

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

MISSISSIPPI STATE CONFERENCE OF  
THE NATIONAL ASSOCIATION FOR  
THE ADVANCEMENT OF COLORED  
PEOPLE, ET AL.

PLAINTIFFS

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

STATE BOARD OF ELECTION  
COMMISSIONERS, ET AL.

DEFENDANTS

1 Before SOUTHWICK, *Circuit Judge*, JORDAN, *Chief District Judge*, and  
2 OZERDEN, *District Judge*.

3 PER CURIAM.

4 The Mississippi State Conference of the National Association for the  
5 Advancement of Colored People and numerous individual black Mississippi  
6 voters brought this suit against the Mississippi State Board of Election  
7 Commissioners and other Mississippi officials. They challenged the State's  
8 2022 redistricting maps for electing members of the state legislature. The  
9 Plaintiffs allege the 2022 maps dilute black Mississippian votes in violation  
10 of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, and contain  
11 unconstitutional racial gerrymanders in violation of the Fourteenth  
12 Amendment of the United States Constitution.

13 We find the Plaintiffs have satisfied their burden under *Thornburg v.*  
14 *Gingles*, 478 U.S. 30 (1986), by presenting three illustrative districts that  
15 satisfy the requirements of Section 2. *See* 52 U.S.C. § 10301. We conclude,  
16 however, that the Plaintiffs did not establish the redistricting maps are  
17 unconstitutional racial gerrymanders. We will provide the Mississippi  
18 Legislature an opportunity to enact revised maps.

19 Before explaining our ruling, we wish to state the court’s appreciation  
20 to all counsel for their professionalism. Voting-rights litigation can be  
21 contentious. In this lawsuit, though, lawyers and witnesses were respectful  
22 and measured in the expression of the disagreements about the law and the  
23 evidence. Some very wise and experienced Mississippi voting-rights lawyers  
24 appeared on both sides of this dispute. New and quite able lawyers from  
25 within and beyond the state’s borders appeared as well. All are to be  
26 commended.

27 I. FACTUAL AND PROCEDURAL BACKGROUND

28 *A. Parties*

29 The Mississippi State Conference of the National Association for the  
30 Advancement of Colored People (“Mississippi NAACP”) is the only  
31 organizational plaintiff in this suit. It is a subsidiary organization of the  
32 National Association for the Advancement of Colored People, Inc., a non-  
33 profit organization founded in 1909. Stipulations [199] App. A at 1. Some  
34 Mississippi NAACP members are registered voters who reside in the five  
35 legislative districts that the Plaintiffs challenge as unconstitutional racial  
36 gerrymanders. *Id.*; Doc [220], 6.

37 Fourteen individual Mississippians joined the Mississippi NAACP as  
38 Plaintiffs in this case.<sup>1</sup> Doc [199], 2–5. These individuals are all registered  
39 voters who live in one of the challenged legislative districts and consider  
40 themselves to be Democrats. *Id.* Several individual Plaintiffs are also

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<sup>1</sup> The Individual Plaintiffs named in the complaint are Dr. Andrea Wesley, Dr. Joseph Wesley, Robert Evans, Gary Fredericks, Pamela Hamner, Barbara Finn, Otho Barnes, Shirlinda Robertson, Sandra Smith, Deborah Hulitt, Rodesta Tumblin, Dr. Kia Jones, Angela Grayson, Marcelean Arrington, and Victoria Robertson. Doc [199], 2–5. Angela Grayson withdrew as a Plaintiff in September 2023. Doc [84] (Order Granting Withdrawal).

41 members of the Mississippi NAACP. *Id.* We refer to these parties  
42 collectively as the Plaintiffs.

43 The Mississippi State Board of Election Commissioners is composed  
44 of the Attorney General, the Mississippi Governor, and the Secretary of  
45 State. MISS. CODE ANN. § 23-15-211. That board, Mississippi Attorney  
46 General Lynn Fitch, Mississippi Governor Tate Reeves, and Mississippi  
47 Secretary of State Michael Watson were all named as Defendants in this suit.  
48 *Id.* at 5–6. The Mississippi Republican Executive Committee moved to  
49 intervene as a Defendant, and the motion was granted in May 2023. Doc [32]  
50 (Motion); Text-Only Order May 19, 2023 (Granting Motion). We refer to  
51 these parties collectively as the Defendants.

52 *B. The Mississippi Legislature’s Actions*

53 The United States Census Bureau conducts a census during the first  
54 year of each decade and releases the results the following year to every state.  
55 *See* 13 U.S.C. § 141. Every ten years following the release of the census data,  
56 the Mississippi Legislature is to “apportion the state in accordance with the  
57 Constitution of the state and of the United States into consecutive numbered  
58 Senatorial and Representative districts of contiguous territory.” MISS.  
59 CONST. art. XIII, § 254. The Mississippi Legislature’s Standing Joint  
60 Legislative Committee on Reapportionment and Redistricting (“Standing  
61 Joint Committee”) is the legislative body responsible for drafting each  
62 Mississippi reapportionment plan for state senate and state house  
63 membership once the decennial census data is delivered. *See* MISS. CODE  
64 ANN. §§ 5-3-91 to 5-3-103. The Standing Joint Committee must draw plans  
65 “according to constitutional standards” and state guidelines. §§ 5-3-93, 5-3-  
66 101. The state guidelines are:

- 67 (a) Every district shall be compact and composed of contiguous  
68 territory and the boundary shall cross governmental or  
69 political boundaries the least number of times possible; and

70 (b) Districts shall be structured, as far as possible and within  
71 constitutional standards, along county lines; if county lines  
72 are fractured, then election district lines shall be followed  
73 as nearly as possible.

74 § 5-3-101. Once the redistricting maps are drafted and approved by the  
75 Standing Joint Committee, each house must approve a joint resolution that  
76 sets out the maps. MISS. CONST. art. XIII, § 254. The Mississippi Governor  
77 has no official role in the approval of the maps.

78 In response to COVID-19, the Census Bureau was required to adapt  
79 and delay some of its 2020 Census operations. *See* U.S. CENSUS BUREAU,  
80 U.S. DEP'T OF COM. AND LABOR, 2020 CENSUS OPERATIONAL  
81 ADJUSTMENTS: CHANGES DUE TO COVID-19 (2020),  
82 [https://www.census.gov/content/dam/Census/library/factsheets/2023/d  
84 ec/operational-adjustments-covid-19.pdf](https://www.census.gov/content/dam/Census/library/factsheets/2023/d<br/>83 ec/operational-adjustments-covid-19.pdf). The release of redistricting data  
84 had an original statutory deadline of March 31, 2021, but it was not released  
85 to states until August 12, 2021. *Id.*; Stipulations [199] App. A at 10. The  
86 2020 Census data showed that over the last ten years, Mississippi's overall  
87 population declined from 2,967,297 to 2,961,279 — a 6,018-person decrease  
88 from the 2010 Census. Stipulations [199] App. A at 11. The non-Hispanic  
89 White population decreased by 83,210 persons, and the Any-Part Black  
90 population increased by 7,812 persons. *Id.* The Any-Part Black population  
91 constitutes 37.94 percent of the state's total population and 36.14 percent of  
92 the voting-age population, making it the largest minority population in  
93 Mississippi. *Id.* Based on this population data, the ideal district size for a  
94 state senate district is 56,948, and the ideal size for a state house district is  
95 24,273. *Id.* at ¶ 57.

96 Following the release of the 2020 Census data, the Mississippi  
97 Legislature convened the Standing Joint Committee, which conducted nine  
98 public hearings and held four public meetings over the course of nine months.

99 Doc [199], 10–11; Stipulations [199] App. A at 12. Members of the public  
100 were invited to participate in the public hearings held between August 5,  
101 2021, and August 23, 2021, and to provide input on the redistricting process.  
102 Stipulations [199] App. A at 12. No proposed redistricting maps were  
103 revealed to the public at these hearings, nor was the public given the  
104 opportunity to comment on the maps. *Id.*

105 In a 15-minute November 2021 open meeting, the Standing Joint  
106 Committee adopted the following criteria for drawing the state legislative  
107 districts:

- 108 (1) Each district’s population should be less than 5 [percent]  
109 above or below the ideal population of the district.
- 110 (2) Districts should be composed of contiguous territory.
- 111 (3) The redistricting plan should comply with all applicable  
112 state and federal laws including Section 2 of the Voting  
113 Rights Act of 1965, as amended, and the Mississippi and  
114 United States Constitutions.

115 Doc [199], 10; Stipulations [199] App. A at 12; JTX-013. Thus, the  
116 population must be within 5 percent of 56,948 for a state senate district and  
117 within 5 percent of 24,273 for a state house district. Stipulations [199] App.  
118 A at 11–12. In addition to these three criteria, separation of incumbents into  
119 different districts is a legally available redistricting standard. *Bush v. Vera*,  
120 517 U.S. 952, 964–65 (1996) (plurality opinion). The Standing Joint  
121 Committee also considered precinct-level voting-age and voting-age racial-  
122 demographic information as required by the Voting Rights Act when devising  
123 districts. Stipulations [199] App. A at 12–13; *see* 52 U.S.C. § 10301.

124 The Standing Joint Committee held its final meeting on March 27,  
125 2022, and it publicly revealed the proposed maps for the state legislative  
126 districts. Stipulations [199] App. A at 13. At five o’clock that same day, the  
127 Standing Joint Committee voted to adopt both proposed maps, with

128 Representative Bo Brown, Senator Angela Turner-Ford, and Senator  
129 Derrick Simmons voting against the proposed state house map. *See id.* at  
130 ¶ 63; JTX-014.

131 On March 29, both the full state house and state senate voted to adopt  
132 their respective districting plans. Stipulations [199] App. A at 13. Two  
133 amendments were proposed to the state house districting plan, JR 1. JTX-  
134 010, 31:20–24, 23:25–46:20. The first amendment was adopted by voice vote  
135 to separate the districts for two black Democratic representative incumbents,  
136 and the second amendment supplying an alternative map portraying an  
137 additional five black-majority districts failed by a vote of 77 to 39 as an  
138 admitted racial gerrymander. *Id.* at 47:20–21. The two amendments  
139 proposed to the state senate districting plan, JR 202, also failed. Those  
140 amendments would have added four black-majority districts. Democratic  
141 Senator Simmons, who advocated for adding four majority-black senate  
142 seats, emphasized that the black population in Mississippi had grown and the  
143 white population had shrunk. Therefore, he argued, a “map that maintains  
144 the status quo simply dilutes black voting strength in Mississippi.” JTX-011,  
145 98:09–99:12; *see also* Stipulations [199] App. A at 13; Doc [219], 9 n.5.  
146 Republican Senator Dean Kirby responded by contending that Senator  
147 Simmons’s proposed map “is not a map this state needs.” JTX-011, 99:19–  
148 20. The senate approved the map released by the Standing Joint Committee.  
149 JTX-011, 194:13–14; *see also* Doc [219], 9 n.5; Doc [220], 4.

150 On March 31, the state house approved JR 202, the state senate  
151 approved JR 1, and the maps (the “Enacted Plans”) became law.  
152 Stipulations [199] App. A at 13. The Enacted Plans were determined to be in  
153 compliance with the Mississippi Code, containing only one senate district  
154 and three house districts where two incumbents were paired together. *See*  
155 MISS. CODE ANN. § 5-3-101; *see also* *Bush*, 517 U.S. at 964–65.

156           The Mississippi Legislature consists of 52 state senate districts and  
157 122 state house districts. Stipulations [199] App. A at 13, 15. Of the 52 senate  
158 districts, the Enacted Senate Plan renders 15 black-majority districts, and of  
159 the 122 house districts, the Enacted House Plan renders 42 black-majority  
160 districts based on the 2020 Census data. *Id.* at 14–15. Both Enacted Plans  
161 retained the same number of black-majority districts used for the last state  
162 legislative elections prior to the 2020 Census.<sup>2</sup> Doc [220], 2. In doing so,  
163 the floor debates of both houses contained generalized statements from  
164 Senator Kirby and Representative Beckett that “maintaining the political  
165 performance” of Republicans and Democrats throughout the state was an  
166 “important consideration in developing th[e] proposed plan[s],” yet those  
167 statements were not made in relation to the specific districts in this case, nor  
168 was there any data mentioned that was used to achieve that general goal.  
169 JTX-010, 14:25–15:06; *see* JTX-011, 12:06–11. The only specifics provided  
170 were that years of service and incumbency were considered factors of  
171 “political performance.” JTX-010, 20:09–24. The Defendants use that  
172 phrase without specifically defining it. We take from the record, though, that  
173 years of service and incumbency are aspects of political performance. If  
174 political performance is distinguishable from incumbent protection, the  
175 differences would seem to be minor.

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<sup>2</sup> The legislature enacted plans for both houses in 2012 following the release of the 2010 Census data; in 2019, the legislature adopted a revised plan for the senate as a result of a court order. *See Thomas v. Bryant*, 938 F.3d 134, 140, 143 (5th Cir. 2019). The 2012 State Senate Plan contained 15 black-majority districts, and the 2012 State House Plan contained 42 black-majority districts. Stipulations [199] App. A at 14–15 ¶¶ 67, 79. The United States Department of Justice precleared the plans as was then required under Section 5 of the Voting Rights Act. *See Shelby County v. Holder*, 570 U.S. 529, 556–57 (2013). The 2019 Senate Plan that created one more black-majority district was used in the 2019 elections, but the senate districts reverted to the 2012 geographical boundaries following the Fifth Circuit’s vacating the 2019 Senate Plan because the litigation that caused its creation was moot. *Thomas v. Reeves*, 961 F.3d 800, 801 (5th Cir. 2020).

176           The Standing Joint Committee played no further role in the  
177 redistricting process once the Enacted Plans became state law. It is the  
178 responsibility of various other state and local officials to enforce and  
179 implement the law and to administer elections. *See* MISS. CODE ANN. § 23-  
180 15-211, *et seq.* The Enacted Plans established the current makeup of the  
181 Mississippi Legislature as of January 15, 2024: 16 Democrats and 36  
182 Republicans in the state senate; 41 Democrats, 79 Republicans, and 2  
183 Independents in the state house; 14 black senators and 38 white senators; and  
184 roughly 40 black representatives and 82 white representatives. Stipulations  
185 [199] App. A at 16.

186           *C. The Litigation*

187           The Plaintiffs filed this civil action in December 2022, challenging the  
188 Enacted Plans as violations of both the Equal Protection Clause of the  
189 Fourteenth Amendment and Section 2 of the Voting Rights Act and seeking  
190 declaratory and injunctive relief. Doc [219], 13; Doc [220], 4; Doc [1]  
191 (Complaint). Two former defendants, State Senator Dean Kirby and State  
192 Representative Dan Eubanks, filed a motion to dismiss for lack of jurisdiction  
193 over them, after which the Plaintiffs amended their complaint and named  
194 only the above-mentioned Defendants. Docs. [17], [18], [24], [27]. The  
195 Mississippi Republican Executive Committee later intervened as a  
196 Defendant. Doc [32] (Motion); Text-Only Order May 19, 2023 (Granting  
197 Motion).

198           As part of their Section 2 claim, the Plaintiffs assert Mississippi’s  
199 black population requires at least four additional black-majority senate  
200 districts and at least three additional black-majority house districts be drawn.  
201 Doc. [27], 3. In some of the same areas where these alleged districts can be  
202 drawn, the Plaintiffs contend two enacted senate districts and three enacted  
203 house districts are unconstitutional racial gerrymanders that were drawn



204 with race as the predominant factor. *Id.* at 4; Doc [220], 4–5 (*see* chart on pg.  
205 5). To support their contention, the Plaintiffs proposed two Illustrative Plans  
206 — one Illustrative Senate Plan and one Illustrative House Plan — that  
207 contained seven illustrative majority-minority districts to be added to the  
208 current number of majority-minority districts. PTX-001, 26–79, Ex. M &  
209 AH. According to the Defendants, were the Mississippi Legislature to accept  
210 the Plaintiffs’ seven illustrative districts, it would cause ripple effects in more  
211 than 70 current electoral districts. PTX-001, 28 ¶ 53, 60 ¶ 122.

212 An order for a trial was entered in June 2023, but the trial did not begin  
213 until February 26, 2024, before a three-judge panel as required by statute.  
214 *See* 28 U.S.C. § 2284(a); Doc [3], 40, 44; *see* Text-Only Order June 23, 2023  
215 (Setting Trial Deadlines). The trial lasted eight days, during which fourteen  
216 Plaintiff witnesses and three Defense witnesses testified. *See generally* Docs  
217 [212], [215]. Thereafter, the Plaintiffs and Defendants, along with the  
218 Intervenor Defendant, filed post-trial briefs and proposed findings and  
219 conclusions of law. Docs. [218]–[221].

## 220 II. GENERAL LEGAL PRINCIPLES

221 Legislative reapportionment “is primarily the duty and responsibility  
222 of the States, not the federal courts.” *Allen v. Milligan*, 599 U.S. 1, 29 (2023)  
223 (quotation marks and citation omitted). However, a State’s actions  
224 throughout its redistricting process can be challenged under both the  
225 Fourteenth Amendment and the Voting Rights Act. The Equal Protection  
226 Clause of the Fourteenth Amendment prohibits states from denying “any  
227 person within [their] jurisdiction the equal protection of the laws.” U.S.  
228 CONST. amend. XIV, § 1. “Its central purpose is to prevent the States from  
229 purposefully discriminating between individuals on the basis of race.” *Shaw*  
230 *v. Reno*, 509 U.S. 630, 642 (1993). Improper racial gerrymanders used in  
231 legislative redistricting — like those alleged here — fall within the

232 Fourteenth Amendment’s prohibition. *Cooper v. Harris*, 581 U.S. 285, 291  
233 (2017).

234 “‘Electoral districting is a most difficult subject for legislatures,’  
235 requiring a delicate balancing of competing considerations.” *Bethune-Hill v.*  
236 *Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (quoting *Miller v. Johnson*,  
237 515 U.S. 900, 915 (1995)). Section 2 of the Voting Rights Act prohibits any  
238 “standard, practice, or procedure” imposed by a State throughout its  
239 electoral districting process that “results in a denial or abridgement of the  
240 right of any citizen of the United States to vote on account of race or color.”  
241 52 U.S.C. § 10301(a). “The essence of a [Section] 2 claim is that a certain  
242 electoral law, practice, or structure interacts with social and historical  
243 conditions to cause an inequality in the opportunities enjoyed by black and  
244 white voters to elect their preferred representatives.” *Gingles*, 478 U.S. at  
245 47. “Such a risk is greatest ‘where minority and majority voters consistently  
246 prefer different candidates’ and where minority voters are submerged in a  
247 majority voting population that ‘regularly defeats’ their choices.” *Milligan*,  
248 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 48). The Supreme Court thus  
249 requires Section 2 vote-dilution claims be analyzed using the *Gingles* three-  
250 part framework. *Id.* at 17. If a court concludes that plaintiffs do not have an  
251 equal opportunity to elect their preferred candidate under a challenged  
252 districting map, there likely is a Section 2 violation. *See Gingles*, 478 U.S. at  
253 44; *Robinson v. Ardoin*, 86 F.4th 574, 589 (5th Cir. 2023).

254 The Plaintiffs presented evidence at trial under both the Equal  
255 Protection Clause and Section 2. We will discuss each theory separately.

256 III. EQUAL PROTECTION CLAIM

257 Racial gerrymandering occurs when race improperly motivated the  
258 drawing of electoral districts such that it “rationally cannot be understood as  
259 anything other than an effort to separate voters” based on race. *Shaw*, 509

260 U.S. at 649; see *Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262–  
261 63 (2015). Courts conduct “a two-step analysis” to determine whether a  
262 legislative district is an unconstitutional racial gerrymander. *Harris*, 581 U.S.  
263 at 291. “First, the plaintiff must prove that ‘race was the predominant factor  
264 motivating the legislature’s decision to place a significant number of voters  
265 within or without a particular district.’” *Id.* (quoting *Miller*, 515 U.S. at 916).  
266 If “the legislature subordinated other factors — compactness, respect for  
267 political subdivision, partisan advantage, [etc.] — to racial considerations,”  
268 race is the predominant factor. *Id.* (quotation marks and citation omitted).

269 The plaintiff has the burden of proof when asserting a challenged  
270 district was enacted with discriminatory intent. *Abbott v. Perez*, 585 U.S. 579,  
271 603 (2018). Because of the “serious intrusion” courts make into “the most  
272 vital of local functions” when analyzing redistricting cases, the “good faith  
273 of the state legislature must be presumed.” *Id.* (quoting *Miller*, 515 U.S. at  
274 915). This presumption, however, can be overcome if the plaintiff makes a  
275 sufficient showing that the legislature subordinated traditional race-neutral  
276 districting principles to race. See *Miller*, 515 U.S. at 915–16. Plaintiffs can  
277 use “direct evidence of legislative intent, circumstantial evidence of a  
278 district’s shape and demographics,” or both to meet this burden and to  
279 establish race as the predominant factor. *Harris*, 581 U.S. at 291 (quotation  
280 marks and citation omitted).

281 The second step in the analysis shifts the burden to the State to  
282 withstand strict scrutiny. *Id.* at 292. If race was the predominant factor, the  
283 State must prove that “its race-based sorting of voters” and the district’s  
284 design serve a “compelling interest” and are “narrowly tailored to that end.”  
285 *Id.* (quotation marks and citation omitted). The Supreme Court recognizes  
286 compliance with the Voting Rights Act — including Section 2 — as a  
287 compelling interest. *Id.* Using Section 2 to justify race-based districting,  
288 however, requires a State show “it had ‘a strong basis in evidence’ for

289 concluding that the statute required its action.” *Id.* (quoting *Alabama Legis.*  
290 *Black Caucus*, 575 U.S. at 278). In other words, the legislature must have had  
291 “good reasons” to believe such district drawing was necessary for statutory  
292 compliance. *Alabama Legis. Black Caucus*, 575 U.S. at 278.

293 The racial-predominance inquiry “concerns the actual considerations  
294 that provided the essential basis for the lines drawn, not *post hoc* justifications  
295 the legislature in theory could have used but in reality did not.” *Bethune-Hill*,  
296 580 U.S. at 189–90. It concerns *how* the legislature conducted the  
297 redistricting, not *why* the legislature conducted it that way. *See Harris*, 581  
298 U.S. at 308 n.7. The Plaintiffs thus bear the burden under this inquiry “to  
299 show, either through circumstantial evidence of a district’s shape and  
300 demographics or more direct evidence going to legislative purpose, that race  
301 was the predominant factor motivating the legislature’s [redistricting]  
302 decision,” *Bethune-Hill*, 580 U.S. at 187 (quoting *Miller*, 515 U.S. at 916),  
303 “regardless of [the legislature’s] ultimate objective,” *Harris*, 581 U.S. at 308  
304 n.7.

305 Unlike a Section 2 claim that may be established by discriminatory  
306 results, the Plaintiffs were required to provide sufficient evidence of “race-  
307 based decisionmaking” to prove their Equal Protection claim. *See Miller*, 515  
308 U.S. at 915. In other words, the Plaintiffs’ task “is simply to persuade the  
309 trial court — without any special evidentiary prerequisite — that race (not  
310 politics) was the predominant consideration” of the Mississippi Legislature  
311 during the redistricting process when drawing the Enacted Plans. *Harris*, 581  
312 U.S. at 318 (quotation marks and citation omitted). This is a demanding  
313 burden, and “[p]roving racial predominance with circumstantial evidence  
314 alone is much more difficult” when partisanship is raised as a defense.  
315 *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1234–35 (2024).

316            “[P]artisan and racial gerrymanders ‘are capable of yielding similar  
317 oddities in a district’s boundaries’ when there is a high correlation between  
318 race and partisan preference.” *Id.* at 1235 (quoting *Harris*, 581 U.S. at 308).  
319            “When partisanship and race correlate, it naturally follows that a map that  
320 has been gerrymandered to achieve a partisan end can look very similar to a  
321 racially gerrymandered map.” *Id.* To prevail on their racial gerrymandering  
322 claim, the Plaintiffs “must disentangle race from politics by proving that the  
323 former *drove* a district’s lines.” *Id.* (emphasis in original) (quotation marks  
324 and citation omitted).

325            The Intervenor Defendant insisted throughout trial the Plaintiffs  
326 stipulated this constitutional claim away with one of their interrogatory  
327 responses:

328            9. Does the identification of invidiously discriminatory intent  
329 on the basis of race constitute technical knowledge which may  
330 be the subject of expert testimony under Rule 702?

331            Plaintiffs’ Response: Plaintiffs do not assert any claims  
332 premised on invidious discriminatory intent on the basis of  
333 race.

334            Doc [199], 16 (Pretrial Order). The Plaintiffs, however, attempt to  
335 distinguish “invidious” behavior and the necessary predominance under  
336 Equal Protection. Footnote 10 of the Plaintiffs’ post-trial brief argues it this  
337 way:

338            In contrast to claims involving racial animus or invidious  
339 discrimination, “the essence of the [E]qual [P]rotection claim  
340 recognized in *Shaw* is that the State has used race as a basis for  
341 separating voters into districts.” [*Miller*, 515 U.S. at 911.]  
342 Racial gerrymandering claims are thus cognizable even when  
343 the State undertakes the racial sorting with a “benign”  
344 motivation. *Shaw*, 509 U.S. at 653; *see also Bush*, 517 U.S. at  
345 984. Consistent with that distinction, racial gerrymandering  
346 claims require that racial sorting be the “predominant”

347 consideration affecting a “significant” number of voters,  
348 whereas claims of invidious discrimination are actionable even  
349 if discriminatory purpose is merely “a motivating factor”  
350 affecting any racial group, regardless of the number of  
351 individuals affected. *Compare* [*Harris*], 581 U.S. at 291–92 *with*  
352 *Vill[age] of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429  
353 U.S. 252, 265 (1977).

354 Doc [221], 25 n.10.

355 One of the cited precedents discusses whether a statute’s explicit  
356 racial classification was “benign” and subject to the less-searching review  
357 Justice Souter argued for in dissent or was “motivated by illegitimate notions  
358 of racial inferiority or simple racial politics.” *Shaw*, 509 U.S. at 642–43, 653  
359 (quotation marks and citation omitted). The Supreme Court held that either  
360 motive, if focused on race, was subject to strict scrutiny under the Equal  
361 Protection Clause “because without it, a court cannot determine whether or  
362 not the discrimination truly is ‘benign.’” *Id.* at 653.

363 Other caselaw indicates racial reasons might be able to survive strict  
364 scrutiny if the State believes a racial gerrymander enactment is needed to  
365 satisfy the Voting Rights Act. As recently as 2022, the Supreme Court stated  
366 that a consciously gerrymandered district could be upheld for that reason:

367 Under the Equal Protection Clause, districting maps that sort  
368 voters on the basis of race “‘are by their very nature odious.’”  
369 *Shaw*[,] 509 U.S. [at] 643[.] Such laws “cannot be upheld  
370 unless they are narrowly tailored to achieving a compelling  
371 state interest.” *Miller*[,] 515 U.S. [at] 904[.] We have assumed  
372 that complying with the VRA is a compelling interest. [] *Harris*,  
373 581 U.S. [at 292]. And we have held that if race is the  
374 predominant factor motivating the placement of voters in or  
375 out of a particular district, the State bears the burden of  
376 showing that the design of that district withstands strict  
377 scrutiny. *Ibid.* Thus, our precedents hold that a State can

378 satisfy strict scrutiny if it proves that its race-based sorting of  
379 voters is narrowly tailored to comply with the VRA. *Ibid.*  
380 *Wisconsin Legis. v. Wis. Elections Comm’n*, 595 U.S. 398, 401 (2022). The  
381 word “invidious” was not used in either the 2022 *Wisconsin Legislature*  
382 opinion or the 2017 *Harris* opinion that it cites. The Supreme Court did use  
383 “invidious” in its 1995 *Miller* opinion, which also dealt with a motive of  
384 advantaging minorities. There, the State argued that the Department of  
385 Justice made it utilize race-based redistricting:

386 Our presumptive skepticism of all racial classifications  
387 prohibits us as well from accepting on its face the Justice  
388 Department’s conclusion that racial districting is necessary  
389 under the Act. Where a State relies on the Department’s  
390 determination that race-based districting is necessary to  
391 comply with the Act, the judiciary retains an independent  
392 obligation in adjudicating consequent equal protection  
393 challenges to ensure that the State’s actions are narrowly  
394 tailored to achieve a compelling interest.

395 *Miller*, 515 U.S. at 922 (citation omitted).

396 The *Miller* Court noted it was uncontested that the parties  
397 “practically stipulated” that a particular district was a racial gerrymander  
398 and explicitly discussed the “maximizing majority-black” policy that drove  
399 the enactment of the “max-black plan.” *Id.* at 910, 924. The majority never  
400 tried to distinguish the advantaging-minorities motive from harming them,  
401 simply referring to “invidious discrimination” in its concluding paragraph as  
402 the label for what the legislature had done even though it was trying to help  
403 the minority population have an equal opportunity to gain public office. *Id.*  
404 at 927. The Court reprimanded any form of “automatic invocation of race  
405 stereotypes” as they “retard[] that progress and cause[] continued hurt and  
406 injury” to the minority population in election law. *Id.*

407           There is little caselaw discussing whether favorable motives are  
408 “invidious” even when they fail under strict scrutiny as they did in *Miller*.  
409 We thus give the Plaintiffs some leeway as to the relevance of the label  
410 “invidious” considering the Supreme Court recognized racial motives that  
411 might be upheld in *Shaw*, *Harris*, and *Wisconsin Legislature*. Still, no  
412 precedent has made the point the Plaintiffs urge here — that the word  
413 “invidious” does not apply to some unacceptable motives. The only racial  
414 motives so far discussed by the Court that might be upheld are used to  
415 comply with the Voting Rights Act. *Wisconsin Legis.*, 595 U.S. at 401; *Miller*,  
416 515 U.S. at 922.

417           The allegations here are not that. The Plaintiffs allege that the  
418 Enacted Plans contain unconstitutional racial gerrymanders; they do not  
419 challenge them as failed efforts possibly intended to comply with federal law.  
420 Thus, it would take *invidious* discrimination to make an Equal Protection case  
421 here. The Plaintiffs clarified they “are not alleging invidious” discrimination  
422 or “animus” as part of their Equal Protection claim. Trial Tr. 1672:6–8.  
423 Without that intent, however, the Plaintiffs cannot meet their required  
424 burden. *See Abbott*, 585 U.S. at 603.

425           Even if we assume the Plaintiffs preserved a benign-motive case, there  
426 was insufficient evidence of racial predominance under the Equal Protection  
427 Clause. The Plaintiffs rely on the testimony of Dr. Jordan Ragusa, a tenured  
428 professor of political science at the College of Charleston, to prove race  
429 predominated in the design of the five challenged districts. Trial Tr. 968:16–  
430 971:10. We accepted Dr. Ragusa as an expert in quantitative methods and  
431 analysis, the modeling of electoral districting, and American politics, Trial  
432 Tr. 980:17–25, and allowed his explanation as to whether he disentangled the  
433 effects of race, partisanship, and traditional redistricting principles on the  
434 Enacted Plans, Trial Tr. 981:9–18.



435 Dr. Ragusa conducted a statistical analysis comparing Census data to  
436 the Enacted Plans and created multivariate logistic-regression models of the  
437 information. Trial Tr. 981:19–982:5. In doing so, the Plaintiffs contend Dr.  
438 Ragusa was able to evaluate the Mississippi Legislature’s decisions made  
439 during the redistricting process and determine what factor predominantly  
440 influenced its decisions. Trial Tr. 982:6–15. Dr. Ragusa’s regression models  
441 showed the effect of the black voting-age population (“BVAP”) was  
442 statistically significant in at least one model for all five districts, which Dr.  
443 Ragusa testified allowed him to “conclude that race was a significant factor  
444 in all five of the challenge[d] districts.” Trial Tr. 982:21–24. The Plaintiffs  
445 assert Dr. Ragusa’s regression models sufficiently control for partisanship  
446 and other factors and show race was the motivating factor in moving voters  
447 in and out of districts. Doc [221], 27–28. Thus, according to the Plaintiffs,  
448 their Equal Protection claim was clearly established. *Id.*

449 The Defendants, however, persuasively discredited those models and  
450 articulated how they establish partisanship was just as much a factor in the  
451 drawing of district lines as race. Doc [218], 6–7. One problem with Dr.  
452 Ragusa’s analysis is that he used what he called the “county envelope”  
453 method to determine whether geographical units called census blocks, *see*  
454 Trial Tr. 983:23–986:9 (discussing census blocks), were more likely to be  
455 moved into a district based on their racial composition, Trial Tr. 995:4–  
456 996:8. The Supreme Court recently concluded that the county-envelope  
457 model is flawed because it inadequately accounts for contiguity and  
458 compactness. *See Alexander*, 144 S. Ct. at 1246. Further, even though Dr.  
459 Ragusa initially attempted to conclude his findings could not “be dismissed  
460 as a simple byproduct of partisan gerrymandering or adherence to th[e]  
461 common redistricting principles,” Trial Tr. 983:3–5, he later stated he was  
462 “unable to offer definitive proof” of racial gerrymandering because “[t]he  
463 analysis can’t disentangle intentional from unintentional racial

464 discrimination. Both are reasonable explanations for the results . . . but [he]  
465 can't say one way or the other what caused the effect of race. What [he] can  
466 say is that race was a factor.” Trial Tr. 1120:12–20.

467 Thus, at most, the Plaintiffs' expert's opinion was that race was one  
468 factor in the Mississippi Legislature's redistricting that merged with partisan  
469 protection. That is not enough. The Enacted Plans must have  
470 predominantly utilized race such that the only rational way to view the  
471 districts is “an effort to separate voters” based solely on their race. *Shaw*,  
472 509 U.S. at 649. Because Plaintiffs failed to prove that race was the  
473 predominant factor, we do not consider the evidence and specific arguments  
474 that two enacted senate districts and three enacted house districts were racial  
475 gerrymanders. Without invidious intent, the Plaintiffs cannot establish an  
476 Equal Protection violation.

#### 477 IV. SECTION 2 OF THE VOTING RIGHTS ACT

##### 478 A. *Private Right of Action Under Section 2*

479 We start with the Defendants' argument that Section 2 of the Voting  
480 Rights Act cannot be enforced by private parties. They acknowledge  
481 foreclosure of the issue in the Fifth Circuit because of a recent opinion  
482 recognizing such a right. *See Robinson*, 86 F.4th at 588. The Defendants  
483 present their no-private-right-of-action arguments to preserve the issue for  
484 later review.

485 Though the *Robinson* holding is binding on this court, that opinion's  
486 explanation was brief, responding in kind to the limited argument made by  
487 Louisiana in that appeal. Further review of the private-right-of-action issue  
488 in the present case may occur, and we include additional analysis now.

489 The *Robinson* court concluded the issue was essentially foreclosed by  
490 a Fifth Circuit precedent holding that Section 2 of the Voting Rights Act  
491 abrogated state sovereign immunity. *Id.* (citing *OCA-Greater Hous. v. Texas*,

492 867 F.3d 604, 614 (5th Cir. 2017)). The court determined that the abrogation  
493 was not without purpose and that private individuals had been granted a right  
494 to sue under Section 2. *Id.*

495 The *Robinson* court did not discuss the revamped analysis used by the  
496 Supreme Court since 2001 for determining whether a congressional  
497 enactment may be enforced by private individuals. *See Gonzaga Univ. v. Doe*,  
498 536 U.S. 273, 284 (2002); *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).  
499 That analysis first examines the relevant statute for an explicit grant of a right  
500 to sue. *See, e.g., Gonzaga Univ.*, 536 U.S. at 283–84. Absent such welcomed  
501 textual clarity, a private cause of action may be implied when a statute  
502 (1) contains rights-creating language and (2) displays “an intent ‘to create  
503 . . . a private remedy.’” *Id.* at 284 (quoting *Sandoval*, 532 U.S. at 286).

504 An overlapping though separate inquiry is “whether a statutory  
505 violation may be enforced through [42 U.S.C.] § 1983.” *Id.* at 283.  
506 “Plaintiffs suing under § 1983 do not have the burden of showing an intent  
507 to create a private remedy because § 1983 generally supplies a remedy for the  
508 vindication of rights secured by federal statutes.” *Id.* at 284. Therefore, if  
509 “a plaintiff demonstrates that a statute confers an individual right, the right  
510 is presumptively enforceable by § 1983.” *Id.*

511 In looking for congressionally created private rights that can be  
512 protected under Section 1983, the *Gonzaga* and *Sandoval* opinions rejected  
513 earlier, less-demanding approaches for deciding when Congress has created  
514 a private right in a statute. *See id.* at 282–83; *see also Sandoval*, 532 U.S. at  
515 287 (stating the Supreme Court had “sworn off the habit of venturing beyond  
516 Congress’s intent” on whether a statute created private rights).

517 We start with the text of Section 2 of the Voting Rights Act:

518 (a) No voting qualification or prerequisite to voting or  
519 standard, practice, or procedure shall be imposed or applied by

520 any State or political subdivision in a manner which results in a  
521 denial or abridgement of the right of any citizen of the United  
522 States to vote on account of race or color, or in contravention  
523 of the guarantees set forth in section 10303(f)(2) of this title, as  
524 provided in subsection (b).

525 (b) A violation of subsection (a) is established if, based on  
526 the totality of circumstances, it is shown that the political  
527 processes leading to nomination or election in the State or  
528 political subdivision are not equally open to participation by  
529 members of a class of citizens protected by subsection (a) in  
530 that its members have less opportunity than other members of  
531 the electorate to participate in the political process and to elect  
532 representatives of their choice. The extent to which members  
533 of a protected class have been elected to office in the State or  
534 political subdivision is one circumstance which may be  
535 considered: *Provided*, That nothing in this section establishes a  
536 right to have members of a protected class elected in numbers  
537 equal to their proportion in the population.

538 52 U.S.C. § 10301.

539 There certainly is an emphasis on rights in subsection (a) when it  
540 prohibits states taking actions that “result[] in a denial or abridgement of the  
541 right . . . to vote.” § 10301(a). Less obvious is textual language revealing a  
542 congressional intent to provide for a private remedy. In considering how to  
543 evaluate what Section 2 does and does not state, we find it useful to review  
544 an Eighth Circuit opinion issued after the Fifth Circuit’s *Robinson* opinion.  
545 *See Arkansas State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204  
546 (8th Cir. 2023). There, the majority held Section 2 provided no private right  
547 of action. *Id.* at 1206–07. It also determined that the plaintiffs had neither  
548 included in their complaint nor made a meaningful argument that their rights  
549 could be enforced using Section 1983. *Id.* at 1218. The Plaintiffs in the case  
550 before us included Section 1983 in their complaint as one of the bases for the  
551 suit, thus there is no waiver of the argument. Amended Comp. ¶ 11.

552           With respect for the Eighth Circuit majority, we find Chief Judge  
553 Smith’s dissent in that case to express the more persuasive analysis. *See*  
554 *Arkansas State Conf. NAACP*, 86 F.4th at 1218–24 (Smith, C.J., dissenting).  
555 Of course, we are bound by *Robinson* regardless of which opinion persuades.  
556 Still, we explain what we find persuasive about the dissent.

557           The Eighth Circuit majority and dissent each discuss a 1996 Supreme  
558 Court opinion in which a plurality stated that “the existence of the private  
559 right of action under Section 2 . . . has been clearly intended by Congress  
560 since 1965.” *Morse v. Republican Party of Va.*, 517 U.S. 186, 232 (1996)  
561 (plurality opinion) (quoting VOTING RIGHTS EXTENSION, S. REP. NO. 97-417  
562 (1982), 30, *as reprinted in* 1982 U.S.C.C.A.N. 177)). Though we find that a  
563 majority of the *Morse* Court agreed with that part of the plurality opinion, it  
564 may have been *dicta*. *See Arkansas State Conf. NAACP*, 86 F.4th at 1215.

565           It was not until a little more than 35 years after the Voting Rights Act  
566 was enacted that the Supreme Court articulated a test for determining  
567 whether Congress has created a private right of action to enforce a particular  
568 enactment. *See Sandoval*, 532 U.S. at 286.

569           Even if the *Morse* statement is *dicta*, the Fifth Circuit has held that it  
570 is generally bound by Supreme Court *dicta*, especially when it is “recent and  
571 detailed.” *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013).  
572 The *Morse* opinion is neither particularly recent nor detailed, but the Fifth  
573 Circuit seemingly would tread cautiously before taking a different path. As  
574 to the second issue — that the decision might be questionable because it  
575 predates *Sandoval* — we find that the Supreme Court has told inferior courts  
576 to remain faithful to its on-point precedent: “[I]f a precedent of this Court  
577 has direct application in a case, yet appears to rest on reasons rejected in some  
578 other line of decisions, the Court of Appeals should follow the case which  
579 directly controls, leaving to [the Supreme Court] the prerogative of

580 overruling its own decisions.” *Agostini v. Felton*, 521 U.S. 203, 237 (1997)  
581 (citation omitted).

582 Also weighing against any court’s marking its own path is that, before  
583 *Sandoval* and continuing with quite recent opinions, there has been  
584 substantial caselaw in which “the Federal Government and individuals have  
585 sued to enforce [Section] 2, and injunctive relief [was held to be] available in  
586 appropriate cases to block voting laws from going into effect.” *Shelby County*,  
587 570 U.S. at 537 (citations omitted). The existence of a private right of action  
588 in opinions such as *Shelby County* has simply been assumed by courts.  
589 Indeed, for decades, Supreme Court and circuit court opinions have resolved  
590 Section 2 cases brought by private parties without addressing whether there  
591 was even a right for those parties to sue.

592 Eighth Circuit Chief Judge Smith reviewed this same history and  
593 expressed prudent caution:

594 Furthermore, since the Court decided *Morse*, “scores if not  
595 hundreds of cases have proceeded under the assumption that  
596 Section 2 provides a private right of action. All the while,  
597 Congress has consistently reenacted the VRA without making  
598 substantive changes, impliedly affirming the previously  
599 unanimous interpretation of Section 2 as creating a private  
600 right of action.” *Coca [v. City of Dodge City]*, 669 F. Supp. 3d  
601 [1131, 1140 (D. Kan. 2023)]. . . . Until the Supreme Court  
602 instructs otherwise, I would hold that [Section] 2 contains an  
603 implied private right of action.

604 *Arkansas State Conf. NAACP*, 86 F.4th at 1223–24 (Smith, C.J., dissenting).

605 Finally, few congressional enactments have had a more profound  
606 effect on the country than the Voting Rights Act of 1965, and a large  
607 percentage of the enforcement actions under the Voting Rights Act have been  
608 brought by private individuals. Though the following does not come from  
609 statutory text, it is noteworthy that on the page of the Senate Report

610 immediately following the discussion of what we now call the Senate Factors  
611 appears this assertion: “the Committee reiterates the existence of the private  
612 right of action under Section 2, as has been clearly intended by Congress  
613 since 1965. *See Allen v. Board of Elections*, 393 U.S. 544 (1969).” S. REP.  
614 NO. 97-417, at 30.

615 If a court now holds, after almost 60 years, that cases filed by private  
616 individuals were never properly brought, it should be the Supreme Court,  
617 which has the controlling word on so momentous a change. Regardless, we  
618 are bound by the Fifth Circuit *Robinson* opinion that the Plaintiffs may  
619 properly bring this suit to enforce their rights under the Voting Rights Act.

620 *B. The Gingles Framework*

621 To succeed in proving a Section 2 vote-dilution claim, plaintiffs must  
622 first satisfy the three *Gingles* preconditions. *Milligan*, 599 U.S. at 18. “First,  
623 the minority group must be sufficiently large and [geographically] compact  
624 to constitute a majority in a reasonably configured district.” *Id.* (alteration  
625 in original) (quotation marks and citation omitted). A district is reasonably  
626 configured when it complies “with traditional districting criteria, such as  
627 being contiguous and reasonably compact.” *Id.* Second, the minority group  
628 must be politically cohesive. *Id.* Third, the white majority must be shown to  
629 vote sufficiently as a bloc to usually defeat the minority-preferred candidate.  
630 *Id.* “The third precondition, focused on racially polarized voting,  
631 ‘establish[es] that the challenged districting thwarts a distinctive minority  
632 vote’ at least plausibly on account of race.” *Id.* at 19 (alteration in original)  
633 (quoting *Grove v. Emison*, 507 U.S. 25, 40 (1993)).

634 If a plaintiff fails to establish any one of these three preconditions, a  
635 court need not consider the others nor continue the analysis. *See League of*  
636 *United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006) [hereinafter  
637 *LULAC v. Perry*].

638           The first and second *Gingles* preconditions “are needed to establish  
639 that the minority has the potential to elect a representative of its own choice  
640 in some single-member district.” *Emison*, 507 U.S. at 40. The second and  
641 third *Gingles* preconditions “are needed to establish that the challenged  
642 districting thwarts a distinctive minority vote by submerging it in a larger  
643 white voting population.” *Id.* “Unless these points are established, there  
644 neither has been a wrong nor can be a remedy.” *Id.* at 40–41.

645           Although “the *Gingles* requirements cannot be applied mechanically  
646 and without regard to the nature of the claim[,] . . . [i]t remains the rule . . .  
647 that a party asserting [Section] 2 liability must show by a preponderance of  
648 the evidence” that all three preconditions are met. *Bartlett v. Strickland*, 556  
649 U.S. 1, 19–20 (2009). The Plaintiffs must meet this burden, and “[a]ny lack  
650 of evidence in the record regarding a violation of the Voting Rights Act . . .  
651 must be attributed to” the Plaintiffs. *League of United Latin Am. Citizens*  
652 *#4552 v. Roscoe Indep. Sch. Dist.*, 123 F.3d 843, 846 (5th Cir. 1997).

653           Once a plaintiff sufficiently establishes the three threshold  
654 preconditions, he must then “show, under the totality of the circumstances,  
655 that the political process is not equally open to minority voters,” which, in  
656 turn, establishes a Section 2 violation. *Milligan*, 509 U.S. at 18 (quotation  
657 marks and citation omitted). Courts are guided by factors identified by the  
658 Supreme Court in their totality-of-the-circumstances analyses. *League of*  
659 *United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 849  
660 (5th Cir. 1993) (en banc) [hereinafter *LULAC v. Clements*]; *Robinson*, 86  
661 F.4th at 589 n.2. We will identify and analyze these factors after reviewing  
662 the three preconditions.

663           1. *Gingles Precondition One*

664           “The first *Gingles* precondition focuses on [the] geographical  
665 compactness and numerosity” of the minority population. *Robinson*, 86



666 F.4th at 589 (citing *Milligan*, 599 U.S. at 18). Under this precondition, a  
667 plaintiff is required to establish that the minority population forms a  
668 sufficient majority in a district to have the potential to elect a minority-  
669 preferred candidate if there is political cohesion. *Emison*, 507 U.S. at 40. To  
670 do so, the plaintiff “must show by a preponderance of the evidence that the  
671 minority population in the potential election district is greater than 50  
672 percent.” *Strickland*, 556 U.S. at 19–20. “This percentage is analyzed in  
673 terms of the [BVAP] because only eligible voters can affect the *Gingles*  
674 analysis.” *Robinson*, 86 F.4th at 590. If the BVAP is greater than 50 percent,  
675 it must also be sufficiently compact such that a reasonably configured  
676 majority-minority district can be drawn. *See LULAC v. Perry*, 548 U.S. at  
677 433.

678 This first precondition is satisfied as follows:

679 Where an election district could be drawn in which minority  
680 voters form a majority but such a district is not drawn, or where  
681 a majority-minority district is cracked by assigning some voters  
682 elsewhere, then — assuming the other *Gingles* factors are also  
683 satisfied — denial of the opportunity to elect a candidate of  
684 choice is a present and discernible wrong that is not subject to  
685 the high degree of speculation and prediction attendant upon  
686 the analysis of crossover claims.

687 *Strickland*, 556 U.S. at 18–19. It also “requires the possibility of creating  
688 more than the existing number of reasonably compact districts with a  
689 sufficiently large minority population to elect candidates of its choice.”  
690 *LULAC v. Perry*, 548 U.S. at 430 (quoting *Johnson v. De Grandy*, 512 U.S.  
691 997, 1008 (1994)). Thus, it must be shown that a large, geographically  
692 compact minority population exists that could be part of an additional,  
693 reasonably configured majority-minority district that the State did not draw.  
694 *See Milligan*, 599 U.S. at 20.

695           The Defendants argue that after the Supreme Court’s recent *Milligan*  
696 decision, there is another requirement — a precondition to the precondition  
697 as it were. They rely on Justice Kavanaugh’s concurrence in that opinion to  
698 assert that a court must first find that the districts as legislatively drawn  
699 combined or divided the black population. Before quoting the part of the  
700 concurring opinion on which the Defendants rely, we address a part of the  
701 majority opinion they ignore. The majority opinion described the first  
702 precondition this way:

703           First, the “minority group must be sufficiently large and  
704 [geographically] compact to constitute a majority in a  
705 reasonably configured district.” *Wisconsin Leg[.],* 595 U. S. [at  
706 400] (*per curiam*) (citing *Gingles*, 478 U.S. at 46–51, 106 S. Ct.  
707 2752). A district will be reasonably configured, our cases  
708 explain, if it comports with traditional districting criteria, such  
709 as being contiguous and reasonably compact.

710 *Milligan*, 599 U.S. at 18 (first alteration in original) (citing *Alabama Legis.*  
711 *Black Caucus*, 575 U.S. at 272). Justice Kavanaugh joined the majority’s  
712 analysis of the *Gingles* preconditions. *Id.* at 42 (Kavanaugh, J., concurring in  
713 part and concurring in the judgment). It is difficult to interpret anything else  
714 Justice Kavanaugh wrote as being an alteration of what he accepted as the  
715 majority’s understanding of precondition one.

716           Instead of revising precondition one, his concurring opinion was  
717 responding to the State’s argument that *Gingles* needed to be abandoned  
718 because it “inevitably requires a proportional number of majority-minority  
719 districts.” *Id.* at 42–43. That is not what *Gingles* demands, Justice  
720 Kavanaugh wrote, as that would require the combining of “geographically  
721 dispersed minority voters into unusually shaped districts, without concern  
722 for traditional districting criteria such as county, city, and town lines.” *Id.* at  
723 43. “*Gingles* requires the creation of a majority-minority district only when,  
724 among other things, (i) a State’s redistricting map cracks or packs a large and

725 geographically compact minority population and (ii) a plaintiff’s proposed  
726 alternative map and proposed majority-minority district are reasonably  
727 configured.” *Id.* (quotation marks and citations omitted).

728 We view this portion of Justice Kavanaugh’s opinion as simply  
729 explaining the natural effect of satisfying precondition one. The effect is that  
730 if a reasonably configured majority-minority district can be formed that  
731 satisfies traditional redistricting principles and does not join “geographically  
732 dispersed minority voters into unusually shaped districts,” then minority  
733 voters have been cracked from that minority district to form majority  
734 districts. *Id.* Justice Kavanaugh also agreed that analyzing the preconditions  
735 “requires in certain circumstances that courts account for the race of voters  
736 so as to prevent the cracking or packing . . . of large and geographically  
737 compact minority populations.” *Id.* at 44.

738 We conclude, then, that Justice Kavanaugh’s concurring opinion  
739 cannot be read as his abandonment of almost 40 years of jurisprudence  
740 applying *Gingles*. We still, however, need to understand what compactness  
741 of a district means. We see it as an imprecise concept, but we know we are  
742 to consider traditional districting principles like communities of interest and  
743 maintaining traditional boundaries. *LULAC v. Perry*, 548 U.S. at 433.  
744 “Communities of interest vary between states, generally defined by the given  
745 state’s districting guidelines.” *Robinson*, 86 F.4th at 590; *see Milligan*, 599  
746 U.S. at 20–21. The districting guidelines applicable here require  
747 communities that share a common interest, are likely to have similar  
748 legislative concerns, and might benefit from cohesive representation in the  
749 state legislature. PTX-001, 20.

750 In *Milligan*, the Supreme Court concluded that “proposed maps  
751 [which] split the same number of county lines as (or even *fewer* county lines  
752 than) the State’s map” and contained no “tentacles, appendages, bizarre

753 shapes, or any other obvious irregularities” can strongly support the first  
754 *Gingles* precondition. 599 U.S. at 20 (emphasis in original) (quoting *Singleton*  
755 *v. Merrill*, 582 F. Supp. 3d 924, 1011 (N. D. Ala. 2022)). We will look for that  
756 in the Plaintiffs’ Illustrative Plans.

757         The Court further identified that equal populations, contiguity, and  
758 respect for existing political subdivisions like counties, cities, and towns  
759 would allow illustrative maps to satisfy traditional districting criteria and  
760 strongly suggest black voters could constitute a majority in a reasonably  
761 configured district. *Id.* In analyzing communities of interest, the Court  
762 concluded that even urban and rural communities can be configured into  
763 reasonably compact districts if they share cultural, economic, social, and  
764 educational ties despite the geographical distance. *See id.* at 19–21; *LULAC*  
765 *v. Perry*, 548 U.S. at 434–35.

766         Race can also be considered in drawing illustrative districts to satisfy  
767 the first *Gingles* precondition. *See Milligan*, 599 U.S. at 31. Certainly, to  
768 demonstrate that reasonably configured, majority-minority districts could be  
769 drawn, race must be considered, but race cannot be “the predominant factor  
770 in drawing district lines.” *Id.* Here, William S. Cooper testified as an expert  
771 for the Plaintiffs in redistricting relevant to the first *Gingles* precondition, and  
772 he drew the Illustrative Plans the Plaintiffs presented as part of his overall  
773 analysis. Cooper testified that he was aware of and considered race as  
774 required by *Gingles* when drawing his maps, but it did not predominate in his  
775 analysis. Trial Tr. 109:2–5; 152:20–21. We will explore the specifics of  
776 Cooper’s testimony when we examine each of the illustrative districts. For  
777 now, it suffices to say that we have found as to some of the districts, but not  
778 all, race predominated and traditional factors were not followed.

779         Besides arguing that race predominated, the Defendants argue that  
780 Cooper did not take in account the traditional redistricting principle of

781 “political performance.” As we mentioned earlier, the best explanation of  
782 that phrase offered by the Defendants is that it refers to length of service and  
783 incumbency. To the extent this can be seen as, among other interests,  
784 protecting incumbent-constituent relationships and maintaining hard-earned  
785 legislative expertise, that is a valid state interest but should not be deferred to  
786 at the cost of “constitutional norms.” *League of United Latin Am. Citizens,*  
787 *Council No. 4434 v. Clements*, 986 F.2d 728, 763 (5th Cir.), *rev’d en banc*, 999  
788 F.2d 831 (5th Cir. 1993) (quoting *White v. Weiser*, 412 U.S. 783, 791 (1973)).

789 Much of the law on incumbent protection is in the context of equal  
790 protection claims. For example, the Supreme Court has held that “avoiding  
791 contests between incumbent[s]” is a legitimate state goal. *Karcher v. Daggett*,  
792 462 U.S. 725, 740 (1983). Similarly, we conclude that political performance,  
793 a concept that gives weight to the length of service of incumbents and their  
794 relationships with constituents, is a valid consideration under the first *Gingles*  
795 precondition.

796 Courts must consider each illustrative district independently to  
797 “determine if the illustrative districts have similar needs and interests  
798 beyond race.” *Robinson*, 86 F.4th at 590; *see LULAC v. Clements*, 999 F.2d  
799 at 877–94 (analyzing each district in detail). An illustrative map proposing  
800 overall compactness improvements does not necessarily meet *Gingles* one as  
801 to each illustrative district within the map. *See LULAC v. Clements*, 999 F.2d  
802 at 877–94. Thus, the key consideration here is that if one of the Illustrative  
803 Plans presented by the Plaintiffs identifies a reasonably configured, compact  
804 majority-minority district that respects traditional redistricting principles,  
805 the first *Gingles* precondition is met. *See Milligan*, 599 U.S. at 20. We discuss  
806 each of the Plaintiffs’ Illustrative Plans and their respective districts to  
807 determine whether each satisfies the first *Gingles* precondition.

808 *a. An Overview of the Plaintiffs' Illustrative Plans*

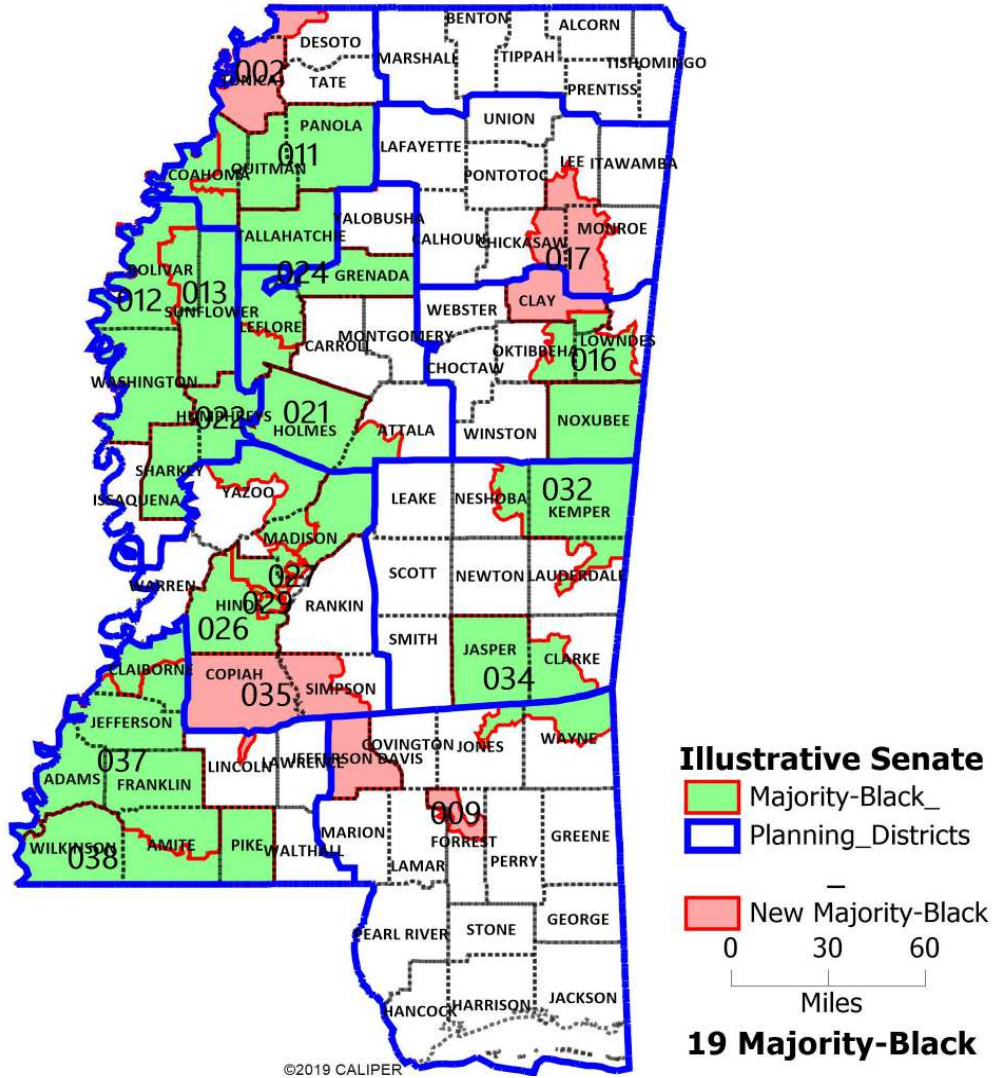
809 As noted, the Plaintiffs presented the expert testimony of William  
810 Cooper, who was tendered and accepted as an expert in redistricting,  
811 demographics, and census data, to prove the first *Gingles* precondition. Trial  
812 Tr. 84:11-14, 85:23-86:1. Cooper works with different organizations and  
813 states as a private consultant in redistricting work. He has prepared  
814 redistricting maps in approximately 750 jurisdictions in 45 states and has  
815 been qualified as a redistricting and demographics expert in over 50 voting-  
816 rights cases in 20 states since 1987. Trial Tr. 78:21-79:5, 80:10-13, 81:24-  
817 82:5; *See* PTX-001, 81-91. In Mississippi, Cooper has over 30 years of  
818 experience in voting cases and has served as a redistricting and demographics  
819 expert in multiple statewide cases. Trial Tr. 82:15-18, 83:10-84:10.

820 In preparation for this trial, Cooper developed two Illustrative  
821 Legislative Plans — the Illustrative Senate Plan and the Illustrative House  
822 Plan — to assess whether Mississippi's black population is sufficiently  
823 geographically compact to create additional majority-minority districts. Trial  
824 Tr. 86:5-17. We found Cooper's extensive experience, particularly in  
825 Mississippi cases, qualified him to testify as an expert in redistricting and  
826 demographics relevant to this case.

827 We first offer the two statewide Illustrative Plans. Each shows the  
828 location of the Plaintiffs' illustrative additional majority-minority districts:  
829 four senate districts and three house districts.

830

This is the map showing all the illustrative senate districts:



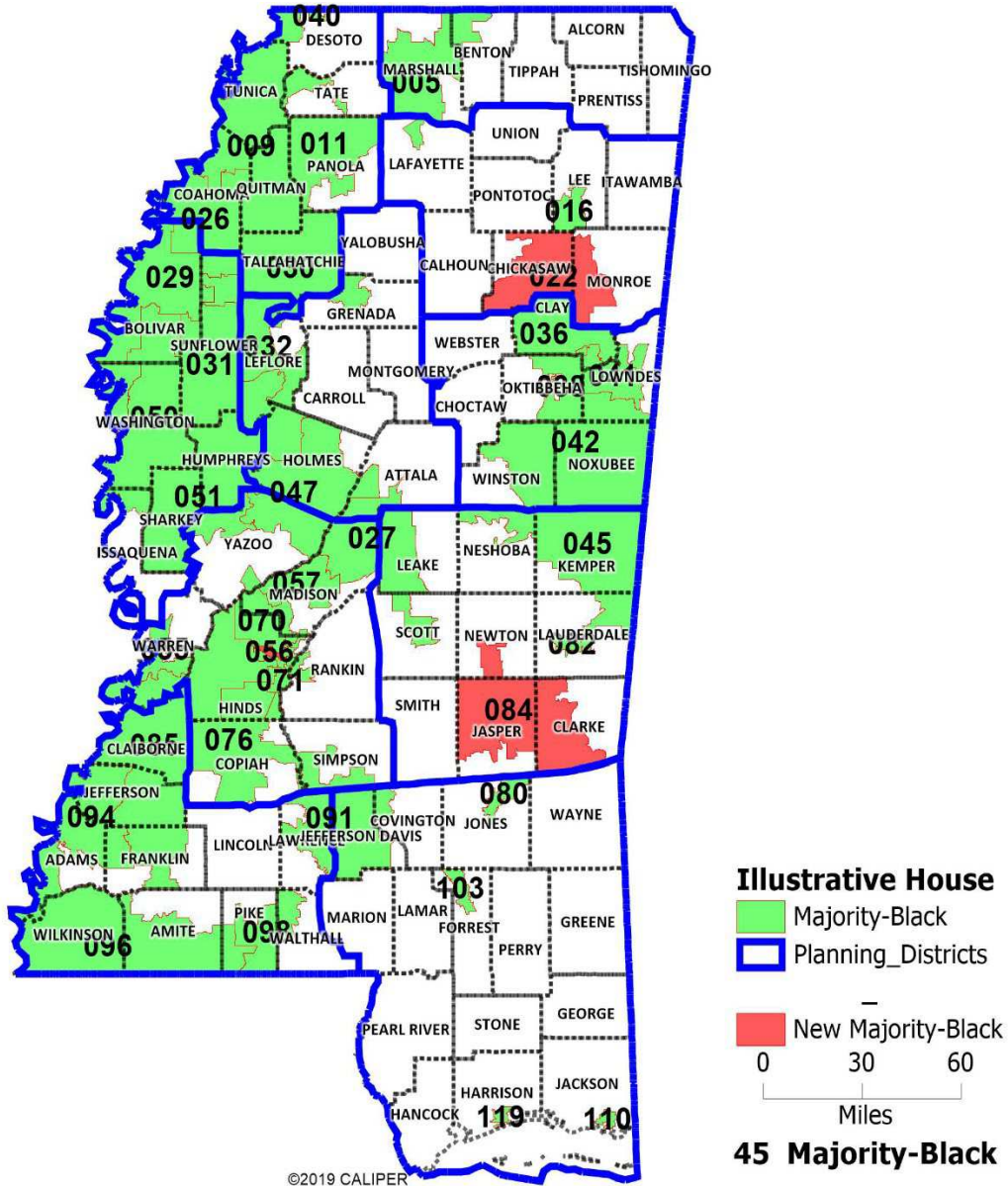
831

832 The Enacted Senate Plan has 50.36 percent of black voters living in  
833 black-majority districts and 84.33 percent of white voters living in white-  
834 majority districts. PTX-001, 50. In Cooper’s Illustrative Senate Plan, 58.39  
835 percent of black voters live in black-majority districts and 75.24 percent of  
836 white voters live in white-majority districts. *Id.* By modifying 41 of the 52  
837 enacted senate districts, the Illustrative Senate Plan reduces the alleged

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838 representation gap found in the Enacted Senate Plan by 17.13 percent. Trial  
839 Tr. 98:1-12; PTX-001, 28, 67-68.

840 This is the map showing all the illustrative house districts.



841

842 The Enacted House Plan has 62.38 percent of black voters living in  
843 black-majority districts and 82.92 percent of white voters living in white-



844 majority districts. PTX-001, 74. In Cooper’s Illustrative House Plan, 64.78  
845 percent of black voters live in black-majority districts and 80.12 percent of  
846 white voters live in white-majority districts. *Id.* The Illustrative House Plan  
847 modifies 33 of the 122 enacted house districts and improves the alleged  
848 representation disparity found in the Enacted House Plan by 5.19 percent. *Id.*

849 We next consider the testimony explaining the drawing of these maps.

850 To develop his Illustrative Plans, Cooper’s initial analysis began with  
851 black-population statistics in Mississippi. Cooper used several data points,  
852 including population and geographic data from the 1990 to 2020 Censuses,  
853 socioeconomic data published by the Census Bureau, Mississippi precinct  
854 boundaries, and incumbent-address information. PTX-001, 93–94. The  
855 specific Census population data set Cooper used is the complete population  
856 file designed by the Census Bureau for use by states in legislative  
857 redistricting. *Id.* Cooper then used the well-known redistricting software  
858 “Maptitude for Redistricting” to compile the data and draw his Illustrative  
859 Plans.<sup>3</sup> *Id.* Maptitude displays various kinds of voter data and precinct lines  
860 and permits the map-drawer to see precincts shaded in different colors based  
861 on their BVAP. Doc [201], 78, 109–110.

862 According to the 2020 Census data, the non-Hispanic White  
863 population comprises 55.35 percent of the total population in Mississippi. *See*  
864 PTX-001, 9. African Americans are the next largest racial/ethnic category,  
865 representing 37.94 percent of the total population in 2020, which is the  
866 highest proportion of any state. *Id.* Mississippi’s overall population grew by  
867 116,621 persons from 2000 to 2020. Doc [220], 16–17. The African  
868 American population alone grew by 81,905 persons, making it the largest

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<sup>3</sup> “This software is deployed by many local and state governing bodies across the country for redistricting and other types of demographic analysis.” PTX-1, 92.

869 element of Mississippi’s population growth. PTX-001, 10; Trial Tr. 87:5–13.  
870 Mississippi’s BVAP also increased from 33.29 percent to 36.14 percent  
871 during that same period. PTX-001, 6, 10–11. In contrast, Mississippi’s non-  
872 Hispanic White population fell by 88,831, and the non-Hispanic White VAP  
873 dropped from 64.16 percent to 57.76 percent from 2000 to 2020. PTX-001,  
874 6, 10–11; Trial Tr. 87:5–13.

875 Cooper used Mississippi’s Planning and Development Districts  
876 (“PDDs”) to evaluate the state’s population change at the regional level.  
877 Trial Tr. 90:23–24. These PDDs were designed to “provide a consistent  
878 geographic base for the coordination of Federal, State, and local development  
879 programs.” PTX-020, 1 (Exec. Order). They were also “organized with  
880 boundaries which represent natural, social, and economic relationships.” *Id.*  
881 at 2. Cooper used these PDDs as “a way to organize [Mississippi] in[to]  
882 regions . . . that actually matter today.” Trial Tr. 90:23–24. However, the  
883 PDD boundaries have remained unchanged since at least 1971. *See* PTX-020.  
884 That by itself suggests they are poorly designed tools for the purposes of  
885 evaluating legislative districts.<sup>4</sup>

---

<sup>4</sup> The Plaintiffs filed a pretrial motion seeking judicial notice of facts related to PDDs, and we deferred ruling. *See* Pls.’ Mot. [196]. Under Federal Rule of Evidence 201(b), a “court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Some facts the Plaintiffs mentioned in their motion were introduced into evidence, thus mooted those issues. For example, former Mississippi Governor John Bell Williams’s 1971 executive order was introduced as PTX-020. *See* Mem. [197] at 6. Cooper then testified about the general purpose of PDDs. *See, e.g.*, Trial Tr. at 90–91.

Beyond what was admitted into evidence, the Plaintiffs have not established that other potentially relevant facts satisfy Rule 201. For example, they have not shown that we should take judicial notice of facts found on a trade association’s website. *See* Pls.’ Mem. [197] at 6. Even if we were to take judicial notice of the remaining facts, it would not change the conclusion that PDDs are ill-suited for legislative districting.

886 Cooper combined the 2020 Census data and population information  
887 provided by the PDDs to determine whether additional majority-minority  
888 districts could be drawn in his Illustrative Plans. PTX-001, 16–18. Cooper  
889 focused primarily on PDD regions with substantial black populations that  
890 experienced double-digit black-population growth or double-digit white-  
891 population decline between 2000 and 2020. PTX-001, 18–21; Trial Tr.  
892 156:11–157:9, 159:18–160:3. These were the areas in which Cooper “felt it  
893 was likely . . . [to] develop additional majority [b]lack districts.” Trial Tr.  
894 160:4–8.

895 Cooper’s analysis of Mississippi’s PDDs showed the black population  
896 growth at the regional level was concentrated in four PDD regions: Central  
897 Mississippi, North Delta, Southern Mississippi, and Three Rivers. Trial Tr.  
898 92:1–11; PTX-001, 17. The net black-population growth in these four regions  
899 was 120,399 persons between 2000 and 2020, and the white population loss  
900 was 7,636 persons. Trial Tr. 92:1–11; PTX-001, 17. Cooper testified the net  
901 black-population growth in these four regions equates to the drawing of two  
902 100 percent black senate districts and about five 100 percent house districts,  
903 thus suggesting “it would be very easy to draw additional majority-[b]lack  
904 districts in the state of Mississippi in these specific areas.” Trial Tr. 95:3–8.  
905 By focusing on these areas, Cooper further asserted his Illustrative Plans  
906 “prove superior or equal to the 2022 Legislative Plans across almost every  
907 conceivable race-neutral quantitative measure of community of interest.”  
908 PTX-001, 21.

909 While we credit Cooper’s overall analysis and drawing of the  
910 Illustrative Plans as viable methods for us to consider when determining  
911 compactness, we find the evidence does not support his use of PDDs as  
912 communities of interest. The PDDs were created about 60 years ago, PTX-  
913 0020, and they are “voluntary nonprofit corporations,” Trial Tr. 156:5–7,  
914 that have differing priorities and common interests, DTX-016. Further,

915 there was testimony that PDDs are not public civil divisions for which the  
916 Census Bureau reports. Trial Tr. 154:5–15. The Plaintiffs even concede  
917 PDDs do not help further analysis of the first *Gingles* precondition, stating  
918 the court “can eliminate the concept of [PDDs] and still come up with . . .  
919 similar” districts. See Trial Tr. 156:25–157:9, 158:2–5, 160:2–3. There is also  
920 no evidence the Mississippi Legislature considered PDDs in drawing the  
921 Enacted Plans. See MISS. CODE ANN. § 5-3-101. We find the use of PDDs in  
922 Cooper’s analysis to be unhelpful.

923 Of importance, though, is that the 2022 Enacted Plans contained the  
924 same number of majority-minority districts as the previously enacted plans  
925 despite the admitted black-population growth and white-population decline.  
926 PTX-001, 22–25, 45–46, 54–57, 68–70, 177–79, 244–46, 498–501, 590–93;  
927 JTX-002; JTX-004; JTX-005. Indeed, both the state senate and state house  
928 have only added one additional majority-minority district in their respective  
929 legislative plans since 2002. Trial Tr. 89:12–90:1. The additional majority-  
930 minority senate district resulted from a court order four years ago. See  
931 *Thomas*, 961 F.3d at 800–01. Trial Tr. 90:2–8.

932 Cooper testified that he developed the Illustrative Plans here by using  
933 traditional redistricting principles, including population equality,  
934 compactness, contiguity, communities of interest, traditional political  
935 boundaries, non-dilution of minority voting strength, and incumbent  
936 pairings. Trial Tr. 105:4–107:12. He further testified that he balanced the  
937 traditional redistricting principles such that none predominated over the  
938 other when drawing the Illustrative Plans. Trial Tr. 107:13–22, 109:2–6,  
939 123:13–14. We credit this statement as to some of his illustrative districts,  
940 but not every illustrative district.

941 The Defendants challenged whether Cooper properly used these  
942 traditional redistricting principles. At trial, Cooper was asked to review the

943 legislative redistricting process and the factors the Standing Joint Committee  
944 was required to consider — one person, one vote; contiguity of the districts;  
945 political performance; compliance with all state and federal laws such as  
946 Section 2 of the Voting Rights Act; compactness; and minimalization of  
947 county and precinct splits. JTX-010, at 8-14; Trial Tr. 168:20. The Standing  
948 Joint Committee examined the significant population shifts throughout  
949 Mississippi where major areas experienced population loss and indicated this  
950 necessitated the collapse of two districts to be moved to the areas with the  
951 largest increase in population. JTX-010, 11-14.

952         Cooper acknowledged that he neither examined the many competing  
953 interests the Mississippi Legislature examines when drawing maps nor  
954 considered political performance while drawing the Illustrative Plans. Trial  
955 Tr. 225:21-226:2. On the other hand, the Defendants failed to provide any  
956 detail as to how the failure to consider those interests impacted any of  
957 Cooper’s illustrative districts. The Defendants’ evidence was fairly brief  
958 videos of each committee chair explaining to his chamber what that  
959 committee had tried to do. General statements about political performance  
960 were made. Nothing in that evidence addresses how Cooper’s failure or  
961 inability to consider political performance invalidated any of the illustrative  
962 districts. Even if “political performance” is a trump card, which it is not, the  
963 Defendants must at least place it face up on the table.

964         The Defendants offered the testimony of Dr. Thomas Brunell to  
965 prove that the Plaintiffs did not meet their burden under *Gingles* precondition  
966 one. *See generally* Trial Tr. 1242-1495. Dr. Brunell is a professor with a  
967 doctorate in political science at the University of Texas at Dallas, where he  
968 has been employed since 2005. DX-003, 22. He is an appointed member of  
969 the Census Scientific Advisory Committee for the Census Bureau where he  
970 provided guidance and assistance related to redistricting development  
971 procedures. Trial Tr. 1250:18-1251:13. Dr. Brunell was accepted at trial as

972 an expert in redistricting, elections, the Voting Rights Act, and  
973 representation and statistics. Trial Tr. 1253:24–1254:2. Although the  
974 Defendants offered Dr. Brunell’s testimony specifically to challenge  
975 Cooper’s methods, Dr. Brunell agreed Cooper was not maximizing the  
976 number of majority-minority districts. Trial Tr. 1336:1–9.

977       Regarding compactness and split precincts, Dr. Brunell opined that  
978 there were only marginal differences between the compactness scores of the  
979 Enacted Plans and Cooper’s Illustrative Plans. DX-003, 12–14. Cooper  
980 considered three mathematical compactness scores generated by the  
981 accepted Maptitude software and asserted that, on average, the Illustrative  
982 Senate Plan is slightly more compact than the Enacted Senate Plan and the  
983 compactness of the Illustrative and Enacted House Plans are comparable.  
984 Trial Tr. 106:3–13, 111:7–112:24. That is generally true.

985       The only geographical boundaries Mississippi law requires be  
986 followed “as nearly as possible” are county, municipal, and precinct lines.  
987 MISS. CODE ANN. § 5-3-101. Both the Enacted Plans and Illustrative Plans  
988 satisfied this requirement. The Illustrative House Plan has the same number  
989 of split counties and modestly fewer split municipalities and precincts  
990 compared to the Enacted House Plan. DX-003, 15. The Illustrative Senate  
991 Plan splits fewer counties but has almost the same number of total county  
992 splits as the Enacted Senate Plan. Dr. Brunell created a chart to show the  
993 comparisons.

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|               | Split Counties | Total County Splits | 2020 VTD Splits | Municipalities not Split | Total Municipal Splits |
|---------------|----------------|---------------------|-----------------|--------------------------|------------------------|
| 2022 House    | 67             | 179                 | 255             | 216                      | 225                    |
| Cooper House  | 67             | 167                 | 228             | 218                      | 221                    |
| 2022 Senate   | 43             | 58                  | 41              | 244                      | 128                    |
| Cooper Senate | 34             | 52                  | 38              | 253                      | 110                    |

994

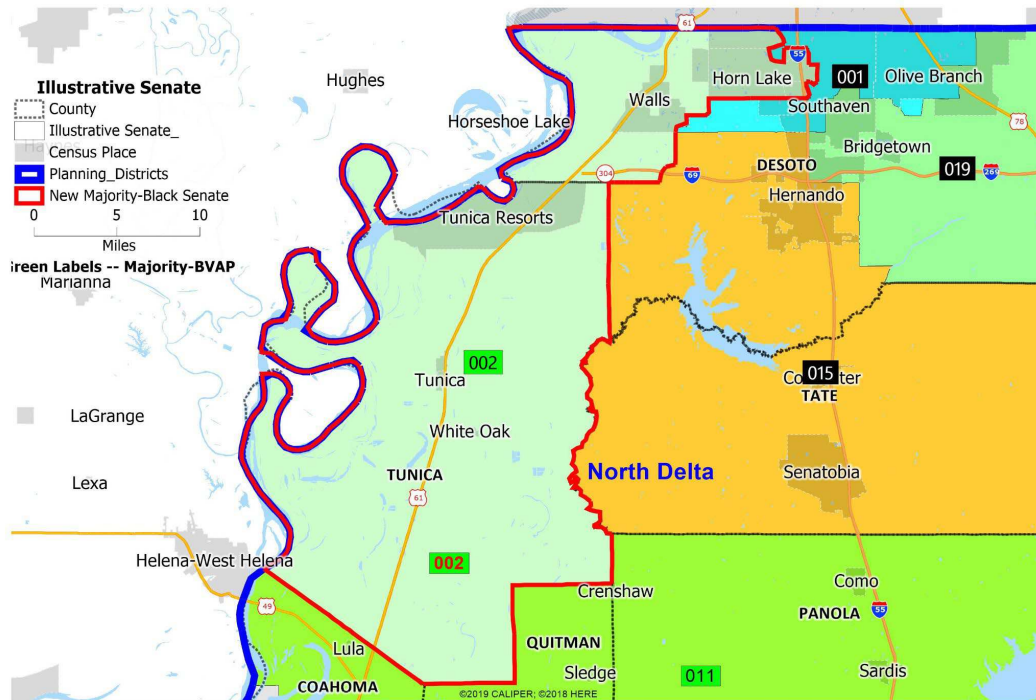
995 Dr. Brunell’s chart supports Cooper’s statement that “[t]here’s very little  
 996 difference” between the Enacted Plans and the Illustrative Plans. Trial Tr.  
 997 112:22–23. The Illustrative Plans perform only a “little better[, n]ot a lot but  
 998 a little,” better than the Enacted Plans, such that “[t]hey’re almost the  
 999 same.” Trial Tr. 112:10–11, 22–23.

1000 As to incumbent pairings, Dr. Brunell noted the Enacted Plans have  
 1001 only one incumbent pairing in the senate and three pairings in the house. DX-  
 1002 003, 14. Separating incumbents into different districts was an important  
 1003 factor the Mississippi Legislature considered when drawing its plans. JTX-  
 1004 10, 12:3–15, 20:19–24; JTX-011, 8:5–10. That is a valid consideration for the  
 1005 legislature. *See Vera*, 517 U.S. at 963–64; *League of United Latin Am. Citizens*,  
 1006 *Council No. 4434*, 986 F.2d at 763. The Illustrative Plans, however, have  
 1007 more incumbent pairings than the Enacted Plans, despite incumbency  
 1008 protection being an important consideration. DX-003, 14. Cooper testified  
 1009 he was unable “to obtain complete information about all of the incumbents,”  
 1010 and it was sometimes impossible “to keep all incumbents in separate  
 1011 districts.” Trial Tr. 106:23–107:12. Nonetheless, the Enacted Plans are more  
 1012 favorable as to incumbency protection.

1013 We found at trial that Dr. Brunell is qualified to testify as an expert in  
 1014 redistricting and demographics, but the following discussion of the individual  
 1015 illustrative districts will reveal some of his testimony that we do not credit.

1016

*b. Illustrative Senate District 2*



1017

1018 Illustrative SD 2 is an additional majority-minority district with a  
1019 BVAP of 50.91 percent that Cooper asserts can be drawn in Tunica and  
1020 DeSoto Counties. PTX-001, 29–34, 324. We reproduce the western-most  
1021 part of the map. DeSoto County contains the fastest growing black  
1022 population in Mississippi. Trial Tr. 130:2–3. Cooper combined some of the  
1023 population from three enacted senate districts throughout DeSoto County,  
1024 to create Illustrative SD 2 in addition to maintaining a current majority-black  
1025 district. PTX-001, 29–34. Cooper divided the City of Horn Lake and its  
1026 substantial black population once, keeping most of it in a single district, and  
1027 eliminated the splitting of Tate and Panola Counties under the Enacted  
1028 Senate Plan. PTX-001, 29–34; Trial Tr. 131:23–132:8. Cooper testified that  
1029 he followed natural boundaries by tracking the Highway 61 transportation  
1030 and economic corridor, allowed for population growth by including precincts



1031 with low BVAP, and kept the population deviation on the lower end of the  
1032 required 5-percent deviation. Trial Tr. 131:14–20, 190:15–191:5.

1033 Pamela Hamner also testified for the Plaintiffs to explain how  
1034 Illustrative SD 2 respects communities of interests. Hamner has lived in  
1035 DeSoto County for 25 years as a reporter covering northern Mississippi. She  
1036 recently ran for political office, which caused her to contact voters and  
1037 residents in the areas contained in Illustrative SD 2. Trial Tr. 704:10–14,  
1038 705:15–706:4, 710:1–4, 720:5–11. Hamner testified that she received some  
1039 threats while campaigning in white communities, though few details were  
1040 given. She testified that Highway 61 connects the communities and allows  
1041 the residents to travel between towns in DeSoto County for church,  
1042 healthcare, entertainment, and other activities. Trial Tr. 723:13–20.  
1043 Hamner also explained in detail the economic, education, healthcare, and  
1044 numerous other issues the residents are similarly concerned with. Trial Tr.  
1045 723:7–12, 714:14–715:6, 727:16–22.

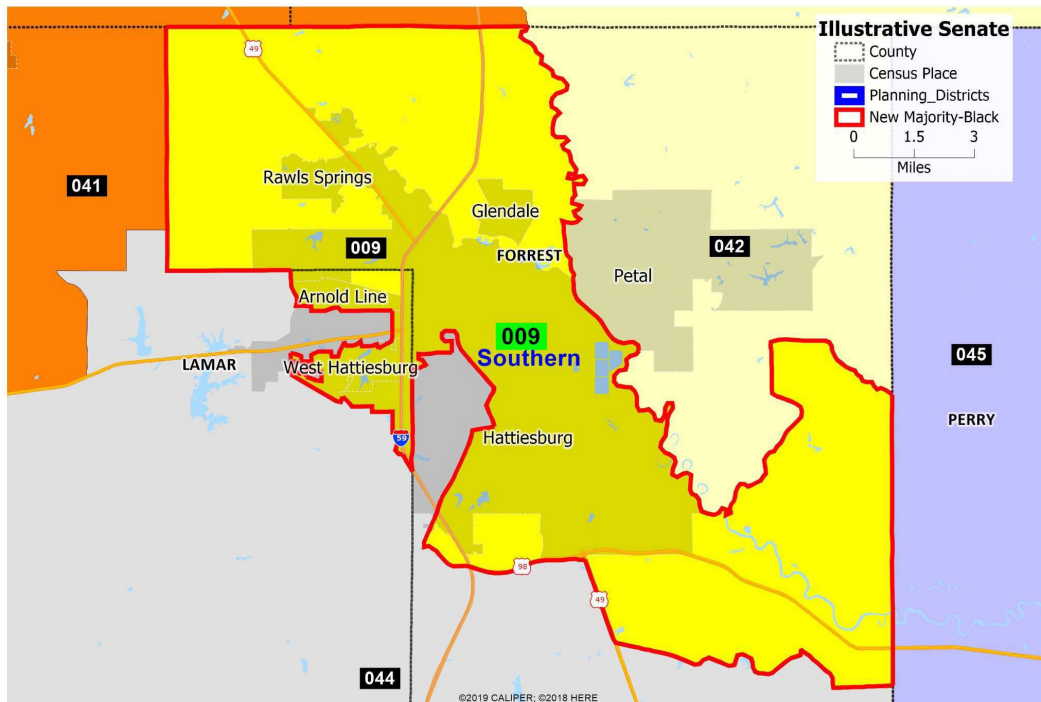
1046 In creating Enacted SD 2, the Mississippi Legislature effectively  
1047 cracked the majority-black community in Horn Lake across three districts  
1048 and split Horn Lake and the historically black town of Jago rather than  
1049 keeping them together like in Illustrative SD 2. Trial Tr. 713:15–714:6, 716:5–  
1050 25, 718:7–20. Hamner testified this effectively took away the power of the  
1051 black communities to seek representation when the Enacted Plans became  
1052 law. Trial Tr. 714:7–13, 715:10–17. We credit that testimony.

1053 The Defendants disputed that Cooper’s methods followed traditional  
1054 redistricting principles for this illustrative district. Defendants’ expert Dr.  
1055 Brunell opined that Cooper specifically targeted the majority-black precincts  
1056 to include in Illustrative SD 2 while excluding the majority-white precincts  
1057 to increase the number of black-majority districts. DX-003, 11; Trial Tr.  
1058 1336:1–9. On that point, we know that in preparing illustrative districts, the  
1059 Supreme Court recognizes their purpose is to show what can be done, *i.e.*,

1060 that a reasonably compact majority-minority district can be created that  
1061 respects traditional districting principles. *Milligan*, 599 U.S. at 30. There “is  
1062 a difference ‘between being aware of racial considerations and being  
1063 motivated by them’” in preparing the maps. *Id.* (quoting *Miller*, 515 U.S. at  
1064 916). Cooper’s identifying those majority-minority areas was a necessary  
1065 part of the exercise.

1066 This district is reasonably compact and satisfies traditional  
1067 redistricting factors. Cooper testified that he was not maximizing the number  
1068 of majority-minority districts, and Defendants’ expert Dr. Brunell opined the  
1069 same. We credit both witnesses’ testimony as it applies to this illustrative  
1070 district. Further, there was no evidence offered about how considerations of  
1071 political performance affected the districting here. We thus find that  
1072 Illustrative SD 2 satisfies the first *Gingles* precondition.

1073 *c. Illustrative Senate District 9*



1074

1075 Illustrative SD 9 is an additional majority-minority district with a  
1076 BVAP of 50.95 percent that Cooper asserts can be drawn in Forrest and  
1077 Lamar Counties and adjacent to the City of Hattiesburg. PTX-001, 38–41,  
1078 324. It includes Rawls Springs, Glendale, and substantial portions of Arnold  
1079 Line and West Hattiesburg, and it is drawn primarily around Hattiesburg’s  
1080 municipal borders. *See* PTX-001, 394. Cooper testified this illustrative  
1081 district better respects traditional redistricting principles than the Enacted  
1082 Senate Plan. Trial Tr. 134:1–14; PTX-001 at 38–41, 247. The Enacted Senate  
1083 Plan split Hattiesburg across four districts and went far north “to pick up  
1084 pieces of Jones County and Laurel and then on into Jasper County.” PTX-  
1085 001, 302. Illustrative SD 9 instead keeps the city almost entirely whole,  
1086 follows municipal boundaries extending from Hattiesburg, avoids pairing an  
1087 incumbent, and evenly includes and excludes various BVAP precincts. Trial  
1088 Tr. 134:19–20, 134:23–135:10, 204:17–25, 205:7–15.

1089 Lay testimony supports the reasonableness of keeping Hattiesburg  
1090 together. Dr. Joseph Wesley, a Hattiesburg resident since 1977, explained  
1091 that Hattiesburg is the “Hub City” for people from the surrounding areas  
1092 near Illustrative SD 9 to come for education, culinary, and economic needs.  
1093 Trial Tr. 665:7–9, 676:2–12. He testified Illustrative SD 9 better respects the  
1094 geographic boundaries of highways that serve the surrounding areas and  
1095 allows easier access to education and healthcare for the communities. Trial  
1096 Tr. 679:4–684:9. The common histories and traditions for the black  
1097 communities are also centered in Hattiesburg, where the communities are  
1098 kept whole through Illustrative SD 9. Trial Tr. 676:13–677:8, 678:3–5. We  
1099 credit his unrebutted testimony.

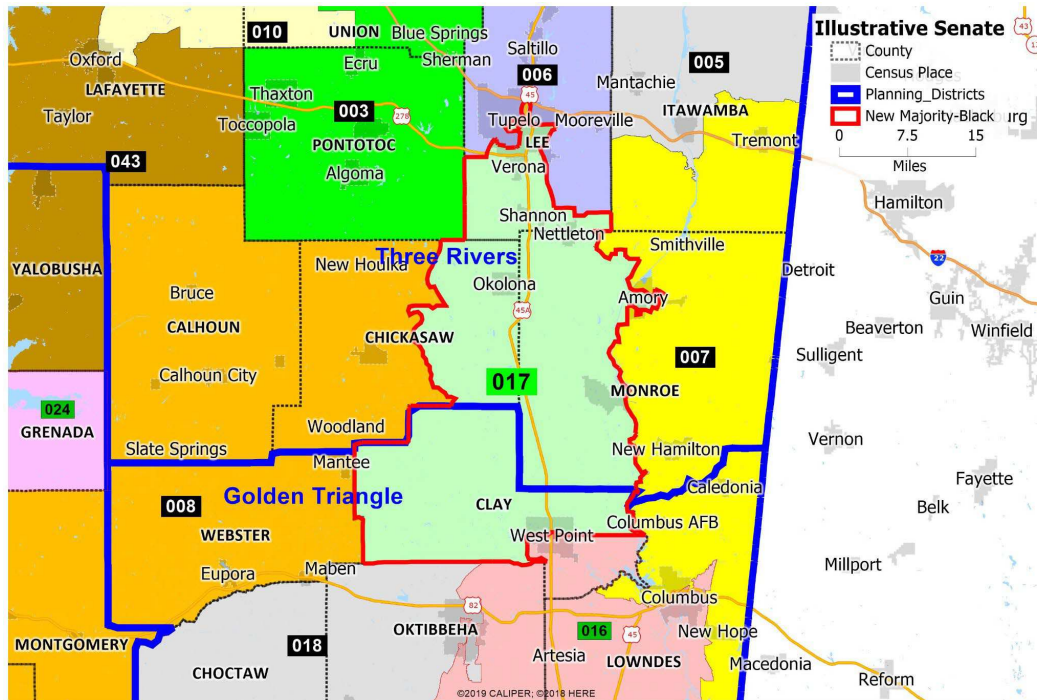
1100 The Defendants presented evidence that the boundary lines of  
1101 Illustrative SD 9 followed along the racial lines of larger concentrations of  
1102 black populations and split two precincts between Enacted SD 9 and SD 42.  
1103 PTX-001, 38–41, 324; Trial Tr. 205:7–15. The Defendants asserted there

1104 was no race-neutral explanation for Cooper’s redrawing of Illustrative SD 9  
1105 in this way because altering either of the split precincts to make them whole  
1106 would undermine the 50.95 percent BVAP of Illustrative SD 9 and preclude  
1107 Cooper’s racial objective. DX-003, 46; Doc [219], 36. However, the  
1108 Defendants’ overlay of Illustrative SD 9’s borders on a racially shaded  
1109 precinct map does not demonstrate such clear-cut cherry-picking between  
1110 majority-black and majority-white precincts, as several majority-white  
1111 precincts just outside Hattiesburg are also within Illustrative SD 9’s borders.  
1112 *See* DX-003, 046.

1113 Here, too, we find that Cooper has created a reasonably compact  
1114 district that follows traditional redistricting principles. His purpose, as  
1115 *Gingles* precondition one requires, was to identify whether a reasonably  
1116 compact majority-minority district could be formed that respected traditional  
1117 redistricting factors. We find that the City of Hattiesburg itself is less split in  
1118 the illustrative district. Although Illustrative SD 9 does exclude what we  
1119 accept are some majority-white areas, we find the design still leaves the  
1120 district reasonably compact. We find this district satisfies *Gingles*  
1121 precondition one.

1122

*d. Illustrative Senate District 17*



1123

1124 Illustrative SD 17 is an additional majority-minority district with a  
 1125 BVAP of 53.54 percent that Cooper asserts can be drawn in the Golden  
 1126 Triangle and Three Rivers areas. PTX-001, 323–25. SD 17 had an original  
 1127 BVAP of 29.48 percent in the Enacted Senate Plan. *Id.*; JTX-049, 4. To  
 1128 create Illustrative SD 17, Cooper took portions of the black populations from  
 1129 Enacted SD 6, 7, 8, and 16. PTX-001, 249–50, 386; Trial Tr. 136:7–10.  
 1130 Cooper testified this better respected black communities along Highway 45  
 1131 that share socioeconomic and historical interests, followed whole precincts,  
 1132 and tracked natural boundaries. Trial Tr. 136:7–21, 199:24–200:14, 223:25–  
 1133 224:3.

1134 Mamie Cunningham, a retired schoolteacher and lifelong resident of  
 1135 Chickasaw County, testified as to the common interests that Illustrative SD  
 1136 17 brings together. Trial Tr. 233:2–234:2, 244:17–245:1. Residents in the  
 1137 area share socioeconomic, civic, economic, educational, and other interests

1138 across county lines, and the municipalities are connected by natural  
1139 boundaries Highway 45 and Alternate Highway 45, which are frequently  
1140 traveled by residents to access retail outlets and services. Trial Tr. 245:2–  
1141 246:13, 247:14–248:2. Although she resides in Chickasaw County,  
1142 Cunningham herself worked in neighboring Monroe and Clay Counties, all  
1143 of which are within Illustrative SD 17. Trial Tr. 244:13–245:13. We credit  
1144 her testimony in general, but we do not credit her reliance on the fact that a  
1145 particular highway goes through the entire district to say a community of  
1146 interest exists.

1147         According to the Defendants, however, Cooper “dismantles”  
1148 Enacted SD 7 and SD 16 by reducing their BVAPs from 40.08 percent and  
1149 63.06 percent to 17.83 percent and 53.54 percent, respectively, to draw  
1150 Illustrative SD 17. Doc [219], 27; PTX-001, 324; JTX-049, 3–4. They assert  
1151 Cooper crossed PDD boundaries, violating his own redistricting criteria, and  
1152 used only public-school-district athletics in his consideration for Illustrative  
1153 SD 17 because he did not think black children would be attending private  
1154 schools. Trial Tr. 197:1–6, 200:15–204:2. We have already found that the  
1155 PDDs are not useful in the analysis, and Cooper’s deviation from them helps  
1156 support our earlier finding. On cross, Cooper explained the precinct splits  
1157 he created protected incumbents and better preserved other precinct lines,  
1158 resulting in fewer splits than the Enacted Plans. Trial Tr. 196:25–198:3.

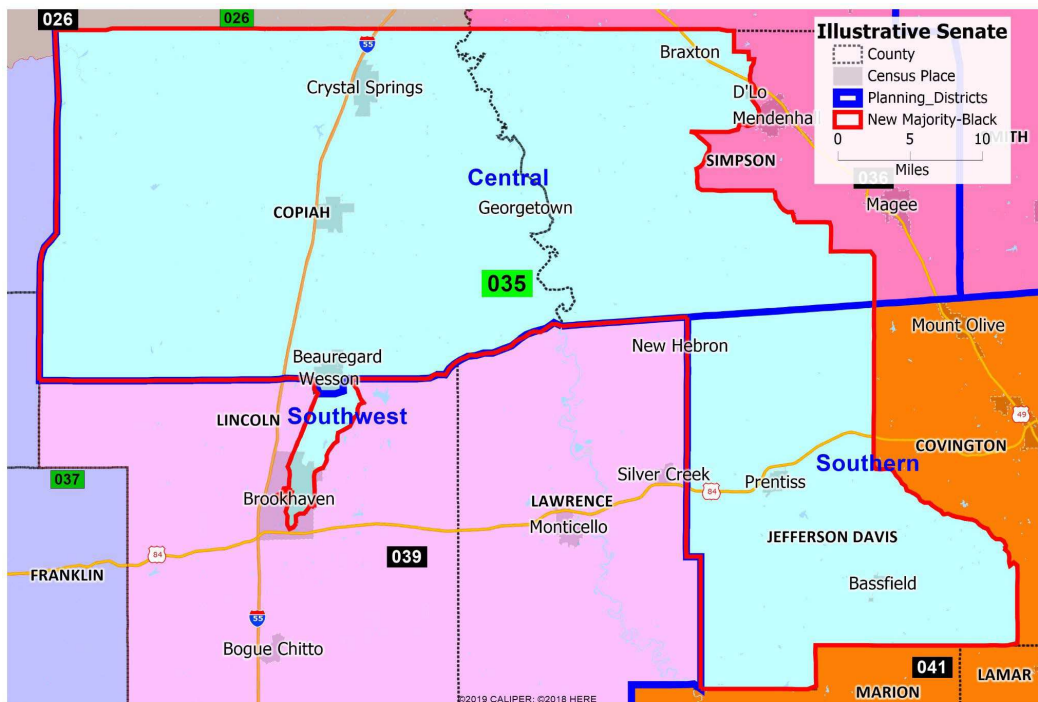
1159         The Defendants maintain that it is clear Illustrative SD 17 was created  
1160 for no reason other than race. They assert Cooper had to dissolve Enacted  
1161 SD 7, which elected a minority-preferred white Democratic candidate in  
1162 2023, and the dismantling of an existing minority-performing district is not  
1163 required under Section 2. Doc [219], 34–35.

1164         This illustrative district splits three major municipalities in the area,  
1165 crossing multiple relevant boundaries. It splits Tupelo and captures only  
1166 black-majority precincts but excludes white-majority precincts. DX-003, 42.

1167 It further splits West Point and Amory by crossing PDD and geographic  
1168 boundaries that split communities of interest. See PTX-001 at 338; Trial Tr.  
1169 136, 197–198. These facts support that Cooper had a racial objective and that  
1170 race predominated in his drawing of this district to achieve said objective.  
1171 Although he gave his opinion that there was a community of interest because  
1172 Illustrative SD 17 follows Highway 45 and the Tennessee-Tombigbee  
1173 Waterway from north to south, we do not accept that following those two  
1174 transportation corridors supports that the communities they encounter share  
1175 interests. Rather, the evidence indicates Cooper combined parts of distinct  
1176 communities in an attempt to force one community of interest to exist.

1177 We find that Cooper’s claimed considerations of communities of  
1178 interest and lack of a racial objective are not credible. Illustrative SD 17 does  
1179 not satisfy the first *Gingles* precondition.

1180 e. *Illustrative Senate District 35*



1181

1182 Illustrative SD 35 is an additional majority-minority district with a  
1183 BVAP of 52.12 percent that Cooper asserts can be drawn in Copiah, Simpson,  
1184 Lincoln, Lawrence, and Jefferson Davis Counties. PTX-001, 324. Enacted  
1185 SD 35 had an original BVAP of 39.38 percent in the Enacted Senate Plan. *Id.*;  
1186 JTX-049, 4. To achieve his illustrative district, Cooper splits Lincoln  
1187 County, crossing the county boundary to cut out a portion of the City of  
1188 Brookhaven and to incorporate the area between it and the City of Wesson,  
1189 which has a “significant Black population.” Trial Tr. 206:15–18, 139:4–7.  
1190 Cooper testified Illustrative SD 35 also keeps Copiah and Jefferson Davis  
1191 Counties whole; splits only one precinct to keep the City of D’Lo whole;  
1192 respects the geographical, transportation, and educational connections along  
1193 Highway 51; and respects high-school-sports leagues in the counties. Trial  
1194 Tr. 139:1–14, 224:9–225:10; PTX-001, 341, 367.

1195 In redrawing Illustrative SD 35, Cooper split counties and  
1196 municipalities to achieve his apparent racially predominant objective. *See*  
1197 Trial Tr. 206:24–207:22; DX-003, 44; PTX-001, 398. By running a narrow  
1198 extension south into a portion of Brookhaven, Cooper splits the city between  
1199 two districts and includes only predominantly black precincts within  
1200 Illustrative SD 35 to reach the desired BVAP. *See* Trial Tr. 206:24–207:22;  
1201 DX-003, 44; PTX-001, 398. This extension into the black precincts of  
1202 Brookhaven, not into the whole city, certainly falls into the category of a  
1203 “tentacle” that shows the illustrative district does not have a reasonably  
1204 compact majority-minority voting-age population.

1205 In defending Illustrative SD 35, Cooper testified that Highway 51 and  
1206 Interstate Highway 55 run north from Brookhaven through Hazelhurst and  
1207 to Crystal Springs as common boundaries and that a significant number of  
1208 Mississippians commute to work via these highways. *See* Trial Tr. 138-39,  
1209 224–25; PTX-001, 398. Nonetheless, the tentacle into Brookhaven excludes

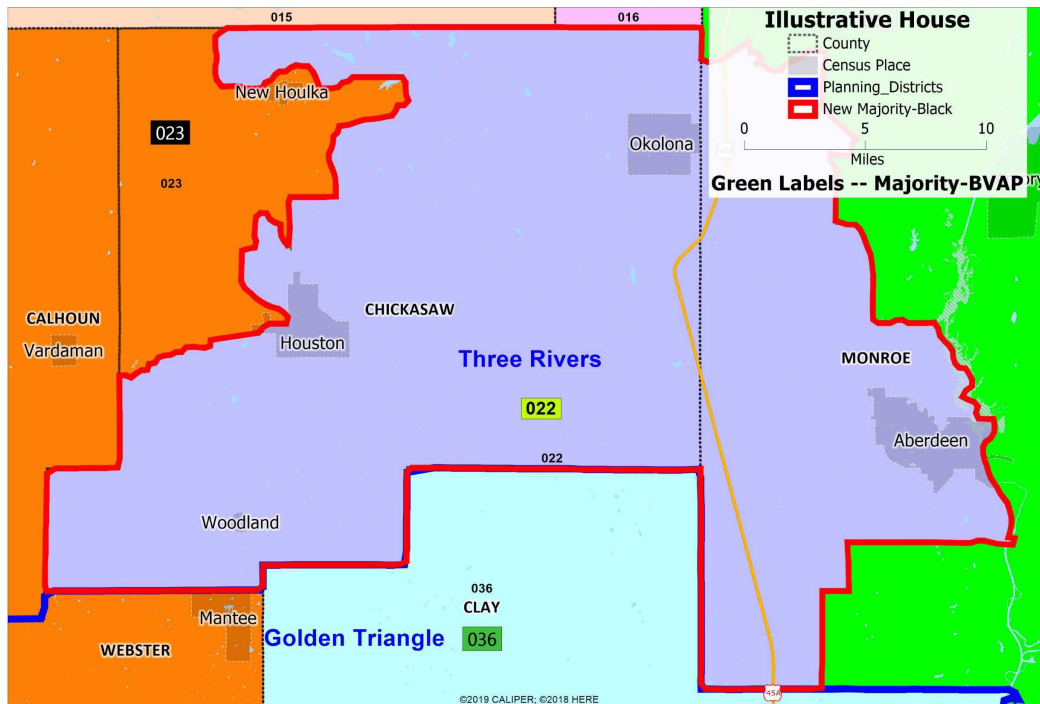


1210 Interstate 55 and hugs only the east side of Highway 51 to capture the higher  
1211 BVAP population of the area. *See* DX-003, 44; PTX-001, 398.

1212 Plaintiffs' witness Ashley Wilson, a lifelong resident of the City of  
1213 Crystal Springs, testified there were significant community ties between  
1214 Brookhaven and Copeiah County. *See* Trial Tr. 873–85. Specifically, many  
1215 people in Copeiah County and Brookhaven share economic, shopping, work,  
1216 hospital, and travel interests that are all connected along Highway 51 and  
1217 Interstate 55. *Id.* These ties, however, are not enough to overcome the  
1218 significant county and municipality splits in Illustrative SD 35, nor do they  
1219 explain how one tentacle of Brookhaven that is majority black would have any  
1220 more in common with Copeiah County municipalities than other precincts.

1221 Illustrative SD 35 does not satisfy the first *Gingles* precondition.

1222 *f. Illustrative House District 22*



1223

1224 Illustrative HD 22 is an additional majority-minority district with a  
1225 BVAP of 55.41 percent that Cooper asserts can be drawn in Chickasaw and

1226 Monroe Counties by splitting small areas from the Cities of Aberdeen and  
1227 Houston. PTX-001, 716, 897. HD 22 had an initial BVAP of 29.86 percent  
1228 in the Enacted House Plan. PTX-001, 716; JTX-051, 4. Cooper testified  
1229 Illustrative HD 22 is more compact than the Enacted House Plan by  
1230 containing only two counties and following Highway 45 rather than splitting  
1231 predominantly black communities across three districts like in the Enacted  
1232 House Plan. Trial Tr. 142:5–143:8; PTX-001, 61–64. He explained  
1233 Illustrative HD 22 encompasses whole precincts and follows natural  
1234 boundaries such as waterways and county borders. Trial Tr. 144:2–6. The  
1235 Enacted House Plan instead “crack[s the b]lack population in the midsection  
1236 of Chickasaw and Monroe Counties” three ways and connects them via a  
1237 narrow land bridge. Trial Tr. 142:21–143:8.

1238 Mamie Cunningham again testified about the communities of interest  
1239 for Illustrative HD 22, and like for Illustrative SD 17, residents in the  
1240 Illustrative HD 22 area share socioeconomic, civic, economic, educational,  
1241 and other similar interests across county lines, and the municipalities are  
1242 connected by the frequently traveled natural boundaries Highway 45 and  
1243 Alternate Highway 45. Trial Tr. 245:2–246:13, 247:14–248:2. We credit her  
1244 testimony.

1245 The Defendants do not so much challenge the illustrative district as  
1246 they explain why a different district was drawn. They rely on the state house  
1247 committee chairman’s summary statement explaining the plan and how there  
1248 was population loss in the state. JTX-010, 6. The Defendants interpret the  
1249 statement as indicating that there was a population loss in this specific  
1250 district, but that is not what the chairman said. Regardless, all such a  
1251 statement means is that a district that lost population must add population to  
1252 comply with the required population-deviation standards, nothing more.

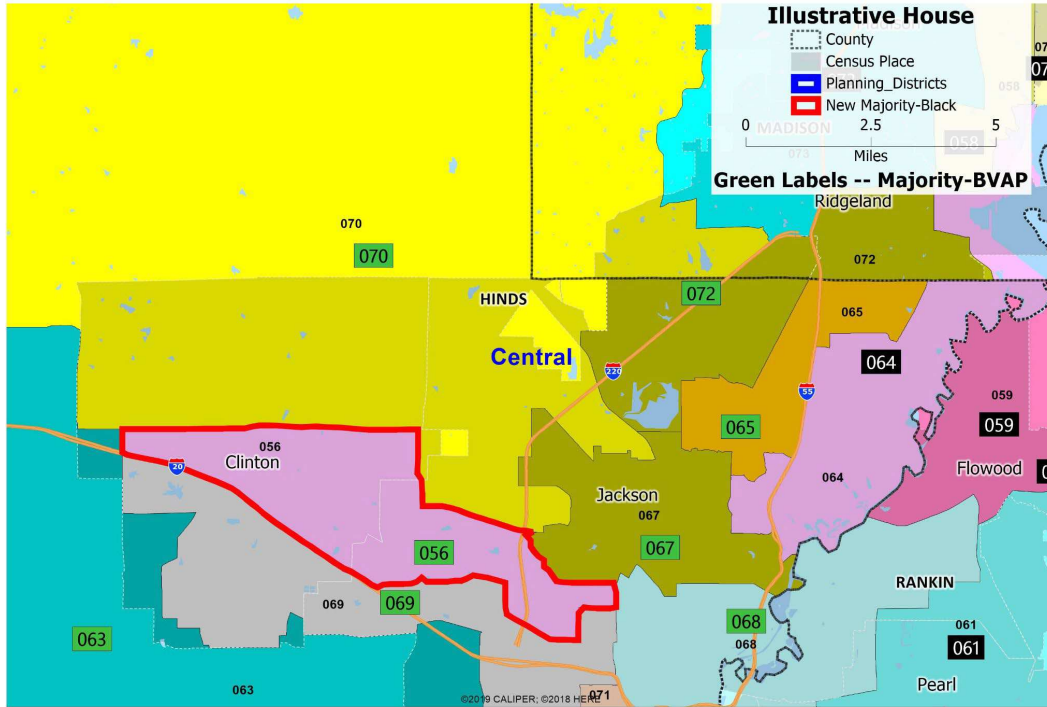
1253 The Defendants also assert that Enacted HD 22 was designed to  
1254 protect an incumbent. That fact does not affect the legitimacy of the

1255 illustrative district. Further, the Defendants argue Illustrative HD 22 is  
1256 drawn along racial lines such that majority-black population precincts are  
1257 included and majority-white precincts are excluded solely to achieve a racial  
1258 objective. DX-003, 50. We explained before that so long as race is not the  
1259 predominant factor, the Supreme Court has approved the consideration of  
1260 race to show that a reasonably compact majority-minority district could be  
1261 drawn. *Milligan*, 599 U.S. at 30–31. We distinguish our earlier discussion of  
1262 Illustrative SD 17, where we found that Cooper allowed race to predominate  
1263 when he split the black populations from three different cities, and the  
1264 Plaintiffs offered little credible evidence that the resulting illustrative district  
1265 joined communities of interest. There is no significant splitting of cities in  
1266 Illustrative HD 22, and we find the evidence credible that the resulting  
1267 district shares relevant interests.

1268 Illustrative HD 22 was not drawn with race as the predominant factor,  
1269 and it satisfies traditional redistricting criteria. We find this district satisfies  
1270 the first *Gingles* precondition.

1271

*g. Illustrative House District 56*



1272

1273 Illustrative HD 56 is an additional majority-minority district with a  
1274 BVAP of 58.99 percent that Cooper asserts can be drawn in Hinds and  
1275 Madison Counties by splitting the City of Clinton. PTX-001, 717; Trial Tr.  
1276 143:724, 215 13–16. Enacted HD 56 had an original BVAP of 22.97 percent  
1277 in the Enacted House Plan. PTX-001, 716; JTX-051, 6. Cooper testified  
1278 Illustrative HD 56 is “an extremely compact district” anchored in Clinton  
1279 that does not stretch into Madison County like the Enacted House Plan and  
1280 is only 15 miles long. Trial Tr. 144:11–24, 217:2–4. Illustrative HD 56 instead  
1281 tracks the Interstate 20 border and contains whole precincts, while removing  
1282 allegedly unnecessary county splits. Trial Tr. 145:14–23.

1283 While this illustrative district is entirely contained in Hinds County  
1284 and the Jackson municipal area, it does not appear Cooper gave the needed  
1285 consideration as to whether there is an actual community of interest between  
1286 Clinton and west Jackson. See PTX-001, 821. Cooper identified that because

1287 “[t]hey’re right next door to one another,” “it’s an urban area [where] there  
1288 could be all sorts of common side relating roads and highways,” and “they’re  
1289 so close to one another,” Illustrative HD 56 could contain a potential  
1290 community of interest. Trial Tr. 216:8–18. He could not identify any of the  
1291 “other factors that [he] considered in determining whether or not there’s a  
1292 community of interest.” See Trial Tr. 216:21–217:4. Cooper only discussed  
1293 Clinton’s proximity to west Jackson and its “significant increase in the Black  
1294 population.” Trial Tr. 217:14–15; *see id.* This does not explain why the parts  
1295 of Clinton included in Illustrative HD 56 have more in common with west  
1296 Jackson than the rest of the city other than race.

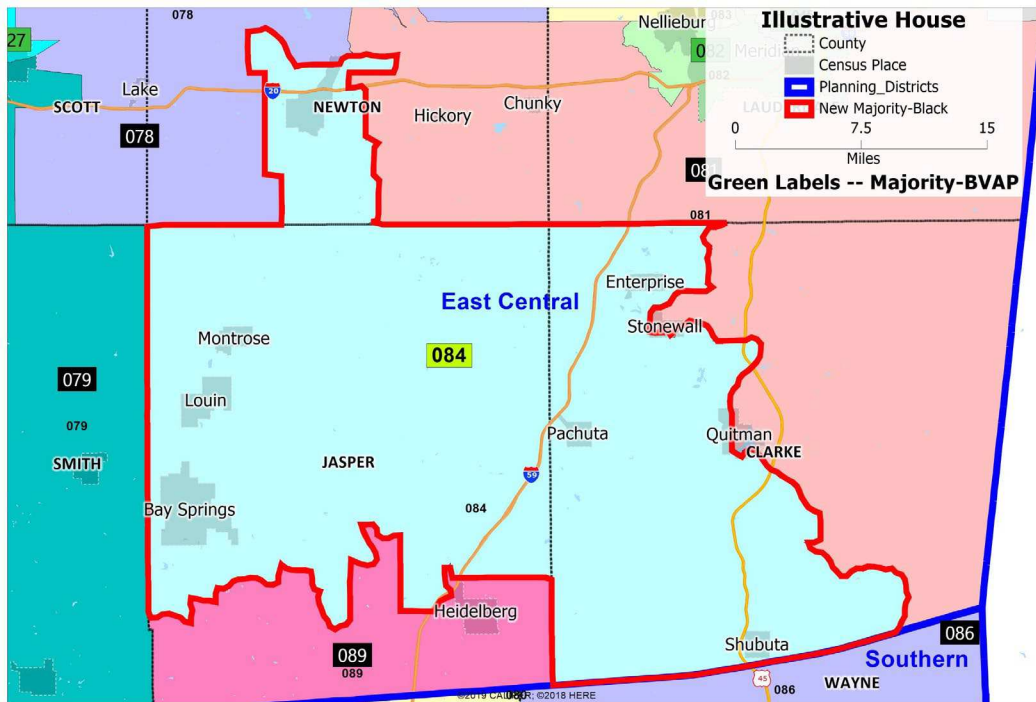
1297 Sharon Moman, a real-estate broker in and lifelong resident of Clinton  
1298 and Jackson, testified about the strong connections between the two areas  
1299 that make Illustrative HD 56 a community of interest. Trial Tr. 644:4–10,  
1300 649:17–651:2. Though Moman identified various connections, she did not  
1301 testify that the specific portion of west Jackson that was included in the  
1302 illustrative district shared such interests with Clinton. Instead, most of her  
1303 testimony centered on Jackson amenities that were not in the part of Jackson  
1304 included in the illustrative district. While Moman credibly answered the  
1305 questions she was asked, her testimony does not establish a community of  
1306 interest across Illustrative HD 56.

1307 In addition, the Defendants argue that political performance justified  
1308 Enacted HD 56 and undermined the illustrative district. We would describe  
1309 the argument as being that the illustrative district did not follow traditional  
1310 redistricting criteria because it did not take political performance into  
1311 account. Here, the criterion is better understood as being incumbent  
1312 protection. Though counsel’s argument to the court mentioned the  
1313 connection, no evidence was introduced that Speaker of the House Philip  
1314 Gunn represented the enacted district. Trial Tr. 214:17–24. Nonetheless,  
1315 we can take judicial notice that Speaker Gunn represented that district, but

1316 we must also take notice that he did not run for re-election. Nothing in the  
1317 record, or that we can take judicial notice of, indicates whether it was already  
1318 known by the Mississippi Legislature that he would not run again when the  
1319 redistricting maps were adopted. In light of that uncertainty, we give only  
1320 slight weight to the argument that the illustrative district did not follow the  
1321 traditional redistricting criteria of political performance.

1322 Considering all the evidence, we find that the Plaintiffs did not prove  
1323 that Illustrative HD 56 was reasonably configured using traditional  
1324 redistricting factors, particularly as to a community of interest. Thus, we find  
1325 Illustrative HD 56 does not satisfy the first *Gingles* precondition.

1326 *h. Illustrative House District 84*



1327  
1328 Illustrative HD 84 is an additional majority-minority district with a  
1329 BVAP of 53.05 percent that Cooper asserts can be drawn in Newton, Jasper,  
1330 and Clark Counties by splitting the City of Quitman. PTX-001, 717. The  
1331 Enacted House Plan left Quitman whole and had a BVAP of 37.28 percent.

1332 *Id.*; JTX-051, 6. Cooper’s Illustrative HD 84 is underpopulated by 2.76  
1333 percent while Illustrative HD 81, located east of Illustrative HD 84, is  
1334 overpopulated by 4.67 percent. *See* DX-003, 50. Cooper nonetheless  
1335 testified that Illustrative HD 84 reduces the number of county splits from  
1336 eight to two, keeps the City of Newton mostly whole, and avoids splitting  
1337 Newton’s only majority-black precinct, all while the Enacted House Plan  
1338 splits multiple counties and multiple precincts. PTX-001, 857–62, 870, 881–  
1339 91; *see* Trial Tr. 697:1–16.

1340 Deacon Kenneth Harris and Terry Rogers both testified as to the  
1341 community of interest found within Illustrative HD 84. Deacon Harris is a  
1342 lifelong Newton County resident who previously served as a Newton County  
1343 Supervisor and was a member of the East Central Planning and Development  
1344 Board that worked on the redistricting of the district. Trial Tr. 685:17–  
1345 687:16. Rogers is a nineteen-year-old lifelong City of Quitman resident and  
1346 current college student who ran for Mississippi Commissioner of Agriculture  
1347 and Commerce. Trial Tr. 933:11–19, 936:17–937:18. Both Harris and Rogers  
1348 credibly testified as to the common, rural, low-income nature of the  
1349 communities combined in the illustrative district and how these communities  
1350 share traditions, festivals, retail and church venues, and sports rivalries. Trial  
1351 Tr. 691:3–693:21, 938:23–940:16. They also explained the employment and  
1352 healthcare opportunities shared among Newton, Jasper, and Clark County  
1353 residents. *Id.* According to Harris and Rogers, Illustrative HD 84 does a  
1354 better job maintaining communities than the Enacted House Plan and  
1355 “binds” the area “together instead of splitting it like it is now.” *Id.*; Trial  
1356 Tr. 693:20–21.

1357 However, this testimony does not provide enough to overcome the  
1358 significance of splitting three counties and the City of Quitman.  
1359 Neighboring-county residents attending major festivals in the area;  
1360 preferring to attend church, shop, and work in Newton County; and being

1361 served by Newton County’s one hospital speaks to their geographic  
1362 proximity but is not enough to support that this illustrative district comprises  
1363 a distinct community of interest. *See* Trial Tr. 690:16–693:20; 938:20–  
1364 942:24. That the one hospital does not appear to be within Illustrative HD  
1365 84 and an identified community of interest — Quitman — is split undermines  
1366 the assertion that this illustrative district contains a community of interest.  
1367 *See* Trial Tr. 693:9–10; PTX-001, 694. Illustrative HD 84 is thus not  
1368 reasonably drawn and does not satisfy *Gingles* one.

1369 \* \* \*

1370 Under the first *Gingles* precondition, the Plaintiffs were required to  
1371 prove the geographical compactness and numerosity of Mississippi’s  
1372 minority population. *Robinson*, 86 F.4th at 589. The evidence presented  
1373 must prove Mississippi’s minority population in a potential election district  
1374 is greater than 50 percent and is compact enough to create another black-  
1375 majority district that the State did not draw, and the potential district must  
1376 respect traditional districting criteria. *See Strickland*, 556 U.S. at 19–20;  
1377 *Milligan*, 599 U.S. at 20.

1378 We find that three of the illustrative senate and house districts reflect  
1379 minority groups that are sufficiently large and geographically compact  
1380 enough to constitute a majority in a reasonably configured district. *Milligan*,  
1381 599 U.S. at 18. These districts are Illustrative SD 2, SD 9, and HD 22.

1382 The remaining four illustrative districts — Illustrative SD 17, SD 35,  
1383 HD 56, and HD 84 — do not satisfy this *Gingles* precondition.

1384 2. *Gingles Preconditions Two and Three*

1385 The Supreme Court requires that the evidence allow a court to make  
1386 findings as to all three preconditions as they specifically relate to an  
1387 illustrative district. “Those three showings, [the Court] explained, are  
1388 needed to establish that ‘the minority [group] has the potential to elect a



1389 representative of its own choice’ in a possible district, but that racially  
1390 polarized voting prevents it from doing so in the district as actually drawn  
1391 because it is ‘submerg[ed] in a larger white voting population.’” *Harris*, 581  
1392 U.S. at 302 (second and third alteration in original) (quoting *Emison*, 507 U.S.  
1393 at 40). Thus, once an acceptable illustrative district for purposes of  
1394 precondition one has been identified, the Plaintiffs must establish that the  
1395 second and third preconditions are satisfied as to the enacted districts in the  
1396 geographical area of the illustrative district. In addition, evidence covering  
1397 other geographical areas, if it can be shown those areas share relevant  
1398 characteristics, could be shown to be relevant.

1399         The second *Gingles* precondition concerns the voting behavior of  
1400 black voters. *See Gingles*, 478 U.S. at 51, 56. It asks whether a significant  
1401 number of black voters “usually vote for the same candidates,” *id.* at 56, such  
1402 that they would elect their representative of choice in a majority-minority  
1403 district, *see Milligan*, 599 U.S. at 18–19.

1404         The third *Gingles* precondition focuses on the electoral outcomes  
1405 resulting from racially polarized behavior. *See Gingles*, 478 U.S. at 51, 56.  
1406 Concentrating on racially polarized voting, “the plausibility that the  
1407 challenged legislative districting thwarts minority voting on account of race”  
1408 must be established. *Robinson*, 86 F.4th at 595. In other words, a plaintiff  
1409 must provide proof that “whites vote sufficiently as a bloc usually to defeat  
1410 the minority’s preferred candidates.” *Gingles*, 478 U.S. at 56. “Thus, the  
1411 question whether a given district experiences legally significant racially  
1412 polarized voting requires discrete inquiries into minority and white voting  
1413 practices.” *Id.*

1414         The second and third *Gingles* preconditions are often analyzed  
1415 together. *Emison*, 507 U.S. at 40; *see Milligan*, 599 U.S. at 22. Courts  
1416 determine first if the black voters are politically cohesive. *Milligan*, 599 U.S.

1417 at 18–19. Then, “[t]he question is not whether white bloc voting is present,  
1418 but whether such bloc voting in a given district amounts to legally significant  
1419 racially polarized voting.” *Robinson*, 86 F.4th at 595; *see also LULAC v.*  
1420 *Clements*, 999 F.2d at 850. The Supreme Court recognizes a difference  
1421 between legally significant and statistically significant racially polarized  
1422 voting. *See Gingles*, 478 U.S. at 53, 55. Statistics may be used to determine  
1423 the voting percentages and support for candidates in a given election, but  
1424 what amounts to statistical importance may not rise to legal significance given  
1425 the relevant facts. *See id.* at 79 (clarifying the determination of “whether the  
1426 political process is equally open to minority voters” is “peculiarly dependent  
1427 upon the facts of each case” (quoting *Rogers v. Lodge*, 458 U.S. 613, 621)); *see*  
1428 *also LULAC v. Clements*, 999 F.2d at 850–51.

1429 Thus, “[t]he proper question to ask is this: If the [S]tate’s districting  
1430 plan takes effect, will the voting behavior of the white majority cause the  
1431 relevant minority group’s preferred candidate usually to be defeated?”  
1432 *Robinson*, 86 F.4th at 597 (quotation marks and citation omitted). In other  
1433 words, do cohesion among the minority group and bloc voting among the  
1434 majority population both exist. We now examine the evidence regarding the  
1435 second and third preconditions as they relate to the enacted districts in the  
1436 areas where we found the three illustrative districts satisfied precondition  
1437 one.

1438 The Plaintiffs presented the expert testimony of Dr. Lisa Handley as  
1439 their evidence of the second and third *Gingles* preconditions. Dr. Handley  
1440 received her PhD in political science. She then started her own company  
1441 where she provides redistricting expertise to various districts throughout the  
1442 United States. Trial Tr. 260:20–25. She has aided state and local  
1443 jurisdictions, the Department of Justice, and independent-redistricting and  
1444 civil-rights organizations by providing racial bloc-voting analysis and  
1445 expertise. Trial Tr. 255:18–21, 261:1–7. With over 35 years of quantitative-

1446 voting-analysis experience, she has testified as an expert in numerous  
1447 redistricting cases, including in Louisiana, Georgia, and Texas, where she  
1448 conducted analyses of voting patterns by race and redistricting plans to  
1449 determine whether the black population is politically cohesive and the voting  
1450 is polarized. PTX-004, 2-3, 70; Trial Tr. 255:18-21, 257:23-260:16. At trial,  
1451 we accepted Dr. Handley as an expert in racially polarized voting and the  
1452 statistical analysis of minority vote dilution and redistricting. Trial Tr.  
1453 262:15-22.

1454 To challenge Dr. Handley's analyses, the Defendants presented  
1455 expert testimony from Rice University professor Dr. John Alford. DX-001,  
1456 2. Dr. Alford has been teaching political science at Rice for over 35 years and  
1457 is well-versed in redistricting, elections, voting behavior, and statistical  
1458 methods. *Id.* Dr. Alford has served as an expert witness in numerous  
1459 redistricting cases, including in Louisiana, Georgia, and Texas, where he  
1460 presented statistical methodology and analyses related to racially polarized  
1461 voting pursuant to the *Gingles* second and third preconditions. Trial Tr.  
1462 1410:22-1411:23; DX-001, 30-31. At trial, we accepted Dr. Alford as an  
1463 expert on assessing the second and third *Gingles* preconditions and Senate  
1464 Factor 2. Trial Tr. 1413:12-19.

1465 Dr. Handley analyzed racial voting patterns in the county clusters  
1466 where the seven illustrative districts were drawn to evaluate the extent of  
1467 racially polarized voting. She focused on areas where the Illustrative and  
1468 Enacted Plans overlapped. PTX-004, 6-8; Trial Tr. 262:24-263:7. She  
1469 classified the senate districts as Area One — North West and North Central;  
1470 Area Two — Greater Golden Triangle; Area Three — South Central; and  
1471 Area Four — South East. The house districts were classified as Area Five  
1472 — Western Jackson; Area Six — Golden Triangle; and Area Seven — East  
1473 Central. PTX-004, 7-8 (Table One). The two illustrative senate districts we  
1474 concluded satisfy the first *Gingles* precondition, Illustrative SD 2 and SD 9,

1475 are in Areas One and Four, and the valid illustrative house district,  
1476 Illustrative HD 22, is in Area Two, with some overlap in Area Six. *See id.*

1477 Dr. Handley utilized homogeneous precinct analysis, ecological  
1478 regression, and ecological inference, three well-accepted statistical methods  
1479 employed in *Gingles* analyses. PTX-004, 3–5; Trial Tr. 270:6–12. These  
1480 three methods calculate the percentage of black voters and white voters who  
1481 voted for specific candidates in certain elections. Trial Tr. 273:25–274:7. Dr.  
1482 Handley and Dr. Alford agreed that, of the three methods used, the ecological  
1483 inference (“EI RxC”) method is the most accurate and reliable for  
1484 determining credible intervals of racial bloc voting. Trial Tr. 270:13–273:11,  
1485 1425:2–9, 1426:8–12. We accept this characterization. Further, EI RxC was  
1486 the principal method Dr. Handley employed when analyzing the recent  
1487 statewide general elections, state legislative general elections, statewide  
1488 Democratic primaries, and nonpartisan judicial contests in the seven areas of  
1489 interest. PTX-004, 8–11; Trial Tr. 270:13–273:11.

1490 Dr. Handley primarily focused on contests that included both black  
1491 and white candidates because courts have found these biracial elections to be  
1492 more probative than contests with only white candidates for a *Gingles*  
1493 polarized-voting analysis. Trial Tr. 274:22–275:6. For a comparison, she  
1494 also analyzed several elections that did not include black candidates. *See*  
1495 PTX-004, 9. Dr. Handley found that all seven areas she examined  
1496 demonstrated consistently high levels of racially polarized voting, with black  
1497 voters cohesively supporting their preferred candidates and white voters  
1498 cohesively bloc-voting against black-preferred candidates. Though we must  
1499 be alert to how the evidence and Dr. Handley’s findings relate to the areas

1500 encompassing the three illustrative districts that satisfy the first *Gingles*  
1501 precondition, we need not disentangle all of Dr. Handley’s analyses.<sup>5</sup>

1502 *a. State Legislative Elections*

1503 Dr. Handley analyzed 19 biracial state legislative elections in each of  
1504 the seven illustrative district areas under the 2012 enacted district  
1505 boundaries. PTX-004, 9–10, 12. Dr. Handley classified these state legislative  
1506 contests as endogenous elections, meaning the elections are for the same  
1507 offices as the ones involved in the litigation. Trial Tr. 1447:2–16. She  
1508 testified that endogenous elections are the most probative when analyzing the  
1509 second and third preconditions. The Fifth Circuit once stated that when  
1510 considering whether there is racial bloc voting under *Gingles*, “elections  
1511 involving the particular office at issue will be more relevant than elections  
1512 involving other offices.” *Magnolia Bar Ass’n, Inc. v. Lee*, 994 F.2d 1143, 1149  
1513 (5th Cir. 1993). We agree that legislative elections are the most probative  
1514 here, but we also acknowledge that evidence as to other elections is  
1515 potentially relevant.

1516 The Defendants’ expert Dr. Alford testified that the legislative  
1517 elections Dr. Handley considered are better classified as semi-endogenous.  
1518 Trial Tr. 1447:17–1448:13. His clarification was because the 19 elections  
1519 concern the right office but not the right districts since Dr. Handley used the  
1520 2012 district lines rather than the 2022 enacted district lines. Trial Tr.  
1521 1448:11–13; PTX-004, 9. We do not resolve the definitional dispute but

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<sup>5</sup> We examine significant parts of Dr. Handley’s evidence in what follows, but our findings as to the second and third preconditions rely on evidence relevant to the enacted districts that are in the geographical areas where the illustrative districts that we already found satisfied precondition one are located. As the Fifth Circuit stated, “plaintiffs must show that such bloc voting would be present in the *challenged* districting plan. And that conclusion must be true for voters in a particular location.” *Robinson v. Ardoin*, 37 F.4th 208, 224 (5th Cir. 2022) (emphasis in original) (citations omitted).

1522 simply accept that the 19 legislative elections selected by Dr. Handley are the  
1523 most analogous ones.

1524         The 2022 district lines and the 2023 state legislative election returns  
1525 for all county precincts became available as of November 2023, just a few  
1526 months before trial, but neither Dr. Handley nor any other expert analyzed  
1527 those returns. Trial Tr. 1202:21–1203:4; Doc [219], 44. Instead, under the  
1528 previously enacted plans, Dr. Handley considered any election within a  
1529 district if the district was either wholly contained in any of her seven areas or  
1530 overlapped with either the illustrative or enacted districts. Trial Tr. 1202:21–  
1531 1203:4; Doc [219], 44. She then performed an effectiveness analysis. PTX-  
1532 004, 58–60; Trial Tr. 322:19–22. Whatever arguments could be made that  
1533 later and better data existed, we find that at most they affect, slightly, the  
1534 weight to be given to Dr. Handley’s findings.

1535         Dr. Handley used these results to find that black citizens voted  
1536 cohesively for their candidates while white voters cohesively opposed the  
1537 black-preferred candidates in all state legislative elections. PTX-004, 12.  
1538 None of the following findings were limited to just the three geographical  
1539 areas of the relevant illustrative districts, but there also is no suggestion of  
1540 significant regional polarization variations in Mississippi. Here, too, we find  
1541 that the absence of evidence focused just on the three areas is a matter of the  
1542 weight of the evidence.

1543         Dr. Handley found that on average, 83.3 percent of black voters  
1544 supported black-preferred candidates compared to 18.3 percent of white  
1545 voters. *Id.* Additionally, black candidates were successful in the state  
1546 legislative elections only in majority-minority districts. Trial Tr. 294:17–21.  
1547 The black-preferred candidate is sometimes a white Democrat, ones like  
1548 Senator Hob Bryan, Senator David Blount, and Representative Shandra  
1549 Yates (first elected as a Democrat, then re-elected as an Independent).

1550 Stipulations [199] App. A at 17–19. The Defendants showed that in Enacted  
1551 SD 2, which contains only a 33 percent BVAP, black Democrat (and Plaintiff)  
1552 Pamela Hamner obtained 43 percent of the vote. PTX-004, 16. Enacted SD  
1553 7 has a 40.08 percent BVAP and 43.9 percent effectiveness score from Dr.  
1554 Handley, but white Democrat Hob Bryan obtained 54.89 percent of the vote.  
1555 Trial Tr. 347:23–348:25.

1556 Dr. Handley’s effectiveness analysis is not altered by these references.  
1557 Under Senate Factor 2, “proof that some minority candidates have been  
1558 elected does not foreclose a § 2 claim.” *Gingles*, 478 U.S. at 75. “[T]he  
1559 election of a few minority candidates does not necessarily foreclose the  
1560 possibility of dilution of the black vote.’” *Clark v. Calhoun County*, 88 F.3d  
1561 1393, 1397 (5th Cir. 1996) (citation omitted). At most these examples show  
1562 an occasional breakdown of racial polarization for reasons not explained in  
1563 the record. Quality of candidates and of opposition cannot always be  
1564 irrelevant. One of the Plaintiffs’ experts, Dr. Marvin King of the University  
1565 of Mississippi, testified as to those considerations:

1566 Q. Dr. King, you also refer to candidate viability. What do  
1567 you mean by that?

1568 A. Sure. So — so Black voters are strategic, right? So, you  
1569 know, there are instances when Blacks may not support the  
1570 Black Democrat candidate if they are not viable. And what we  
1571 mean by that is they haven’t raised money, they might be a  
1572 perennial candidate that puts their name on the ballot election  
1573 after election.

1574 Trial Tr. 774:22–775:4.

1575 Further, racial polarization in voting is not disproved by evidence that  
1576 black voters supported a white candidate. We are concerned with racial  
1577 polarization of voters, *i.e.*, are white voters consistently preventing the

1578 election of the candidates that black voters would choose? It is the race of  
1579 the voters, not of the candidates, that matter.

1580 Dr. Handley testified to the presence of racially polarized voting in all  
1581 19 elections, but to the extent possible we focus on her testimony related to  
1582 the areas of Illustrative SD 2, SD 9, and HD 22. Of course, none of the  
1583 elections occurred in the precise districts at issue. Trial Tr. 284:8-18. We  
1584 find that, nonetheless, the relevant areas comprise Enacted SD 2, 10, 19, 34,  
1585 42, and 45 and Enacted HD 36 and 39. *See* PTX-004, 58-60 (App. B).

1586 Of these districts, Dr. Handley specifically testified as to Enacted HD  
1587 36 and 39 and Enacted SD 42 and 45. Trial Tr. 289-93. Enacted HD 36 was  
1588 a black-majority district in which the black-preferred candidate won 77.7  
1589 percent of the votes and the white-preferred candidate received essentially  
1590 no black support. Trial Tr. 290; PTX-004, 59 (App. B). Enacted HD 39 was  
1591 not a black-majority district, and the white candidate received 75 percent of  
1592 the vote to the black-preferred candidate's 25 percent. Trial Tr. 293:2-9;  
1593 PTX-004, 60 (App. B). Dr. Handley concluded that, in Enacted SD 42, had  
1594 there been more black voters in the district, the black-preferred candidate  
1595 would have carried the election. Trial Tr. 291:22-292:2. Instead, the  
1596 majority-white district gave 85.8 percent of the votes to the white-preferred  
1597 candidate. PTX-004, 59 (App. B). In Enacted SD 45, the white-preferred  
1598 candidate received 86.8 percent of the vote, while the black-preferred  
1599 candidate received 13.2 percent. PTX-004, 59 (App. B). The white  
1600 candidate received over 95 percent of the white vote, while the majority of  
1601 black voters supported the black-preferred candidate. Trial Tr. 292:3-19.  
1602 From this, Dr. Handley concluded there was clear racial polarization in each  
1603 applicable district. Trial Tr. 289-93.

1604 Although Dr. Handley testified all 19 elections were racially polarized,  
1605 the Defendants argue the black-preferred candidate won in eight of the 19



1606 elections and seven elections were only able to be “best guess estimate[s]”  
1607 of the racially polarized voting, indicating reliability issues in Dr. Handley’s  
1608 analysis. Doc [219], 45. In most of the state legislative contests (14 out of  
1609 19), Dr. Handley found that cohesion among black voters was at least 75  
1610 percent. Pls. FOF ¶¶ 162–163. The average level of black support for  
1611 preferred candidates across the seven areas was 94.3 percent in biracial  
1612 contests. Trial Tr. 283:6–10. The Defendants’ expert did not dispute that  
1613 black voters are cohesively supporting preferred candidates in those areas.

1614 In Dr. Alford’s opinion, Dr. Handley’s definition of cohesion is  
1615 flawed. Dr. Handley defines cohesive voting as when “a substantial number  
1616 of minority voters consistently vote for the same candidates,” but she does  
1617 not identify a specific numerical threshold to determine cohesion. Trial Tr.  
1618 267:8–19. Dr. Handley testified that courts do not set a bright-line rule on  
1619 cohesive voting and instead provide a range. Trial Tr. 267:14–19. Dr. Alford  
1620 generally agreed with that but then criticized Dr. Handley’s analysis that  
1621 found “every preferred candidate gets cohesive support [b]ecause they  
1622 couldn’t be the preferred candidate” without cohesive support. Trial Tr.  
1623 1455:1–10. Dr. Alford explained the candidates would not be considered  
1624 preferred “unless they [had gotten] more votes than the other candidate” in  
1625 the election. *Id.* In his opinion, no finding can be made that the second and  
1626 third *Gingles* preconditions are met to any degree of scientific certainty  
1627 because Dr. Handley’s cohesion standard lacks any indication of the needed  
1628 level of black support to meet that standard. *Id.*; DX-001, 11.

1629 We credit Dr. Handley’s testimony that, even absent a precise  
1630 definition for cohesiveness, black and white voters are voting for separate  
1631 candidates at a sufficiently high percentage to satisfy the *Gingles*  
1632 requirements for racial polarization. In majority-black districts, the evidence  
1633 shows that white voters do not prevent the election of candidates that black  
1634 voters prefer, but that fact supports and does not undermine that

1635 preconditions two and three are satisfied. We thus reject Dr. Alford’s  
1636 criticisms of Dr. Handley’s methodology or her findings.

1637 *b. Statewide General Elections*

1638 Dr. Handley testified that legislative elections were the most  
1639 probative, but she also found useful data from other elections. She analyzed  
1640 17 statewide general elections in each of the seven illustrative district areas.  
1641 PTX-004, 8–9. Eleven elections had a black Democrat running against a  
1642 white Republican, and the remaining five had no black candidates.<sup>6</sup> *Id.* Dr.  
1643 Handley concluded that voting was consistently and starkly racially polarized  
1644 in all 17 elections. PTX-004, 11–12. An average of 94.3 percent of black  
1645 voters cohesively supported their preferred candidate, while an average of 6.9  
1646 percent of white voters voted for the black-preferred candidate in the 11  
1647 biracial elections. *Id.* at 11. In the five elections with no black candidates, the  
1648 average white support for black-preferred candidates increased to 9.1 percent  
1649 for white candidates. *Id.* at 11–12. Specifically in these statewide general  
1650 elections, Dr. Handley calculated what she qualified as “quite stark” voting  
1651 behavior. Trial Tr. 266:7. We provide Dr. Handley’s calculations, then  
1652 address Dr. Alford’s responses.

1653 First, the areas encompassing the three illustrative districts that  
1654 satisfy *Gingles* precondition one. For Illustrative SD 2 and 9, those are Areas  
1655 One and Four. In Area One, black-voter support for black-preferred  
1656 candidates ranged from 96.6 percent to 73.9 percent, with an average of 92.29  
1657 percent. PTX-004, 37–39; Trial Tr. 281:22–282:11. White-voter support for

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<sup>6</sup> Dr. Handley analyzed the 2020 presidential race in which a white man, Joseph Biden, headed the Democratic ticket and a black woman, Kamala Harris, was his running mate. PTX-004, 8. Neither Dr. Handley nor the Plaintiffs presented further statistics or analysis on the 2020 Presidential election other than to state it “was also starkly polarized in all seven areas of interest.” PTX-004, 11 n.16. Thus, we discuss only the 16 statewide elections where meaningful data was presented to the court.

1658 the black-preferred candidate ranged from 20.5 percent to 6.3 percent, with  
1659 an average of 9.67 percent. PTX-004, 37–39; Trial Tr. 282:12–20. In Area  
1660 Four, black-voter support for the black-preferred candidate ranged from 96.2  
1661 percent to 83.2 percent, with an average of 93.73 percent. PTX-004, 46–48;  
1662 *see generally* Trial Tr. 281:22–283:5. White-voter support for the black-  
1663 preferred candidate ranged from 13.1 percent to 2.8 percent, with an average  
1664 of 5.02. *Id.*

1665 For Illustrative HD 22, we consider Dr. Handley’s Areas Two and  
1666 Six. In Area Two, black-voter support for the black-preferred candidate  
1667 ranged from 97.4 percent to 85.3 percent, with an average of 95.23 percent.  
1668 PTX-004, 40–42; *see generally* Trial Tr. 281:22–283:5. White-voter support  
1669 for the black-preferred candidate ranged from 14.7 percent to 2.9 percent,  
1670 with an average of 5.84 percent. *Id.* In Area Six, black-voter support for the  
1671 black-preferred candidate ranged from 96.9 percent to 85.2 percent, with an  
1672 average of 94.98 percent. PTX-004 at 52–54; *see generally* Trial Tr. 281:22–  
1673 283:5. White-voter support for the black-preferred candidate ranged from  
1674 14.8 percent to 3.1 percent, with an average of 5.35 percent. *Id.*

1675 Now, the statistics for the remaining three areas. In Area Three, black  
1676 voter support for the black-preferred candidate ranged from 98.4 percent to  
1677 89.3 percent, with an average of 96.61 percent. PTX-004, 43–45; *see generally*  
1678 Trial Tr. 281:22–283:5. White-voter support for the black-preferred  
1679 candidate ranged from 17.5 percent to 4.2 percent, with an average of 7.49  
1680 percent. *Id.* In Area Five, black-voter support for the black-preferred  
1681 candidate ranged from 98.3 percent to 89.0 percent, with an average of 96.31  
1682 percent. PTX-004, 49–51; *see generally* Trial Tr. 281:22–283:5. White-voter  
1683 support for the black-preferred candidate ranged from 32 percent to 5.3  
1684 percent, with an average of 15.68 percent. *Id.* In Area Seven, black-voter  
1685 support for the black-preferred candidate ranged from 96.6 percent to 82.9  
1686 percent, with an average 94.26 percent. PTX-004, 55–57; *see generally* Trial

1687 Tr. 281:22–283:5. White-voter support for the black-preferred candidate  
1688 ranged from 11.2 percent to 2.2 percent, with an average of 3.86 percent. *Id.*

1689 Dr. Handley explained only the elections results in Area One at trial.  
1690 *See* Trial Tr. 276–283. She discussed her determinations with respect to two  
1691 of the elections in this area of interest, finding clear black-voter cohesion and  
1692 racial polarization. *See* Trial Tr. 278–281. Using her specific results from  
1693 Area One and the above voter-support ranges for the remaining six areas, Dr.  
1694 Handley opined that the 17 statewide general elections portrayed black voters  
1695 as being “very cohesive” and that “[y]ou couldn’t get much more cohesive  
1696 than this.” Trial Tr. 279:21–22; *see generally* Trial Tr. 276–283. She further  
1697 articulated that “[v]oting is quite polarized in th[e] seven areas” of interest.  
1698 Trial Tr. 283:18.

1699 Dr. Alford used Dr. Handley’s data to formulate his own opinions  
1700 about the 17 statewide elections. He insisted that the data does not  
1701 demonstrate racially polarized voting but, instead, voting that is polarized  
1702 around party. Trial Tr. 1443:1–13. Dr. Alford explained that the data  
1703 showed a gap in voter preference in these statewide general elections among  
1704 black and white voters in a contest between two white candidates with a mean  
1705 difference of 86.5 percent based solely on party. DX-001, 10. In an election  
1706 between a white Republican and a black Democrat, however, the mean  
1707 difference in voting support among black and white voters was 87.6 percent.  
1708 *Id.* Removing the racial cue, the mean difference between the white  
1709 Republican and black Democrat is 86.3 percent. *Id.* Democratic candidates  
1710 had a 90 percent range of cohesive support by black voters, and Republican  
1711 candidates had an 80–90 percent range of cohesive support by white voters.  
1712 *Id.* at 7–8. In Dr. Alford’s opinion, whether a candidate is a Democrat or a  
1713 Republican makes an almost 90 percent difference to black and white voters  
1714 in these elections, but whether a candidate is black or white barely registers.  
1715 *Id.* at 10.

1716 Dr. Alford asserted this indeed shows partisan polarized voting  
1717 because “when we vary the race of candidates, it simply doesn’t [] make a  
1718 difference.” Trial Tr. 1442:10–11. Dr. Alford conceded, however, that it is  
1719 “not empirically untrue of” Dr. Handley’s data that “Black voters  
1720 overwhelmingly prefer Black candidates[, and] White voters overwhelmingly  
1721 prefer White candidates.” Trial Tr. 1443:1–6. He clarified this “is not  
1722 actually something the [data] could disconfirm” and opined the better  
1723 conclusion is that partisanship is what is polarizing the voters because “the  
1724 data [in its entirety] doesn’t support” race as the polarizing factor. Trial Tr.  
1725 1443:5–12.

1726 We find Dr. Alford’s concession — that race versus party as the  
1727 motivating factor is quite difficult to distinguish from the data — may be true  
1728 but does not prevent us from making findings here. We see in the 16  
1729 statewide contests almost always a range of no less than 95 percent support  
1730 by black voters for the Democratic candidate, and, in those same elections,  
1731 less than 10 percent support from white voters. There are aberrant elections,  
1732 as both experts testified. The most significant is when the last of the  
1733 Democratic statewide officials, Attorney General Jim Hood, ran for  
1734 Governor in 2019. He received almost 18 percent of the white vote and 96  
1735 percent of the black vote. We contrast that with the evidence in Dr.  
1736 Handley’s report that when black Hattiesburg mayor Johnny DuPree was the  
1737 Democratic nominee for Governor in 2011, his white crossovers were only  
1738 8.4 percent, less than half of what Attorney General Hood received. Race  
1739 matters.

1740 We do not find that, if an occasional candidate supported  
1741 overwhelmingly by black voters can break the color barrier just a bit among  
1742 white voters, this proves anything other than that there will be outliers in  
1743 statistical analysis.

1744           Similarly, at times the black Democratic candidate did not have a  
1745 significant campaign. One of these was the 2015 Governor’s race, where the  
1746 black Democratic nominee Robert Gray received only 84 percent of the black  
1747 vote. No evidence was introduced about him, but we accept that election as  
1748 an example of a Democratic candidate who may not have appeared credible  
1749 to many black voters. We find that this data demonstrates racial bloc voting  
1750 exists in the areas of the three illustrative districts that satisfied the first  
1751 precondition.

1752                           *c. Statewide Democratic Primaries and Judicial-District Elections*

1753           Dr. Handley next analyzed eight statewide biracial Democratic  
1754 primary elections. PTX-004, 10–11. She found reliable statistical estimates  
1755 impossible to generate solely in the seven areas and thus reported statewide  
1756 estimates. Trial Tr. 296:21–297:4. Dr. Handley focused solely on  
1757 Democratic primaries because black voters generally prefer Democrats over  
1758 Republicans, meaning there would be no black-preferred candidates in the  
1759 Republican primaries. Moreover, so few black voters participate in  
1760 Republican primaries such that reliable voting behavior estimates cannot be  
1761 produced. Trial Tr. 296:9–18. Just these preliminary observations reveal  
1762 that these elections are not useful. Accordingly, we do not discuss the  
1763 evidence with the exception of the following.

1764           Dr. Handley examined three recent Mississippi non-partisan elections  
1765 for the state supreme court in which there was at least one black and one  
1766 white candidate. She found sharp racial polarization in the two contests in  
1767 which the black candidate won in a district with a voting-age population fairly  
1768 evenly divided between black citizens and white citizens. She found no racial  
1769 polarization in the third election, won by the white candidate in a district with  
1770 a substantial white-majority electorate. PTX-004, 13. The two polarized  
1771 elections had over 90 percent black-voter support for black candidates and

1772 white-voter support for white candidates. *Id.* Dr. Handley conducted this  
1773 analysis solely “to rebut the contention that it could be party not race”  
1774 causing these results, and she concluded polarization was present  
1775 “regardless of the fact that party was not on the ballot.” Trial Tr. 300:7–8,  
1776 21–22.

1777 Dr. Alford’s rebuttal was to acknowledge that while Mississippi  
1778 judicial elections are nominally nonpartisan, it is a widely acknowledged fact  
1779 that the candidates and their campaigns are anything but nonpartisan. DX-  
1780 001, 15. Partisan advertisements, appeals, candidate endorsements, and  
1781 donations are common in Mississippi, even resulting in court battles over  
1782 party alignment for candidates. *See generally James v. Westbrook*, 275 So. 3d  
1783 62 (Miss. 2019). We agree with the Plaintiffs that not all voters would be  
1784 aware of the partisan alliances behind individual supreme court candidates.  
1785 Nonetheless, a high-enough percentage of voters know which party supports  
1786 which judicial candidate for us to reject Dr. Handley’s factual claims as to  
1787 these elections.

1788 \* \* \*

1789 We find racial polarization among voters in Mississippi is quite high.  
1790 Trial Tr. 267:4–6. Black-preferred candidates are consistently unable to win  
1791 elections unless running in a majority-minority district. Trial Tr. 268:1–9.  
1792 White voters are also cohesive in voting for candidates that usually defeat the  
1793 black-preferred candidates. Though there is no standard set by courts on the  
1794 level of cohesion needed to support the analysis under *Gingles*, we find that  
1795 Dr. Handley is correct that the level of cohesion here is sufficient, particularly  
1796 for the areas encompassing the three valid illustrative districts.

1797 Having met their burden under the second and third *Gingles*  
1798 preconditions, the Plaintiffs have no duty “to disprove that factors other than  
1799 race affected voting patterns” in the areas of interest. *Teague v. Attala*

1800 *County*, 92 F.3d 283, 290 (5th Cir. 1996). The Defendants, however, could  
1801 “rebut the plaintiffs’ evidence by showing that no such [racial] bias exists in  
1802 the relevant voting community.” *Id.*

1803 We have already mentioned that the Defendants attempt to rebut by  
1804 saying this is all partisanship, not race. Whether that argument should be  
1805 addressed here or under the totality-of-the-circumstances analysis is unclear.  
1806 The Defendants at least acknowledged that it could fall under Senate Factor  
1807 2, *see* Doc [218], 15, but precedent sometimes blurs that line.<sup>7</sup>

1808 Just where the discussion best fits will not matter in this case, as  
1809 ultimately the evidence does not support that racial polarization has become  
1810 partisan divisions. For detailed reasons we set out in our analysis of Senate  
1811 Factor 2, we find that, although there certainly was evidence and argument  
1812 presented on that possibility, the Defendants have not rebutted the Plaintiffs’  
1813 showing under *Gingles* preconditions two and three.

1814 The Plaintiffs have thus satisfied the three *Gingles* preconditions for  
1815 Illustrative SD 2, SD 9, and HD 22.

1816 *3. Totality of the Circumstances*

1817 Having found that the Plaintiffs satisfied all three preconditions for a  
1818 vote-dilution claim, we must now engage in a “searching practical evaluation  
1819 of the past and present reality” of the political process in Mississippi.  
1820 *Gingles*, 478 U.S. at 79 (quotation marks and citation omitted). That

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<sup>7</sup> For example, the *en banc* court in *LULAC v. Clements* held that the evidence failed to show race, not partisanship, best explained voting in Dallas County. 999 F.2d at 877. As such, there was no “threshold showing required by *Gingles*.” *Id.* That implicates the preconditions. That same opinion, however, also noted when discussing partisanship that the question is “whether the political processes are equally open,” which rests “upon a searching practical evaluation of the past and present reality.” *Id.* at 860 (quotation marks and citations omitted). That is a totality inquiry. *See Milligan*, 599 U.S. at 19.



1821 evaluation considers the totality of the circumstances, described as “an  
1822 intensely local appraisal of the design and impact of the contested electoral  
1823 mechanisms.” *Id.* (quotation marks and citation omitted).

1824 In 1986, the Supreme Court adopted “typical factors” to be  
1825 considered in this portion of the Section 2 vote-dilution analysis. *Id.* at 36 &  
1826 n.4. The United States Senate referred to these same factors in its report on  
1827 the 1982 amendments to the Voting Rights Act. *See* S. REP. NO. 97-417, at  
1828 23, 28–29. Most courts refer to them as the Senate Factors, and so will we.

1829 The following is the usual enumeration:

- 1830 1. the extent of any history of official discrimination in the  
1831 state or political subdivision that touched the right of the  
1832 members of the minority group to register, to vote, or  
1833 otherwise to participate in the democratic process;
- 1834 2. the extent to which voting in the elections of the state or  
1835 political subdivision is racially polarized;
- 1836 3. the extent to which the state or political subdivision has  
1837 used unusually large election districts, majority vote  
1838 requirements, anti-single shot provisions, or other voting  
1839 practices or procedures that may enhance the opportunity  
1840 for discrimination against the minority group;
- 1841 4. if there is a candidate slating process, whether the members  
1842 of the minority group have been denied access to that  
1843 process;
- 1844 5. the extent to which members of the minority group in the  
1845 state or political subdivision bear the effects of  
1846 discrimination in such areas as education, employment, and  
1847 health, which hinder their ability to participate effectively  
1848 in the political process;
- 1849 6. whether political campaigns have been characterized by  
1850 overt or subtle racial appeals; [and]
- 1851 7. the extent to which members of the minority group have  
1852 been elected to public office in the jurisdiction. . . .

- 1853 8. whether there is a significant lack of responsiveness on the  
1854 part of elected officials to the particularized needs of the  
1855 members of the minority group; [and]  
1856 9. whether the policy underlying the state or political  
1857 subdivision’s use of such voting qualification, prerequisite  
1858 to voting, or standard, practice or procedure is tenuous.

1859 *Teague*, 92 F.3d at 292–93 (alterations in original) (quoting *Gingles*, 478 U.S.  
1860 at 36–37).

1861 *Gingles* invited consideration of other factors: “While the enumerated  
1862 factors will often be pertinent to certain types of [Section] 2 violations,  
1863 particularly to vote dilution claims, other factors may also be relevant and  
1864 may be considered.” *Gingles*, 478 U.S. at 45 (footnote omitted). Rarely do  
1865 courts consider others, though. We do not consider Factor 4, as no evidence  
1866 was offered relevant to the slating of candidates.

1867 Importantly, the totality-of-the-circumstances inquiry recognizes that  
1868 a court’s application of these factors “is peculiarly dependent upon the facts  
1869 of each case.” *Id.* at 79. Defendants may attempt “to rebut plaintiffs’  
1870 claim[s] of vote dilution via evidence of objective, nonracial factors” like  
1871 partisan politics; as we stated before, it is not the Plaintiffs’ burden to negate  
1872 “all nonracial reasons possibly explaining” voting patterns. *Teague*, 92 F.3d  
1873 at 292, 295 (quotation marks and citation omitted).

1874 Indeed, “[i]t will be only the very unusual case in which” the *Gingles*  
1875 preconditions are established and liability does not follow, and, in such a case,  
1876 the court “must explain with particularity why it has concluded” there is no  
1877 Section 2 violation. *Id.* at 293 (quoting *Clark v. Calhoun County*, 21 F.3d 92,  
1878 97 (5th Cir. 1994)).

1879 We now review the factors.

1880                    *a. Senate Factors 1 and 3*

1881                    The first factor in examining the totality of the circumstances is “the  
1882 extent of any history of official discrimination in the state” that diluted or  
1883 denied “the right of the members of the minority group to register, to vote,  
1884 or otherwise to participate in the democratic process.” *Gingles*, 478 U.S. at  
1885 36–37. The third is “the extent to which the state . . . has used . . . voting  
1886 practices or procedures that may enhance the opportunity for discrimination  
1887 against the minority group.” *Id.* at 37. We consider the two factors together  
1888 because both look at the history of discrimination. The evidence as to each  
1889 is at times the evidence as to both.

1890                    How much history to consider is one question. To answer it, we  
1891 distinguish between judicial precedents that examined history relevant to an  
1892 Equal Protection analysis, which requires showing discriminatory or  
1893 invidious intent, and those that examined history relevant to Section 2 of the  
1894 Voting Rights Act.

1895                    The Defendants argue that distant history of discrimination in  
1896 Mississippi is all but irrelevant. Among their authorities is *Shelby County*, 570  
1897 U.S. 529. There, the Supreme Court concluded the factual circumstances in  
1898 1965 that allowed Congress to impose preclearance obligations on changes to  
1899 election and voting rules in those states with a history of racial discrimination  
1900 were constitutionally insufficient to support the continued application of the  
1901 preclearance obligations. *Id.* at 556–57. As the Court phrased it, the  
1902 “extraordinary measure[]” of requiring certain “States to obtain federal  
1903 permission before enacting any law related to voting” was “a drastic  
1904 departure from basic principles of federalism.” *Id.* at 534–35. Making that  
1905 requirement applicable only to some states was “an equally dramatic  
1906 departure from the principle that all States enjoy equal sovereignty.” *Id.* at  
1907 535. The Court held that current conditions must justify so wrenching a

1908 change to constitutional norms as to require states to preclear their laws. *Id.*  
1909 at 536.

1910 Obviously, *Shelby County* was not a Section 2 case and did not concern  
1911 Senate Factor 1. Moreover, we are involved in a less revolutionary task than  
1912 distorting the constitutional norms of equal sovereignty. We are considering  
1913 a range of circumstances, including history, that the Supreme Court has  
1914 identified to help us evaluate a State’s recent redistricting decision. The  
1915 *Shelby County* decision thus does not provide us with relevant guidance.

1916 Further, the Defendants rely on a recent Fifth Circuit opinion which  
1917 held that the circumstances surrounding the adoption of Mississippi’s 1890  
1918 Constitution did not invalidate voting qualifications as currently applied in  
1919 the state. *Harness v. Watson*, 47 F.4th 296, 306–307, 311 (5th Cir. 2022) (en  
1920 banc), *cert. denied*, 143 S. Ct. 2426 (2023). That was an Equal Protection  
1921 claim for which the Fifth Circuit had to decide whether the invidious intent  
1922 behind the initial measure was relevant after later amendments. *Id.* at 299,  
1923 303. There was no analysis of Senate Factor 1. *See generally id.*

1924 The Defendants urge us to interpret a 2001 Fifth Circuit opinion  
1925 applying the Voting Rights Act as closing the door to any review of older  
1926 history. Doc [219], 60 ¶ 206. The opinion concerned Mississippi’s being  
1927 divided into three districts for election of state supreme court justices and  
1928 members of two state commissions. *NAACP v. Fordice*, 252 F.3d 361, 364  
1929 (5th Cir. 2001). The court remarked that “the abysmal reality of  
1930 Mississippi’s history of official discrimination regarding the right of African–  
1931 Americans to register and to vote is evident in the record,” and “that  
1932 African–Americans in Mississippi are less educated, suffer from higher  
1933 unemployment, earn lower incomes, and live in disparate conditions as  
1934 compared to Mississippi’s white citizens.” *Id.* at 367. The court then stated  
1935 that unless plaintiffs show “these facts ‘actually hamper the ability of

1936 minorities to participate,’” the evidence does not “support a finding that  
1937 minorities suffer from unequal access to Mississippi’s political process.” *Id.*  
1938 (quoting *LULAC v. Clements*, 999 F.2d at 866). We consider the Fifth  
1939 Circuit’s holding to focus on what is not enough by itself, not to limit what  
1940 we are to consider as to the totality.

1941           We find no bar in *Shelby County, Fordice*, or *Harness* as to when older  
1942 history becomes too attenuated or diluted by later events to be relevant in a  
1943 Voting Rights Act claim. There is, however, a clear statement in a Fifth  
1944 Circuit Voting Rights Act opinion: “[T]he most relevant historical evidence  
1945 is relatively recent history, not long-past history,” but “even long-ago acts of  
1946 official discrimination give context to the [*Gingles*] analysis.” *Veasey v.*  
1947 *Abbott*, 830 F.3d 216, 232, 257 (5th Cir. 2016) (quotation marks and citation  
1948 omitted). At least for context, then, early history of discrimination has  
1949 relevance.

1950           For all that, there is no reason to summarize the evidence concerning  
1951 the earlier history and determine its precise relevance. The Defendants have  
1952 accepted the accuracy of the statement in one precedent “[t]hat Mississippi  
1953 has a long and dubious history of discriminating against blacks is  
1954 indisputable.” *Teague*, 92 F.3d at 293–94. We find, based on the evidence  
1955 introduced in this case, that the long and dubious history, with significant  
1956 acts of violence still occurring, lasted at least through the 1960s. We examine  
1957 what has occurred since then.

1958           Though we just disclaimed full consideration of early history, we will  
1959 start with the Plaintiffs’ arguments concerning how certain provisions in the  
1960 1890 Mississippi Constitution continue to have discriminatory effects. Two  
1961 of the Plaintiffs’ expert witnesses, the previously mentioned Dr. Marvin King  
1962 and Jackson State University Professor Robert Luckett, elaborated on the  
1963 effects of the 1890 constitution. The constitution contained both a poll tax

1964 and literacy test, allowed for the creation of all-white primaries and  
1965 segregated education, and created a means to disenfranchise black  
1966 Mississippians, though it also could have operated to prevent poor and poorly  
1967 educated whites from voting. Trial Tr. 375:4–377:22, 379:2–17, 421:10–  
1968 422:16. Of these provisions, the only identified provisions still in effect in  
1969 Mississippi are a lifetime disenfranchisement of those convicted of certain  
1970 crimes and a residency requirement. Trial Tr. 451:13–452:2, 454:15–456:16.  
1971 There was evidence that only the disenfranchisement provision continues to  
1972 disproportionately disenfranchise black citizens. The Fifth Circuit  
1973 concluded that this current, somewhat-amended list of disenfranchising  
1974 crimes has been shorn of its original discriminatory *purpose*. *Harness*, 47  
1975 F.4th at 306–307, 311.

1976 Under Section 2 of the Voting Rights Act, though, we are concerned  
1977 with whether there are discriminatory *effects*. Plaintiffs’ expert Dr. Byron  
1978 D’Andra Orey testified that “formerly incarcerated individuals are less likely  
1979 to participate in politics” in Mississippi and that “African-Americans are  
1980 disproportionately incarcerated.” Trial Tr. 519:22–25. Dr. Orey opined that  
1981 Mississippi’s disenfranchising laws cause a huge racial disparity in whether  
1982 black Mississippians are able to participate in voting. *Id.*; *see* Trial Tr.  
1983 569:19–571:13. Dr. Orey further identified that Mississippi’s severe lifetime-  
1984 disenfranchisement law and black Mississippians’ overrepresentation in the  
1985 criminal-justice system lead to black Mississippians being 12 percent less  
1986 likely to vote while white Mississippians are one percent less likely to do so.  
1987 PTX-008, 19–20; *see* Trial Tr. 569:19–571:13. Dr. Lockett, another Plaintiffs’  
1988 expert, presented further evidence that black Mississippians are incarcerated  
1989 at disproportionately higher rates than whites. Trial Tr. 416:6–13. We are  
1990 not concerned here with policy justifications, only whether the  
1991 disenfranchisement provision is disproportionate in its effects. We accept

1992 the testimony as credible that it does leave a higher percentage of black than  
1993 white Mississippians ineligible to vote.

1994 The two Plaintiffs' experts also found racial discrimination in the  
1995 State's rules for nominating candidates. Dr. King found that in 1972, the  
1996 legislature first adopted the requirement that party primaries include a runoff  
1997 if no candidate receives a majority, and that the adoption was "an effort to  
1998 minimize nascent Black voting strength." PTX-013, 16-17. That is factually  
1999 incorrect. The statute Dr. King cites as creating the requirement of runoff  
2000 primaries was the recodification of a prior statute into a new Mississippi Code  
2001 adopted in 1972. *See* MISS. CODE ANN. § 23-3-69 (1972) (recodifying MISS.  
2002 CODE § 3194 (1942)). A still earlier statute was the first to mandate runoff  
2003 primaries. *See* MISS. CODE § 3701 (1906).

2004 The Plaintiffs do not argue that party primaries are discriminatory.  
2005 Their arguments solely apply to the runoff requirement. Because the only  
2006 testimony to support a discriminatory purpose to runoff primaries was  
2007 inaccurate, we find no racial motive behind adoption of the requirement.

2008 Regardless of motive, though, runoff primaries qualify as potential  
2009 evidence relevant to Senate Factor 3 as a majority-vote requirement that  
2010 could provide an opportunity for discrimination. Any discriminatory effect  
2011 of the runoffs applies only to party nominations, not to general elections. In  
2012 fact, the report by Plaintiffs' expert Dr. Lisa Handley stated that "candidates  
2013 supported by black voters usually managed to win the Democratic  
2014 nomination." PTX-004, 13. Her trial testimony was arguably even stronger:  
2015 "[E]ven if voting is [racially] polarized in the Democratic primary, it's  
2016 relatively easy, because so few whites participate in the Democratic primary  
2017 for the candidate of choice of Black voters to succeed in the Democratic  
2018 primary." Trial Tr. 296:4-8. We find that the Plaintiffs did not present

2019 evidence to support that runoff primaries enhance the opportunities to  
2020 discriminate against black voters in Mississippi.

2021           The Plaintiffs also criticize a 2023 statute governing the removal of  
2022 names, or purging, from the voting rolls. *See* H.B. 1310, 2023 Leg., Reg.  
2023 Sess., 2023 Miss. Laws, ch. 534 (codified as MISS. CODE ANN. § 23-15-153).  
2024 It provides that, along with other reasons, names of registered voters may be  
2025 removed from the voter rolls if they have “failed to comply with the  
2026 provisions of Section 23-15-152.” MISS. CODE ANN. § 23-15-153(1). Both  
2027 the referenced Section 23-15-152 and a federal statute allow removal of  
2028 voters’ names when they have not voted for two consecutive federal  
2029 elections. *Compare* MISS. CODE ANN. § 23-15-152(4), *with* 52 U.S.C.  
2030 § 20507(d)(1)(B)(ii). Federal law also requires that state policies be  
2031 nondiscriminatory and not result in the removal of a registered voter who has  
2032 voted or appeared to vote in one of the past two general federal elections. 52  
2033 U.S.C. § 20507(b)(1)-(2). We have not been shown how the Mississippi  
2034 statutes on removing names of those who have not voted violate any federal  
2035 law.

2036           Another of the Plaintiffs’ claims concerns Mississippi’s absentee-  
2037 voting rules. Mississippi restricts absentee voting to voters with one of eight  
2038 acceptable excuses. MISS. CODE ANN. § 23-15-713(a)-(h). Requesting an  
2039 absentee ballot by mail may also require notarization. *See* § 23-15-627. The  
2040 Plaintiffs do not claim, and we do not hold, that the State is violating the legal  
2041 rights of voters in having more restrictive absentee-voting practices and not  
2042 allowing early voting. Those are policy decisions on the proper procedures  
2043 for conducting elections. A more traditional state might not embrace all the  
2044 current options for voting other than in person on election day. The factual  
2045 issue under Senate Factor 3, however, is whether identified voting  
2046 procedures tend to enhance the opportunity for discrimination against the  
2047 minority group. Dr. Lockett testified that Mississippi’s restrictions on



2048 absentee voting disproportionately impact black voters who rely on absentee  
2049 voting in greater proportions than white voters due to financial hardships,  
2050 work requirements, and health disparities. Trial Tr. 403:18–408:9. We  
2051 credit that testimony. The main factor allegedly driving the disproportionate  
2052 impact is the nature of black poverty. *See* Trial Tr. 404:19–406:20.

2053 The Plaintiffs also claim a recent statutorily implemented voting  
2054 practice disproportionately affects black voters. In 2023, the legislature  
2055 enacted House Bill 1020, which expanded the already existing Capitol  
2056 Complex Improvement District of Jackson (“CCID”). *See* H.B. 1020, 138th  
2057 Leg., Reg. Sess., 2023 Miss. Laws, ch. 546. Dr. Luckett asserted the  
2058 expansion of the police force and court system in the CCID now  
2059 encompassed “what constitutes 100 percent of the measurable white  
2060 population in the city of Jackson.” Trial Tr. 411:4–6. Dr. Luckett claimed  
2061 this enactment was “part of a long history and a continuum of attempts to  
2062 diminish and disfranchise African-Americans in the state of Mississippi from  
2063 1868 to the present.” Trial Tr. 413:2–4.

2064 Dr. Luckett’s testimony was based on a provision of the enactment  
2065 that created four temporary judgeships to be appointed by the State’s chief  
2066 justice. *See* H.B. 1020, *supra*, at sec. 1. Because black residents compose 83  
2067 percent of the Jackson population, Dr. Luckett asserted those unelected  
2068 judges would disproportionately impact black voters. *See* Trial Tr. 412.

2069 Events have overtaken the issue. In September 2023, the Mississippi  
2070 Supreme Court held that creating four temporary appointed judgeships with  
2071 terms just short of four years violated the state constitution. *Saunders v.*  
2072 *State*, 371 So. 3d 604, 608 (Miss. 2023). On the other hand, the court  
2073 recognized the chief justice’s long-existing and frequently utilized statutory  
2074 authority to appoint special judges to assist a “judicial district in Mississippi  
2075 facing *exigent circumstances*.” *Id.* (emphasis in original); *see also* MISS. CODE

2076 ANN. § 9-1-105(2). Such judgeships would end when the exigencies ended.  
2077 *See Saunders*, 371 So. 3d at 608. We thus find that the allegedly  
2078 disenfranchising aspects of H.B. 1020 are gone. Moreover, the state court's  
2079 analysis revealed that the same power to appoint temporary judges had  
2080 already been granted to the chief justice. The part of H.B. 1020 that was  
2081 invalidated was essentially a duplication of existing authority, though the  
2082 prior statute did not mandate its immediate use in a specific locale as did H.B.  
2083 1020. The differences between the chief justice's authority under the two  
2084 statutes is an insufficient basis to find a dilution of black voting rights.

2085         The Defendants urge that under Senate Factor 1 we consider the  
2086 history of legislative redistricting. The Defendants suggest we start with  
2087 redistricting after the 2000 census. We instead will begin one decade earlier,  
2088 when a three-judge district court rejected the Mississippi Legislature's plan  
2089 adopted after the 1990 census and which had been used in the 1991 election;  
2090 the court ordered a new election in 1992 under a court-ordered plan. *Watkins*  
2091 *v. Mabus*, 771 F. Supp. 789, 797-98, 807 (S.D. Miss. 1991), *aff'd in part*,  
2092 *vacated in part*, 502 U.S. 954 (1991). The Defendants are correct, though,  
2093 that the next two redistricting plans for the legislature, adopted after the 2000  
2094 and 2010 censuses, were precleared by the Department of Justice under the  
2095 then-operative requirements of the Voting Rights Act.

2096         Less favorable evidence concerns congressional redistricting. The  
2097 Plaintiffs' only argument regarding congressional redistricting was in one  
2098 sentence detailing Mississippi's need to draw new Section 5-compliant  
2099 congressional districts in 2002. *See generally Smith v. Clark*, 189 F. Supp. 2d  
2100 503 (S.D. Miss. 2002). The additional court opinions that have often found  
2101 those districts to violate either the Constitution or the Voting Rights Act are  
2102 available to us for consideration as well. We consider them.

2103           The legislature drew new congressional districts in 1981, but the  
2104 United States Attorney General objected to the districts under the  
2105 preclearance requirement of Section 5 of the Voting Rights Act. *See Jordan*  
2106 *v. Winter*, 541 F. Supp. 1135, 1138 (N.D. Miss. 1982). The 1982 primaries  
2107 and general elections were held under an interim redistricting plan designed  
2108 by a three-judge district court. *Id.* at 1144–45. That court’s 1982 decision  
2109 was later vacated and the case remanded by the Supreme Court “for further  
2110 consideration in light of Section 2 of the Voting Rights Act of 1965, 42 U.S.C.  
2111 [§] 1973, as amended in 1982.” *Brooks v. Winter*, 461 U.S. 921, 921 (1983).  
2112 That amendment allowed a finding of a Section 2 violation if the results of a  
2113 measure relating to voting, regardless of intent, denied or abridged voting  
2114 rights. *See* Voting Rights Act Amendments of 1982, Pub. L. No. 97–205, § 3,  
2115 96 Stat. 131, 134 (codified as amended 52 U.S.C. § 10301). On remand, the  
2116 district court imposed a new map that increased the black voting-age  
2117 population in the Second District. *Jordan v. Winter*, 604 F. Supp. 807, 810,  
2118 814 (N.D. Miss.), *aff’d sub nom. Mississippi Republican Exec. Comm. v. Brooks*,  
2119 469 U.S. 1002 (1984).

2120           There was no litigation over the Mississippi Legislature’s plan for  
2121 congressional districts after the 1990 Census. That is the most recent  
2122 congressional redistricting that has not been challenged.

2123           After the 2000 Census, which led to Mississippi’s loss of one  
2124 congressional seat, the legislature failed to adopt a redistricting plan in time  
2125 for the 2002 election filing deadlines. *See Smith*, 189 F. Supp. 2d at 504–05.  
2126 Therefore, a three-judge district court devised a redistricting plan and  
2127 ordered that it be used for the 2002 elections and every succeeding election  
2128 until the State produced an acceptable plan. *Smith v. Clark*, 189 F. Supp. 2d  
2129 548, 559 (S.D. Miss. 2002). The Supreme Court affirmed. *Branch v. Smith*,  
2130 538 U.S. 254, 265 (2003).

2131           After the 2010 Census, the same three-judge district court found the  
2132 new census rendered the court’s 2002 plan malapportioned, but the  
2133 legislature had yet to produce a viable new plan for use in the 2012 elections.  
2134 *Smith v. Hosemann*, 852 F. Supp. 2d 757, 760–61 (S.D. Miss. 2011). The court  
2135 developed a plan to which no party objected, and the court in 2011 ordered  
2136 its use until the State produced an acceptable plan. *Id.* at 765–67.

2137           After the 2020 Census, the legislature adopted its own congressional-  
2138 redistricting plan. *Smith v. Hosemann*, No. 3:01-cv-855, 2022 WL 2168960,  
2139 \*1 (S.D. Miss. May 23, 2022). The defendants moved to vacate the 2011  
2140 order, while the plaintiffs insisted the legislature’s plan was invalid. *Id.* at \*1–  
2141 2. The district court vacated the 2011 injunction, allowing the legislature’s  
2142 plan to go into effect, but it also held that the plaintiffs were not barred from  
2143 seeking relief under the Voting Rights Act. *Id.* at \*8. The United States  
2144 Supreme Court dismissed for lack of jurisdiction. *Buck v. Watson*, 143 S. Ct.  
2145 770 (2023). There have been no further proceedings in that case.

2146           Thus, unlike for legislative redistricting after the 2000 and 2010  
2147 censuses when there were no challenges to those plans, the legislature has  
2148 been held to violate the Voting Rights Act in drawing new congressional  
2149 districts in 1980, then in not drawing any in 2000 and 2010. This is some  
2150 evidence of a continuation of official discrimination.

2151           To summarize, this factor is about history. When the United States  
2152 Supreme Court upheld a district court’s finding in *Milligan* that the evidence  
2153 supported Senate Factor 1, the Court quoted the district court finding that  
2154 “Alabama’s extensive history of repugnant racial and voting-related  
2155 discrimination is undeniable and well documented.” *Milligan*, 599 U.S. at 22  
2156 (quoting *Singleton*, 582 F. Supp. 3d at 1020). We examine the Alabama  
2157 district court’s opinion to determine what the Supreme Court found  
2158 sufficient. The district court included these events:

2159           (1)     A successful constitutional challenge to legislative redistricting  
2160 after the 2010 census. *Singleton*, 582 F. Supp. 3d at 1020. The Alabama suit  
2161 concerned congressional redistricting yet considered constitutional defects  
2162 in prior legislative redistricting. Our facts are a mix, such that in this  
2163 challenge to the legislature’s redistricting we have considered challenges in  
2164 Mississippi both for Congress and for the legislature. We find that record to  
2165 be of at least comparable weight as the record in Alabama.

2166           (2)     A successful challenge to “local at-large voting systems with  
2167 numbered post created by the State Legislature.” *Id.* at 1021. This is another  
2168 example of a successful challenge to a legislative measure, and we have  
2169 identified relatively recent and successful litigation in Mississippi both for  
2170 congressional and legislative redistricting.

2171           (3)     “[T]he Justice Department has sent election observers to  
2172 Alabama nearly 200 different times, and . . . between 1965 and 2013, more  
2173 than 100 voting changes proposed by the State or its local jurisdictions were  
2174 blocked or altered under Section 5 of the Voting Rights Act.” *Id.* Here, the  
2175 Justice Department issued 81 voting-determination letters to Mississippi  
2176 counties between 1985 and 2012, ordering districts be redrawn and voting  
2177 practices be amended (PTX-063; Trial Tr. 396:16–400:12); Mississippians  
2178 have successfully challenged at-large election procedures (PTX-007, 29–30;  
2179 Trial Tr. 389:3–390:25); and more restrictive voting changes proposed by  
2180 Mississippi were enjoined by federal courts (PTX-007, 38; Trial Tr. 405:24–  
2181 406:9; 407:1–408:9; 1231:25–1232:12).

2182           We consider the evidence here to be comparable to what the *Milligan*  
2183 Court found satisfied the first and third Senate Factors for Alabama. To be  
2184 sure, Mississippi is a much different state today than during the period of its  
2185 “long and dubious history of discriminating against blacks.” *Teague*, 92 F.3d  
2186 at 293–94. Nonetheless, we find more recent events still cause the first and  
2187 third Senate Factors to weigh in favor of the Plaintiffs.

2188 *b. Senate Factor 2*

2189 Senate Factor 2 measures “the extent to which voting in the elections  
2190 of the state or political subdivision is racially polarized.” S. REP. NO. 97-417,  
2191 at 29. Said differently, the factor considers “racial bloc voting.” *Gingles*, 478  
2192 U.S. at 52 n.18; *see also* S. REP. NO. 97-417, at 55.

2193 As explained before, Senate Factor 2 overlaps with *Gingles*  
2194 precondition three, which is also routinely described as concentrating on  
2195 racial polarization. *See, e.g., Milligan*, 599 U.S. at 19 (identifying *Gingles*  
2196 precondition three as “focused on racially polarized voting”). We have  
2197 concluded under *Gingles* precondition three that the Plaintiffs met their  
2198 burden and the Defendants failed to rebut it. We now consider the issue  
2199 under the totality of the circumstances.

2200 When viewed under the totality of the circumstances, racial bloc  
2201 voting is one of the two most important factors, the other being minority  
2202 candidates’ success or failure in elections. *Gingles*, 478 U.S. at 48 n.15 (citing  
2203 S. REP. NO. 97-417, at 28–29). If both factors are “present, the other factors  
2204 . . . are supportive of, but not essential to, a minority voter’s claim.” *Id.*  
2205 (emphasis omitted).

2206 To begin, the scope of relevant evidence is broader at this stage. While  
2207 we focused our review of the *Gingles* preconditions on the districts at issue,  
2208 we may consider more under the totality analysis. *See LULAC v. Perry*, 548  
2209 U.S. at 438 (citing *Gingles*, 478 U.S. at 44–45) (noting that statewide  
2210 evidence has been used under other Senate Factors and finding it  
2211 “[p]articularly” appropriate under the proportionality factor “given the  
2212 presence of racially polarized voting . . . throughout Texas”); *see also*  
2213 *Milligan*, 599 U.S. at 22 (relying on statewide evidence under totality of  
2214 circumstances); *Fordice*, 252 F.3d at 370 (noting that exogeneous elections  
2215 are probative under Senate Factor 2).

2216           Turning to the facts, the parties agree that Mississippians vote along  
2217 racial lines. But under the totality-of-the-circumstances analysis, “[a]  
2218 defendant may try to rebut plaintiffs’ claim of vote dilution via evidence of  
2219 ‘objective, nonracial factors.’” *Teague*, 92 F.3d at 292 (quoting *Nipper v.*  
2220 *Smith*, 39 F.3d 1494, 1513 (11th Cir. 1994)). The Defendants take that  
2221 approach, arguing that the existing polarization is not “on account of race”  
2222 because Mississippi voters are “driven by partisan polarization rather than  
2223 racial polarization.” Doc [219] ¶ 233.<sup>8</sup>

2224           The parties say the Court must determine whether partisan affiliation  
2225 or race “best explains the divergent voting patterns among minority and  
2226 white citizens.” Doc [219] ¶ 183 (citation omitted); *see* Doc [220] ¶ 677; *see*  
2227 *also Lopez v. Abbott*, 339 F. Supp. 3d 589, 602–03 (S.D. Tex. 2018) (applying  
2228 similar standard). That test comes from *LULAC v. Clements*, a Section 2 case  
2229 filed by black and Hispanic residents challenging the way Texas elected its  
2230 trial judges. 999 F.2d at 838.

2231           The *LULAC v. Clements* district court held that “plaintiffs need only  
2232 demonstrate that whites and blacks generally support different candidates to  
2233 establish legally significant white bloc voting.” *Id.* at 850. The Fifth Circuit  
2234 reversed, agreeing with the defendants that “the record indisputably  
2235 prove[d] that partisan affiliation, not race, *best explain[ed]* the divergent  
2236 voting patterns among minority and white citizens in the contested

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<sup>8</sup> The Supreme Court recently considered a race-versus-partisanship issue in *Alexander*, 144 S. Ct. 1221. The plaintiffs’ claim, though, was of racial gerrymandering violative of the Equal Protection Clause, and the question before the court was whether “race predominated in the drawing of a district.” *Id.* at 1252. The *Alexander* plaintiffs did “not rely on the Voting Rights Act of 1965,” nor did the defendants. *Id.* (Thomas, J., concurring in part). Though the *Alexander* Court considered a similar issue to the one before us, its decision is inapplicable to effects-based review under Section 2 of the Voting Rights Act. *See Milligan*, 599 U.S. at 13 (discussing the effects standard).

2237 counties.” *Id.* (emphasis added). The appellate court also observed that  
2238 “[a]bsent evidence that minorities have been excluded from the political  
2239 process, a ‘lack of success at the polls’ is not sufficient to trigger judicial  
2240 intervention.” *Id.* at 853 (quoting *City of Mobile v. Bolden*, 446 U.S. 55, 109  
2241 (1980) (Marshall, J., dissenting)).<sup>9</sup>

2242 The *LULAC v. Clements* court found no evidence that minorities had  
2243 been excluded from the political process on account of race. *Id.* at 861.  
2244 Instead, it found facts “unmistakably” proving “partisan affiliation,” not  
2245 race, defeated the minority-backed judicial candidates in Texas. *Id.* “First,  
2246 white voters constitute[d] the majority of not only the Republican Party, but  
2247 also the Democratic Party, even in several of the counties in which the former  
2248 dominate[d].” *Id.* Second, both parties, “especially the Republicans,  
2249 aggressively” nominated minority candidates who were then supported  
2250 “without fail” by white voters just as much as those voters supported white  
2251 candidates. *Id.* Finally, the court found no evidence that white elected  
2252 officials were unresponsive to minority constituents, something the court  
2253 considered a hallmark of racial bloc voting. *Id.* at 858–59.

2254 This case is different. While we recognize that our review requires a  
2255 “‘functional’ and ‘practical’” examination rather than a mechanical  
2256 checklist of the facts that buttressed the *LULAC v. Clements* opinion, *id.* at  
2257 861, none of those facts exist here. There is no proof that whites constitute a  
2258 majority of the Democratic Party, that Republicans aggressively recruit and  
2259 unfailingly support black Republican candidates, or that elected white  
2260 officials respond to black constituents as they did in Texas.

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<sup>9</sup> The Supreme Court has never applied a best-explains test, but it has not overruled that binding precedent.



2261           On the responsiveness question, the parties addressed various public  
2262 issues and whether the Republican-dominated legislature has been receptive  
2263 to the stated desires of black voters. We are more persuaded, though, by  
2264 witnesses Joseph Wesley, Kenneth Harris, Pamela Hamner, Gary  
2265 Fredericks, and Terry Rogers who all testified — without contradiction —  
2266 that their elected officials ignore the black community. Trial Tr. 669:3–670:8  
2267 (Wesley); 698:15–699:16, 702:9–14 (Harris); 726:10–727:2 (Hamner);  
2268 906:20–907:18 (Fredericks); 943:22–944:3 (Rogers). According to *LULAC*  
2269 *v. Clements*, these facts indicate racial bloc voting and not partisan bloc  
2270 voting. 999 F.2d at 859; *see also Rogers v. Lodge*, 458 U.S. 613, 623 (1982)  
2271 (noting that racial bloc voting “allows those elected to ignore [minority]  
2272 interests without fear of political consequences”).

2273           Not only are the salient *LULAC v. Clements* facts missing here, but we  
2274 also find no analogous facts exist in this record. Instead, the Plaintiffs  
2275 presented credible evidence that the “political process is not ‘equally open’  
2276 to minority voters.” *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at  
2277 45–46) (summarizing a plaintiff’s burden under the totality-of-the-  
2278 circumstances test). As noted above, the Enacted Plans split black  
2279 communities like Horn Lake and Jago. *See* Section IV(B)(1)(b), *supra*. As a  
2280 result, there is no dispute that black voters are disproportionately located in  
2281 districts in which they are the minority. Under the Enacted Senate Plan,  
2282 84.33 percent of white voters live in white-majority districts while only 50.36  
2283 percent of black voters live in black districts. PTX-001, 50. A similar  
2284 disparity exists under the Enacted House Plan — 82.92 percent of whites live  
2285 in majority districts compared to just 62.38 percent of black voters. PTX-  
2286 001, 74.

2287           Once in those minority districts, it is almost impossible for a black-  
2288 preferred candidate to prevail because crossover voting is nearly non-  
2289 existent. We credit Dr. Handley’s testimony regarding “stark” polarization

2290 across varied local and statewide elections. Trial Tr. 266:7; *see also* Section  
2291 IV(B)(2)(a)–(c), *supra*. When Dr. Handley considered votes in the areas of  
2292 interest during statewide elections, black voters supported black Democrats  
2293 94.3 percent of the time while white voters crossed over at only a 6.9 percent  
2294 rate. That crossover number rose to 9.1 percent when the Democrat was  
2295 white. PTX-004, 11–12.

2296 Other courts have found that crossover percentages like these support  
2297 a finding of racial bloc voting. Most notably in *Milligan*, the district court  
2298 found racial bloc voting under *Gingles* two and three where “on average,  
2299 Black voters supported their candidates of choice with 92.3 [percent] of the  
2300 vote” while “white voters supported Black-preferred candidates with 15.4  
2301 [percent] of the vote.” 599 U.S. at 22 (quoting *Singleton*, 582 F. Supp. 3d at  
2302 1017). The Supreme Court affirmed. *Id.* at 23, 42.

2303 A similar result followed in *Robinson v. Ardoin*, when white crossover  
2304 voting was around 11.7 percent in statewide elections (per Dr. Handley) and  
2305 about 20.8 percent in “a different set of elections” (per another expert  
2306 witness). 605 F. Supp. 3d 759, 842 (M.D. La. 2022), *vacated and remanded*,  
2307 86 F.4th 574 (5th Cir. 2023) (affirming finding of Section 2 violation but  
2308 vacating injunction as legislature prepared new map). Black voters’ support  
2309 for their chosen candidates averaged 83.8 percent and rose to 93.5 percent in  
2310 two-person races. *Id.* at 801. The Fifth Circuit addressed “racial  
2311 polarization” under the third *Gingles* precondition and affirmed the finding  
2312 that the plaintiffs proved its existence. *Robinson*, 86 F.4th at 597. The  
2313 averages for Mississippi resemble — if not surpass — those in *Milligan* and  
2314 *Robinson*.

2315 The extent of that polarization further distinguishes *LULAC v.*  
2316 *Clements*, which found no legal significance to “blacks generally support[ing]  
2317 different candidates” than whites. 999 F.2d at 850. That case did not

2318 consider polarization of this magnitude or the effect it has on open  
2319 participation when coupled with cracking and packing. We find as a factual  
2320 matter the extent of the polarization between races across Mississippi  
2321 provides at least circumstantial evidence that the divide is based on race.

2322         This is not, however, the only evidence; other facts make this case  
2323 much like *Milligan*. There, the Supreme Court explained that the plaintiffs  
2324 had carried their burden at the totality-of-the-circumstances stage because  
2325 “elections in Alabama were racially polarized; . . . ‘Black Alabamians  
2326 enjoy[ed] virtually zero success in statewide elections’; . . . political  
2327 campaigns in Alabama had been ‘characterized by overt or subtle racial  
2328 appeals’; and . . . ‘Alabama’s extensive history of repugnant racial and  
2329 voting-related discrimination [was] undeniable and well documented.’” 599  
2330 U.S. at 22 (quoting *Singleton*, 582 F. Supp. 3d at 1018–24). Though Alabama  
2331 did not appeal the totality holding, the Supreme Court still found no reason  
2332 to dispute the district court’s “careful factual findings,” *id.* at 23, including  
2333 the finding that Senate Factor 2 “weigh[ed] heavily in favor of the”  
2334 plaintiffs’ Section 2 claim because the “pattern of racially polarized voting  
2335 [was] clear, stark, and intense,” *Singleton*, 582 F. Supp. 3d at 1018.

2336         These facts are equally true here in Mississippi. The two states share  
2337 a similar history, and neither has elected a black candidate in a statewide  
2338 election since Reconstruction. Trial Tr. 752:19–25, 788:14–18. Also, black  
2339 legislative candidates in Mississippi have had virtually no success in federal  
2340 or state elections outside majority-black districts. Trial Tr. 310:6–9, 388:10–  
2341 389:2, 789:1–7. We find that the Plaintiffs have shown racially polarized  
2342 voting under the totality of the circumstances.

2343         The Defendants attempt to rebut all this, however, and argue  
2344 Mississippians vote based on party, not race. To begin, they say we should  
2345 consider two Equal Protection cases that addressed the politics-versus-race

2346 issue: *White v. Regester*, 412 U.S. 755 (1973), and *Whitcomb v. Chavis*, 403  
2347 U.S. 124 (1971). “Congress codified the ‘results’ test [the Supreme Court]  
2348 had employed, as an interpretation of the Fourteenth Amendment, in *White*  
2349 and *Whitcomb*.” *LULAC v. Clements*, 999 F.2d at 851 (quoting *Gingles*, 478  
2350 U.S. at 97 (O’Connor, J., concurring in the judgment)). To the extent they  
2351 are relevant, our case is like *White*, not *Whitcomb*.

2352 In *White*, the Court found Equal Protection violations in some Texas  
2353 districts based on evidence of lack of minority political success since  
2354 Reconstruction, a history of discrimination, voting requirements that  
2355 depressed minority votes, racial campaign tactics, and a lack of  
2356 responsiveness from elected officials in minority communities. 412 U.S. at  
2357 765–69; *see also* S. REP. NO. 97-417, at 21–22. Our facts and record are similar.

2358 By contrast, the Court found in *Whitcomb* that politics, not race,  
2359 motivated the disputed election practices because there were no  
2360 impediments to black participation and black-preferred and minority  
2361 candidates enjoyed some success at the polls with support of white voters.  
2362 403 U.S. at 149–50. According to *LULAC v. Clements*, *Whitcomb*

2363 established a clean divide between actionable vote dilution and  
2364 “political defeat at the polls”; the 1982 amendments [were]  
2365 enacted to restore a remedy in cases “where a combination of  
2366 public activity and private discrimination have joined to make  
2367 it virtually impossible for minorities to play a meaningful role  
2368 in the electoral process.”

2369 999 F.2d at 850–51 (emphasis omitted) (quoting *Hearings on the Voting Rights*  
2370 *Act Before the Subcomm. on the Constitution of the S. Comm. of the Judiciary*,  
2371 97th Cong., 2d Sess. 1367–68 (1982) (statement of Professor Drew Days)).  
2372 Again, the Plaintiffs have shown that impediments do exist in Mississippi —  
2373 for example being disproportionately placed in minority districts — and that

2374 they have had almost no success electing their candidates of choice outside  
2375 majority-minority districts.

2376 The Defendants also rely on Dr. Alford's expert opinion that  
2377 partisanship explains the polarization Dr. Handley's data reveals. Although  
2378 we have considered all opinions Dr. Alford offered, none convince us that the  
2379 Defendants have overcome the Plaintiffs' showing of racially polarized  
2380 voting. We will, however, address a few examples.

2381 Dr. Alford identifies select races in predominantly white house  
2382 districts where Dr. Handley's statistics have massive confidence intervals,  
2383 indicating uncertainty. *See* DX-001, 11 (Alford Report). It may be true  
2384 uncertainty exists, but Dr. Handley explained that districts with small  
2385 minority populations are harder to evaluate. Trial Tr. 278:5-11, 288:2-18.  
2386 That statistical reality does not outweigh the breadth of Dr. Handley's  
2387 opinions and supporting evidence about stark racial bloc voting, nor does it  
2388 offer rebuttal evidence to meet the Defendants' burden.

2389 Another fact Dr. Alford relies on is the recent success of a lone black  
2390 Republican candidate in a legislative election. Trial Tr. 1470:18-23. The  
2391 same thing happened in *Milligan*, but the district court held under Senate  
2392 Factor 2 that "[o]ne election of one Black Republican is hardly a sufficient  
2393 basis . . . to ignore . . . the veritable mountain of undisputed evidence that in  
2394 all the districts at issue in this case, and in all statewide elections, voting in  
2395 Alabama is polarized along racial lines." *Singleton*, 582 F. Supp. 3d at 1019.  
2396 The Supreme Court took no issue with these Senate Factor 2 findings. 599  
2397 U.S. at 23. In any event, "proof that some minority candidates have been  
2398 elected does not foreclose a [Section] 2 claim." *Gingles*, 478 U.S. at 75; *see*  
2399 *Clark*, 88 F.3d at 1397 ("[T]he election of a few minority candidates does  
2400 not necessarily foreclose the possibility of dilution of the black vote."  
2401 (citation omitted)).

2402 Dr. Alford generally says black voters support white Democrats in  
2403 equal measure with black Democrats, thus demonstrating that partisanship is  
2404 the answer. Trial Tr. 1521:4–15. That statement is superficially true but fails  
2405 to consider the record evidence explaining why black voters might choose  
2406 white Democrats — like support for issues important to black citizens. And  
2407 even Dr. Alford acknowledges that “it’s possible for political affiliation to be  
2408 motivated by race.” Trial Tr. 1537:3–6. Yet he never examined the political  
2409 positions of the two state parties — or any candidates — to determine  
2410 whether race factored into partisan voting. Trial Tr. 1504:9–25. Another  
2411 defense expert, Dr. Brunell, has written that “the split between the political  
2412 parties rests on a racial division.” Trial Tr. 1319:19:19–22. He also testified  
2413 that there is “[n]o question” “that racial division . . . is still part of what’s  
2414 going on in politics today.” Trial Tr. 1320:5–8.

2415 Dr. Alford also cites the 2012, 2016, and 2020 presidential elections,  
2416 when voting percentages remained roughly the same for candidates Barack  
2417 Obama, Hillary Clinton, and Joe Biden despite their differing races. DX-001  
2418 at 6–7. We mention that, though the 2016 Democratic Presidential ticket had  
2419 no black nominee, Joe Biden’s 2020 running mate was Kamala Harris, who  
2420 was a black candidate. Additionally, Dr. Alford’s analysis does not consider  
2421 how race may factor into partisan voting. As we have explained in our  
2422 discussion of *Gingles* preconditions two and three, the baseline white  
2423 opposition to black-preferred candidates is so high — between 92 percent  
2424 and 93.6 percent in these three elections, DX-1 at 6–7 — there is little room  
2425 for additional white opposition to a black Democratic candidate.

2426 *LULAC v. Clements* anticipated a similar issue, remaining “sensitive  
2427 to the reality that political positions can be proxies for racial prejudice.” 999  
2428 F.2d at 879. While acknowledging this possibility, the Fifth Circuit saw no  
2429 such concern “where white voters support black candidates of a particular  
2430 party in larger percentage than they support white candidates of the same

2431 party.” *Id.* In addition, as noted, Senate Factor 2 is part of a “searching  
2432 practical evaluation of the ‘past and present reality.’” *Milligan*, 599 U.S. at  
2433 19 (quoting *Gingles*, 478 U.S. at 79). Given the undisputed history of  
2434 polarized voting in Mississippi — including recent history — Dr. Alford has  
2435 not convincingly separated race from politics.

2436 Context also matters. The opinions from the Plaintiffs’ expert  
2437 historian Dr. King need not be taken as correct in every detail, but in recent  
2438 decades the Democratic Party has certainly been the one more closely  
2439 associated with civil rights. The Defendants’ expert Dr. Brunell agrees. He  
2440 testified that racial division and the Democratic Party’s association with civil  
2441 rights “definitely played a role” in party realignment. Trial Tr. 1320:4.

2442 That Mississippi voters have been separated by race even when most  
2443 black voters were Republicans and white voters were Democrats adds weight  
2444 to our finding that racially polarized voting best explains the divide — at least  
2445 on this record. Dr. King testified “that the racial polarization throughout  
2446 Mississippi political history precedes the partisan polarization. So the  
2447 foundation of any polarization people see is the racial polarization that comes  
2448 first, right. Race has always been the preeminent political issue in Mississippi  
2449 and so that defines the dividing lines for the parties. So race comes first.  
2450 That’s the foundation for polarization.” Trial Tr. 764:21-765:3.<sup>10</sup>

2451 To conclude on Dr. Alford, he offered similar testimony in *Robinson*,  
2452 where the court found his “opinions are unsupported by meaningful  
2453 substantive analysis” and “border on *ipse dixit*.” 605 F. Supp. 3d at 840. We  
2454 share those concerns. While we accepted Dr. Alford as an expert and find

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<sup>10</sup> We do not hold — nor need we — that realignment was solely race-based or that every Republican is motivated by it. But the evidence is undisputed that race plays a role.

2455 that some of his opinions are plausible, he has not overcome Dr. Handley’s  
2456 testimony.

2457 In short, we find that the Plaintiffs established racially polarized voting  
2458 “on account of race or color” as those words are interpreted by the Senate  
2459 Report and the Supreme Court. *See Milligan*, 599 U.S. at 25 (explaining that  
2460 “it is patently clear that Congress has used the words ‘on account of race or  
2461 color’ in the Act to mean ‘with respect to’ race or color, and not to connote  
2462 any required purpose of racial discrimination” (quoting *Gingles*, 478 U.S. at  
2463 71 n.34). The Defendants’ evidence fails to show that “partisan affiliation,  
2464 not race, best explains the divergent voting patterns among minority and  
2465 white citizens.” *LULAC v. Clements*, 999 F.2d at 850.

2466 As in *Singleton*, when “we look deeper” into the race-versus-politics  
2467 issue “we are looking at very little evidence.” 582 F. Supp. 3d at 1018–19.  
2468 Although we acknowledge that partisanship plays a role, we agree with Dr.  
2469 Brunell that there is “[n]o question” “that racial division . . . is still part of  
2470 what’s going on in politics today.” Trial Tr. 1320:5–8. The Defendants’  
2471 proof does not outweigh the Plaintiffs’ evidence on this factor, and it  
2472 certainly would not make this one of those “very unusual case[s]” where no  
2473 violation is found despite establishing the *Gingles* preconditions. *Clark*, 21  
2474 F.3d at 97 (citation omitted). Senate Factor 2 weighs in favor of the Plaintiffs.

2475 *c. Senate Factor 5*

2476 This factor considers the extent to which members of the minority  
2477 group still bear the effects of discrimination in areas such as education,  
2478 employment, and health, and whether as a result they are hindered in their  
2479 ability to participate effectively in the political process.

2480 Much of the relevant evidence was offered by Dr. Orey, a professor in  
2481 the Department of Political Science at Jackson State University. Trial Tr.  
2482 492:13–19. Dr. Orey has both teaching and publication experience in areas



2483 directly linked with race and its effect on political behavior. Trial Tr. 495:6–  
2484 16. He teaches multiple undergraduate- and graduate-level classes regarding  
2485 minority politics, black voters in the political system, and applicable research  
2486 methods. Trial Tr. 498:1–16. Dr. Orey also has experience conducting voter-  
2487 turnout analyses using the EI RxC methodology, conducting descriptive  
2488 statistical analyses for Senate Factor 5, and testifying as an expert in  
2489 numerous court cases. Trial Tr. 495:25–496:3, 503:4–17, 504:2–16. Based  
2490 on these qualifications, we accepted Dr. Orey as an expert in political science,  
2491 political participation and behavior, and race and politics. Trial Tr. 506:8–  
2492 15.

2493         The Plaintiffs offered Dr. Orey’s testimony specifically to explain the  
2494 “social and economic indicators [that] had an impact on voting amongst  
2495 African-Americans” and how those “indicators negatively impacted turnout  
2496 amongst African-Americans.” Trial Tr. 506:21–24. To conduct this Senate  
2497 Factor 5 analysis, Dr. Orey used descriptive statistics like poverty, education  
2498 access, turnout data, and EI RxC data to determine whether black citizens  
2499 had the ability to effectively participate in Mississippi politics. Trial Tr.  
2500 504:23–505:13. These methodologies and data sources Dr. Orey used in his  
2501 analysis are ones commonly relied upon among experts in political science.  
2502 Trial Tr. 505:14–24.

2503         Dr. Orey started his analysis with a theoretical framework regarding  
2504 the resources required for Mississippians to participate in the political  
2505 process. PTX-008, 4. We find persuasive his determination that voting and  
2506 political participation has economic costs such that whether individual voters  
2507 participate is influenced by financial resources, leisure time, and education.  
2508 Dr. Orey further concluded black voters face larger disparities than white  
2509 voters in areas such as education and income, affecting both the relative  
2510 likelihood that they have the resources that are needed to vote and the ability  
2511 to participate in the voting process. PTX-008, 3–11.

2512 We find Dr. Orey is correct that black Mississippians suffer  
2513 socioeconomic disparities that impair their ability to participate in the  
2514 political process. Black Mississippians are significantly worse off in terms of  
2515 income, poverty, unemployment, educational attainment, internet access,  
2516 vehicle ownership, and health-insurance coverage. We accept as accurate the  
2517 evidence that about 31 percent of black Mississippians live below the poverty  
2518 line as compared to about 11.5 percent of white Mississippians. PTX-008, 5.  
2519 Dr. Orey testified, based on political-science literature and his own  
2520 regression analysis, that there is a strong correlation between financial status  
2521 and voter turnout. Trial Tr. 512:10–15, 544:17–546:23. The analysis he  
2522 conducted supports that income and poverty have been significant factors  
2523 influencing voter participation, generally and specifically in Mississippi.  
2524 PTX-008, 27–28.

2525 Dr. Orey quantified racial disparities in Mississippi regarding the level  
2526 of education as establishing black citizens have long been segregated from  
2527 attaining the needed education for coherent political participation. PTX-  
2528 008, 9–12. About 10.3 percent of white Mississippians did not complete high  
2529 school, compared to 17.9 percent of black Mississippians. PTX-008, 8. As  
2530 to college degrees, 28.5 percent of white Mississippians have a bachelor’s  
2531 degree or higher, compared to 18.2 percent of black Mississippians. PTX-  
2532 008, 8.

2533 Dr. Orey testified that these educational disparities can be traced to  
2534 the long history of both *de jure* and *de facto* racial segregation in Mississippi.  
2535 Residential patterns and the quality of education located in certain  
2536 Mississippi locales, among other things, have resulted in many school  
2537 systems being as segregated today as they were decades ago. PTX-008, 9; *see*  
2538 Trial Tr. 512–514. Numerous negative effects of segregation in housing and  
2539 education were also identified by Dr. Orey. For example, because of the  
2540 racial economic disparities and resulting variations in local tax bases,

2541 residential segregation results in lower-funded black schools compared to  
2542 predominantly white ones. PTX-008, 9.

2543 Dr. Orey described a very strong, “well-established” correlation  
2544 between educational attainment and voter turnout such that political-science  
2545 literature renders education as a requirement in “virtually” any “analysis of  
2546 voting behavior . . . model.” Trial Tr. 515:20–516:1. Education is “one of  
2547 the resources that individuals need to vote” in order to “understand[] the  
2548 issues” and “navigate the registration process[,]” for instance. Trial Tr.  
2549 515:7–19. We accept as fact that there has been a historical pattern, based on  
2550 all these factors and perhaps others, that black citizens of Mississippi have  
2551 participated in the political process in lower percentages than white citizens.

2552 The factual issue for us is the current effect of these conditions on  
2553 black-voter turnout. The disparities continue to exist, but are black  
2554 Mississippians currently voting in lower percentages than whites because of  
2555 the effects of discrimination? If not, then any past hindrance caused by those  
2556 conditions to black citizens’ ability to participate effectively in the political  
2557 process has been overcome. Dr. Orey addressed this factual question by  
2558 examining voter turnout only in the 2020 general election. Trial Tr. 579:3–  
2559 5. The Defendants’ expert Dr. Brunell said it was important to examine  
2560 trends over time and one election was inadequate. Trial Tr. 1258:15–1259:5.  
2561 We find that examining multiple elections would give a clearer picture, but  
2562 we acknowledge that Dr. Orey’s analysis is only weakened, not discredited,  
2563 by its consideration of solely 2020.

2564 In his 2020 election analysis, Dr. Orey used three different, generally  
2565 accepted methods: (1) ecological-inference analysis based on precinct-level  
2566 election results and United States Census racial demographic data; (2)  
2567 Bayesian Improved Surname Geocoding (“BISG”) of the Mississippi  
2568 Secretary of State’s full voter database (which includes voter history); and

2569 (3) reviewing estimates from the Cooperative Election Study (“CES”), a  
2570 survey where voter turnout behavior is independently validated to eliminate  
2571 the known problem of overreporting voting behavior in polls and surveys.  
2572 PTX-008, 22–25. Dr. Orey testified that each of these methods showed a  
2573 significant gap in turnout between black and white Mississippians. Trial Tr.  
2574 642:4–17.

2575 Dr. Orey’s EI RxC estimate was that white turnout in 2020 was 65.84  
2576 percent, while black turnout was 56.03 percent. PTX-008, 25. The  
2577 Defendants’ response does not significantly challenge the validity of the EI  
2578 RxC analysis itself but argues this estimate is unreliable because it is based on  
2579 data from one federal election for offices that are not the subject of this suit.  
2580 Doc [219], 73. The Defendants’ arguments are legitimate, but we find the  
2581 estimates are still sufficiently reliable for our consideration.

2582 Dr. Orey then used BISG to estimate the racial composition of the  
2583 Mississippi voter file. BISG is an algorithmic method used to predict a  
2584 person’s race or ethnicity based on their last name and where they live on a  
2585 map. PTX-008, 24. Applying BISG to a copy of the Mississippi voter file,  
2586 which contains voter names, addresses, and voting history from 2020 and  
2587 prior elections, Dr. Orey estimated a 69.7 percent turnout rate for white  
2588 Mississippi voters, compared to 57.3 percent for black voters. PTX-008, 25.

2589 The Defendants argue Dr. Orey’s BISG analysis uses an incomplete  
2590 data set, in part because the contents of the state voter file are so far removed  
2591 from the 2020 election. Doc [219], 73–74. Dr. Orey used information from  
2592 the file as it existed in June 2022 to infer individuals’ turnout in the  
2593 November 2020 general election. The file is continuously updated, and as  
2594 voters move and new information is recorded, the file reflects each change.  
2595 Dr. Orey acknowledged he had not previously performed a BISG analysis but

2596 stood behind the results despite there being a 5 percent loss in data. Trial Tr.  
2597 583:23–585:10.

2598 Here, too, we do not refuse to consider the analysis. We find the  
2599 questions about the accuracy of the data Dr. Orey used for his analysis to be  
2600 legitimate but not dispositive.

2601 Finally, Dr. Orey examined turnout by race estimates using the CES,  
2602 a 50,000-plus person national stratified sample survey administered by the  
2603 polling firm YouGov. PTX-008, 24–25. The CES dataset includes  
2604 “validated vote” information, representing an independent authentication of  
2605 whether a survey respondent voted, which Dr. Orey used for his analysis.  
2606 Trial Tr. 532:24–533:15. Among registered voters, the CES’s validated vote-  
2607 turnout estimate was 72.5 percent for black Mississippians in 2020,  
2608 compared to 86.8 percent turnout for white Mississippians. PTX-008, 26.  
2609 Among all adults, the validated vote-turnout rates estimated by the CES for  
2610 2020 were 46.1 percent for black Mississippians and 59.6 percent turnout for  
2611 white Mississippians. PTX-008, 26 n.59. Dr. Orey used the weighting  
2612 variables corresponding to turnout among registered voters and among all  
2613 adults to confirm his observation that a racial gap in turnout existed across  
2614 both measures. Trial Tr. 535:22–536:24.

2615 The Defendants identified some errors in the computations, including  
2616 voters that should not have been included. The central criticism of these last  
2617 calculations by the Defendants’ expert Dr. Brunell is in evaluating the  
2618 statistical significance of the figures. Dr. Brunell testified that 0.05 p-value  
2619 (probability value) — or a 95 percent confidence level — is typically the  
2620 lowest level of statistical significance that is used to determine the reliability  
2621 of the estimates. Dr. Orey admitted that a p-value of less than 0.05 means  
2622 that one can be 95 percent confident in the estimates. He testified that this  
2623 level is the “more stringently and more commonly” used threshold for tests

2624 of statistical significance. Dr. Orey himself utilized the 95 percent threshold  
2625 in some of his analysis.

2626 Dr. Orey acknowledged, however, that his analysis did not quite reach  
2627 a p-value of less than 0.05. By his calculations, the statistical significance  
2628 level of the racial-turnout gap among all adults in Mississippi (excluding  
2629 noncitizens) was 0.058, meaning that one can be “94 percent sure that this is  
2630 the correct estimate,” which is a high level of confidence. Trial Tr. 540:2–9.  
2631 The confidence level looking at the racial-turnout gap among registered  
2632 voters was similar at 0.055. Trial Tr. 543:8–15.

2633 Dr. Orey explained “there’s nothing definitive about [0].05,” yet Dr.  
2634 Brunell said there is. Dr. Brunell nonetheless agreed that choosing any  
2635 particular threshold as a cutoff was “arbitrary” or “artificial,” and that social  
2636 scientists may choose different thresholds. Another of the Plaintiffs’ experts,  
2637 Dr. Ragusa, supported this statement and explained that for statistical  
2638 significance, “a p-value of less than .1, but not less than .05, is one of [the]  
2639 options” and “more people, in my judgment, are using a p-value of less than  
2640 [0].1 as a minimally significant result.”

2641 Disputes among the experts about statistical significance have arisen  
2642 in other cases. We accept the view of a Ninth Circuit opinion that insofar as  
2643 admissibility is concerned, “[a]s a general matter, so long as the evidence is  
2644 relevant and the methods employed are sound, neither the usefulness nor the  
2645 strength of statistical proof determines admissibility under Rule 702.” *Obrey*  
2646 *v. Johnson*, 400 F.3d 691, 696 (9th Cir. 2005). This evidence was properly  
2647 admitted. Once admitted, how we as factfinders consider the evidence is the  
2648 issue. The Seventh Circuit was particularly dismissive of the 95 percent  
2649 standard:

2650 Litigation generally is not fussy about evidence; much  
2651 eyewitness and other nonquantitative evidence is subject to

2652 significant possibility of error, yet no effort is made to exclude  
2653 it if it doesn't satisfy some counterpart to the 5 percent  
2654 significance test.

2655 *Kadas v. MCI Systemhouse Corp.*, 255 F.3d 359, 362 (7th Cir. 2001).

2656 We need not be nearly so loose in our standards as that quote, but we  
2657 should consider evidence that the expert acknowledges fall short of the 95  
2658 percent confidence level, but not too far, and that the expert explains as  
2659 statistically significant. We find questions about the accuracy of the data Dr.  
2660 Orey used for his analysis to be legitimate but not dispositive.

2661 To respond to Dr. Orey's analysis, the Defendants presented a  
2662 recently released March 2024 BISG study from the Brennan Center for  
2663 Justice at NYU Law School, entitled "Growing Racial Disparities in Voter  
2664 Turnout, 2008–2022." Trial Tr. 1272:10–15. No party had been aware of  
2665 the study when the eight-day trial began, and it was introduced only for  
2666 identification. Trial Tr. 1282:16–17, 1283:12–15. In fact, the study states it  
2667 was published on March 2, 2024, the Saturday at the end of the first week of  
2668 trial.

2669 The study showed a narrow gap in voter turnout between black and  
2670 white Mississippians. Most importantly, the study found that in 2020 there  
2671 was a slightly higher-percentage turnout among blacks than among whites.  
2672 Trial Tr. 1286:13–19. Dr. Brunell explained that the premise of the study was  
2673 to show that the voter-turnout gap had widened post-*Shelby County*,  
2674 particularly in states previously covered by Section 5. Trial Tr. 1285:1–9.  
2675 The study found that the voter-turnout gap reversed only in Mississippi, with  
2676 blacks turning out in a higher percentage than whites in 2020 and slightly  
2677 higher in 2022. Trial Tr. 1286:21–1287:6.

2678 The Plaintiffs objected to the survey, claiming that it was not disclosed  
2679 by the expert-designation deadline and was not sufficiently reliable under

2680 Federal Rule of Evidence 702. We took those objections under advisement  
2681 and now overrule them. Starting with the disclosure, we consider the missed  
2682 deadline under the standard set forth in *Hamburger v. State Farm Mutual*  
2683 *Automobile Insurance*, 361 F.3d 875, 883 (5th Cir. 2004). Under that standard,  
2684 good cause existed for the late disclosure because the survey was first  
2685 published after the expert-disclosure deadline and just four days before the  
2686 Defendants offered it. The Defendants also provided a copy to the Plaintiffs  
2687 once they discovered the survey and before mentioning it in court. Any  
2688 prejudice caused by the late disclosure was addressed when the court  
2689 recessed the case to allow the Plaintiffs to depose Dr. Brunell about the  
2690 report. That approach also eliminated the need for a longer continuance.  
2691 Although the importance of the testimony is minimal, this factor does not  
2692 outweigh the others, which favor admission.

2693 As for Rule 702, Dr. Brunell testified that the Brennan Center is a  
2694 respected institution and that surveys like this are the kind he would rely on  
2695 in his normal work. Trial Tr. 1277:11–25. “As a general rule, questions  
2696 relating to the bases and sources of an expert’s opinion affect the weight to  
2697 be assigned that opinion rather than its admissibility and should be left for the  
2698 jury’s consideration.” *United States v. 14.38 Acres of Land, More or Less*  
2699 *Situated in Leflore County*, 80 F.3d 1074, 1077 (5th Cir. 1996) (quoting *Viterbo*  
2700 *v. Dow Chem. Co.*, 826 F.2d 420, 422 (5th Cir. 1987)). We find that Dr.  
2701 Brunell’s testimony regarding the Brennan Center survey was admissible,  
2702 and the reliability of the survey is a question of weight.

2703 We accept that survey into evidence. Nonetheless, the parties had  
2704 almost no time to explore the details of the survey nor to consider through  
2705 their own experts its possible flaws. As we understand the survey report, it  
2706 was not peer reviewed. Trial Tr. 1387:23–1388:7. Dr. Brunell stated he had  
2707 not previously heard of its authors, though we do not know the significance  
2708 of such lack of fame. Trial Tr. 1388:11–20. We accept that the Brennan



2709 Center is a respected institution and that its reports are not amateurish.  
2710 Nonetheless, we know too little about this particular report to have it  
2711 outweigh other evidence in the case.

2712 The Defendants submitted evidence from the U.S. Census Bureau  
2713 and the U.S. Department of Labor’s Current Population Survey (“CPS”).  
2714 The Defendants emphasize the Supreme Court’s explicit reliance on CPS  
2715 data in *Shelby County* as evidence of its trustworthiness. The Court held that  
2716 conditions that once supported requiring only some states but not others to  
2717 preclear all changes to voting practices with the Department of Justice no  
2718 longer existed. *See Shelby County*, 570 U.S. at 554. Starting with the adoption  
2719 of the Voting Rights Act in 1965, “Census Bureau data indicate that African-  
2720 American voter turnout has come to exceed white voter turnout in five of the  
2721 six States originally covered by [Section] 5.” *Id.* at 535. As the Court  
2722 mentioned, a chart using the CPS data was placed in both the Senate and  
2723 House reports on the bill that reauthorized the Voting Rights Act in 2006 and  
2724 was also reproduced in the opinion. *Id.* at 548 (citing S. REP. NO. 109-295,  
2725 at 11 (2006); H.R. REP. NO. 109-478, at 12 (2006)).

2726 The relevant part of the CPS survey is conducted every two years.  
2727 Voters are asked questions about the election, specifically whether they  
2728 voted. The CPS shows insignificant differences between black and white  
2729 turnout either among registered voters or among the voting-age population  
2730 in Mississippi. Trial Tr. 560:19-562:11. Dr. Orey disagreed, testifying that  
2731 black turnout remains lower than white turnout. Dr. Orey’s criticism of the  
2732 CPS survey focuses on how the data is collected. He testified that “the  
2733 literature shows that African-Americans are more likely to overreport”  
2734 voting “because of racial identity” and a sense that “what happens to other  
2735 Blacks impacts one’s individual life,” which leads to increased pressure to  
2736 over-report. Trial Tr. 531:15-23.

2737           While Dr. Orey raises facially plausible problems with CPS data, we  
2738 are not necessarily persuaded by this testimony. We acknowledge the  
2739 Supreme Court’s *Shelby County* opinions contain no discussion of arguments  
2740 that the CPS data is unreliable. If the argument was not raised, there was no  
2741 need for the Court to consider possible inaccuracies. The Supreme Court  
2742 found the data sufficient to discuss, but it is unnecessary to resolve any  
2743 potential statistical issue to decide this case. Dr. Orey’s arguments are  
2744 reasonable, but we find the evidence supports, at the very least, that whatever  
2745 gap existed in the turnout in Mississippi in 1965 is greatly reduced today.

2746           In addition to his analysis of voter turnout by race, Dr. Orey also  
2747 conducted a regression analysis to examine the extent to which black turnout  
2748 in Mississippi was in fact driven by the socioeconomic markers discussed  
2749 previously. PTX-008, 26–27. Dr. Orey used “data from the voter file” and  
2750 “aggregated the data” along with “census data at the [bloc] level” and, in  
2751 doing so, he was “able to examine whether or not the turnout amongst Blacks  
2752 was a function of some of these indicators.” Trial Tr. 544:12–546:23.

2753           This factor required us to consider the extent past discrimination  
2754 affected black voters’ ability to participate in Mississippi’s political process  
2755 today. *Teague*, 92 F.3d at 292. We credit Dr. Orey’s conclusion that voting  
2756 and political participation is influenced by financial resources, education,  
2757 income, and unemployment. We find that black Mississippians are worse off  
2758 than white voters in terms of these factors. The percentage of black voters  
2759 who live below the poverty line is more than twice that of white voters, and  
2760 they are less likely to graduate high school and college where they would have  
2761 access to the required education needed to navigate the political process.

2762           Irrespective of the size or even existence of turnout discrepancies, we  
2763 find that the record establishes black Mississippians’ ability to participate  
2764 effectively in Mississippi politics is hindered by racial gaps in education

2765 access, financial status, and health. Senate Factor 5 thus weighs in favor of  
2766 the Plaintiffs.

2767 *d. Senate Factor 6*

2768 This factor considers the use of “overt or subtle racial appeals” in  
2769 political campaigns. *Gingles*, 478 U.S. at 37. The Plaintiffs’ evidence  
2770 identified other elections, but we will discuss only those elections the  
2771 Plaintiffs identified in their proposed findings of fact regarding this factor.

2772 In a Republican primary contest, one candidate’s 30-second video  
2773 advertisement briefly showed the candidate speaking on a stage next to a  
2774 furled Confederate flag. That was an isolated incident, but we accept it was  
2775 seeking white-voter support.

2776 In a general election between a white Republican senator and a black  
2777 challenger, the state Republican Party issued a campaign flyer focusing on the  
2778 fact that the Democratic candidate “was forced to resign after being indicted  
2779 in Washington, D.C. as U.S. Agriculture Secretary.” The flyer did not  
2780 acknowledge that he had been acquitted following a trial. Though perhaps  
2781 unfair, a political party’s highlighting that the other party’s candidate was  
2782 indicted for a crime, regardless of the candidate’s race and even if there had  
2783 been an acquittal or no trial as of yet, is neither surprising nor a racial appeal.

2784 Two other examples in evidence are of a white congressional  
2785 candidate in 1982 and a white supreme court candidate in 2004 who each  
2786 identified himself as “one of us” when running against a black man. Another  
2787 three-judge district court categorized the congressional candidate’s slogan as  
2788 a racial appeal. *See Jordan*, 604 F. Supp. at 813 & n.8. Similarly appealing to  
2789 white voters, a sitting state representative in 2015 urged “voters to vote  
2790 against a ballot initiative because, if it passed, it would allow a Black judge to  
2791 decide what happens with public schools.” Trial Tr. 781:14–19.

2792           The Plaintiffs also introduced evidence of how some black candidates  
2793 were exposed to the racial animosities of some voters. That evidence did not  
2794 reveal official discrimination under Senate Factor 1, nor racial appeals by  
2795 opposing candidates under Senate Factor 6. Nonetheless, if white voters are  
2796 insulting or even threatening black candidates, that is relevant to  
2797 understanding the totality of the circumstances. Because a consideration of  
2798 this evidence is supported by the Supreme Court’s observation in *Gingles*  
2799 that the “list of typical factors is neither comprehensive nor exclusive,” *see*  
2800 *Gingles*, 478 U.S. at 45 (citing S. REP. NO. 97-417, at 29–30), we conclude  
2801 that, if there have been threats to black candidates because of their race, it is  
2802 a relevant consideration.

2803           One relevant witness on this additional consideration was Pamela  
2804 Hamner. She was questioned about her campaign in DeSoto County, having  
2805 been a candidate both in 2021 for the Board of Aldermen and in 2023 for the  
2806 state senate.

2807           Q.    I know you mentioned earlier that you campaigned in  
2808 Horn Lake, did you campaign in Hernando?

2809           A.    No -- very little. Hernando, I -- so when I ran in '21 I had  
2810 the police called on me, and people in my party, some of the  
2811 men, they told me don’t go out by myself, which I’m glad I  
2812 didn’t, so I didn’t spend a lot of time in Hernando, I -- and my  
2813 canvassers had the police called on them this time too.

2814           Trial Tr. 720:15–22.

2815           Hamner described Hernando as “the county seat [that is] an older  
2816 historic area, too, but it’s . . . more rural and it’s more White. . . . Hernando  
2817 is predominantly White.” Trial Tr. 719:10–19. Hamner’s trial testimony  
2818 implies she and her party members were treated this way because she was a  
2819 black candidate campaigning in a predominantly white area.

2820 Another witness was Terry Rogers. At age 18, he ran for the statewide  
2821 office of Agriculture Commissioner in 2023. He testified that while  
2822 campaigning at a county fair that is the state’s largest political forum, he saw  
2823 Confederate flags. While he was giving a speech there, someone in the  
2824 audience held up a cell phone so that Rogers could see a picture of a dog with  
2825 a noose around its neck.

2826 The evidence supports that some candidates continue to make racial  
2827 appeals. We find that Senate Factor 6 weighs in favor of the Plaintiffs. Other  
2828 candidates occasionally encounter offensive or threatening actions by voters  
2829 due to their race. We also find that the limited evidence of such conduct to  
2830 add slight weight in favor of the Plaintiffs.

2831 *e. Senate Factor 7*

2832 This factor considers “the extent to which members of the minority  
2833 group have been elected to public office in the jurisdiction.” *Gingles*, 478  
2834 U.S. at 37. Senate Factor 7 is a particularly important factor in the totality-  
2835 of-the-circumstances analysis. The success of black candidates is far from  
2836 negligible. As stated by Plaintiffs’ expert Dr. Orey, Mississippi is among the  
2837 states with the highest number of black elected officials.

2838 The evidence shows, though, that in order for black-preferred  
2839 candidates to be elected for the legislature or for Congress, they almost  
2840 always have to be running in majority-black districts. The evidence further  
2841 showed there has not been a black candidate elected to statewide office since  
2842 the end of Reconstruction 150 years ago. In recent elections, the Democratic  
2843 Party has had some black nominees for statewide office, including for the  
2844 United States Senate and Governor, but all have been defeated.

2845 Because a black-majority district is a virtual prerequisite for black  
2846 candidates’ success in Mississippi politics, it is relevant that the Mississippi  
2847 Legislature left the number of majority-black districts unchanged following

2848 the recent Census, despite substantial increases in the black population and  
2849 corresponding losses in the white population. There was testimony that the  
2850 number of black legislators today is disproportionate to their percentage of  
2851 the state’s population. We do not overlook that the Voting Rights Act states  
2852 “[t]hat nothing in this section establishes a right to have members of a  
2853 protected class elected in numbers equal to their proportion in the  
2854 population.” 52 U.S.C. § 10301(b). Indeed, the Supreme Court concluded  
2855 in its recent decision regarding Alabama congressional districts that  
2856 proportional representation can rarely be achieved because of diffusion of the  
2857 relevant population. *Milligan*, 599 U.S. at 28–29. Nonetheless,  
2858 proportionality “is a relevant fact in the totality of the circumstances to be  
2859 analyzed when determining whether members of a minority group have ‘less  
2860 opportunity . . . to participate in the political process.’” *De Grandy*, 512 U.S.  
2861 at 1000 (citation omitted). The Court later restated that relevance in relation  
2862 to majority-minority districts: “Another relevant consideration is whether  
2863 the number of [black-majority] districts . . . is roughly proportional to [the  
2864 black] population in the relevant area.” *LULAC v. Perry*, 548 U.S. at 426.

2865 Balancing the substantial success for black-preferred candidates with  
2866 its currently unbreachable limits, we conclude this factor, if not neutral,  
2867 slightly favors the Plaintiffs.

2868 *f. Senate Factor 8*

2869 This factor considers whether “elected officials are unresponsive to  
2870 the [minority’s] particularized needs.” *Gingles*, 478 U.S. at 45. The  
2871 Plaintiffs seek to show a lack of responsiveness on the part of the white  
2872 Republican Mississippi Legislature with evidence of such matters as a failure  
2873 to expand Medicaid, not adequately funding education, and the decision to  
2874 enact the legislative-redistricting plan being challenged in this case.

2875           We find, based on testimony, that Medicaid expansion is important to  
2876 the black community. Trial Tr. 701:12–24, 726:14–727:2. The unrebutted  
2877 testimony is that the failure to expand Medicaid disproportionately harms  
2878 black communities, particularly those in the Mississippi Delta where regional  
2879 hospitals are in financial struggles. Trial Tr. 519:4–15. Dr. Orey testified that  
2880 black Mississippians “will more likely depend on Medicaid relative to  
2881 whites” and face “vast differences” in health coverage. Trial Tr. 518:4–19.

2882           Regarding education funding, the Plaintiffs provided two expert  
2883 opinions, and we find both credible. Dr. Orey and Dr. Lockett concluded  
2884 that Mississippi’s successes with respect to education have been unevenly  
2885 distributed, with predominantly black schools being underfunded and  
2886 underperforming as compared to predominantly white schools. PTX-008,  
2887 8–12; PTX-007, 48–50.

2888           Other witnesses, such as Dr. Joseph Wesley, Deacon Kenneth Harris,  
2889 and Terry Rogers, testified that white legislators do not campaign in black  
2890 communities or attend events hosted by black civic organizations. Dr.  
2891 Wesley testified that, during his role as Political Action Chair for the Forrest  
2892 County Branch of the NAACP, the Branch has held numerous community  
2893 forums — including for statewide candidates — open to all candidates, and  
2894 yet his elected senator has never attended or otherwise engaged with the  
2895 black community in the district. Finally, Pamela Hamner testified that her  
2896 senator was not responsive to the needs and concerns of black voters in her  
2897 area. The testimony of these witnesses was unrebutted, and we credit it.

2898           We mention that funding is a component of the decision that the  
2899 Plaintiffs say should be made. Funding based on a set budget is a zero-sum  
2900 calculation. Whether there is money for full funding of education and to  
2901 expand Medicaid, even though Medicaid expansion has significant federal  
2902 contribution, and also pay for the other significant work authorized by the

2903 Mississippi Legislature is not for this court to decide. We mention as well  
2904 that the Defendants did not offer any testimony that could have added  
2905 context for the decisions.

2906 Under this factor, we analyze whether there are circumstances in  
2907 which Mississippi has failed to respond to the needs of black voters. *Teague*,  
2908 92 F.3d at 292. The Defendants are quite correct that the state government  
2909 is not running roughshod over the interests of those in the minority.  
2910 Although both chambers of the Mississippi Legislature are controlled by  
2911 Republicans, a significant number of Democrats chair committees in both  
2912 chambers, having been appointed by Republican leadership. Doc [199], 17–  
2913 18. Even its redistricting decision served the minority’s interests when the  
2914 majority agreed to unpair two incumbent Democrats such that the new plan  
2915 would not require them to run against each other.

2916 In sum, the Plaintiffs’ examples of a lack of responsiveness include  
2917 shortfalls in funding for education and the failure to expand Medicaid, the  
2918 redistricting plan itself, and the failure of some white legislators to participate  
2919 in black-community events. We find Senate Factor 8 favors the Plaintiffs.

2920 *g. Senate Factor 9*

2921 This factor considers “whether the policy underlying the state or  
2922 political subdivision’s use of such voting qualification, prerequisite to voting,  
2923 or standard, practice or procedure is tenuous.” *Gingles*, 478 U.S. at 37. This  
2924 factor requires a consideration of the policies used by Mississippi to justify  
2925 its districting decisions in this case. *Teague*, 92 F.3d at 292. The Plaintiffs  
2926 do not contest that the legislature followed its policy of creating districts that  
2927 were sufficiently equal in population for each chamber and consisted of  
2928 contiguous tracts. The legislature’s policies also require that the districts  
2929 comply with all state and federal laws relating to redistricting, that the



2930 districts be compact and minimize county and precinct splits, and that the  
2931 design of the districts consider “political performance.”

2932         The Defendants described the basic criteria the Standing Joint  
2933 Committee was required to follow to avoid unconstitutional race-based  
2934 redistricting and to retain the cores of the existing districts: One Person, One  
2935 Vote; contiguity of the districts; and compliance with all state and federal  
2936 laws. JTX-010, 8–14. Those are legitimate, non-tenuous policies, but how  
2937 they were applied needs to be explained. We accept that some *limited* packing  
2938 or cracking of minority populations in order to protect a white incumbent is  
2939 a non-tenuous reason. All we have in that regard are quite general  
2940 pronouncements made by the chair of the committee in each chamber when  
2941 explaining the relevant plan that assisting incumbents was a factor. There is  
2942 no evidence of when such considerations led to the creation of a particular  
2943 district and resulted in the failure to create a black-majority district in that  
2944 same area. We needed more than generalized statements for this defense in  
2945 light of the Plaintiffs’ evidence of a Section 2 violation.

2946         We find the legislature did not enact an egregiously flawed plan, the  
2947 equivalent of a political gerrymander of squeezing the minority into as few  
2948 districts as possible. Yet, we do not find any specific, non-tenuous  
2949 justifications for why black-majority districts were not created in the three  
2950 identified areas. We find, therefore, that this factor weighs in favor of the  
2951 Plaintiffs.

2952                 *h. Summary of the Senate Factors*

2953         We have detailed the law, evidence and our findings on all the Senate  
2954 Factors except for the inapplicable Senate Factor 4. We found all clearly to  
2955 favor the Plaintiffs with two exceptions. One exception was Senate Factor 6,  
2956 concerning overt or subtle racial appeals election campaigns. We found it  
2957 only slightly favors the Plaintiffs. We also found that Senate Factor 7, which

2958 considers the success of minority candidates in elections, either is neutral or  
2959 only slightly favors the Plaintiffs.

2960 Senate Factors 2 (racially polarized voting) and 7 are considered “the  
2961 most important” factors in a totality-of-the-circumstances analysis. *Gingles*,  
2962 478 U.S. at 48 n.15. One of these most important factors clearly favors the  
2963 Plaintiffs, while the other is perhaps almost neutral. As indicated, though, all  
2964 other factors in the totality of circumstances clearly favor the Plaintiffs.

2965 After engaging in the required “intense[] local appraisal” and  
2966 “searching practical evaluation of the past and present reality” of  
2967 Mississippi’s political process, *see Gingles*, 478 U.S. at 79 (quotation marks  
2968 and citation omitted), we conclude this is not one of the “only very unusual  
2969 case[s]” where the *Gingles* preconditions are established, but there is no  
2970 liability. *Teague*, 92 F.3d at 293 (quoting *Clark*, 21 F.3d at 97). The Plaintiffs  
2971 instead met their burden under both the *Gingles* preconditions and the  
2972 totality of the circumstances. We therefore find Mississippi’s 2022 Enacted  
2973 Plans violate Section 2 of the Voting Rights Act.

2974 V. REMEDY

2975 We have concluded that the Plaintiffs met their burden under the  
2976 *Gingles* framework to establish that Mississippi’s 2022 Enacted Plans violate  
2977 Section 2 of the Voting Rights Act. The task now is to establish a remedy.

2978 Once a Section 2 violation is found, the court faces “the difficult  
2979 question of the proper remedial devices which federal courts should utilize in  
2980 state legislative apportionment cases.” *Reynolds v. Sims*, 377 U.S. 533, 585  
2981 (1964) (Fourteenth Amendment case). One thing is clear though: the court’s  
2982 “first and foremost obligation” must be “to correct the Section 2 violation.”  
2983 *United States v. Brown*, 561 F.3d 420, 435 (5th Cir. 2009) (citation omitted).  
2984 “In doing so, the district court ‘should exercise its traditional equitable

2985 powers to fashion the relief so that it completely remedies the prior dilution  
2986 of minority voting strength.’” *Id.* (quoting S. REP. NO. 97-417, at 31).

2987         Addressing similar equities in the equal-protection context, the  
2988 Supreme Court has noted that courts must “tak[e] account of what is  
2989 necessary, what is fair, and what is workable.” *North Carolina v. Covington*,  
2990 581 U.S. 486, 488 (2017) (per curiam) (quoting *Reynolds*, 377 U.S. at 585).  
2991 Though neither *Covington* nor *Reynolds* are Section 2 cases, the Fifth Circuit  
2992 has relied on *Reynolds* and other equal-protection cases when discussing  
2993 Voting Rights Act remedies. *See Veasey v. Abbott*, 830 F.3d 216, 270 (5th Cir.  
2994 2016). The Fifth Circuit also holds that “any remedy ‘should be sufficiently  
2995 tailored to the circumstances giving rise to the Section 2 violation,’ . . . and  
2996 to the extent possible, courts should respect a legislature’s policy objectives  
2997 when crafting a remedy.” *Id.* at 269 (quoting *Brown*, 561 F.3d at 435) (other  
2998 citations omitted).

2999         While the proper remedy depends on the specific circumstances of  
3000 each case, “it would be the unusual case in which a court would be justified  
3001 in not taking appropriate action to [e]nsure that no further elections are  
3002 conducted under the invalid plan.” *Reynolds*, 377 U.S. at 585; *see also Veasey*,  
3003 830 F.3d at 270 (applying *Reynolds* under Section 2). That is particularly true  
3004 when elections are imminent, but here the next legislative election would not  
3005 happen until 2027. Therefore, the question is whether to order a special  
3006 election to remedy the Section 2 violation found.

3007         The Defendants urge us not to order any special elections, relying on  
3008 the equitable considerations found in *Covington*: “[1] the severity and nature  
3009 of the particular . . . violation, [2] the extent of the likely disruption to the  
3010 ordinary processes of governance if early elections are imposed, and [3] the  
3011 need to act with proper judicial restraint when intruding on state  
3012 sovereignty.” Def. Findings ¶ 421 (quoting *Covington*, 581 U.S. at 488). We

3013 accept the Defendants’ invitation to use this test and find that these same  
3014 equities are relevant under Section 2.

3015 Starting with the first consideration, the Defendants argue the  
3016 violations are not severe because the Plaintiffs “have not proved any  
3017 violation.” Def. Findings ¶ 422. We disagree with the premise of this  
3018 argument — that there are *no* violations — and the Defendants give us  
3019 nothing further in deciding how to determine severity. Even so, the severity  
3020 here is greater than in *Covington*. There, the Supreme Court unanimously  
3021 vacated a district-court decision that ordered special elections in 28 North  
3022 Carolina legislative districts in 2017 that would allow the winners to serve  
3023 only one year until the next regular legislative elections. *Covington*, 581 U.S.  
3024 at 487. The Supreme Court concluded that the district court had given only  
3025 cursory consideration to the balance of equities before ordering the elections.  
3026 *Id.* at 488–89.

3027 The violations in *Covington* were more numerous than those proved  
3028 here, but the length of the remaining Mississippi terms is three times as long.  
3029 The legislators elected under the Enacted Plans have served, at this point, a  
3030 little more than six months of their four-year terms. Thus, if left as is, black  
3031 voters in each affected district will be served for a full term by a legislator  
3032 chosen in an election that diluted black votes. The harm is localized, but it is  
3033 severe to the affected voters. This is the exact kind of injury that warrants a  
3034 remedy.

3035 The extent of any likely disruption to the ordinary governmental  
3036 processes is the next factor to consider. In Section 2 litigation, requiring a  
3037 special session of a legislature to redraw district lines is a common remedy.  
3038 *See, e.g., Robinson*, 86 F.4th at 600–01. Nonetheless, such special sessions  
3039 are a disruption of the ordinary legislative process and should be ordered only  
3040 if it is equitable to do so.

3041           One equitable consideration in deciding the proper timing of a remedy  
3042 is whether the Plaintiffs acted quickly to assert their rights. By the end of  
3043 March 2022, Mississippi approved redistricting plans for both houses of the  
3044 legislature. The Plaintiffs did not sue until December 20, 2022. As they  
3045 state, however, other Section 2 cases were stayed during this period while the  
3046 Supreme Court considered *Milligan*. See *Nairne v. Ardoin*, No. CV 22-178-  
3047 SDD-SDJ, 2022 WL 3756195, at \*1 (M.D. La. Aug. 30, 2022) (staying  
3048 proceedings until June 2023). Further, despite some initial delay in  
3049 challenging the Enacted Plans, the Plaintiffs sought an expedited pretrial  
3050 schedule — which the Defendants opposed — and required no extensions  
3051 under that schedule. We find that any initial delays are insufficient to make  
3052 a special election inequitable, nor would they justify not having a special  
3053 session, which would be unfortunate but likely limited in time.

3054           The final factor is that the court must exercise restraint before  
3055 intruding onto state sovereignty. In addition to our finding violations, we also  
3056 find that allowing the violations to go unaddressed for the entire four-year  
3057 term of affected legislators, when only a little more than six months have been  
3058 served at this date, is not an equitable result. We therefore need to order  
3059 some redistricting to rectify the Section 2 violations.

3060           In doing so, we know that “reapportionment is primarily the duty and  
3061 responsibility of the State through its legislature or other body, rather than of  
3062 a federal court.” *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) (citations  
3063 omitted). Thus, “in redistricting cases, district courts must offer governing  
3064 bodies the first pass at devising a remedy.” *Brown*, 561 F.3d at 435 (citation  
3065 omitted).

3066           We will do that here with this guidance. Three of the illustrative  
3067 districts satisfy all three *Gingles* preconditions: Illustrative Senate Districts 2  
3068 and 9 and Illustrative House District 22. Our determination that these

3069 specific illustrative districts support a Section 2 violation does not require the  
3070 State to draw districts as proposed in the Plaintiffs’ remedial plans. *See Vera*,  
3071 517 U.S. at 978. The State has discretion in determining how best to remove  
3072 the violation, subject to further judicial review. *See id.* The Plaintiffs’  
3073 proposed remedy is to require districts be drawn “in which Black voters have  
3074 an opportunity to elect candidates of their choice in the areas in and around”  
3075 the relevant illustrative districts. Pls.’ Proposed Findings ¶ 781. We agree  
3076 that would satisfy the State’s obligations, but the State has discretion on how  
3077 to proceed with the remedy.

3078           Because we have concluded that only three of the illustrative districts  
3079 identified by the Plaintiffs satisfy the three *Gingles* preconditions, there is no  
3080 obligation to redraw districts in the areas of the other four illustrative  
3081 districts. If the Mississippi Legislature creates three new majority-minority  
3082 districts, however, there will likely be a need to revise other districts to make  
3083 that possible. We find that the equitable factors identified in *Covington* allow  
3084 the State to limit the ripple effect of creating new majority-minority districts  
3085 as much as reasonably possible. Special elections will need to be called for all  
3086 revised districts, and minimizing the number of legislative seats subject to  
3087 election for a briefer-than-usual term is a significant State interest.

3088           So, how much time is needed for a special election? As mentioned  
3089 before, we are to “afford a reasonable opportunity for the legislature” to  
3090 create and adopt its own constitutional plan. *Wise v. Lipscomb*, 437 U.S. 535,  
3091 540 (1978). Because we will require elections for any districts the Mississippi  
3092 Legislature alters in response to this court’s ruling, relevant dates are these:  
3093 (1) for the Mississippi Legislature to adopt new maps; (2) for this court to be  
3094 presented either with objections to new maps drawn by the Mississippi  
3095 Legislature or with maps proposed by the parties if the Mississippi  
3096 Legislature does not act; and (3) for elections to be held.

3097           After trial, we asked the parties to submit their arguments about the  
3098 necessary timing of new elections for some legislative districts if we found a  
3099 need to order elections. We have found the need, but the parties'  
3100 submissions are now outdated. It is the desire of this court to have new  
3101 legislators elected before the 2025 legislative session convenes, but the  
3102 parties can make whatever arguments about timing they conclude are valid.  
3103 We state now that the parties should be prepared to present their own  
3104 respective maps five days after the deadline for the Mississippi Legislature to  
3105 adopt its own plan, thereby being able to present alternatives almost  
3106 immediately should the Mississippi Legislature not act.

3107           In order for the court to receive the arguments of counsel on the issue  
3108 of timing for the steps that must be taken, we will conduct a video  
3109 conferencing hearing on Monday, July 8, at 2:00 p.m.; Tuesday, July 9, at  
3110 2:00 p.m.; or Thursday, July 11, at 1:00 p.m. Counsel will be contacted by  
3111 the court to determine the most appropriate date.

3112           It is SO ORDERED.