IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DR. DOROTHY NAIRNE, *et al.*, Plaintiffs, v. R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana, Defendant.	Civil Action No. 3:22-CV-00178-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson

DEFENDANTS' REPLY BRIEF IN SUPPORT OF SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs claimed to have standing to challenge some 47 legislative districts based principally on the assurances of the Louisiana NAACP's President that the NAACP had members residing in those districts. That claim collapsed under the slightest scrutiny, however, as Plaintiffs can now only identify named individual Plaintiffs or Louisiana NAACP members that allegedly reside in eight challenged House districts (HDs 1, 25, 34, 60, 65, 66, 68, 101) and four Senate districts (SDs 2, 8, 17, 38). Nevertheless, Plaintiffs cannot rely on associational or organizational standing of their Entity Plaintiffs for standing, and the Court should enter summary judgment in Defendants' favor.

ARGUMENT

A. Associational Standing

Standing in a § 2 case requires an organization to identify specific members that are harmed. Defendants explained that the Louisiana NAACP cannot rely on associational standing here because it did not timely "name the individuals who were harmed by the" challenged redistricting plans. *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009); Doc. 149-1 at 7–10. For months, Plaintiffs asserted that they did not need to identify specific members to assert associational standing. Plaintiffs are wrong.

With their Opposition, Plaintiffs attached the Declaration of Michael McClanahan. Doc. 163-10. Mr. McClanahan, who is the President of the Louisiana NAACP, asserts that he has identified specific members in Shreveport, Baton Rouge, New Orleans, Natchitoches, and Lake Charles. *Id*. at ¶ 6. But he does not identify their names or addresses. He claims to have reviewed their "membership information" but admitted at his deposition that the Louisiana NAACP does not have any membership lists. Doc. 163-8 at 74:6-16, 81:24-82:2, 82:11-15, 82:25-83:21.

Thus, this case proves why this Court cannot "accept[] the organization's self-description of . . . its members." *Summers*, 555 U.S. at 497. A prior declaration from Mr. McClanahan stated that he had identified members in "at least" 47 legislative districts, Doc. 135-1 at 2, but in response to the Court's order, the Louisiana NAACP identified only 10 individuals, Doc. 173-1 at 2–6. In opposition to Defendants' summary-judgment motion, Mr. McClanahan said the Louisiana NAACP "identified a [] member in a dilutive district in the Lake Charles area . . . who could be drawn into a new opportunity district as demonstrated by Illustrative House District 38." Doc. 163-10 at ¶ 6(f). But the only Louisiana NAACP member identified from the Lake Charles area who would reside in illustrative HD38, *see* Doc. 173-1 at 2–6, already resides in a majority-Black district (HD34) in the enacted plan. That alleged member therefore does not suffer a § 2 injury; moving that alleged member from one majority-Black district to another does nothing of legal significance. Plaintiffs' contention that their assertions should be trusted without adversarial vetting, *see* Doc. 163 at 15–19, is legally wrong—and for good reason. *Summers*, 555 U.S. at 497.

Louisiana NAACP's position finds no support in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015), either. The Court found "reversible error," not because the trial court demanded identification of members, Doc.163 at 16, but because it granted judgment without providing an opportunity to "provide a membership list." 575 U.S. at 270. The rule of *Alabama* is that a court, "rather than act *sua sponte*," must "give [an entity plaintiff] an opportunity to provide evidence of member residence." *Id.* at 271. That is why the Court did not find standing on the record before it. Instead, the Court issued a "remand" so that the district court would "permit[] the Conference to *file its list of members* and permit[] the State to respond, as appropriate." *Id.* (emphasis added). Plaintiffs' argument that it need not actually name individual members is wrong.

In this case, the Court is not acting *sua sponte* to surprise Louisiana NAACP. Louisiana

NAACP has had the notice that its standing was challenged, and that membership identification was required, since July 2022 (when Defendant served discovery requests addressing standing) or at least as of August 9, 2023, when Louisiana NAACP sought protection from discovery regarding its members. Doc. 119. Even after this Court held that that "standing has been raised by the Defendant," on October 24, Doc. 158, the Louisiana NAACP *still refused* to name its members, Doc. 163 at 15–19 (filed October 27). In *Alabama*'s posture, that would be as if the Court had remanded and the Louisiana NAACP *still refused to name its members*. Obviously, that would not have worked in *Alabama*, where the whole point of remand was production of a membership list. It cannot work here.[1] And absent the actual identification of such members, the Louisiana NAACP cannot demonstrate associational standing. *See Summers*, 555 U.S. at 498.

Only last week did the Louisiana NAACP identify specific individuals. But its choice to do so only after discovery closed in a case this Court expedited for Plaintiffs' benefit is wholly improper. Their disclosures are untimely and this evidence should be disregarded.

Redistricting "is not a game of ambush." *In re Landry*, 83 F.4th 300, 303 (5th Cir. 2023). But that is what Plaintiffs have made it, aided by this Court's orders. Plaintiffs admit Defendants have engaged in "months of pursuing discovery," Doc. 173 at 2, but Defendants should not have had to do that. The reason Defendants pursued discovery was not merely to obtain "the information Plaintiff has produced," *id.*, but to obtain it in time to vet the Louisiana NAACP's standing assertion on a transparent record. Plaintiffs' obstinance enabled them to thwart that, as they disclosed member identities more than two months after fact discovery closed and just three weeks

[1] As Defendants anticipated, Louisiana NAACP relies on cases in the motion-to-dismiss posture, including one that found the error was in failing to grant "leave to amend" to state member names. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015); *see also Democratic Party of Virginia v. Brink*, 599 F. Supp. 3d 346, 354 (E.D. Va. 2022) (motion-to-dismiss posture). Notably, *Democratic Party* is bad law under Fourth Circuit precedent, *see S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013).

before trial is set to begin. Doc. 110 at 2.[2]

That affords Defendants no means of discovery to assess basic questions, such as how the Louisiana NAACP ascertained information about these individuals when its President "*didn't have a list or anything*" and simply "spoke with my lawyers" before vetting membership. Doc. 163-8 at 91 (emphasis added). It is a mystery how these individuals were identified, who identified them, what means were taken to ensure accuracy of the disclosed information, and whether that information is true. Defendants also have no means of determining whether the listed members vote for the candidates Plaintiffs believe are minority-preferred.

Compounding these irregularities is Plaintiffs' apparent fast-and-loose treatment of the Louisiana NAACP's structure. Plaintiffs allege only that their newly disclosed "members" are members of NAACP "branch" organizations, *see* Doc. 173-1 at 2–6, and claim members of "branches" are "automatically" members of the Louisiana NAACP (i.e., the "State Conference"). Doc. 163 at 13. But the sources cited for that assertion do not support it. Plaintiffs attach a document they claim are the Louisiana NAACP's "bylaws," Doc. 163-9, but provide no admissible evidence that this document is the Louisiana NAACP's governing bylaws: it is unsigned, nowhere says it is the Louisiana NAACP's bylaws (it has blank lines for the organization's name on the first page), and it has not been authenticated by declaration or deposition testimony. But even assuming the "bylaws" are the actual bylaws, neither provision Plaintiffs cite show that a member of a "branch" is a member of the State Conference—only that a member of a "Unit" (which can include a "branch") is a member of the national NAACP (which is not a plaintiff), *id.* at art. IV, § 1(a), and that the "Unit" *itself* is the member of the State Conference, *id.* at art. IV, § 3(a). This

[2] Plaintiffs are incorrect to assert that this Court's production order absolved the Louisiana NAACP of its obligations under the Court's scheduling order. By ordering production, the Court commanded what the Louisiana NAACP was obligated to provide all along.

matters because, according to both Mr. McClanahan, Doc 163-8 at 50:9–11, and the "bylaws" themselves, Doc. 163-9 at art. III, § 1(a), "Units" are separate nonprofit organizations that manage their own membership, have their own officers, and could have served as plaintiffs (and have in past voting-rights cases). *See, e.g., Terrebonne Parish Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 407 (M.D. La. 2017), *rev'd on other grounds sub nom*, 963 F. 3d 447 (5th Cir. 2020) (NAACP Louisiana "branch" was plaintiff in Section 2 case).

As shown, Louisiana NAACP's assertions about membership have been inaccurate (or at least doubtful) many times over, and they have frustrated Defendants' ability to learn the truth by demanding expedited proceedings and delaying production until there was no possibility of vetting the truth of the Louisiana NAACP's representations. The Court's slow-walking of the motions about this matter has enabled this ambush.[3]

The Louisiana NAACP, meanwhile, has no argument that its untimely production was justified or harmless, as is required under Fed. R. Civ. P. 37(c)(1). Thus, it must be excluded. *See La. Corral Mgmt., LLC v. Axis Surplus Ins. Co.*, 22-cv-2398, 2023 WL 315940, at *2 (E.D. La. Jan. 19, 2023). Louisiana NAACP's argument that trial should proceed as scheduled gets Rule 37(c) backward. One factor is "the availability of a continuance to cure [the] prejudice" of untimely disclosure. *See, e.g.*, *Red Dot Bldgs. v. Jacobs Tech., Inc.*, No. 11-cv-1142, 2012 WL 2061904, at *4 (E.D. La. June 7, 2012). Because Rule 37 "places the burden on" Plaintiffs "to prove harmlessness or substantial justification," *La. Corral Mgmt.*, 2023 WL 315940, at *2, they are obligated to show why the material should not be excluded. Having insisted that a continuance is not available, Plaintiffs cannot argue that prejudice to Defendants from their untimely disclosure can be cured.

[3] *See* Docs. 121, 122, 126, 127, 129, 130, 131, 132, 132-1, 132- 2, 135, 135-1, 136, 144, 144-1, 149, 149-1, 153, 153-1, 158, 159, 163, 169.

In any event, the untimely disclosed identities do not provide standing for the relief that Plaintiffs seek. Louisiana NAACP's associational standing (even if shown as to disclosed persons) can support only a hollowed-out version of their § 2 claim. They have disclosed 10 individuals, but they challenge dozens of districts and demand a plan with 49 majority-BVAP districts. *See* Doc. 163-1 at 5; Doc. 135 at 3 n.1. Because an individual plaintiff has standing "only with respect to those legislative districts in which they reside," *North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018), Plaintiffs can (at most) challenge HD1, HD25, HD34, HD60, HD65, HD66, HD68, HD101, SD2, SD8, SD17, and SD38. That cannot result in a judgment requiring "at least 14 majority-Black State Senate districts" and "at least 35 majority-Black State House districts." Doc. 150-10 at 6–7.

Plaintiffs respond that they have standing to "seek to alter the boundaries" of more than "the specific districts in which they live." Doc. 173 at 5. But that is true only as "necessary to reshape the voter's district." *Gill v. Whitford*, 138 S. Ct. 1916, 1931 (2018). An individual NAACP member is entitled to changes to neighboring district lines for the sole purpose of making that *member's* district an opportunity district under § 2, not to ensure that any other districts in the area where that member lives are also majority-BVAP, as Plaintiffs erroneously suggest. Plaintiffs say *Gill* is not on point because it concerned "gerrymandering," *id.*, but the "alleged harm" in that case was "the dilution of [the plaintiffs'] votes." *Gill*, 138 S. Ct. at 1920. That is the same harm as is alleged under § 2. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2337 (2021); *Thornburg v. Gingles*, 478 U.S. 30, 42 (1986) (articulating the "claim of vote dilution").

Binding precedent holds that, "[t]o the extent that the plaintiffs' alleged harm is *the dilution of their votes*, that injury is district specific." *Gill*, 138 S. Ct. at 1920–21. That was recognized in *Petteway v. Galveston Cnty.*, 3:22-cv-57, 2023 WL 2782704 (S.D. Tex. Mar. 30, 2023), and even

Plaintiffs admit: "the court held that a plaintiff lacked standing where the plaintiffs had not even alleged, much less offered, evidence that the individual could be drawn into a new, reasonably compact majority-minority district." Doc. 173 at 5. Exactly. Disclosed NAACP members may (if evidence about them is accepted and accurate) have standing to claim that *one* district where *each* resides become a majority-BVAP district where *that voter* resides. But that is no basis to demand many *more* districts "in the areas of the state" where Plaintiffs (now) focus their challenge. *Id.* Without defying basic principles of math, 10 disclosed residents cannot obtain 35 House districts and 14 Senate districts with BVAP majorities; the most they could ever hope for would be eight House and four Senate districts with BVAP majorities.[4] *See* Doc. 172 at 4; Doc. 173 at 2–6.

Plaintiffs are actually entitled to less than that because some disclosed residents already reside in majority-BVAP districts. Plaintiffs respond that, somehow, a person could be injured by being able to elect a preferred candidate. *See* Doc. 173 at 4. *Gill* counsels the opposite, holding that a plaintiff residing in a district where he could already elect his preferred candidate lacked an injury in fact. 138 S. Ct. at 1924. The disclosed members or individual Plaintiffs residing currently in HDs 34 and 101, and SD 2 lack standing to sue in their own right. Doc. 172 at 5.

Finally, Plaintiffs claim that the objections Defendants raise apply only at the remedial phase. Doc. 173 at 5. Not so. Plaintiffs must establish injury-in-fact, causation, and redressability before taking their claims to trial, and that requires proof that members' "votes have been diluted" and that standing only reaches each member's "own district." *Gill*, 138 S. Ct. at 1930–31. Plaintiffs claim they challenge SDs 2, 5, 7, 8, 10, 14, 15, 17, 19, 31, 36, 38 and 39 and HDs 1-9, 13, 22, 25, 29, 34-37, 47, 57, 58-63, 65-70, 81, 88, and 101. *See* Doc. 163-1 at 5; Doc. 135 at 3 n.1. But they

[4] The enacted plans already surpass those numbers. A § 2 challenger must show "the possibility of creating more than the existing number of reasonably compact [majority-minority] districts." *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994). A claim for *fewer* than the existing number of majority-BVAP districts in Louisiana will surely fail.

do not have Individual Plaintiffs or members in each of those districts. The law is clear that the Court may only try claims as to a very small subset of the challenged districts; it cannot defer its jurisdictional limits to a future remedial phase.

B. Organizational Standing

The Entity Plaintiffs do not have standing to sue in their own right. Plaintiffs' miscellaneous efforts to show Article III standing do not work. Their principal claim is injury where "elections are not competitive" because, where "one party's candidate will win, neither party or candidate has the incentive to expend significant resources on voter mobilization," and "the Louisiana NAACP must step in to fill the gap." Doc. 165 at 5. Plaintiffs infer this harm because "there have been numerous noncompetitive House and Senate elections" under the challenged plans. *Id.*; *see also id.* at 20; Doc. 163-10 ¶¶ 13–17. But § 2 does not require "competitive elections," and Plaintiffs do not ask for competitive elections. They want majority-BVAP districts, which is what § 2 (if satisfied) requires. That is *not* likely to result in competitive elections because "one party's candidate [the Democratic Party's] will win" in districts with Black majorities. Doc. 163 at 5. There must be a "logical nexus between the [plaintiff's] status asserted and the claim," *Flast v. Cohen*, 392 U.S. 83, 102 (1968), and this theory entails no "injury to a cognizable interest" or redressability, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 563 (1992), since Plaintiffs are unlikely to obtain competitive elections through the relief available under § 2.

Plaintiffs' other arguments are variations on this theme and falter for many reasons. They contend that the redistricting plans require the "reallocation of resources from one part of the state to another," Doc. 163 at 20, but that is just another complaint about competitive elections. Plaintiffs have no coherent argument that any "reallocation" resulted from the *racial* demographics of the challenged plans. That is because the challenged plans have *more* majority-BVAP districts than

Louisiana's legislative plans have *ever* had. Relevant under § 2, the Entity Plaintiffs are *better* off now than under prior plans, so if they altered "planned activities," it is based on the competitive-district issue not cognizable under § 2. Besides, Plaintiffs do not identify any "concrete or identifiable" resources, events, or costs. *ACORN*, 178 F.3d at 360; *see* Doc. 163-10; Doc. 163-4 at ¶¶ 24–26. And they have no meaningful explanation of how costs incurred *before* the plans became law create a redressable harm. *See* Doc. 149-1 at 13.

Setting aside Article III standing, the Entity Plaintiffs do not explain how they can be "aggrieved person[s]" within any right of action available by statute. 52 U.S.C. § 10302(a). They ignore the statutory standing analysis and say nothing meaningful of precedents holding (correctly) that the right of action belongs to "minority voters." *Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989). That is "well-settled" law, *see, e.g., White-Battle v. Democratic Party of Va.*, 323 F. Supp. 2d 696, 702 (E.D. Va. 2004), and Plaintiffs' position conflicts with the many decisions holding § 2 protection "is confined to persons whose voting rights have been denied or impaired," *McGee v. City of Warrensville Heights*, 16 F. Supp. 2d 837, 845–46 (N.D. Ohio 1998), which is a standard Plaintiffs do not satisfy. Moreover, even if Plaintiffs' demand for "competitive districts" qualified as an Article III injury, it is well beyond § 2's "zone of interests." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 137 (2014).

Plaintiffs focus on establishing that § 2 contains a right of action, Doc. 163 at 24, but Defendants already stated they are willing to assume as much at this stage for the sake of argument, Doc. 149-1 at 14 n.5. The problem is that "traditional tools of statutory interpretation" do not support a § 2 right of action for the Entity Plaintiffs. *Lexmark*, 572 U.S. at 127. It is unpersuasive for Plaintiffs to claim statutory standing with *no* analysis of the statute. Plaintiffs merely insist that "civil engagement organizations" often bring § 2 claims and ask this Court to do the same without

analysis. But organizations typically can bring VRA claims only if they establish "the standing of the association's members," which is all that occurred in *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017), a case that did not involve a § 2 challenge or even statutory standing. *See id.* at 607, 610–14 (challenge under "Section 208" analyzed as to Article III standing only).[5] Plaintiffs' other authorities involved Article III standing (principally associational standing) and no meaningful analysis of whether an organization has § 2 standing in its *own* right. *See Veasey v. Perry*, 29 F. Supp. 3d 896, 906–07 (S.D. Tex. 2014) (organizations with associational standing fell within § 2); *Harding v. Edwards*, 484 F. Supp. 3d 299, 315–16 (M.D. La. 2020) (Article III standing with no statutory standing analysis); *People First of Ala. v. Merrill*, 2:20-cv-00619, 2020 WL 4747641, at *4 (N.D. Ala. Aug. 17, 2020) (same). The legislative history Plaintiffs cite makes clear that standing is available only to "an organization *representing the interests of injured persons*." S. Rep. No. 94-295, at 40, reprinted in 1975 U.S. Code Cong. & Admin. News 774, 806–807 (emphasis added). The VRA does not deem organizations *themselves* injured for purposes of their *own* standing.

CONCLUSION

The Court should grant Defendants' summary-judgment motion.

Respectfully submitted, this the 13th day of November, 2023.

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[5] The "breadth" of the private right "varies according to the provisions of law at issue." *Lexmark*, 572 U.S. at 130. Thus the analysis under § 2 and § 208 would differ in all events.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DR. DOROTHY NAIRNE, *et al.*, Plaintiffs, v. R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana, Defendant.	Civil Action No. 3:22-CV-00178-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson

DEFENDANTS' REPLY JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Local Civil Rule 56(d), Defendant R. Kyle Ardoin, in his official capacity as Secretary of State of Louisiana; Defendant Intervenors Patrick Page Cortez and Clay Schexnayder in their respective official capacities as President of the Louisiana Senate and Speaker of the Louisiana House of Representatives; and Intervenor-Defendant the State of Louisiana, through Louisiana Attorney General Jeff Landry (collectively "Defendants"), respectfully submit the following Reply Joint Statement of Undisputed Material Facts in support of their Joint Motion for Summary Judgment:

A. This Lawsuit

1. This case involves a single cause of action under Section 2 of the Voting Rights Act challenging the Louisiana house and senate redistricting plans the Legislature enacted in 2022. *See* Amend. Compl., Rec. Doc. 14, at 56–58.

Plaintiffs' Response: Admitted.

2. The operative complaint lists six individuals as Plaintiffs: Dr. Dorothy Nairne, Jarrett Lofton, Rev. Clee Earnest Lowe, Dr. Alice Washington, Steven Harris, and Alexis Calhoun. *Id.* at ¶¶ 14–25.

Plaintiffs' Response: Admitted.

3. Plaintiffs Lofton and Calhoun have since voluntarily dismissed their claims. *See* Rec. Doc. 133. The four individuals who remain as Plaintiffs are Dr. Nairne, Rev. Lowe, Dr. Washington, and Mr. Harris (the "Individual Plaintiffs").

Plaintiffs' Response: Admitted.

4. The Individual Plaintiffs allege that they reside in HD25, HD60, HD66, and HD69. Amend. Compl., Rec. Doc. 14, at ¶¶ 15, 19, 21, 23.

Plaintiffs' Response: Qualified. The Individual Plaintiffs have declared under penalty of perjury that, to the best of their knowledge and recollection, they reside in House Districts 25, 60, 66, and 69. ECF No. 149-3, Individual Pls.' Resp. to Interrogs., at 4, 29, 51, 72.

Defendants' Reply: Defendants admit the qualification included in Plaintiffs' Response.

5. The Individual Plaintiffs allege that they reside in SD2, SD5, SD16, and SD29. *See* Ex. 1 at 4, 29, 51, 72. No Individual Plaintiff resides in any state legislative district other than HD25, HD60, HD66, HD69, SD2, SD5, SD16, or SD29. *See id.* Several of these districts are already majority-minority districts. *See* Ex. 2 at 1–2.

Plaintiffs' Response: Denied. The Individual Plaintiffs have declared under penalty of perjury that, to the best of their knowledge and recollection, they reside in House Districts 25, 60,

66, and 69, and Senate Districts 2, 16, and 29. Individual Pls.' Resp. to Interrogs., ECF No. 149-3, at 4, 29, 51, 72.

Defendants' Reply: Defendants admit the qualification included in Plaintiffs' Response.

6. The operative complaint lists two Entity Plaintiffs, Black Voters Matter Capacity Building Institute ("BVM") and the Louisiana State Conference of the National Association for the Advancement of Colored People (the "Louisiana NAACP"). Amend. Compl., Rec. Doc. 14, at ¶¶ 26, 39.

Plaintiffs' Response: Admitted

7. The Entity Plaintiffs are both non-profit corporations. *See* NAACP Dep. Tr. 21:10–12; 22:21–23:23; 50:2–4; BVM Dep. Tr. 12:11–13:7.

Plaintiffs' Response: Admitted

8. Plaintiffs ask the Court to declare both house and senate redistricting plans invalid in their entirety and enjoin them in full. *See* Amend. Compl., Rec. Doc. 14, Prayer for Relief ¶¶ A and B.

Plaintiffs' Response: Denied. Plaintiffs claim that Defendants violated the mandates of Section 2 by enacting legislative maps for the Louisiana State Senate and Louisiana State House of Representatives that unlawfully deprive Louisiana's Black voters of a meaningful opportunity to elect candidates of their choice to the State Senate and House of Representatives. In the Senate map, the Black vote has been diluted in the Shreveport area, Jefferson Parish, and in the East Baton Rouge area. To establish *Gingles* I, Plaintiffs have proffered an illustrative map, which creates new districts

that are numbered as Senate District 38, 19, and 17. In the House map, the Black vote has been diluted in the Shreveport area, the East Baton Rouge area, the Ascension area, Lake Charles area, and the Natchitoches area. To establish *Gingles* I, Plaintiffs have proffered an illustrative map, which creates new districts that are numbered as House District 1, 65, 68, 69, 60, 38, and 23. Plaintiffs have not challenged the maps in their entirety. Plaintiffs' illustrative districts directly implicate the following enacted districts: House Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 22, 25, 29, 34, 35, 36, 37, 47, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 81, 88, and 101, and Senate Districts 2, 5, 7, 8, 10, 14, 15, 17, 19, 31, 36, 38, and 39. *See* Am. Compl., ECF No. 14, ¶¶ 90, 96, 105–108, 112–115; Am. Compl., Exs. 1–4; NAACP Supp. Resp. to Interrogs., ECF No. 149-7, at 2–3 (focusing on data "[a]s to each Louisiana State House and State Senate District at issue in the Complaint"); Individual Pls.' Resp. to Interrogs., ECF No. 149-3, at 4, 6, 30, 52–53, 73–74. In addition, in remedying the vote dilution Plaintiffs allege, other districts may be indirectly affected. *See*, *e.g.*, Ex. 2.

Defendants' Reply: Qualified. Defendants admit that the Prayer for Relief in Plaintiff's Amended Complaint speaks for itself and that it purports to ask the Court to enjoin the use of the Enacted House and Senate Plans. Defendants further admit that in their opposition to Defendants' Joint Motion for Summary Judgment, Plaintiffs have attempted to narrow the districts at issue in this case and frame the legal issues in a way that is not consistent with their Amended Complaint. Whether that is appropriate, is a non-material, legal issue for the Court to decide.

B. Plaintiff BVM

9. Headquartered in Atlanta, Georgia, BVM is a general advocacy organization focusing on the goal of increasing the outreach capacity of other organizations engaged in voter

participation and increasing black voter turnout. BVM Dep. Tr. 10:22–11:3; 18:7–25; 25:2–23; 27:3–7. BVM operates in twenty-five states across the country. *Id.* at 18:7–25. BVM maintains an office in Shreveport, Louisiana. *Id.* at 19:22–24; 20:14–19.

Plaintiffs' Response: Qualified. In addition to increasing voter turnout, BVM supports partners' missions by increasing capacity to address their concerns and issuing grants. Ex. 1, Ho-Sang Dep. Tr. at 11:3– 20. 32. BVM's core mission is to "expand Black voter engagement" and "increase power in marginalized, predominantly Black communities." Ex. 2, BVM-LA-Leg 0005179–81; Ex. 3, Ho-Sang Decl. ¶ 4.

Defendants' Reply: Defendants admit the qualification included in Plaintiffs' Response.

10. BVM does not have individual members. *Id.* at 24:12–15.

Plaintiffs' Response: Denied. Although BVM does not have a formal membership structure, BVM has a network of community partners focused on increasing voter participation, and BVM has a significant constituency of individuals and organizations in Louisiana's Black communities who are the primary beneficiaries of BVM's activities. Ho-Sang Dep. Tr. at 11:11–20, 24:12–17; Ho-Sang Decl. ¶¶ 7–11.

Defendants' Reply: Qualified. This is not a disputed material fact. As shown in Plaintiffs' Response, BVM has no formal membership structure. Defendants' Statement of Material Fact 10 contains no statement about community partners, only members.

11. BVM works with community "partners," which it defines as organizations who "work with or around increasing voter participation." *Id.* at 11:11–20. BVM estimates that it has between 50 to 58 partners in Louisiana. *Id.* at 24:16–18.

Plaintiffs' Response: Denied. BVM has a significant constituency of individuals and organizations in Louisiana's Black communities who are the primary beneficiaries of BVM's activities. Ho-Sang Decl. ¶¶ 7–11. BVM's constituency consists of its "partners, their communities, and their members." Ho-Sang Dep. Tr. at 24:10–11; Ho-Sang Decl. ¶¶ 7–11. BVM has approximately 60 partners in Louisiana, and those community partners engage in voter education and on-the-ground efforts to increase voter participation. Ho-Sang Dep. Tr. at 34:17–18; Ho-Sang Decl. ¶ 9.

Defendants' Reply: Qualified. This is not a disputed material fact. As shown in in Plaintiffs' Response, BVM works with community partners to increase voter participation, as alleged in Defendants' Statement of Fact 11. Defendants' Statement of Material Fact 11 contains no statement about constituents, only community partners.

12. Partners are entities BVM "support[s]" with financing or assistance "with the planning process" of "partner initiatives." *Id.* at 27:20–23.

Plaintiffs' Response: Qualified. A partner is an organization or entity that BVM works with to "increase voter participation." Ho-Sang Dep. Tr. at 11:12–14; Ho-Sang Decl. ¶ 9. BVM supports partners' missions by increasing their partners capacity to address their concerns, including by issuing grants and by coordinating with and training their leadership and members. Ho-Sang Dep. Tr. at 11:3– 20; Ho-Sang Decl. ¶¶ 9–10.

Defendants' Reply: Defendants admit the qualification included in Plaintiffs' Response.

13. BVM does not have partners in every parish in Louisiana. *Id.* at 62:7–10.

Plaintiffs' Response: Qualified. BVM does not have partners in every parish in Louisiana, but BVM's constituents include Black voters in many Parishes where the State's newly enacted maps dilute the voting strength of Black voters, such as Bossier, Caddo, Jefferson, St. Charles, East Baton Rouge, West Baton Rouge, De Soto, Natchitoches, Red River, Ascension, and East Feliciana. Ho-Sang Dep. Tr. at 59:22–60:6; Ho-Sang Decl. ¶ 7.

Defendants' Reply: Qualified. This is not a dispute of material fact. As Plaintiffs' Response admits, "BVM does not have partners in every parish in Louisiana…." This is the exact language of Defendants' Statement of Material Fact 13. Any other information contained in the response regarding constituents is immaterial.

14. Not all BVM partners are involved with initiatives relating to redistricting or the redistricting cycle. *Id.* at 26:25–27:14.

Plaintiffs' Response: Denied. All BVM's partners are involved in increasing voter participation, Ho-Sang Dep. Tr. at 11:12–20; Ho-Sang Decl. ¶ 9, which now requires a more nuanced approach in response to the unlawful maps passed in Louisiana's latest redistricting cycle, Ho-Sang Dep. Tr. at 49:3–13. The unlawful maps passed in this redistricting cycle impact and impair BVM's and its partners' core mission and activities designed to increase Black voter participation, because maps that dilute Black voting power cause BVM constituents and other voters become disillusioned with the process and become apathetic. Ho-Sang Decl. ¶¶ 23–26. In response to the last redistricting cycle, BVM's partners will require more resources to encourage participation when voters know the challenges that Black candidates of choice face. *Id*.

Defendants' Reply: Qualified. This is not a dispute of material fact. Plaintiffs' Response discusses an increase in voter participation, while Defendants' Statement of Material Fact 14 speaks only to initiatives specifically pertaining to redistricting.

15. BVM claims that, as a result of the redistricting process, it diverted time and funds it might have otherwise used towards funding its partners' non-redistricting purposes and missions. *Id.* at 47:15–48:25. Specifically, BVM points to costs associated with a bus tour it coordinated during the legislative redistricting and related events from before the maps became law. *Id.* at 50:13–52:4.

Plaintiffs' Response: Qualified. In addition to the costs associated with the bus tour, BVM spent additional staff and partner time responding to Louisiana's redistricting. *Id.* at 47:21–48:1; *see* Ex. 4, BVM-LA-Leg 0002891–93. BVM diverted and expended costs prior to, during, and after redistricting. Ho-Sang Dep. Tr. at 52:1–4.

During the redistricting process, funds were moved from other aspects of BVM to instead cover: (1) "mini grants to partners that participated in the process," (2) payments for "lodging for out-of-town partners during redistricting takeover," (3) a "big bus for the redistricting takeover," (4) outreach costs, such as broadcast texting, and (5) events and event planners. Ho-Sang Dep. Tr. at 50:3–51:22; Ho-Sang Decl. ¶¶ 16–19.

After the Legislature passed S.B. 1 and H.B. 14, BVM has continued to divert resources toward combatting the discriminatory state legislative maps. Ho-Sang Decl. ¶ 21. In addition to calling for the Governor to veto the maps, *id.* ¶ 22, BVM also developed a campaign to hold legislators accountable for voting against fair maps and diluting Black Louisianans' votes and, even in the face of that dilution, to "mak[e] sure that those who make it to the office uphold their

responsibilities in ensuring fair and equal representation in our communities." Ex. 5, BVM-LA-Leg 0000383–84; *see also* Ex. 6, BVM-LA-Leg 0003053, 0005833–36, 0005840.

Thus, as a result of the unlawful maps, BVM will continue to need to divert resources from its core activities (*i.e.*, voter registration efforts, or educating constituents on issues that are important to Black voters in Louisiana) toward finding ways to hold elected officials accountable, even in districts where Black voters are unable to elect their candidate of choice and are receiving unfair representation. BVM will need to divert resources toward engaging with the candidates that represent Black voters in these parishes, to try to ensure that Black voters have a voice and opportunity to be heard by their elected officials despite being denied political power as a result of the enacted maps. Ho-Sang Decl. ¶¶ 24–25.

Defendants' Reply: Qualified. This is not a dispute of material fact. Plaintiffs do not dispute that money was spent on the bus tour or the cited deposition testimony of BVM's 30(b)(6) deponent. Instead, Plaintiffs rely upon additional information, which does not dispute Defendants' Statement of Material Fact 15 presented in a new declaration from Ms. Ho-Sang.

16. BVM also claims that the redistricting process has created an "increasing sentiment" amongst communities that their votes do not count, which BVM asserts requires a "nuanced approach" to initiatives and events. *Id.* at 49:1–13.

Plaintiffs' Response: Qualified. When the Legislature acts to weaken the voices of Black voters, such as by enacting maps that dilute Black voting strength, BVM constituents and other voters become disillusioned with the process and become apathetic. Ho-Sang Decl. ¶ 24. The increased sentiment that a person's vote does not count due to the redistricting process has affected

how BVM organizes, *id.* at 49:8–13, which is how BVM engages with partners and fulfills its mission of increasing voter engagement, *id.* at 26:16–24; Ho-Sang Decl. ¶ 24; Am. Compl., ¶ 26.

In the unlawful districts, more resources will be required to encourage participation when voters know the unfair challenges that Black candidates of choice face as a result of the maps' dilution of Black voters' power. Additionally, more resources will be required when advocating for BVM constituents' preferred positions with elected officials who are not the Black candidate of choice. As long as the discriminatory maps remain in place, BVM will have to redouble its efforts to engage Black voters and convince them that their vote matters, which will require diversion of more of BVM's resources and will make it more difficult to accomplish other organizational goals. Ho-Sang Decl. ¶¶ 24–26.

Defendants' Reply: Qualified. This is not a disputed material fact. Plaintiffs' Response does not dispute anything in Defendants' Statement of Material Fact 16 and instead provides a legal argument.

17. BVM has continued funding and providing grants for its partners. *Id.* at 57:13–58:2. BVM cannot identify any specific grants or grant applications that did not receive funding as a result of the challenged redistricting plans. *Id.* at 58:3–8.

Plaintiffs' Response: Denied. BVM explained that it provided mini grants to partners that participated in the redistricting process instead of spending that money on "more general [get out the vote efforts] to really increase the number of registered voters in a community" or "more teachings" to educate the community on BVM's core issues. Ho-Sang Dep. Tr. at 47:21–48:25.

Defendants' Reply: Qualified. Plaintiffs' Response does not actually deny that BVM has continued to fund its partners as stated in the cited deposition testimony in Defendants' Statement of Material Fact 17.

C. Plaintiff Louisiana NAACP

18. The Louisiana NAACP is a volunteer-based 501(c)(4) organization, run by a statewide executive committee. NAACP Dep. Tr. 21:10–12; 22:21–23:23; 50:2–4. Within Louisiana, there are eight NAACP districts. *Id.* at 23:24–24:3.

Plaintiffs' Response: Qualified. The Louisiana NAACP's membership and organizational structure is set forth in its by-laws. Ex. 7, McClanahan Dep. Tr. at 18:20–24, 135:1–10.

Defendants' Reply: Defendants admit the qualification included in Plaintiffs' Response.

19. The Louisiana NAACP itself does not have individual members, nor does it maintain membership lists. *Id.* at 29:11–15; 37:9–14; 38:16–21. Instead, individual NAACP members belong to their local chapters, or branches, *id.* at 37:11–38:15, which are separate 501(c)(4) organizations, *id.* at 50:9–11, and those local chapters are monitored by the national NAACP, the Louisiana NAACP's parent organization, *id.* at 32:5–7; 20:8–20. There are estimated to be roughly 40 branches of the NAACP in Louisiana. *Id.* at 19:18–23.

Plaintiffs' Response: Denied. The National NAACP is made up of state (or state-area) conferences, which are in turn made up of local branches and chapters. *See* Ex. 8, Louisiana NAACP Bylaws, at art. I, § 1. The state conferences, branches, and chapters are collectively known as "units." *Id.* at art. I, § 1, art. III, § 2. Units are not separately incorporated entities. *Id.* at art. III. § 1. When an individual becomes a member of the NAACP, they become a member of all the units

covering the geographic area in which they live or work as well as the national NAACP, *Id.* at art. VI, §§ 1, 3, and that may including the local branch if one exists in the member's area. McClanahan Dep. Tr. at 29:11–18. The Louisiana NAACP is a membership organization that collects dues from paying members and aims to serve all Black Louisianians regardless of their membership status. *See* Ex. 9, McClanahan Decl. ¶ 4.

Defendants' Reply: Qualified. This is not a disputed material fact because Plaintiffs response is not factually rooted in Mr. McClanahan's deposition testimony and is therefore nothing but an unsubstantiated assertion which cannot create a genuine dispute of material fact. *Rogers v. Jarrett,* 63 F.4th 971, 975 (5th Cir. 2023), *cert. denied*, No. 23-93, 2023 WL 6378558 (U.S. Oct. 2, 2023). Mr. McClanahan's deposition testimony clearly supports Defendants' Statement of Material Fact 19. When asked "How does someone become a member of the State Conference?" Mr. McClanahan responded "Well, they don't become members of the State Conference, per se. Not Individually. They just have to become a member of the branch… the branch is a member of the State Conference." Doc. 163-8 at 29:11-18. Plaintiffs' citation to a document, Ex. 8, they claim is the Louisiana NAACP's bylaws does nothing to change this analysis. *See* Doc. 163-9. Plaintiffs produce no evidence from which the trier of fact could conclude that the bylaws were adopted by the Louisiana NAACP.

20. The national office of the NAACP is responsible for monitoring which branches and units are deemed out of compliance with any of the organization's standards. *Id.* at 20:8–20. The Louisiana NAACP does not receive lists or rosters of branches or members who are not in good standing, nor does the Louisiana NAACP do anything to independently verify standing status with the national organization. *Id.* at 36:11–37:8.

Plaintiffs' Response: Denied. The Louisiana NAACP receives membership information from its branches to determine whether each branch is in good standing. McClanahan Dep. Tr. at 35:17–37:4; *see also* NAACP Bylaws, at art. IV, § 4; Louisiana NAACP Bylaws, at art. I, § 2(d), art. I, § 1(b); art. III, § 2 (defining a branch to be one type of NAACP Unit). The Louisiana NAACP directly supervises the local branches, which are constituent members of the State Conference. McClanahan Dep. Tr.at 18:18–24, 29:11–18, 32:2–7, 38:16–21, 43:1–5, 49:17–22.

Defendants' Reply: Qualified. This is not a dispute of material fact. Defendants admit that the cited bylaws in Plaintiffs' response speak for themselves, as does Mr. McClanahan's clear testimony that membership updates come from the National Chapter and go directly to the branches, not to him. (35:17-21).

21. At least one Louisiana NAACP branch is not in good standing. *Id.* at 30:10–31:6.

Plaintiffs' Response: Denied. The testimony of the Louisiana NAACP's Chapter President, Michael McClanahan, was that at least one Louisiana NAACP branch was not in good standing as of "last year's state convention," and that the Louisiana NAACP and President McClanahan actively "try[] to get them all to be in good standing." Rec. Doc. 163-8 at 30:10–31:6.

Defendants' Reply: Qualified. Plaintiffs' Response does nothing to contradict the cited deposition testimony of Mr. McClanahan that one NAACP branch was not in good standing. In any event, even if there were a dispute, this is not a material fact.

22. Membership in an NAACP branch simply requires dues payments. *Id.* at 28:11–16. There are no age or race requirements for membership. *Id.* at 28:11–29:1. One does not need to be

a registered voter in order to be a member. *Id.* at 29:2–4; 29:11–30:4. Even "a baby" could join an NAACP branch. *Id.* at 28:19–21.

Plaintiffs' Response: Qualified. Each branch must have at least 50 adult members. NAACP Bylaws, at art. III, § 3(b)(i) (explaining that members of any unit are automatically members of the national NAACP, and that "members of [local units] are members of the State/State-Area Conference"); *see also id.* at art. IV, § 4 (describing membership requirements to join branches); McClanahan Dep. Tr. at 20:3–7. While the NAACP accepts members of all races and ethnicities, most members of the Louisiana NAACP are Black. McClanahan Decl. ¶ 4.

Defendants' Reply: Defendants admit the qualification included in Plaintiffs' Response.

23. The Louisiana NAACP does not receive notices when NAACP members pass away, *id.* at 34:9–21, nor is the organization aware of how—or even if—each branch updates their membership roster when a death occurs, *id.* at 34:21–25.

Plaintiffs' Response: Denied. The Louisiana NAACP "regularly" receives notice of its deceased members. McClanahan Dep. Tr. at 34:11–14. Once it receives notice, the Louisiana NAACP attempts to contact the decedent's family and removes their name from any membership lists. *Id.* at 34:17–25.

Defendants' Reply: Qualified. Plaintiffs' response grossly misconstrues Mr. McClanahan's testimony and as such, is nothing more than an unsubstantiated assertion that cannot create a genuine dispute of material fact. *Rogers,* 63 F.4th at 975. When asked "Does the State Conference know when a member has passed away?" Mr. McClanahan responded with "Not All." Mr. McClanahan also testified that he "didn't know where the removing part starts" with respect

to removing names from the membership list. (Rec. Doc. 163-8 at 34:9–25). In any event, this dispute is not material.

24. The Louisiana NAACP asserts that its president, Michael McClanahan, has identified branch members in specific house and senate districts challenged in this case. *See* Ex. 5. The Louisiana NAACP declines to identify branch members or permit discovery concerning them. *See, e.g.*, Rec. Doc. 119.

Plaintiffs' Response: Qualified. In response to Defendant Ardoin's interrogatory seeking personally identifying information of members in each district at issue in this litigation, the Louisiana NAACP provided a list of districts that would be directly involved in the creation of additional majority-Black districts in Mr. Cooper's June 2023 illustrative plan and in which it had identified individual members. Exh. 5. The Louisiana NAACP did not adopt the Defendants' undefined conception of "challenged district." The identity of the Louisiana NAACP's members is protected by the "associational and privacy rights guaranteed by the First and Fourteenth Amendments." *Hastings v. Ne. Indep. Sch. Dist.*, 615 F.2d 628, 631 (5th Cir. 1980). Defendants moved to compel discovery regarding the identity of the Louisiana NAACP's members. ECF No. 132, Defendant's Mtn. to Compel. The Motion was referred to Magistrate Judge Scott D. Johnson. In the order denying the Motion to Compel, Judge Johnson held that "Defendant has not provided any reason to justify its request for the name, address, age, phone number, and occupation of every single member in every challenged district." *Nairne v. Ardoin*, NO. 22-178-SDD-SDJ, at 3 (M.D. La. Sept. 8, 2023), ECF No. 136.

Defendants' Reply: Qualified. Plaintiffs' response contains legal arguments that do not create a disputed material fact. *Rogers,* 63 F.4th at 975. In any event, this issue was mooted when

Plaintiffs produced the names and addresses of members in districts they challenged per Judge Johnson's November 2, 2023 Order, Rec. Doc. 169.

25. Mr. McClanahan does not know how many senate districts the state of Louisiana has, *id.* at 62:24–63:4, nor can he identify the addresses of any branch members, *id.* at 66:5–68:14.

Plaintiffs' Response: Denied. Mr. McClanahan testified that he identified at least one member of the NAACP in Senate Districts 2, 7, 15, 17, 19, 38, and 39. McClanahan Dep. Tr. at 90:9–91:5; *see also* Ex. 9, McClanahan Decl. ¶¶ 5-7. Consistent with the Louisiana NAACP's assertion of its members' associational privilege, Mr. McClanahan was instructed not to answer questions seeking personally identifying information of members, including addresses. E.g., McClanahan Dep. Tr. at 66:7-9

Defendants' Reply: Qualified. This is not a disputed material fact. Plaintiffs' Response indicates that Mr. McClanahan identified members in some of Louisiana's State Senate districts. Plaintiffs' Response fails to contradict Mr. McClanahan's testimony that he does not know how many senate districts are in the state of Louisiana. In any event, any dispute, if there is one, is not material.

26. Mr. McClanahan does not know how many house districts Louisiana has, *id.* at Tr. 81:12–16.

Plaintiffs' Response: Denied. Mr. McClanahan testified that he identified at least one member of the NAACP in House Districts 1, 3, 4, 29, 34, 38, 57, 58, 60, 61, 63, 65, 68, 69, and 101. McClanahan Dep. Tr. at 90:9–91:5; *see also* Ex. 9, McClanahan Decl. at ¶¶ 5-7

Defendants' Reply: Qualified. This is not a disputed material fact. Plaintiffs' Response indicates that Mr. McClanahan identified members in some of Louisiana's State House districts. Plaintiffs' Response fails to contradict Mr. McClanahan's testimony that he does not know how many house districts are in the state of Louisiana. In any event, any dispute, if there is one, is not material.

27. Mr. McClanahan does not have a membership list for the Louisiana NAACP, nor did he review or reference any list or roster prior to asserting that the Louisiana NAACP has members in the districts challenged in this lawsuit. *Id.* at 74:6–16; 81:24–82:2; 82:11–15; 82:25–83:21.

Plaintiffs' Response: Denied. Mr. McClanahan has reviewed NAACP membership information to confirm at least one member who is eligible to vote resides in each challenged district. *See* Ex. 9, McClanahan Decl. ¶¶ 5-7. Mr. McClanahan stated that he had not reviewed a "list" of members to prepare his answers to the Interrogatories. E.g., McClanahan Dep. Tr. at 74:6–16. He did not testify that no such list exists.

Defendants' Reply: Qualified. This is not a disputed material fact. Defendants' Statement of Material Fact 27 did not state that no membership list for the Louisiana NAACP existed. Defendants admit the facts contained in Plaintiffs' response.

28. Mr. McClanahan does not know whether branch members have moved since he allegedly became aware of their presence in the specific districts or if the members are registered to vote or are even Black. *Id.* at 84:17–85:14; 89:5–13.

Plaintiffs' Response: Denied. Mr. McClanahan is aware of the Louisiana NAACP members' presence in specific districts because he either lives near them or "know[s] them personally" and possesses personal knowledge as to many of their residences. McClanahan Dep. Tr. at 82:11–88:15. In preparation for the litigation, Mr. McClanahan reviewed maps of the challenged districts and illustrative districts to identify at least one member of the Louisiana NAACP that resides in each district. McClanahan Dep. Tr. at 129:4–14. In close cases, Mr. McClanahan even went so far as to zoom in on the districts to determine which streets members live on and whether those streets are within the boundaries of the specific districts he identified. *Id.* In addition, Mr. McClanahan is aware of the Louisiana NAACP members' presence in specific districts because he either lives near them or "know[s] them personally" and possesses personal knowledge as to many of their residences. *Id.* at 82:11–88:15. *See also* Ex. 9, McClanahan Decl. at ¶¶ 4-7. Mr. McClanahan also testified that he spoke to members he identified at quarterly meetings and the state convention. *Id.* at 131:2– 11. He has also recently reviewed branch membership lists for the relevant districts, which contain up-to-date member addresses. McClanahan Decl. at ¶ 5.

Defendants' Reply: Qualified. This is not a disputed material fact. Plaintiffs' Response does nothing to address the statement in Defendants' Statement of Material Fact 28 that President McClanahan does not know if members have moved. Defendants' do not dispute that new fact presented in President McClanahan's new declaration that he has recently reviewed and up to date list with member addresses.

29. The Louisiana NAACP alleges injury from the challenged redistricting plan based on the expenditures of time and money the organization spent to mobilize members to attend events such as the legislative roadshows and get its members "excited" about more majority-minority

districts—which occurred before the plans were enacted. *Id.* at 97:19–99:3. The Louisiana NAACP cites the "emotional[] distress" branch members felt when they allegedly realized that the enacted maps were not going to provide them with the additional majority-minority districts the Louisiana NAACP apparently told them to expect. *Id.* at 99:4–101:24.

Plaintiffs' Response: Denied. The Louisiana NAACP also asserts injury as a result of harm to its core mission of achieving equitable political representation, diverted resources, and cancelled events due to the redistricting plans that were enacted. McClanahan Dep. Tr. at 56:12–19, 98:24–101:24, 102:25– 103:1, 103:1–8. These harms occurred after and as a direct result of the enactment of the challenged redistricting plans. *See* Ex. 9, McClanahan Decl. at ¶¶ 9-22.

Defendants' Reply: Qualified. This is not a dispute of material fact. Nothing in Defendants' Statement of Material Fact 29 indicated the alleged harm listed was exhaustive.

30. The Louisiana NAACP also asserts it felt compelled "to shift" its "action plan" after the legislative maps included fewer majority-minority than it hoped, *id.* at 97:24–98:2, *see also id.* at 98:11–23, choosing "not to spend" in some places and "to double up" in others, *id.* at 103:1–6.

Plaintiffs' Response: Qualified. In addition to shifting its action plan, the Louisiana NAACP invested in "radio spots" and "trainings" to engage voters in particular areas. *Id.* at 98:24–99:3. Fewer majority-minority districts also resulted in decreased voter sentiment among the Louisiana NAACP's constituents, which it had difficulty addressing. *Id.* at 100:9–101:24. The noncompetitive districts enacted under the discriminatory legislative maps has led to disinvestment from candidates, campaigns, political parties, and other organizations, requiring the Louisiana NAACP to fill the gaps and exert extra resources and effort to rally voters to participate in elections

in the challenged parts of the State, leaving fewer resources for other work or for voter engagement work in other parts of the state. Ex. 9, McClanahan Decl. at ¶¶ 12-22.

Defendants' Reply: Qualified. This is not a disputed material fact as Plaintiffs' response simply elaborates on the testimony of Mr. McClanahan cited in Defendants' Statement of Material Fact 30.

31. Mr. McClanahan could not identify specific resources diverted because of the challenged plans. *Id.* at 102:15–21; 104:9–21.

Plaintiffs' Response: Denied. As a result of Defendants' conduct, the NAACP diverted its "resources," "finances," and "manpower" towards areas in Louisiana's redistricting plans that denied equal voting opportunities to Black voters. McClanahan Dep. Tr. at 102:25–103:1. Mr. McClanahan testified that the Louisiana NAACP needed to "double up" staffing in areas of the state affected by the challenged redistricting; it was also forced to divert and spend budgetary resources on transportation and lodging in those affected districts. *Id.* at 103:3–11. Mr. McClanahan was aware of specific events that were canceled or postponed as a result of the enacted maps, including rallies and town halls. *Id.* at 103:1–8. He identified specific rallies and town halls in Bogalusa and Orleans that the Louisiana NAACP was unable to hold as a result of the diversion of its resources to address the impact of Louisiana's redistricting plans. *Id.* at 103:1–8, 104:13–21. The Louisiana NAACP regularly devotes significant portions of its resources to voter education and outreach efforts. *See* Ex 9, McClanahan Decl. ¶¶ 3, 9. These efforts take the form of door-to-door canvassing, voter registration efforts, community and candidate forums and other activities. *Id.* ¶¶ 8–9. The effectiveness of these efforts in getting voters registered and to the polls and the resources required are affected by voters' perception of whether their participation in the political process is

meaningful and whether their elected representatives are responsive to their needs. *Id.* ¶¶ 9–14. For example, when volunteers engaged on voter canvassing encounter voters who feel that their vote does not count, they spend more time educating those voters on the importance of participation, with the result that they are able to speak to fewer voters in a given day. *Id.* After enactment challenged maps, the Louisiana NAACP volunteers have faced higher levels of apathy among Black voters and as a result has been required to divert significantly greater resources to canvassing, particularly in areas and districts where Black voters routinely see their candidates of choice defeated. *Id.* at ¶¶ 9–15, 16–18. As Mr. McClanahan testified at his deposition, the Louisiana NAACP has had to reallocate its voter engagement resources to specific impacted areas where Black voters are disillusioned and less engaged as a result of legislative maps they perceive to be unfair. McClanahan Dep. Tr. at 97:24–101:24.

Defendants' Reply: Qualified. This is not a disputed material fact as Mr. McClanahan could not identify any specific monetary resources diverted because of the redistricting plan. Instead, as shown by Plaintiffs' response, Mr. McClanahan only mentioned diversion of resources in sweeping generalities without specific monetary amounts. *See* Rec. Doc. 163-8 at 102:15–103:11.

PLAINTIFFS' ADDITIONAL MATERIAL FACTS

32. Dr. Dorothy Nairne is a Black U.S. citizen who is lawfully registered to vote in Louisiana. Ex 10, Nairne Decl. ¶¶ 2-4. Dr. Nairne has lived in House District 60 and Senate District 2 since 2017. Individual Pls.' Resp. to Interrogs., ECF No. 149-3 at 5. Under the illustrative map prepared by Mr. Bill Cooper in June 2023, Dr. Nairne would reside in House District 58 and Senate

District 2. Ex 10, Nairne Decl. ¶ 5. Dr. Nairne is a dues-paying member of the NAACP. Nairne Decl. ¶ 6.

Defendants' Response: Admitted.

33. Rev. Clee Earnest Lowe is a Black U.S. citizen who is lawfully registered to vote in Louisiana. Ex 11, Lowe Decl. ¶¶ 2-4. Rev. Lowe has lived in House District 66 and Senate District 16 since 2007. Individual Pls.' Resp. to Interrogs., ECF No. 149-3, at 51. Under the illustrative map prepared by Mr. Bill Cooper in June 2023, Rev. Lowe would reside in House District 101 and Senate District 16. Ex 11, Lowe Decl. ¶ 5.

Defendants' Response: Admitted.

34. Dr. Alice Washington is a Black U.S. citizen who is lawfully registered to vote in Louisiana. Ex 12, Washington Decl. ¶¶ 2-4. Dr. Washington has lived in House District 66 and Senate District 16 since January 2016. Individual Pls.' Resp. to Interrogs., ECF No. 149-3, at 29.

Under the illustrative map prepared by Mr. Bill Cooper in June 2023, Dr. Washington would reside in House District 101 and Senate District 16. Ex 12, Washington Decl. ¶ 5.

Defendants' Response: Admitted.

35. Plaintiff Rev. Steven Harris is a Black U.S. citizen who is lawfully registered to vote in Louisiana. Ex 13, Harris Decl. ¶¶ 2-4. Rev. Harris has lived in House District 25 and Senate District 29 since 2018. Individual Pls.' Resp. to Interrogs., ECF No. 149-3, at 72. Under the illustrative map prepared by Mr. Bill Cooper in June 2023, Rev. Harris would reside in House

District 23 and Senate District 29. Ex 13, Harris Decl. ¶ 5. Rev. Harris is a dues-paying member of the NAACP. Harris Decl. ¶ 6.

Defendants' Response: Admitted.

36. Omari Ho-Sang is the senior state organizing manager for BVM. Ho-Sang Dep. Tr. at 10:2–4. Ho-Sang Decl. ¶ 2.

Defendants' Response: Admitted.

37. The Louisiana NAACP has a general objective, among other objectives, to "improve the political, educational, social, and economic status of African-Americans." Louisiana NAACP Bylaws, at art. II, § 1(b)–(c).

Defendants' Response: Admitted.

38. The Louisiana NAACP identified at least one registered voter member who resides in each of the challenged Louisiana Senate and House Districts, as well as at least one member who would resides in each of the newly created majority-Black districts or the newly unpacked majority-Black districts in Bill Cooper's June 2023 illustrative plans. See Louisiana NAACP's Supp. Resp. to Def. Ardoin's First Set of Interrogatories, at 2.

Defendants' Response: Qualified. Defendants admit that the Prayer for Relief in Plaintiff's Amended Complaint, Rec. Doc. 14, speaks for itself and that it purports to ask the Court to enjoin the use of the Enacted House and Senate Plans. Defendants further admit that in their opposition to Defendants' Joint Motion for Summary Judgment, Plaintiffs have attempted to narrow the districts at issue in this case and frame the legal issues in a way that is not consistent

with their Amended Complaint. Whether that is appropriate, is a non-material, legal issue for the Court to decide.

Defendants also admit that Louisiana NAACP's November 6, 2023 Supplemental Responses to Defendant Ardoin's First Set of Interrogatories identify members in Enacted House Districts 1, 25, 34, 60, 65, 68, 101, and Enacted Senate Districts 17, 8, 38, Rec. Doc 173-1.

Respectfully submitted, this the 13th day of November, 2023.

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