter	7	Rapides-Grant	1.45	Baton Rouge	1.35
Price/Marcelle	7	Rapides-Grant	1.58	Baton Rouge	1.25
Robinson	7	Baton Rouge	1.62	Rapides-Grant	1.58
Womack	9	Baton Rouge	1.81	Rapides-Grant	0.95
2024 Enacted	9	Baton Rouge	1.81	Hammond	0.94

Table 5: Metropolitan Statistical Area (MSA) & Precinct Splits: Enacted Map is the Worst

Map	Efficiency Gap	Pr. Dem Win N.O. Distr.	Pr. Dem Win 2nd Black Distr.	Pct. Black in 2nd Black Distr.	Estim. Dem vote 2nd Black Distr.
2022 Enacted	- 5.8% R	100%	n/a	n/a	n/a
Carter	+ 7.9 D	100%	82%	52.0%	54%
R obinson	+ 7.9 D	100%	84%	52.0%	54%
Price/Marcelle	+ 9.5 D	100%	89%	52.2%	55%
Echols	+ 9.8 D	100%	94%	48.2%	56%
Womack	+ 10.3 D	100%	100%	53.7%	59%
2024 Enacted	+ 10.4 D	100%	100%	54.1%	60%

Table 6: Louisiana Map Proposals Based on Partisan Skew & Polarization: Enacted Map is the Worst

5.4 The 2024 Map Is No Remedy

Compactness Even if one concludes that Louisiana's African-American population is large and sufficiently compact to justify imposing two black-majority districts on the state, that does not mean that the 2024 mapping scheme actually unites the "compact" African-American population used to motivate the intervention. To assess that question, I compare the 2024 maps to other proposals put forward to create a second majority-black district outside of New Orleans (and also the plaintiff's map submitted in *Robinson*).

Consulting those real-life alternatives shows how thoroughly the 2024 maps strayed from the compactness standard. The enacted plan is easily the worst on two of the three compactness measures (KIWYSI and P&P), and effectively tied for worst on the third. What dragged it down? First and foremost, the racial gerrymander sitting at the center of it. District 6 bottoms out on the KIWYSI score, stands alone as a poor outlier on the Reock measure, and also returns the lowest Polsby & Popper. Even if Louisiana does contain a large and sufficiently compact African-American population to justify a second majority-black district, the newly enacted 6th District does not envelop it.

Map	Overall P & P	Overall Reock	Overall KIWYSI	2nd Black P & P	2nd Black Reock	2nd Black KIWYSI
Price/ Ma rcelle	.19	.39	37	.10	.37	14
Ro binson	.18	.41	35	.10	.39	17
Carter	.16	.38	32	.07	.35	9
Echols	.14	.29	23	.07	.21	9
2024 E nacted	.11	.30	19	.05	.12	1

Table 7: Compactness of the Entire Scheme and 2nd Black District: Enacted Map is the Worst

One reason the district ranges so widely is that it does not seek to bring representation to Louisiana's parishes with the greatest African-American density, even though that's the portion of Louisiana where slavery was most firmly rooted and part of the region where scholars consider racial polarization most severe even today.[12] Leaving aside Orleans and St. John the Baptist parishes, already included in the 2nd District, the 6th District excludes the counties with the densest African-American population: three in the Mississippi Delta at the state's northeast corner (East Carroll, Madison, and Tensas) and one in the Florida parishes (St. Helena). See Figure 12. Instead, the enacted 6th District sprawls across Central and North Louisiana, grabbing African-American populations from a majority of Louisiana's bigger metro areas. It is anchored by Shreveport and Baton Rouge, slices through Rapides Parish to extract Alexandria, and dips down to grab heavily African-American areas of Lafayette. Anyone from those cities, and anyone who knows the geography of those cities, would recognize that the lines of the 6th District are pulling out African-American neighborhoods. These maps, color-coded by African-American density (with Blue as the highest density and red as the whitest), show how the gray lines of District 6 split urban areas to separate out the African-American population.

[12] ACHARYA, A., BLACKWELL, M., & SEN, M. (2018). *Deep Roots: How Slavery Still Shapes Southern Politics*. Princeton University Press. https://doi.org/10.2307/j.ctvc7732w

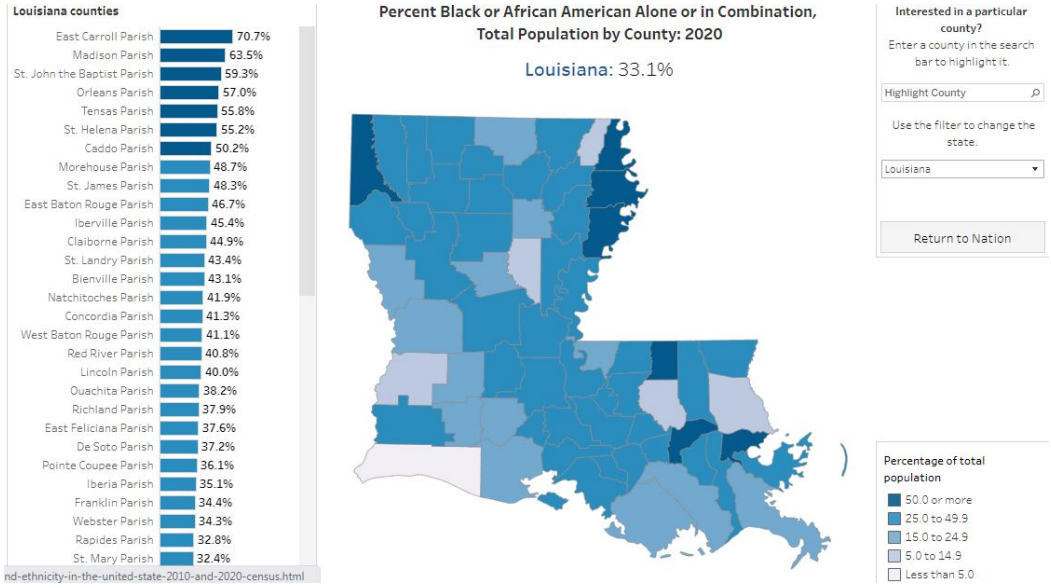

Figure 12: Louisiana's Delta Parishes Are Not in a Black-Majority District

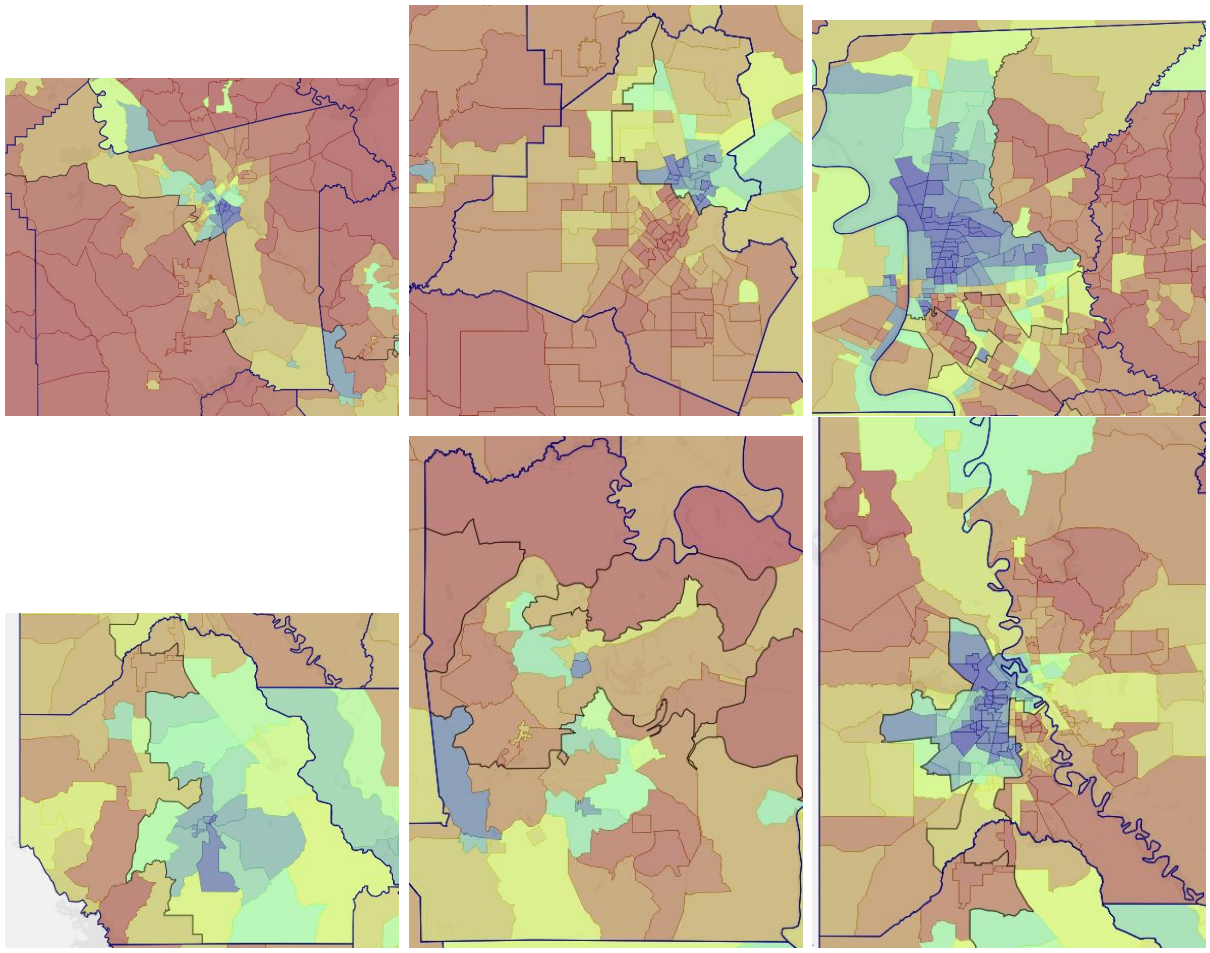

Figure 13: 6th District Grabs the Bluest Portions of (top, left to right) Rapides, Lafayette, East Baton Rouge, (bottom, left to right) DeSoto, Avoyelles, and Caddo parishes.

Any one of these parish separations, in isolation, would suggest an intention to divide voters by race. The consistency of that pattern across parishes, however, makes the systematic behavior unmistakable.

In sum, regardless of the intent with which the 2024 maps were drawn, the 6th District as constituted represents an egregious racial gerrymander when judged by outcome.

6 Conclusion

African-American representation is an important goal, one that the geographical, district-based approach to legislative elections sometimes can hinder. At times, especially in relatively rural areas, the temptation has been to draw contorted district shapes that pull together African-American voters from across much of the state, prioritizing race after other valuable redistricting criteria – especially the compactness standard that seeks to group voters within meaningful and identifiable district borders.

S.B. 8, by plucking African-American neighborhoods out of four larger cities as well as a few diverse towns to create a second majority-minority district, represents such a gerrymander. It produces a map that is less compact, and more disrespectful of political and economic communities of interest, than do simulated maps produced in a race-neutral (and even in a race-conscious) way consistent with standard redistricting criteria. S.B. 8 did not even meet those rules and guidelines to the extent that rival proposals for creating a second black-majority would have.

I do not believe that Louisiana's African-American population outside of New Orleans is sufficiently large and compact to support a second majority-black district without significant racial gerrymandering. But even if one disagrees, S.B. 8 did not group together that relatively compact African-American population.

Certification

The opinions expressed above are sworn, under penalty of perjury, to be true and based on the facts and criteria available to the expert witness as of the time of this report. This expert reserves the right to supplement this report as new information becomes available or as requested by the Plaintiffs.

Signed this 22nd day of March 2024.

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Expert Witness for the Plaintiffs