

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

JOHN ROBERT SMITH, et al. <i>Plaintiffs,</i>
v.
DELBERT HOSEMAN, et al., <i>Defendants</i>
and
BEATRICE BRANCH, et al., <i>Intervenors</i>
KELVIN BUCK, et al., <i>Plaintiffs,</i>
v.
HALEY BARBOUR, et al., <i>Defendants.</i>

3:01-cv-855-HTW-DCB

3:11-cv-717-HTW-LRA

**MOTION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
THE MISSISSIPPI STATE CONFERENCE OF THE NAACP, ONE VOICE, AND
BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE
FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OPPOSING VACATUR OF THE
INJUNCTION**

The NAACP Legal Defense and Educational Fund, Inc., the Mississippi State Conference of the NAACP, One Voice, and Black Voters Matter Capacity Building Institute respectfully move the Court for leave to participate as *amici curiae* and file a brief in opposition to the Mississippi Republican Executive Committee’s motion to vacate the injunction and for other relief. *Amici* are nonprofit organizations working to ensure the full, fair, and free exercise of constitutional and statutory rights for Black people in Mississippi and elsewhere. A copy of the proposed brief has been submitted with this motion.

I. *Amici's* Interest in the Issues Pending Before the Court

The NAACP Legal Defense and Educational Fund, Inc., (LDF) is a nonprofit, nonpartisan legal organization founded in 1940 under the leadership of Justice Thurgood Marshall. LDF's mission is to achieve racial justice and to ensure the full, fair, and free exercise of constitutional and statutory rights for Black people and other people of color. Because the franchise is "a fundamental political right . . . preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), LDF has worked for over 80 years to combat threats to Black people's right to vote and political representation. LDF has been counsel of record or served as an *amicus* in many of the precedent-setting cases regarding racial discrimination in voting in the U.S. Supreme Court, the federal courts of Mississippi, and other courts.¹ As such, LDF has a significant interest in ensuring the full, proper, and continued enforcement of the Voting Rights Act and the Constitution. LDF submits this brief to help the Court appreciate and understand the negative impact of Mississippi's Congressional Redistricting Plan on Black voters in Mississippi.

The Mississippi State Conference of the NAACP (MS NAACP) was at the forefront of major battles of the civil rights movement in Mississippi during the 1950s, '60s, and '70s. The first Mississippi NAACP branch was chartered in Vicksburg, Mississippi in 1918 and re-chartered on April 8, 1940. In 1945, members of branches from across the state came together to charter the

¹ See, e.g., *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254 (2015); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *LULAC v. Perry*, 548 U.S. 399 (2006); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Bush v. Vera*, 517 U.S. 952 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *Houston Lawyers' Assn. v. Attorney General of Tex.*, 501 U.S. 419 (1991); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Rogers v. Lodge*, 458 U.S. 613 (1982); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (*en banc*); *Miss. State Chapter, Operation PUSH, Inc. v. Mabus*, 932 F.2d 400 (5th Cir. 1991); *Milligan v. Merrill*, No. 2:21-cv-1530, 2022 WL 265001 (N.D. Ala. Jan. 24, 2022); *Ga. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015); *Martin v. Mabus*, 700 F. Supp. 327, 329 (S.D. Miss. 1988).

Mississippi State Conference NAACP to coordinate the efforts of local branches and to carry out the mission and vision of the national organization statewide. The MS NAACP mission includes ensuring the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The MS NAACP has a significant interest in this case because of its mission and the interests of its members across the state.

One Voice is a nonprofit organization whose purpose is to improve the quality of life for African Americans and other disenfranchised communities while building local and regional ability to sustain hard-won battles. This is a vision that connects justice to political and economic opportunity. One Voice's work focuses on building power within underserved communities as a tactic to address the ongoing systemic disparities that plague these communities. For the past two years, One Voice has hosted workshops and community discussions about the importance of the redistricting process. COVID-19 has introduced a new reality for civic engagement work. One Voice has hosted a number of tele-townhalls, Zoom coalition meetings and Facebook Live events to discuss civic engagement and redistricting. One Voice's work has helped to bring a level of transparency to Mississippians who would otherwise be left out of the process. This case also represents inclusion for communities that continue to be disfranchised.

Black Voters Matter Capacity Building Institute (BVM) is a nonprofit, nonpartisan organization founded in 2017 to build political power in Black communities in eleven core states. The work includes voter education and finding ways to make voting more accessible and inclusive for all communities, particularly historically marginalized communities. This work includes filing litigation against those states that have passed legislation that creates barriers to voting for Black and marginalized communities. As such, BVM has a significant interest in ensuring the full, proper, and continued enforcement of the Voting Rights Act and the Constitution. BVM submits

this brief to help the Court appreciate and understand the negative impact of Mississippi's Congressional Redistricting Plan on Black voters in Mississippi.

Individually and collectively, *amici* have significant interests in ensuring the full, proper, and continued enforcement of the Voting Rights Act and the Constitution.

II. Permitting the Filing of *Amicus* Briefs is Within the Court's Discretion

Amici request leave to file their proposed brief and the supporting expert declarations and to present argument or evidence at any forthcoming hearings. *Amici* wish to provide context to the Court relating to the negative impact of Mississippi's Congressional Redistricting Plan on Black voters in Mississippi and to contextualize Mississippi's long history of racial discrimination in voting. This Court should grant the motion because "[g]enerally, courts have exercised great liberality in permitting an *amicus curiae* to file a brief in a pending case, and, with further permission of the court, to argue the case and introduce evidence." *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990); *see also Morales v. Turman*, 820 F.2d 728, 730 (5th Cir. 1987) (noting that an *amicus* was allowed to present its own experts and evidence at trial); *Cox v. Morris*, No. 3:18-CV-30-DMB-JMV, 2019 WL 1601367, at *3 (N.D. Miss. Apr. 15, 2019) (permitting *amicus* to submit a brief and materials in opposition to a motion for summary judgment); *Cazorla v. Koch Foods of Mississippi, LLC*, No. 3:10CV135-DPJ-FKB, 2014 WL 2163151, at *3 (S.D. Miss. May 23, 2014) (admitting an *amicus* brief and supporting exhibits and testimonial evidence).

A district court has discretion to permit an *amicus* brief "to assist the court in reaching a proper decision." *Cox*, 2019 WL 1601367, at *5. "District courts have inherent authority to appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure." *Id.* (citing *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008)). "Factors relevant

to the determination of whether *amicus* briefing should be allowed include whether the proffered information is timely or useful or otherwise necessary to the administration of justice.” *Id.* (citing *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 928 (S.D. Tex. 2007) (quotation marks omitted)); *see also Denning v. Barbour*, No. 3:05-CV-771WS, 2006 WL 8454308, at *2 n.3 (S.D. Miss. Mar. 8, 2006) (looking to Fed. R. App. P. 29 in exercising discretion to permit filing of *amicus* brief).

Amici’s brief is timely. *Amici* are filing on the same day that response briefs are due to the motion to vacate the injunction, and its content is unquestionably useful to the disposition of the issues before the Court. *Amici*’s limited participation in any hearings concerning the legality of the 2021 plan also will not cause any unjust delays. *Amici* submit that their participation as *amici curiae* will aid the Court in resolving this case. Accordingly, *amici* respectfully request that this Court grant their motion for leave to appear as *amici curiae*, accept their attached *amici curiae* brief and the supporting declarations, and permit *amici*’s limited participation in any hearings.

Respectfully submitted,

February 24, 2022

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CERTIFICATE OF SERVICE

I, Fred L. Banks, Jr., do hereby certify that I have this date filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record with ECF.

SO CERTIFIED, this the 24th day of February, 2022.

/s/ Fred L. Banks, Jr.
Fred L. Banks, Jr.

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DECLARATION OF WILLIAM S. COOPER

WILLIAM S. COOPER, acting in accordance with 28 U.S.C. § 1746, Federal Rule of Civil Procedure 26(a)(2)(B), and Federal Rules of Evidence 702 and 703, does hereby declare and say:

I. Introduction

1. My name is William S. Cooper. I have a B.A. in Economics from Davidson College. As a private consultant, I currently serve as a redistricting and demographics expert for the *amici*.

(a) Experience

2. I have testified at trial as an expert witness on redistricting and demographics in federal courts in about 50 voting rights cases since the late 1980s. I have filed declarations in about 50 other voting rights cases.

3. In 2022, I have testified at three trials on behalf of plaintiffs challenging post-2020 Census redistricting plans under Section 2 of the Voting rights Act: *Caster v. Merrill*, No. 2:21-CV-1536-AMM (N.D. Ala.), *Pendergrass v. Raffensperger*, No. 1:21-CV-05339-SCJ (N.D. GA), and *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No.1:21-cv-5337 (N.D. Ga). I also testified at trial in a voter suppression lawsuit: *Disability Rights Florida v. Lee*, No. 4:21-cv-187-MW-MAF (N.D. Fla.).

4. In 2022, I also filed two declarations as the Gingles 1 expert for the plaintiffs in *Baltimore NAACP v Baltimore County*, No. 21-cv-03232-LKG (Md.).

5. As shown in the appendix to **Exhibit A**, I have drawn state, county, and municipal election district plans in Mississippi for Sec. 2 plaintiffs and local governments since the 1990s. I served as the Gingles 1 expert for the plaintiffs in *Thomas v. Reeves*, No. 18-cv-441 (S.D. Miss.). I also testified at trial in *Smith v. Clark*, 189 F. Supp. 2d 503 (S.D. Miss. 2002).

(b) Purpose of Declaration

6. For this matter, counsel for the *amici* asked me to prepare two illustrative congressional plans that adhere to traditional redistricting principles and avoid packing Black voters into Congressional District 2 (CD 2). I was also asked to take into account, to the extent practicable, the redistricting factors identified by the Court in *Smith v. Hosemann*, 852 F.Supp.2d 757 (2011) -- for example, (1) keep the Delta counties in a single congressional district, (2) assign each of the four state universities to different districts, and (3) assign the three military bases to different districts.

(c) Methodology

7. I relied on the PL94-171 data published by the U.S. Census Bureau to develop the two illustrative plans. The GIS software that I use is called *Maptitude*, developed by the Caliper Corporation.¹

8. *Maptitude* is deployed by many local and state governing bodies across the country for redistricting and other types of demographic analysis. The *Maptitude* software processes electronic Census Bureau geographic file information in order to produce a map for display on a computer screen. The software also merges demographic data and street address information to match the relevant decennial Census geography.

(d) Summary Conclusions

- Based on the 2020 Census, a congressional plan for Mississippi can be drawn that complies with **all** traditional redistricting principles, as well as Mississippi-specific redistricting factors identified by the Court.
- As shown in the illustrative plans that I have prepared, a key tenet of traditional redistricting principles – the non-dilution of minority voting strength – can be achieved by unpacking the Black population in CD 2 (under the Benchmark 2011 Plan and the Adopted 2022 Plan) and by reconfiguring CD 3.

¹ See: <https://www.caliper.com/maptovu.htm>

II. The Benchmark 2011 Plan and the Adopted 2022 Plan

9. According to the 2020 Census, the Any Part Black voting age population (“BVAP”) in Mississippi is 36.14% -- up from 34.99% in 2011. For all ages, the 2020 AP Black population is 37.94% -- the highest in the nation.²

10. According to the 2020 Census, the Benchmark 2011 Plan (“Benchmark Plan”) is malapportioned. Majority-Black CD 2 is underpopulated by nearly 9%. The three other congressional districts are overpopulated.

11. The task before the Legislature’s map drawers was simple – reconfigure CD 2 and balance the population in the remaining districts, while adhering to traditional redistricting principles: (1) meet one-person one-vote requirements, (2) create reasonably shaped, compact and contiguous districts, (3) respect communities of interest, (4) preserve political subdivision boundaries, and (5) avoid dilution of minority voting strength.

12. In my opinion, the Adopted Plan fails to adhere to traditional redistricting principles because the Legislature’s map drawers chose to maintain the

² In this declaration, “African American” or “Black” refers to persons who are Any Part Black (i.e., Single Race Black or persons of two or more races and some part Black), including Hispanic Black. In some instances (e.g., for historical comparisons), numerical or percentage references identify Single Race Black as “SR Black” and Any Part Black as “AP Black.” Unless noted otherwise, “Black” means AP Black. It is my understanding that following the U.S. Supreme Court decision in *Georgia v. Ashcroft*, 539 U.S. 461 (2003), the “Any Part” definition is an appropriate Census classification to use in most Section 2 cases.

BVAP in CD 2 at an unnecessarily high level of 62.15% -- thereby limiting Black voting strength elsewhere in the state. There is contemporary evidence that a BVAP percentage in the low to mid-50s is sufficient for Black voters to elect a candidate of choice. See, for example, State Senate District 22 drawn by the State in 2018 and anchored in the Delta (*Thomas v. Reeves*).

13. The table in **Exhibit B** details counties, precincts, and parts of precincts that were shifted from one district under the Benchmark Plan to another in the Adopted 2022 Plan (“Adopted Plan”).

14. Overall, the 2020 voting age population (“VAP”) shifted into a new district from the Benchmark Plan to the Adopted Plan is 43.63%. However, an analysis of shifts involving CD 2 reveals that almost no population was shifted out of CD 2 and the population shifted into CD 2 was majority-Black: **Into CD2** (total pop. – **66,371** – **50.35% BVAP**); **From CD 2** (total pop. – **543** – 82.37 % BVAP), representing a single precinct in Hinds County.

C. ILLUSTRATIVE PLANS

15. The two illustrative plans I have prepared demonstrate that plans can be drawn that meet all traditional redistricting principles, including a key redistricting principle not respected in the Adopted Plan -- the non-dilution of minority voting strength. This can be achieved without sacrificing compactness, without splitting additional counties or precincts, and while preserving communities

of interest such as the Delta and state universities in a single district.

(a) Illustrative Plan 1

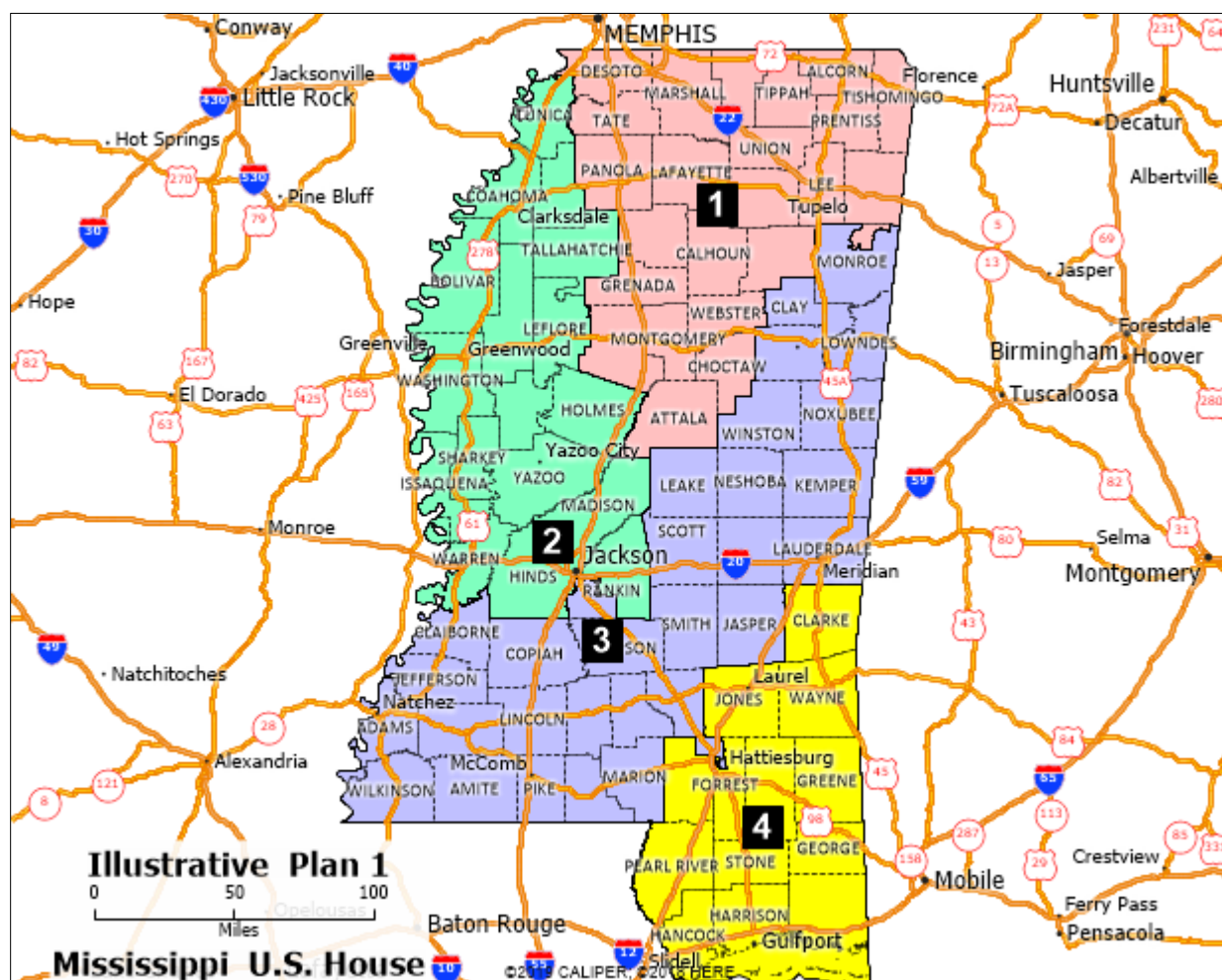
16. The map in **Figure 1** (on the next page) depicts Illustrative Plan 1. District 2 is 54.32% BVAP and District 3 is 41.9% BVAP. A higher resolution map of Illustrative Plan 1 is in **Exhibit C-1**.

17. District 1 is in central and north Mississippi. It encompasses 23 whole counties, sharing Monroe County with District 3. The University of Mississippi is in District 1.

18. District 2 is anchored in Hinds County and the Delta. It encompasses 16 whole counties and splits Rankin County between Districts 2 and 3. Jackson State is in District 2.

19. District 3 is in central and southwest Mississippi. It encompasses 27 whole counties, splitting Rankin County (with District 2) and Forrest County (with District 4). Mississippi State is in District 3.

20. District 4 is in southeast Mississippi and the Gulf Coast. It encompasses 12 whole counties. Southern Mississippi University is in the District 4 portion of Forrest County.

Figure 1**Illustrative Plan 1**

21. The table in **Figure 2** shows 2020 summary population statistics for the Adopted Plan. **Exhibit C-2** contains more detailed 2020 population statistics.

Figure 2**Illustrative Plan 1 – 2020 Census**

District	Population	Deviation	18+ Pop	% 18+ AP Black	% 18+ NH White
1	740319	-1	569508	26.69%	67.40%
2	740320	0	569020	54.32%	41.15%
3	740322	2	571940	41.90%	53.15%
4	740318	-2	567131	21.57%	69.38%

(b) Illustrative Plan 2

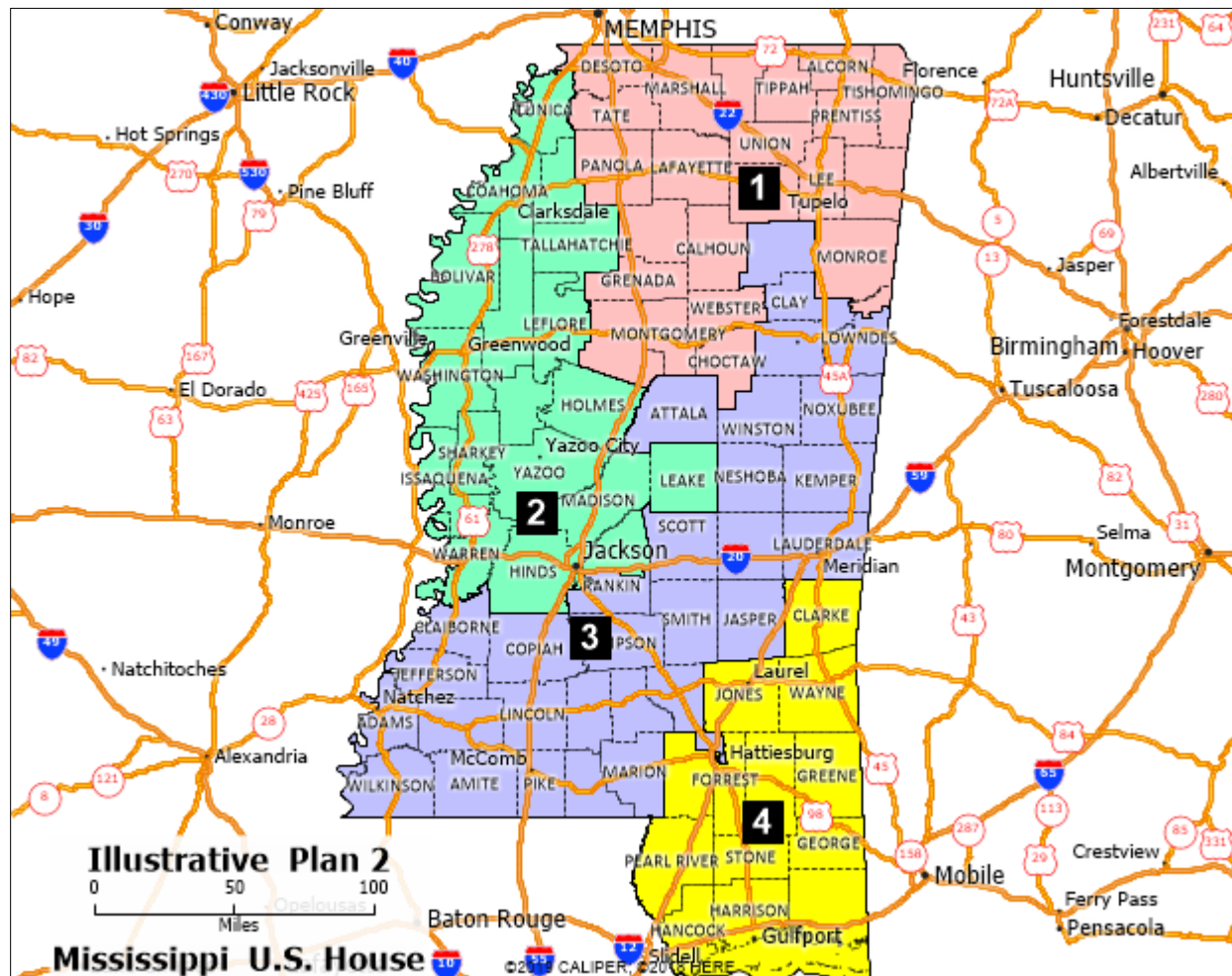
22. The map in **Figure 3** (on the next page) depicts Illustrative Plan 2. District 2 is 54.58% BVAP and District 3 is 42.12% BVAP. A higher resolution map of Illustrative Plan 2 is in **Exhibit D-1**.

23. District 1 is in central and north Mississippi. It encompasses 23 whole counties. Two precincts in Lowndes County (containing Columbus AFB) are in District 1, with the remainder in District 3. The University of Mississippi is in District 1.

24. District 2 is anchored in Hinds County and the Delta. It encompasses 16 whole counties and splits Rankin County between Districts 2 and 3. Jackson State is in District 2.

25. District 3 is in central and southwest Mississippi. It encompasses 27 whole counties, splitting Lowndes County (with District 1), Rankin County (with District 2), and Forrest County (with District 4). Mississippi State is in District 3. Meridian Naval Air Station (Lauderdale County) is in District 3.

26. District 4 is in southeast Mississippi and the Gulf Coast. It encompasses 12 whole counties. Southern Mississippi University is in the District 4 portion of Forrest County. The military installations in Harrison County are in District 4.

Figure 3

27. The table in **Figure 2** shows 2020 summary population statistics for the Adopted Plan. **Exhibit D-2** contains more detailed 2020 population statistics.

Figure 4**Illustrative Plan 2 – 2020 Census**

District	Population	Deviation	18+ Pop	% 18+ AP Black	% 18+ NH White
1	740320	0	569508	26.22%	67.85%
2	740316	-4	569020	54.58%	40.67%
3	740325	5	571940	42.12%	53.18%
4	740318	-2	567131	21.57%	69.38%

(c) Compactness Scores

28. Both Illustrative Plans are reasonably shaped and compact. As shown in **Figure 5**, according to the area-based Reock³ compactness test, there is virtually no overall difference between the Adopted Plan and the Illustrative Plans. **Figure 6** shows that the compactness scores for CD 2 in both Illustrative Plans are better than the compactness scores for CD 2 in the Adopted Plan

Figure 5**Compactness Comparison**

	Reock	
	Mean	Low
Adopted Plan	.42	.30
Illustrative Plan 1	.38	.25
Illustrative Plan 2	.42	.29

³ The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. The Reock test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.” *Maptitude For Redistricting* software documentation (authored by the Caliper Corporation).

Figure 6

	Reock			
	CD 1	CD 2	CD 3	CD 4
Adopted Plan	.47	.30	.35	.57
Illustrative Plan 1	.47	.34	.25	.46
Illustrative Plan 2	.55	.37	.29	.46

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I reserve the right to continue to supplement my reports in light of additional facts, testimony and/or materials that may come to light.

Executed on: February 24, 2022



 WILLIAM S. COOPER

Exhibit A

January 31, 2022

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Summary of Redistricting Work

I have a B.A. in Economics from Davidson College in Davidson, North Carolina.

Since 1986, I have prepared proposed redistricting maps of approximately 750 jurisdictions for Section 2 litigation, Section 5 comment letters, and for use in other efforts to promote compliance with the Voting Rights Act of 1965. I have analyzed and prepared election plans in over 100 of these jurisdictions for two or more of the decennial censuses – either as part of concurrent legislative reapportionments or, retrospectively, in relation to litigation involving many of the cases listed below.

From 1986 to 2021, I have prepared election plans for Section 2 litigation in Alabama, Connecticut, Florida, Georgia, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.

Post-2020 Redistricting Experience

Since the release of the 2020 Census in August 2021, I have served as a redistricting/re-precincting consultant to the San Juan County, Utah Commission. On December 21, 2021, the San Juan County Commission adopted a three-district commission plan that I developed.

In October 2021, I briefly served as a consultant to the city council in Wenatchee, Washington and determined that the 2018 redistricting plan I drew is not malapportioned under the 2020 Census.

January 31, 2022

On January 5, 2022, I testified at trial in the Northern District of Alabama in *Caster v. Merrill*, No. 21-cv-1536 (N.D. Ala.), on behalf of plaintiffs challenging Alabama's 2021 congressional plan under Section 2 of the Voting Rights Act. On January 24, 2022 a 3-judge panel ruled in favor of the plaintiffs.

2010s Redistricting Experience

I developed statewide legislative plans on behalf of clients in nine states (Alabama, Connecticut, Florida, Georgia, Kentucky, Mississippi, South Carolina, Texas, and Virginia), as well as over 150 local redistricting plans in approximately 30 states – primarily for groups working to protect minority voting rights. In addition, I have prepared congressional plans for clients in eight states (Alabama, Florida, Georgia, Louisiana, Maryland, Ohio, Pennsylvania, South Carolina, and Virginia).

In March 2011, I was retained by the Sussex County, Virginia Board of Supervisors and the Bolivar County, Mississippi Board of Supervisors to draft new district plans based on the 2010 Census. In the summer of 2011, both counties received Section 5 preclearance from the U.S. Department of Justice (DOJ).

Also in 2011, I was retained by way of a subcontract with Olmedillo X5 LLC to assist with redistricting for the Miami-Dade County, Florida Board of Commissioners and the Miami-Dade, Florida School Board. Final plans were adopted in late 2011 following public hearings.

In the fall of 2011, I was retained by the City of Grenada, Mississippi to provide redistricting services. The ward plan I developed received DOJ preclearance in March 2012.

In 2012 and 2013, I served as a redistricting consultant to the Tunica County, Mississippi Board of Supervisors and the Claiborne County, Mississippi Board of Supervisors.

January 31, 2022

In *Montes v. City of Yakima* (E.D. Wash. Feb. 17, 2015) the court adopted, as a remedy for the Voting Rights Act Section 2 violation, a seven single-member district plan that I developed for the Latino plaintiffs. I served as the expert for the Plaintiffs in the liability and remedy phases of the case.

In *Pope v. Albany County* (N.D.N.Y. Mar. 24, 2015), the court approved, as a remedy for a Section 2 violation, a plan drawn by the defendants, creating a new Black-majority district. I served as the expert for the Plaintiffs in the liability and remedy phases of the case.

In 2016, two redistricting plans that I developed on behalf of the plaintiffs for consent decrees in Section 2 lawsuits in Georgia were adopted (*NAACP v. Fayette County, Georgia* and *NAACP v. Emanuel County, Georgia*).

In 2016, two federal courts granted summary judgment to the plaintiffs based in part on my *Gingles I* testimony: *Navajo Nation v. San Juan County, Utah* (C.D. Utah 2016) and *NAACP v. Ferguson-Florissant School District, Missouri* (E. D. Mo. August 22, 2016).

Also in 2016, based in part on my analysis, the City of Pasco, Washington admitted to a Section 2 violation. As a result, in *Glatt v. City of Pasco* (E.D. Wash. Jan. 27, 2017), the court ordered a plan that created three Latino majority single-member districts in a 6 district, 1 at-large plan.

In 2018, I served as the redistricting consultant to the Governor Wolf interveners at the remedial stage of *League of Women Voters, et al. v. Commonwealth of Pennsylvania*.

In August 2018, the Wenatchee City Council adopted a hybrid election plan that I developed – five single-member districts with two members at-large. The Wenatchee election plan is the first plan adopted under the Washington Voting Rights Acts of 2018.

January 31, 2022

In February 2019, a federal court ruled in favor of the plaintiffs in a Section 2 case regarding Senate District 22 in Mississippi, based in part on my *Gingles* 1 testimony in *Thomas v. Bryant* (S.D. Ms. Feb 16, 2019).

In the summer of 2019, I developed redistricting plans for the Grand County (Utah) Change of Form of Government Study Committee.

In the fall of 2019, a redistricting plan I developed for a consent decree involving the Jefferson County, Alabama Board of Education was adopted *Traci Jones, et al. v. Jefferson County Board of Education, et al.*

In May 2020, a federal court ruled in favor of the plaintiffs in a Section 2 case in *NAACP et al. v. East Ramapo Central School District, NY*, based in part on my *Gingles* 1 testimony. In October 2020, the federal court adopted a consent decree plan I developed for elections to be held in February 2021.

In May and June of 2020, I served as a consultant to the City of Quincy, Florida – the Defendant in a Section 2 lawsuit filed by two Anglo voters (*Baroody v. City of Quincy*). The federal court for the Northern District of Florida ruled in favor of the Defendants. The Plaintiffs voluntarily dismissed the case.

In the summer of 2020, I provided technical redistricting assistance to the City of Chestertown, Maryland.

I am currently a redistricting consultant and expert for the plaintiffs in *Jayla Allen v. Waller County, Texas*. I testified remotely at trial in October 2020.

Since 2011, I have served as a redistricting and demographic consultant to the Massachusetts-based Prison Policy Initiative for a nationwide project to end prison-based gerrymandering. I have analyzed proposed and adopted election plans in about 25 states as part of my work.

January 31, 2022

In 2018 (Utah) and again in 2020 (Arizona), I have provided technical assistance to the Rural Utah Project for voter registration efforts on the Navajo Nation Reservation.

Post-2010 Demographics Experience

My trial testimony in Section 2 lawsuits usually includes presentations of U.S. Census data with charts, tables, and/or maps to demonstrate socioeconomic disparities between non-Hispanic Whites and racial or ethnic minorities.

I served as a demographic expert for plaintiffs in four state-level voting cases related to the Covid-19 pandemic (South Carolina, Alabama, and Louisiana) and state court in North Carolina.

I have also served as an expert witness on demographics in non-voting trials. For example, in an April 2017 opinion in *Stout v. Jefferson County Board of Education* (Case no.2:65-cv-00396-MHH), a school desegregation case involving the City of Gardendale, Ala., the court made extensive reference to my testimony.

I provide technical demographic and mapping assistance to the Food Research and Action Center (FRAC) in Washington D.C and their constituent organizations around the country. Most of my work with FRAC involves the Summer Food Program and Child and Adult Care Food Program. Both programs provide nutritional assistance to school-age children who are eligible for free and reduced price meals. As part of this project, I developed an online interactive map to determine site eligibility for the two programs that has been in continuous use by community organizations and school districts around the country since 2003. The map is updated annually with new data from a Special Tabulation of the American Community Survey prepared by the U.S. Census Bureau for the Food and Nutrition Service of the U.S. Department of Agriculture.

Historical Redistricting Experience

January 31, 2022

In the 1980s and 1990s, I developed voting plans in about 400 state and local jurisdictions – primarily in the South and Rocky Mountain West. During the 2000s and 2010s, I prepared draft election plans involving about 350 state and local jurisdictions in 25 states. Most of these plans were prepared at the request of local citizens’ groups, national organizations such as the NAACP, tribal governments, and for Section 2 or Section 5 litigation.

Election plans I developed for governments in two counties – Sussex County, Virginia and Webster County, Mississippi – were adopted and precleared in 2002 by the U.S. Department of Justice. A ward plan I prepared for the City of Grenada, Mississippi was precleared in August 2005. A county supervisors’ plan I produced for Bolivar County, Mississippi was precleared in January 2006.

In August 2005, a federal court ordered the State of South Dakota to remedy a Section 2 voting rights violation and adopt a state legislative plan I developed (*Bone Shirt v. Hazeltine*).

A county council plan I developed for Native American plaintiffs in a Section 2 lawsuit (*Blackmoon v. Charles Mix County*) was adopted by Charles Mix County, South Dakota in November 2005. A plan I drafted for Latino plaintiffs in Bethlehem, Pennsylvania (*Pennsylvania Statewide Latino Coalition v. Bethlehem Area School District*) was adopted in March 2009. Plans I developed for minority plaintiffs in Columbus County, North Carolina and Montezuma- Cortez School District in Colorado were adopted in 2009.

Since 1986, I have testified at trial as an expert witness on redistricting and demographics in federal courts in the following voting rights cases (approximate most recent testimony dates are in parentheses). I also filed declarations and was deposed in most of these cases.

January 31, 2022

Alabama

Caster v. Merrill (2022)

Chestnut v. Merrill (2019)

Alabama State Conference of the NAACP v. Alabama (2018)

Alabama Legislative Black Caucus et al. v. Alabama et al. (2013)

Colorado

Cuthair v. Montezuma-Cortez School Board (1997)

Florida

Baroody v. City of Quincy (2020)

Georgia

Cofield v. City of LaGrange (1996)

Love v. Deal (1995)

Askew v. City of Rome (1995)

Woodard v. Lumber City (1989)

Louisiana

Terrebonne Parish NAACP v. Jindal, et al. (2017)

Wilson v. Town of St. Francisville (1996)

Reno v. Bossier Parish (1995)

Knight v. McKeithen (1994)

Maryland

Cane v. Worcester County (1994)

Mississippi

Thomas v. Bryant (2019)

Fairley v. Hattiesburg (2014)

Boddie v. Cleveland School District (2010)

Fairley v. Hattiesburg (2008)

Boddie v. Cleveland (2003)

Jamison v. City of Tupelo (2006)

Smith v. Clark (2002)

NAACP v. Fordice (1999)

Addy v. Newton County (1995)

Ewing v. Monroe County (1995)

Gunn v. Chickasaw County (1995)

Nichols v. Okolona (1995)

Montana

Old Person v. Brown (on remand) (2001)

Old Person v. Cooney (1998)

Missouri

Missouri NAACP v. Ferguson-Florissant School District (2016)

January 31, 2022

Nebraska

Stabler v. Thurston County (1995)

New York

NAACP v. East Ramapo Central School District (2020)

Pope v. County of Albany (2015)

Arbor Hills Concerned Citizens v. Albany County (2003)

Ohio

A. Philip Randolph Institute, et al. v. Ryan (2019)

South Carolina

Smith v. Beasley (1996)

South Dakota

Bone Shirt v. Hazeltine (2004)

Cottier v. City of Martin (2004)

Tennessee

Cousins v. McWherter (1994)

Rural West Tennessee African American Affairs Council v. McWherter (1993)

Texas

Jayla Allen v. Waller County, Texas

Utah

Navajo Nation v. San Juan County (2017), brief testimony – 11 declarations, 2 depositions

Virginia

Smith v. Brunswick County (1991)

Henderson v. Richmond County (1988)

McDaniel v. Mehfoud (1988)

White v. Daniel (1989)

Wyoming

Large v. Fremont County (2007)

In addition, I have filed expert declarations or been deposed in the following cases that did not require trial testimony. The dates listed indicate the deposition date or date of last declaration or supplemental declaration:

Alabama

People First of Alabama v. Merrill (2020), Covid-19 demographics only

Alabama State NAACP v. City of Pleasant Grove (2019)

James v. Jefferson County Board of Education (2019)

January 31, 2022

Voketz v. City of Decatur (2018)

Arkansas

Mays v. Thurston (2020)-- Covid-19 demographics only)

Connecticut

NAACP v. Merrill (2020)

Florida

Florida State Conference of the NAACP v. Lee, et al., (2021)

Calvin v. Jefferson County (2016)

Thompson v. Glades County (2001)

Johnson v. DeSoto County (1999)

Burton v. City of Belle Glade (1997)

Georgia

Alpha Phi Alpha Fraternity et al. v Raffensberger (2022)

Pendergrass v. Raffensberger (2022)

Dwight v. Kemp (2018)

Georgia NAACP et al. v. Gwinnett County, GA (2018)

Georgia State Conference NAACP et al v. Georgia (2018)

Georgia State Conference NAACP, et al. v. Fayette County (2015)

Knighton v. Dougherty County (2002)

Johnson v. Miller (1998)

Jones v. Cook County (1993)

Kentucky

Herbert v. Kentucky State Board of Elections (2013)

Louisiana

Power Coalition for Equity and Justice v. Edwards (2020), Covid-19 demographics only

Johnson v. Ardoin (2019)

NAACP v. St. Landry Parish Council (2005)

Prejean v. Foster (1998)

Rodney v. McKeithen (1993)

Maryland

Baltimore County NAACP v. Baltimore County (2022)

Benisek v. Lamone (2017)

Fletcher v. Lamone (2011)

Mississippi

Partee v. Coahoma County (2015)

Figgs v. Quitman County (2015)

West v. Natchez (2015)

Williams v. Bolivar County (2005)

Houston v. Lafayette County (2002)

Clark v. Calhoun County (on remand)(1993)

January 31, 2022

Teague v. Attala County (on remand)(1993)
Wilson v. Clarksdale (1992)
Stanfield v. Lee County(1991)

Montana

Alden v. Rosebud County (2000)

North Carolina

Lewis v. Alamance County (1991)
Gause v. Brunswick County (1992)
Webster v. Person County (1992)

Rhode Island

Davidson v. City of Cranston (2015)

South Carolina

Thomas v. Andino (2020), Covid-19 demographics only
Vander Linden v. Campbell (1996)

South Dakota

Kirkie v. Buffalo County (2004)
Emery v. Hunt (1999)

Tennessee

NAACP v. Frost, et al. (2003)

Virginia

Moon v. Beyer (1990)

Washington

Glatt v. City of Pasco (2016)
Montes v. City of Yakima (2014)

###

Exhibit B

Population Shifted From 2011 Benchmark Plan to 2022 Adopted Plan

								From	To	
NAME20	VTD	Precinct Name	2020 Pop.	18+ Pop	18+ AP Black	18+ Latino	NH18+ Wht	Benchmark 2011 CD	Adopted CD 2022	% 18+ AP Black
Adams Total			29538	23528	13025	913	9260	03	02	55.36%
Amite Total			12720	10239	3867	92	6125	03	02	37.77%
Clarke	28023000105	Langsdale	126	95	73	0	21	04	03	76.84%
Clarke	28023000205	Shubuta	849	682	549	4	124	04	03	80.50%
Clarke	28023000501	Manassa	214	162	9	0	148	04	03	5.56%
Clarke	28023000502	Pierce's Springs	215	166	88	0	75	04	03	53.01%
Clarke	28023000504	Carmichael	471	388	116	4	266	04	03	29.90%
Clarke Total			1875	1493	835	8	634	04	03	55.93%
Franklin Total			7675	6069	2014	39	3966	03	02	33.19%
Hinds	28049000105	37	1495	1190	592	56	533	03	02	49.75%
Hinds	28049000113	45	2754	2201	673	43	1428	03	02	30.58%
Hinds	28049000206	16	543	329	271	1	50	02	03	82.37%
Hinds	28049000501	1	2227	2039	1172	60	764	03	02	57.48%
Hinds	28049000515	47	1375	1154	893	53	195	03	02	77.38%
Hinds Total			8394	6913	3601	213	2970			52.09%
Jones	28067000103	Shady Grove	4808	3453	995	317	2070	04	03	28.82%
Jones	28067000104	Sharon	3928	2939	856	123	1927	04	03	29.13%
Jones	28067000207	Matthews	739	585	65	5	505	04	03	11.11%
Jones	28067000308	Sandersville Civic C	1404	1064	119	16	755	04	03	11.18%
Jones Total			10879	8041	2035	461	5257	04	03	25.31%
Madison	28089000101	Pleasant Gift Churc	0	0	0	0	0	03	02	0.00%
Madison	28089000407	Canton Fire Station	0	0	0	0	0	03	02	0.00%
Madison	28089000996	Cedar Grove	0	0	0	0	0	03	02	0.00%
Madison Total			0	0	0	0	0	03	02	0.00%
Marion Total			24441	18669	5791	245	12302	04	03	31.02%
Oktibbeha	28105000104	Self Creek/Double	974	787	123	10	637	03	01	15.63%
Oktibbeha	28105000303	Bell Schoolhouse	496	403	253	2	146	01	03	62.78%
Oktibbeha	28105000304	Center Grove/Nor	563	456	208	3	240	01	03	45.61%
Oktibbeha	28105000403	Craig Springs/Sout	94	67	7	1	59	01	03	10.45%
Oktibbeha	28105000405	Sturgis/North Brac	21	14	7	0	7	01	03	50.00%
Oktibbeha Total			2148	1727	598	16	1089			34.63%
Wilkinson Total			8587	6879	4599	59	2171	03	02	66.86%
Winston Total			17714	13650	6048	143	7263	01	03	44.31%
Grand Total			123971	97208	42413	2189	51037			43.63%

Exhibit C-1

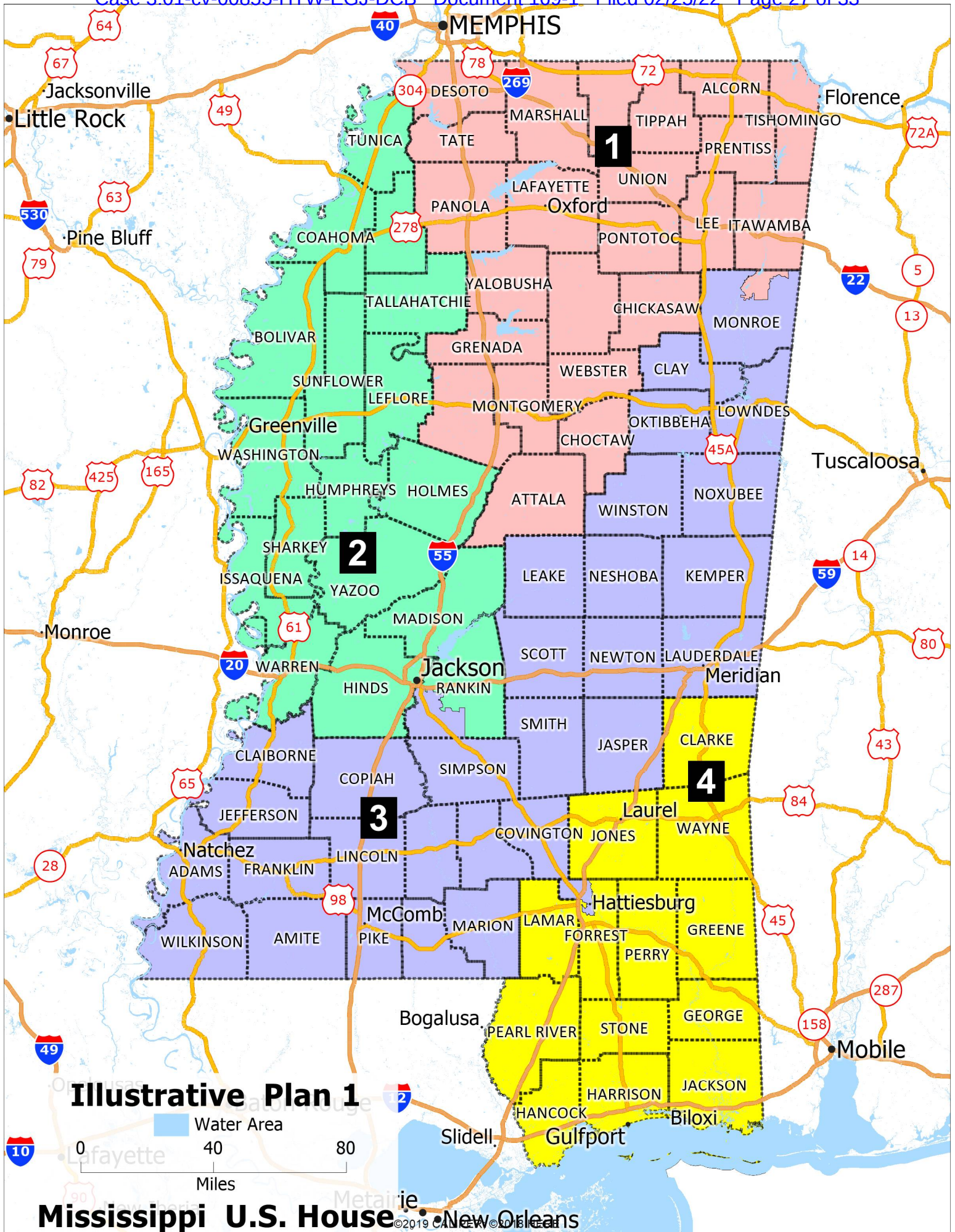


Exhibit C-2

Population Summary Report

Mississippi Congressional Plan – February 17, 2022 Draft

District	Population	Deviation	% Deviation	18+_Pop	18+ AP Black	% 18+ AP Black	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White
1	740319	-1	0.00%	569508	151985	26.69%	17593	3.09%	383827	67.40%
2	740320	0	0.00%	569020	309099	54.32%	13085	2.30%	234173	41.15%
3	740322	2	0.00%	571940	239670	41.90%	12837	2.24%	303985	53.15%
4	740318	-2	0.00%	567131	122326	21.57%	25122	4.43%	393466	69.38%
Total	2961279			2277599	823080	36.1%	68637	3.0%	1315451	57.8%
Total Deviation			0.00%							

Exhibit D-1

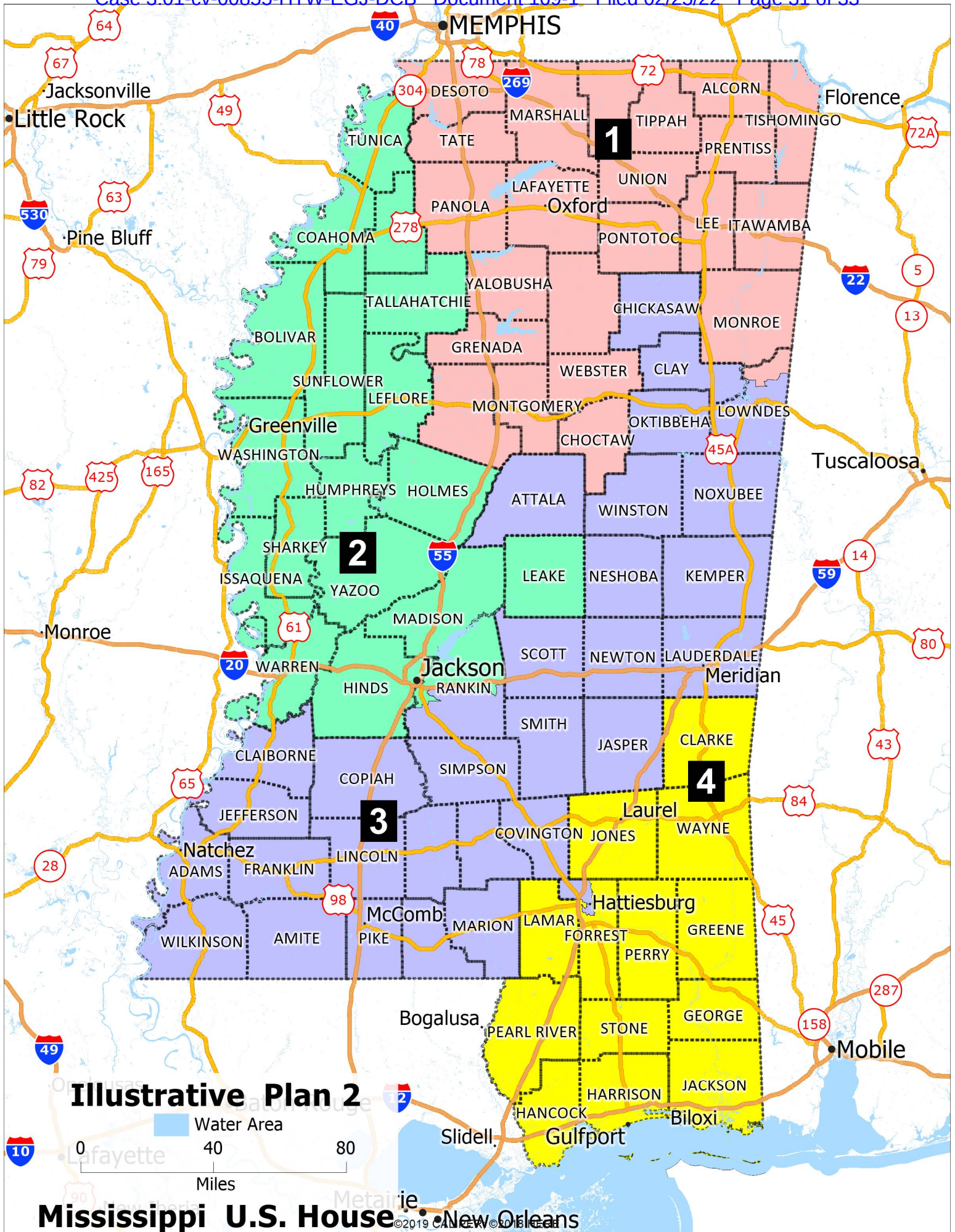


Exhibit D-2

Population Summary Report

Mississippi Congressional Plan – February 24, 2022 Draft

District	Population	Deviation	% Deviation	18+_Pop	18+ AP Black	% 18+ AP Black	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White
1	740320	0	0.00%	569780	149380	26.22%	17421	3.06%	386594	67.85%
2	740316	-4	0.00%	569057	310608	54.58%	13667	2.40%	231418	40.67%
3	740325	5	0.00%	571631	240766	42.12%	12427	2.17%	303973	53.18%
4	740318	-2	0.00%	567131	122326	21.57%	25122	4.43%	393466	69.38%
Total	2961279			2277599	823080	36.1%	68637	3.0%	1315451	57.8%
Total Deviation			0.00%							

Smith v. Hoseman, No. 3:01-cv-855-HTW-DCB
Expert Report for *Amici Curiae*

Baodong Liu, Ph.D.
Professor of Political Science
The University of Utah

February 24, 2022

Introduction

I have been retained as an expert by counsel for Amici to examine the impact of the 2020-round of Congressional redistricting in Mississippi. This report provides a summary of the findings concerning racially polarized voting (RPV) in Mississippi and its effect on the opportunity of Black voters to elect the candidate of their choice in the Enacted Congressional Districts. I was also asked to compare the Enacted Congressional Plan with the two Amici Plans concerning congressional districts.

Summary of Professional Qualifications

I am a tenured professor of political science in the Department of Political Science at the University of Utah. I have done extensive research regarding the relationship between election systems and the ability of minority voters to participate fully in the political process and to elect representatives of their choice.

My research has won the Byran Jackson Award for the best study/dissertation about racial voting from the Urban Politics Section of the American Political Science Association, and the Ted Robinson Award from the Southwest Political Science Association. The results of my research have been published in Social Science Quarterly, American Politics Research, Sociological Methods and Research, PS: Political Science and Politics, Urban Affairs Review, Political Behavior, Journal of Urban Affairs, Southeastern Political Review, and American Review of Politics, among other journals. I am also an author or editor of eight scholarly books including the forthcoming Political Volatility in the United States, and Solving the Mystery of the Model Minority; The Election of Barack Obama: How He Won, and Race Rules: Electoral Politics in New Orleans, 1965-2006. I have also served as a member of the Board of Directors/Advisors on many national and international organizations such as the National Association for Ethnic Studies, Urban Affairs Review, Journal of Behavioral and Social Sciences, and International Encyclopedia of Political Science (CQ Press).

As an expert on RPV analysis, I have published peer-reviewed journal articles and books on the cutting-edge techniques used by academic professionals and supported by courts concerning voting rights cases and the electoral history in the South. I have served as an expert witness for minority plaintiffs in dilution cases in states such as Alabama, Arkansas, South Carolina, New York, Louisiana, Utah, and Tennessee. I have also been invited to be an instructor of RPV analysis in expert training programs, organized by such organizations as the Ford Foundation, concerning both the 2010 and 2020 rounds of redistricting. I have also been retained as RPV expert by Florida State Legislature (the Senate), and the Republican Minority Leader of Illinois State Senate for legal disputes on redistricting.

My applied research and grants have included analyses of ranked choice voting, economic development, racial voting patterns, public school science education, school districts' economic impact on local economy, and various citizen surveys. My grants have come from New America, the National Science Foundation, American Political Science Association, the National Humanities Center, Wisconsin Security Research Consortium, Fond du Lac School District, Johnson Controls, Inc, City of Waupaca (WI), the League of Women Voters, American

Democracy Project, and Wisconsin Public Service. I also served as the editor of Urban News for the American Political Science Association's Urban Politics Section, and I was elected as a co-chair of the Asian Pacific American Caucus of the American Political Science Association.

Attached as Appendix 1 is a curriculum vitae setting forth my professional background, which includes a list of all publications I have authored or co-authored, including forthcoming publications. Appendix II lists the voting rights cases in which I served as an expert witness.

Main Findings on Racially Polarized Voting in Mississippi

My analysis of voting in both Congressional and state-wide elections demonstrates a racially polarized pattern in Mississippi. In the four elections analyzed in this report, the majority of white voters support certain candidates, whereas the overwhelming majority of Black voters support different candidates.

This RPV pattern was clear based on my analysis of three state-wide elections between 2019 and 2020. These three elections include the 2020 US Senate elections in Mississippi, the 2019 Attorney General election, and the 2019 Secretary of State. More importantly, I also analyzed the 2020 Congressional District 2 election which is an endogenous election.¹ The election returns at the precinct level in these four elections are matched with the racial/ethnic demographics at the Voting Tabulation District (VTD) level based on the 2020 census. I relied on the award-winning Ecological Inference (EI) technique and its R-Packages originally developed by Professor Gary King of Harvard University which has been widely adopted by quantitative experts in federal voting rights litigations and redistricting data analyses and supported by courts as the most cutting-edge and advanced scientific tool to estimate accurately the racial/ethnic bloc voting patterns commonly seen in the United States. The EI technique can provide us with the estimates of vote choice of racial/ethnic groups. In the following pages, I will refer non-Hispanic whites as Whites.

Tables 1 and 2 provide the estimates of racial support for the Black and White candidates in the two biracial elections in 2020 (the cells in the tables representing the candidates' vote share with respect to a specific racial group).² The White support for the Black-preferred candidates (Thompson and Espy in the 2020 Congressional District 2 and the 2020 US Senate elections, respectively) was both at about 11% level. In contrast, the overwhelming Black support for the same Black-preferred candidates was at about 94% level. Thus, the White majority and Black voters voted differently, both as a voting bloc.

¹ An endogenous election involves the electoral office at issue (in this case, Congressional elections).

² Biracial elections are those that involve both Black and White candidates.

Table 1
Congressional District 2
2020 General Election

	Of the voters that turned out voted for	
Group	Thompson	Flowers
White	11.6%	88.4%
Black	94.2%	5.8%
Total	54.1%	45.9%

Table 2
US Senate
2020 General Election

	Of the voters that turned out voted for	
Group	Espy	Hyde-Smith
White	11.2%	88.8%
Black	93.9%	6.1%
Total	44.1%	55.9%

Tables 3 and 4 provide the estimates of racial support for the Black and White candidates in the two biracial state-wide elections in 2019. The White support for the Black and Black-preferred candidates (Riley Collins in the Attorney General election and Johnny DuPree in the Secretary of State election, respectively) was, again, as low as around the 10% level. The overwhelming Black support for the Black-preferred candidates was also as high as about 90% level. Clearly, the white majority and Black voters voted differently, both as a voting bloc.

Table 3
Mississippi Attorney General
2019 General Election

	Of the voters that turned out voted for	
Group	Collins	Fitch
White	10.4%	89.6%
Black	89.7%	10.3%
Total	41.5%	58.5%

Table 4
Mississippi Secretary of State
2019 General Election

	Of the voters that turned out voted for	
Group	DuPree	Watson
White	9.5%	90.5%
Black	90.0%	10.0%
Total	40.5%	59.5%

In sum, there has been a consistent pattern of highly racially polarized voting in the biracial elections in Mississippi which is revealed not only in Congressional but also recent state-wide races.

Effectiveness Analyses

I have also conducted a comparative study of three Mississippi Congressional redistricting plans based on the data from the three most recent exogenous statewide elections in Mississippi and the racial demographic data from the 2020 census. These three plans are the Enacted Plan that has been passed by the Mississippi Legislature and signed into law by the Governor, and the other two plans were proposed by the Plaintiffs.

A comparative study of two or more redistricting plans is commonly referred to as an “effectiveness analysis.” This comparative study reports the different opportunities for racial minority voters (in this case, Black voters) to elect the candidates of their choice, given how the different redistricting plans have determined the racial configuration of a certain jurisdiction under legal dispute, and the extent to which racially polarized voting has affected the election outcomes in the given jurisdiction.

To compare the Enacted Plan with the Amici Plans, I used three state-wide exogenous elections about which I have reported the RPV findings above—the 2020 US Senate election, the 2019 State Attorney General election, and the 2019 Secretary of State election. These three elections were state-wide elections which involved all voters in Mississippi, and they were from the most recent statewide election cycles, and thus can help project how voters will vote in near future elections in Mississippi.

Table 5 provides the results of the effectiveness analysis (EA thereafter) for the four Congressional Districts.³

³ The Black racial group measure reported in **Tables 5** is based on any-part BVAP according to the 2020 census data. The redistricting process in the United States typically takes consideration of census Voting-Age-Population (VAP) data to compare the relative presences of racial groups in a given jurisdiction. Certainly, the racial configuration of a given jurisdiction involves more than white and Black groups, such as Hispanic/Latino voters and other racial minority groups. Therefore, I used the racial configuration data (non-Hispanic white VAP, any-part Black VAP, Hispanic VAP, and all-other VAP based on the 2020 census) matched with the three state-wide election data at the census Voting-Tabulation-District (VTD) units to perform the effectiveness analyses.

Table 5: Effectiveness Analyses for CDs in Mississippi

District	CD1	CD 2	CD 3	CD 4
Vote for Black-Preferred-Candidate in 2020 US Senate				
Enacted Plan	40%	60%	39%	37%
Amici Plan 1	38%	59%	45%	35%
Amici Plan 2	39%	58%	43%	36%
Average % vote for Black-Preferred-Candidates				
Enacted Plan	37%	58%	37%	34%
Amici Plan 1	35%	57%	46%	32%
Amici Plan 2	36%	56%	41%	33%

The first three rows of **Table 5** show the estimated vote for the Black-preferred candidate in the 2020 U.S. Senate race under the three proposed plans. The final three rows of **Table 5** provide the average percent of votes cast for the Black-preferred candidates in CDs in the three statewide elections under the three proposed plans. As shown in **Table 5**, the Black-preferred candidate for U.S. Senate would have received between 59% and 58% of the total votes cast in CD 2 under Amici Plans 1 and 2, respectively, whereas the Black-preferred candidate is estimated to have received a similar 60% based on the Enacted Plan. The average percentage vote for the Black-preferred Candidates in the three statewide elections under each of the proposed plans shows similar results. Therefore, the reduction of the BVAP in the Amici Plans in CD 2 would not lead to the loss of an opportunity to elect Black-preferred candidates as compared to the Enacted Plan. This finding shows that the Enacted Plan unnecessarily packed Black voters. In short, the Amici Plans performs as well as or better than the Enacted Plan in terms of Black voters' opportunity to elect the candidate of their choice.

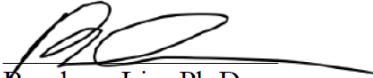
Conclusion

The empirical analyses clearly revealed that in 4 out of 4 biracial elections in Mississippi in which Black and white voters had a chance to vote for a candidate from their own racial group Black voters expressed a preference for specific candidates, and that preference was not shared by a majority of white voters. This RPV pattern is confirmed not only by the 2020 Congressional District 2 election, but also by the three statewide elections during the last two election cycles. Despite the highly cohesive bloc voting by Black voters for the Black preferred candidates, the white majority voters typically voted as bloc to defeat the candidates preferred by Black voters in these elections.

Thus, my empirical analysis indicates that the characteristics of "racial polarization," as defined by the Supreme Court in *Thornburg v. Gingles*, (478 U.S. 30 at 53 n.21), has been met by Mississippi's recent elections.

The Amici Plans are the same or more effective as the Enacted Redistricting Plan in providing Black voters the opportunity to elect their preferred candidates. More specifically, the Amici plans lower the Black population in CD 2 while maintaining Black voters' opportunity to elect in that district.

Per 28 U.S. Code § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 24, 2022.



Baodong Liu, Ph.D.

Curriculum Vitae

Baodong Liu, Ph.D.
Professor (with Tenure) in Political Science and Ethnic Studies

University of Utah
260 S. Central Campus Drive, Room 3231, Salt Lake City, UT 84112
Tel: Office (801) 585 7987; Fax: (801) 585 6492
baodong.liu@utah.edu

PROFESSIONAL EXPERIENCE

Professor of Political Science and Ethnic Studies, affiliated with Asian Studies, 2008-present
Associate Chair, Political Science Department, 2015-2017
Interim Director, Ethnic Studies Program, 2011-2013
University of Utah

Courses taught: Advanced Quantitative Methods (graduate), American Political Behavior (graduate), Race and Political Volatility in the US (graduate/undergraduate), Voting, Election and Public Opinion, Racial and Ethnic Politics, Political Analysis, Asian American Contemporary Issues, Social Justice and Inequality, Asian Pacific American Experiences, Methodology in Ethnic Studies.

TRISS Endowed Professor in Political Science, 2007-2008
Associate Professor (early promotion to associate professor 2005, early tenure 2006)
Assistant Professor, 2002-2005
Department of Political Science
University of Wisconsin-Oshkosh

Courses taught: Race and Ethnicity in American Politics, Politics of Urban Growth, Political Method, State and Local Government, Political Analysis, American Government, National, state and Local Government.

Assistant Professor of Political Science
Department of Political Science
Stephens College, Columbia, Missouri, 1999 - 2002

Courses taught: Urban and Minority Politics, Legislative Process, American Presidency, Campaigning and Lobbying, Macroeconomics, American Government, and Introduction to Statistics.

Consultant, Expert Witness, Principal Investigator, Opinion Writer/Commentator, 2000-present
Provided research services to the US Department of Justice, New America, Navajo Nation, Southern Coalition for Social Justice, National Science Foundation, Lawyers' Committee for Civil Rights Under Law, Florida State Legislature, Illinois State Legislature, Wisconsin Security Research Consortium, Fond du Lac School District, Johnson Controls, Inc, City of Waupaca (WI), and Wisconsin Public Service, among others.
Served also as a commentator and/or opinion writer for Salt Lake Tribune, ABC4News, Hinkley Forum, NPR, AP, Daily Utah Chronicle, ETtoday, Chinese Americans, Milwaukee Sentinel Journal, Daily Caller, KSL, among other media outlets.

EDUCATION

Ph.D. in Political Science (1999), University of New Orleans, Louisiana
Dissertation: Black Candidates, White Voters and Racial Context

Winner of Byran Jackson Award, Urban Politics Section, American Political Science Association, and Winner of Ted Robinson Award for the best research in race and ethnicity, Southwestern Political Science Association

M.A. in *Political Science* (1995), Oklahoma State University, Stillwater, Oklahoma

LL. B (1987), The East China University of Political Science and Law, Shanghai, China

Post-Doctoral Educational Program Participant

National Science Foundation's "Local Elections in America Project Workshop," Macalester College, Saint Paul, MN (2009)

Methodological Issues in Quantitative Research on Race and Ethnicity, Inter-University Consortium for Political and Social Research (ICPSR), University of Michigan (2006)

Mapping Your City with GIS Workshop, New Urban Research, Madison, Wisconsin (2005)

Jessie Ball duPont Summer Seminars for Liberal Arts College Faculty, the National Humanities Center, Research Triangle, North Carolina (2001)

PROFESSIONAL PUBLICATIONS (contribution is in the order of authors for publications with multiple authors).

A) Books

Liu, Baodong. *Political Volatility in the United States: How Racial and Religious Groups Win and Lose*. (forthcoming, Lexington Books)

Liu, Baodong. Ed. (2018). *Solving the Mystery of the Model Minority: The Journey of Asian Americans in America*. Cognella Academic Publishing.

Liu, Baodong. (2016). *Race, Ethnicity and Religion in the American Political Arena*. University Readers.

Liu, Baodong. (2015). *Social Research: Integrating Mathematical Foundations and Modern Statistical Computing*. Cognella Academic Publishing.

Liu, Baodong. (2013). *Understanding the Scientific Method: A Social Science Approach*. University Readers.

Liu, Baodong. (2010). *The Election of Barack Obama: How He Won*. Palgrave Macmillan. Reviewed by Hanes Walton, Jr. (2012) for *The American Review of Politics*.

Liu, Baodong and James Vanderleeuw. (2007). *Race Rules: Electoral Politics in New Orleans, 1965-2006*. Lexington Books. Paperback and Hardback. Reviewed by Peter Burns (2008) for *Urban Affairs Review*; also reviewed by Robert Dupont (2008) for *H-Urban*.

Liu, Baodong. (2002). *Making American Democracy Work: Reforms and Debates*. The McGraw-Hill, Inc.

B) Peer-Reviewed Journal Articles

- Liu, Baodong, Porter Morgan and Dimitri Kokoromytis. (forthcoming) "Immigration, Nation-State Contexts and Value Changes of Ethnic Chinese" *Athens Journal of Social Sciences*.
- Liu, Baodong, Zachary Stickney, and Nicole Batt. (2020). "Authoritarianism for and against Trump," *Journal of Behavioral and Social Sciences* 7(3): 218-238.
- Liu, Baodong. (2018). "The Haitian and Cuban American Electorates in South Florida: Evidence from Ten Federal, State and Local Elections, 2008-2014." *National Political Science Review* 19 (1): 51-60.
- Wei, Dennis, Weiyi Xiao, Christopher Simon, Baodong Liu, Yongmei Ni. (2018). "Neighborhood, Race and Educational Inequality." *Cities* 73: 1-13.
- Simon, Christopher A., Nicholas P. Lovrich, Baodong Liu, and Dennis Wei. (2017). "Citizen Support for Military Expenditure Post 9/11: Exploring the Role of Place of Birth and Location of Upbringing." *Arm Forces and Society* 44 (4): 688-706.
- Liu, Baodong, Dennis Wei, and Christopher A. Simon. (2017). "Social Capital, Race, and Income Inequality in the United States." *Sustainability* 9 (2): 1-14.
- Liu, Baodong. (2014). "Post-Racial Politics? Counterevidence from the Presidential Elections, 2004-2012." *Du Bois Review: Social Science Research on Race* 11(2): 443-463.
- Liu, Baodong. (2014). "Racial Context and the 2008 and 2012 US Presidential Elections." *Athens Journal of Social Sciences* 1(1): 21-33.
- Liu, Baodong. (2011). "Demystifying the 'Dark Side' of Social Capital: A Comparative Bayesian Analysis of White, Black, Latino, and Asian American Voting Behavior." *The American Review of Politics* 32 (Spring): 31-56.
- Byron D'Andra Orey, L. Marvin Overby, Pete Hatemi and Baodong Liu. (2011). "White Support for Racial Referenda in the Deep-South." *Politics & Policy* 39 (4): 539-558.
- Geoffrey M. Draper, Baodong Liu, and Richard F. Riesenfeld. (2011). "Integrating Statistical Visualization Research into the Political Science Classroom." *Information Systems Education Journal* 9 (3): 83-94.
- Liu, Baodong. (2011). "Obama's Local Connection: Racial Conflict or Solidarity?" *PS: Political Science and Politics* 44 (1): 103-105.
- Liu, Baodong. (2011). "State Political Geography and the Obama White Vote." *World Regional Studies* 20 (4): 1-15. (in Chinese)
- Liu, Baodong, Sharon D. Wright Austin, and Byron D'Andrá Orey. (2009). "Church Attendance, Social Capital, and Black Voting Participation" *Social Science Quarterly* 90 (3): 576-92.
- Vanderleeuw, James, Baodong Liu, and Erica Nicole Williams. (2008). "The 2006 New Orleans Mayoral Election: The Political Ramifications of a Large-Scale Natural Disaster." *PS: Political Science and Politics* 41 (4): 795-801.

Liu, Baodong and Robert Darcy. (2008) “Race, Immigration, and Party Strategies in the US Elections,” *Íslenska Leiðin*: 33-39.

Liu, Baodong. (2007). “EI Extended Model and the Fear of Ecological Fallacy”, *Sociological Methods and Research* 36 (1): 3-25.

Liu, Baodong. (2006). “Whites as a Minority and the New Biracial Coalition in New Orleans and Memphis,” *PS: Political Science and Politics* 40 (1): 69-76.

Vanderleeuw, James, and Baodong Liu. (2006). “Racial Polarization or Biracial Coalition? An Empirical Analysis of the Electoral Coalition of Winning Candidates in Urban Elections,” *American Review of Politics* 27 (Winter): 319-344.

Liu, Baodong, and James Vanderleeuw. (2004). “Economic Development Priorities and Central City/Suburb Differences,” *American Politics Research* 32 (6): 698-721.

Vanderleeuw, James, Baodong Liu, and Greg Marsh. (2004). “Applying Black Threat Theory, Urban Regime Theory, and Deracialization: The Memphis Mayoral Elections of 1991, 1995, and 1999,” *Journal of Urban Affairs* 26 (4): 505-519

Liu, Baodong, and James Vanderleeuw. (2003). “Growth Imperative, Postmaterialism and Local Decision-Makers,” *Journal of Political Science* 31: 173-96.

Liu, Baodong. (2003). “Deracialization and Urban Racial Context,” *Urban Affairs Review* 38 (4): 572-591.

Vanderleeuw, James and Baodong Liu. (2002) “Political Empowerment, Mobilization, and Black-Voter Rolloff,” *Urban Affairs Review* 37 (3): 380-96.

Liu, Baodong. (2001). “The Positive Effect of Black Density on White Crossover Voting: Reconsidering the Social Interaction Theory,” *Social Science Quarterly* 82 (3): 602-615.

Liu, Baodong. (2001). “Racial Context and White Interests: Beyond Black Threat and Racial Tolerance,” *Political Behavior* 23 (2): 157-80.

Liu, Baodong, and James Vanderleeuw. (2001). “Racial Transition and White-Voter Support for Black Candidates in Urban Elections,” *Journal of Urban Affairs* 23 (3/4): 309-22.

Liu, Baodong. (2001). “Interests and Opinions among African-Americans: A Test of Three Theories,” *the Texas Journal of Political Studies* 21 (2): 113-24.

Liu, Baodong, and James Vanderleeuw. (1999). “White Response to Black Political Power: the Case of New Orleans, 1980-1994.” *Southeastern Political Review* 27 (1): 175-188.

C) Book Chapters, Encyclopedia Entries and other Peer-reviewed Articles

Liu, Baodong, Nadia Mahallati, and Charles Turner. (2021). “Ranked-Choice Voting Delivers Representation and Consensus in Presidential Primaries” *Available at SSRN*: <https://ssrn.com/abstract=3822879> or <http://dx.doi.org/10.2139/ssrn.3822879>

Liu, Baodong. “The Growth of Scientific Knowledge through Social Computing Networks” (2021). *The 19th International E-Society Conference Proceedings*.

Liu, Baodong. (2014). “Racial Context and the 2008 and 2012 US Presidential Elections” in Yannis A. Stivachtis and Stefanie Georgakis Abbott, ed. *Addressing the Politics of Integration and Exclusion: Democracy, Human Rights and Humanitarian Intervention*. Athens: Atiner publications. (Also published in *Athens Journal of Social Sciences*.)

Liu, Baodong. (2011). “Mayor” in *International Encyclopedia of Political Science*. CQ Press.

Liu, Baodong. (2011). “Roll-off” in *International Encyclopedia of Political Science*. CQ Press.

Liu, Baodong and Carolyn Kirchhoff. (2009) “Mayor”, *Encyclopedia of American Government and Civics*, eds. Michael A. Genovese and Lori Cox Han. New York: Facts on File.

Liu, Baodong and Robert Darcy. (2006). “The Rising Power of Minorities and the Deracialization of U.S. Politics” in Gillian Peele, Christopher J. Bailey, Bruce E. Cain, and B. Guy Peters, ed. *Developments in American Politics 5*. Hampshire, UK: Palgrave Macmillan/Macmillan Publishers.

D) Book Reviews

Liu, Baodong. (2010). Review of Zoltan L. Hajnal, “America’s Uneven Democracy: Race, Turnout, and Representation in City Politics” in *American Review of Politics 31 (summer): 157-160*.

Liu, Baodong. (2008). Review of Rodney E. Hero, *Racial Diversity and Social Capital*, in *Urban Affairs Review 44 (1):146-149*.

Liu, Baodong. (2006). Review of Peter Burns, *Electoral Politics Is Not Enough*, in *American Review of Politics 27 (Spring): 186-189*.

Liu, Baodong. (1999). Review of Terry Nichols Clark and Vincent Hoffmann-Martinot (ed), “The New Political Culture,” in *American Review of Politics 20: 99-102*.

E). Other Publications/Editorials

Liu, Baodong. (2021). “Asian Americans and Minority Voters: The New Destination of Partisan Competitions?” ETtoday. January 8, 2021. (in Chinese/Taiwanese)

Liu, Baodong. (2020). “Checks and Balances and the End of Trump Legal Battles”. ETtoday. Dec. 29, 2020. (in Chinese/Taiwanese)

Liu, Baodong. (2020). “Trump’s Legal Battles and the New Beginning of the Electoral Laws?”. ETtoday. Nov. 10, 2020. (in Chinese/Taiwanese)

Liu, Baodong and Feng Ling. (2018). “Liberalism or Conservatism: Which One Contributes to America More?” *Chinese Americans*, No. 1565. (in Chinese).

Liu, Baodong. (2018). “The Lawsuit against Harvard and Asian-American Attitude toward Affirmative Action,” *Chinese Americans*, No. 1207. (in Chinese).

Liu, Baodong. (2016). “Lu Xun’s Attack on Old Chinese Regime and St. Augustine’s Self Examination,” *Overseas Campus* (in Chinese).

Liu, Baodong. (2015). “Will Christianity Bring about Democracy?” *Overseas Campus* 130 (June): 40-43. (in Chinese)

Liu, Baodong. (2011). “New Ethnic Studies Major at the U: Education for the 21st Century” *Diversity News* 2011 (Fall). <http://diversity.utah.edu/newsletter/fall-2011/ethnic-studies-degree.php>.

Liu, Baodong (2008). “The Urban Politics Field as We Know It.” *Urban News* 22 (1): 1-2.

Liu, Baodong. (2008). “Negative Campaigning a Desperate Strategy,” *The Daily Utah Chronicle*. Guest Column. October 20, 2008.

Liu, Baodong. (2007). “The 2006 Midterm Election: Angry Voters? Yes! Clear Vision? No!” *Wisconsin Political Scientist* XIII (2): 9-10.

Liu, Baodong. (2006). “Midterm Election Results Show No Clear Future Vision.” Guest Column, *Advance-Titan*. Nov. 9, 2006: A5.

Liu, Baodong and James Vanderleeuw. (2003). “Local Policymakers and Their Perceptions of Economic Development: Suburbs, Central Cities and Rural Areas Compared” *Wisconsin Political Scientist* IX (1): 4-7.

SOFTWARE DEVELOPMENT/GRANTS

diaglm, the author of the R software statistical package for diagnosing and visualization of violations of linear and nonlinear statistical modeling, published at GitHub (bblpo/diaglm). 2019.

diagglm, the author of the R software statistical package for diagnosing and visualization of violations of nonlinear statistical modeling, published at github (bblpo/diagglm). 2019.

Principal Investigator, “Authoritarianism in the Global Ethnic Chinese Communities”, a grant proposal supported by University Sabbatical Leave and Asia Center Travel Award. 2020. \$1500

Principal Investigator, with Co-Pi, Mike Cobbs (North Carolina State University) and Richard Engstrom (University of Houston). “Understanding the Support for Ranked-Choice Voting,” initial grant proposal supported by Political Reform Program, New America. Washington D.C. 2020. \$40,000

Co-PI, with Dennis Wei (PI) and Chris Simon. “Amenity, Neighborhood and Spatial Inequality: A Study of Salt Lake County,” Interdisciplinary Research Pilot Program (IRPP), College of Social and Behavioral Science, the University of Utah, 2015. \$10,000.

Co-PI, with Annie Isabel Fukushima (PI). “Victimization, Human Trafficking and Immigrants: Mixed Methods analysis of the Perceptions of Victimhood in U.S. Courts (2000 – 2015)”, submitted to National Institute of Justice, 2015. \$997,407. (rejected)

Co-PI, with Daniel McCool. “The Efficacy of American Indian Voting: A Pilot Project” Research Incentive Grant, College of Social and Behavioral Science, the University of Utah. (2014-). \$7500.

I have provided my Expert Witness Opinions on federal voting rights cases such as *Milligan, et al. v. Merrill, et al.*, Case No. 2:21-cv-01530-AMM and *Thomas, et al. v. Merrill, et al.*, Case No. 2:21-cv-01531-AMM (N.D. Ala. 2021), *Traci Jones et al vs. Jefferson County Board of Education et al*, (N.D. Ala. 2019); *CMA v. Arkansas* (E.D. Ark., 2019); *Navajo Nation, et al, vs. San Juan County, et al*, (D. Utah, 2012); *League of Women Voters of Florida, et al v. Detzner, et al*, (Fla., 2012); *Anne Pope et. al. v. County of Albany and the Albany County Board of Elections* (N.D.N.Y. 2011); *Radogno, et al v. State Board of Elections, et al*, (N.D. Ill. 2011); *NAACP v. St. Landry Parish et al*, (W.D. La. 2003); *Arbor Hill Concerned Citizens Neighborhood Association et al v. County of Albany* (N.D.N.Y. 2003); *Hardeman County Branch of NAACP v. Frost* (2003).

Expert Instructor, Racially Polarized Voting and Political Participation: EI and EZI. Expert Preparation Program, Community Census and Districting Institute. A grant supported by Ford Foundation and Southern Coalition for Social Justice, Duke University, Durham, North Carolina. 2010.

Principal Investigator, 2010-2012. A Multi-level Analysis of Obama Racial Coalition in 2008 and 2012. A project funded by the PIG grant of College of Social and Behavior Sciences, the University of Utah.

Co-PI. Educational Succession Movements in U.S. Metropolitan Areas, proposal submitted to Seed Grants, the University of Utah. 2009. Rejected.

Recipient, Faculty Sabbatical Grant, 2008. University of Wisconsin Oshkosh, grant offered, but finally declined the offer due to job change.

Grant Director/Faculty Advisor, 2008. The WiscAMP program, National Science Foundation.

Principal Investigator, 2007. Wisconsin Research and Development Capacity Study. A project funded by Wisconsin Security Research Consortium.

Principal Investigator, 2007. The Impact of Industrial Involvement on Science Education in Wisconsin. A project funded by Johnson Control, Inc.

Principal Investigator, 2007. The Impact of Fond du Lac School District on Local Economic Development. A project funded by Fond du Lac School District.

EI Methodologist, 2007. Retrogressive Effects of H.B. No. 1565 on Latino Voters in the Bexar County Metropolitan Water District, TX.

Principal Investigator, 2006. The Impact of Economic Development on Citizen Opinions. A project funded by City of Waupaca, Wisconsin Public Services.

Principal Investigator, 2006. Leading the Big Easy: Will the Biracial Coalition Sustain Katrina? Institute on Race and Ethnicity, University of Wisconsin System. 2006.

Methodological Issues in Quantitative Research on Race and Ethnicity, Inter-University Consortium for Political and Social Research (ICPSR), Institute of Social Research, University of Michigan, 2006.

Off-Campus Program Grant, Faculty Development, the University of Wisconsin-Oshkosh, 2006.

GIS and Social Research, Small Research Grant, Faculty Development Program, the University of Wisconsin-Oshkosh, 2005.

Principal Investigator, Getting the White Votes. American Political Science Association Research Grant, Washington D.C., 2003.

Principal Investigator, A Comparative Study of Urban Elections. Faculty Research Development Grant, the University of Wisconsin-Oshkosh, Oshkosh, Wisconsin, 2004.

Principal Investigator, Getting the White Votes. Faculty Research Development Grant, the University of Wisconsin-Oshkosh, Oshkosh, Wisconsin, 2003.

Advanced Graduate Student Travel Grant, the American Political Science Association, 1999

AWARDS AND HONORS

Nominee for the Career & Professional Development Center, Faculty Recognition Program, University of Utah. 2018.

Winner of A Showcase of Extraordinary Faculty Achievements (for publication of my book, Social Research: Integrating Mathematical Foundations and Modern Statistical Computing. San Diego: Cognella Academic Publishing), With commendation from the J. Willard Marriott Library and the Office of the Vice President for Research. University of Utah. 2016

Nominee for the Social and Behavior Science College Superior Research Award (senior scholar category), nominated by the political science department in both 2011 and 2012.

Professor of Political Science (National 985-Plan Supported Foreign Scholar), Taught Summer Class at School of Government, Nanjing University, Nanjing, China. 2012.

TRISS Endowed Professorship for Excellence, University of Wisconsin Oshkosh, 2007-8

Artinian Award for Professional Development, Southern Political Science Association, 2004

Byran Jackson Award for the best research/dissertation in racial and ethnic politics in an urban setting, Urban Politics Section, the American Political Science Association, 1999

Ted Robinson Award for the best research in race and ethnicity, Southwestern Political Science Association, 1999

Who's Who in America, 2001-2006, Marquis, USA.

Davis Summer Research Grant, Stephens College, 2001

Firestone Baars Grant for Faculty Development, Stephens College, 1999-2001

Vice President Discretion Grant for Research, Stephens College, 2001, 2000

Advanced Graduate Student Travel Grant, the American Political Science Association, 1999

Graduate Student Travel Grant, University of New Orleans, 1997

The Best Graduate Student Paper Award, Department of Political Science, Oklahoma State University, 1993

Pi Sigma Alpha, National Political Science Honor Society, 1994

PROFESSIONAL POSITIONS

Member, Review Board, Journal of Behavioral and Social Sciences, 2019-present

Member, Board of Directors, National Association for Ethnic Studies, 2013-2015

Editorial Board, Urban Affairs Review, 2008-2011

Editorial Advisor, International Encyclopedia of Political Science, CQ Press, 2005-2011

Editor, Urban News, Urban Politics Section, American Political Science Association, 2004-2010

Chair, Urban Politics Program, Southern Political Science Association Annual Convention, 2008

Co-Chair, Asian Pacific American Caucus, American Political Science Association, 2004-2006

Member, American Political Science Association Small Research Grant Committee, 2005

AS A JUDGE OR REVIEWER OF WORKS OF OTHER SCHOLARS FOR ACADEMIC JOURNALS OR PRESSES

2001-present

Perspectives; Politics and Religion; American Political Science Review; Lexington Books; Journal of Behavioral and Social Sciences; The National Science Foundation; Sage Publications, W. W. Norton & Company, Inc; McGraw Hill Publishing; Journal of Politics; National Political Science Review, Political Analysis; Social Science Quarterly; Urban Affairs Review; Political Research Quarterly; Politics and Policy; Journal of Urban Affairs; American Politics Research; Public Opinion Quarterly; Political Behavior; Sociological Methods and Research

PROFESSIONAL AND COMMUNITY SERVICES

Reviewer, University **URC Faculty Scholarly Grant Program, 2020**

Chair, Faculty Tenure and Promotion Committee, Political Science, 2019-2020

Member, Curriculum Overhaul Committee, Ethnic Studies, 2018-2019

Member, Faculty Tenure and Promotion Committee, Political Science, 2018-2019

Chair, Faculty Tenure and Promotion Sub-Committee, Ethnic Studies, 2017-2018

Member, Graduate Committee, political science department, the University of Utah, 2014-2018

Member, Executive Committee, political science department, the University of Utah, 2014-2018

Faculty Senator, the University of Utah, 2015-2018

Chair, American Politics Field, political science department, the University of Utah, 2014-2018

Member, GC Building Committee, Social Science Lab, 2015-2018

Expert Volunteer for Utah Fair Redistricting Legal Team, 2017

Member, Assistant Vice President for Diversity Search Committee, 2015-2016

Member, Ad Hoc Graduate Committee for Writing, 2015-2016

Chair, Faculty Joint Appointment Search Committee, ethnic studies program and theatre department, the University of Utah, 2014-2015

Member, Betty Glad Foundation Committee, political science department, the University of Utah, 2014-2015

Chair, Awards Committee, National Association for Ethnic Studies, 2014

Faculty Mentor to Junior Faculty, Department of Political Science, 2013-2018

Chair, University of Utah MLK Committee. 2012-2013.

Member, Graduate School Dean Search Committee, 2013.

Member, University Diversity Leadership Team, the University of Utah. 2010-2013.

Member, University Teaching Program Committee, the University of Utah, 2011-2013.

Member, University Diversity Curriculum Committee, Undergraduate Studies, the University of Utah, 2011-2013.

Judge, The Research Day of College of Social and Behavioral Science, 2011-2013.

Member, Organizing Committee, International Conference on Urbanization and Development in China, University of Utah, August 2010.

Member, Retention, Promotion, and Tenure Committee, Department of Political Science, the University of Utah. 2011-2013.

Assistant Director, Ethnic Studies Program, the University of Utah. 2010-2011.

Committee Member, Undergraduate Studies, Department of Political Science, the University of Utah. 2009-2011.

Committee Member, Utah Opportunity Scholarship, the University of Utah, reviewing and making decisions on more than 200 applications. 2009-2010.

Member, Ethnic Studies Positions Exploration Committee, the University of Utah. 2009-2010.

Member, Marketing Committee, Department of Political Science, the University of Utah. 2009-2010.

Guest Speaker, “Obama and the 2008 Presidential Election: A Spatial Analysis” at the Graduate Seminar titled Introduction of Survey Research in Higher Education. College of Education. The University of Utah. Feb. 3, 2009.

Special Speaker, “Obama and the Minimum Winning Coalition” Ethnic Studies Works in Progress Presentation. The University of Utah. Dec., 5, 2008.

Special Speaker, “Election 2008: A Symposium,” Hinckley Institute of Politics, University of Utah. October 6, 2008.

Special Speaker, “Predicting the 2008 Presidential Election Outcomes” Political Science Department, the University of Utah. Sept. 25, 2008.

Political Commentator for reporting from Salt Lake Tribune, AP, EFE Hispanic News Services, Milwaukee Journal Sentinel, WHBY, KFRU radio stations, the Post-Crescent, Oshkosh Northwestern, Columbia Missourian, and the Daily Utah Chronicle. December 1999 to present.

Faculty Representative for University of Wisconsin-Oshkosh, ICPSR, University of Michigan, 2007-2008

Member, Board of Trustees, Wisconsin International School, 2007-2008

Member, UWO Office of Institutional Research Advisory Board, 2007-2008

President, Northeast Wisconsin Chinese Association, 2007 (executive vice president, 2006)

Member, Program Evaluation Committee. College of Letters and Science, University of Wisconsin-Oshkosh, 2007-2008

Member, Political Science Curriculum, Center for New Learning, University of Wisconsin-Oshkosh, 2007-2008

Moderator, Oshkosh City Forum, Mayoral Candidates’ Debates, March 23, 2005

Grant Reviewer, Faculty Development Program. University of Wisconsin-Oshkosh, 2004-2008

Member, African American Minor Counsel. University of Wisconsin-Oshkosh, 2006-2008

Member, Search Committee for University Foundation President. University of Wisconsin-Oshkosh, 2005-2006.

Member, Faculty Senate Libraries & Information Services Committee. University of Wisconsin-Oshkosh, 2005-2008.

Chair/Member, Curriculum Committee, Dept. of Political Science, University of Wisconsin-Oshkosh, September 2002-2008.

Chair, Budget Committee, Dept. of Political Science, University of Wisconsin-Oshkosh, September 2007-2008.

Member, Personal Committee, Dept. of Political Science, University of Wisconsin-Oshkosh, September 2007-2008.

Member, Search Committee, Dept. of Political Science, University of Wisconsin-Oshkosh, September 2002-2008.

Faculty Director, the Stephens College Model UN Team, National Model United Nations Conference, New York, New York, March, 2002.

Chair, Political Science Search Committee, Stephens College. August 2001 to May 2002.

Member, Editorial Advisory Board, Collegiate Press, San Diego, California. 2000 to 2001.

Chair, Harry Truman Scholarship Committee, Stephens College. 2000 to 2002.

Member, Strategic Planning and Budgeting Committee, Stephens College. 2000 to 2002.

CONFERENCE PAPER/PROCEEDINGS

Liu, Baodong. "Racial Prejudice behind the Anti-Affirmative Action Attitude of Asian Americans," paper presented at the Western Political Science Association Annual Conference. San Diego. April 2019.

Liu, Baodong, Porter Morgan and Dimitri Kokoromytis. "Immigration, Nation-State Contexts and Value Changes of Ethnic Chinese" paper presented at the Midwest Political Science Association Annual Conference. Chicago. April 2019.

Baodong Liu. "The Strategical Religious Voter", paper presented at the Midwest Political Science Association Annual Meeting. Chicago, Illinois. April 2018.

Baodong Liu, Nicole Batt and Zackery Stickney. "Authoritarianism for and against Trump", paper presented at the Annual Meeting of Behavioral and Social Sciences, Las Vegas, Nevada. February 2018.

Baodong Liu. "The Strategic Religious Voter", paper presented at the Oxford Symposium on Religious Studies, Oxford, UK. March 2016.

Baodong Liu. "The Political Fate of Religious Minorities in the U.S. Presidential Elections." paper presented at the 19th Annual American Association of Behavioral and Social Sciences. Las Vegas, Nevada. February 2016.

Baodong Liu. "The Political Fate of Religious Minorities in the U.S. Presidential Elections." paper presented at the Hawaii University International Conferences on Arts, Humanities, Social Sciences and Education. Honolulu, Hawaii. January 2016.

Baodong Liu. "Statistical Inference and Visualization of Big Data in Urban Research", paper presented at the 3rd International Conference on China Urban Development, Shanghai, China. June 2015.

Baodong Liu. "Race, Religion, and U.S. Presidential Elections," paper presented at the Annual Convention of National Association for Ethnic Studies, Oakland, California. April 2014.

Baodong Liu. "Racial Context and the 2008 and 2012 US Presidential Elections," paper presented at the 11th Annual International Conference on Politics & International Affairs, Athens, Greece. June 2013.

Baodong Liu. "Deracialization in the Post-Obama Era," presented at the National Black Political Scientist Association Annual Meeting. Las Vegas, Nevada. March 2012.

Baodong Liu. "Obama's Racial Coalition," paper presented at the Southwestern Social Science Association Annual Meeting. Las Vegas, Nevada. March 2011.

Geoffrey M. Draper, Baodong Liu, and Richard F. Riesenfeld. "Integrating Statistical Visualization Research into the Political Science Classroom" Information Systems Educators Conference. 2010. Nashville, Tennessee. October 2010.

Baodong Liu. "Space and Time: An Empirical Analysis of 2008 Presidential Election," paper delivered at the Annual American Political Science Association Conference, Toronto, Canada, September 2009.

Baodong Liu. "Sequential and Spatial Voting: An Analysis of the 2008 Democratic Primaries," paper presented at the 2009 Midwest Political Science Association Annual Conference, Chicago, Illinois, April 2009.

Baodong Liu. "Social Capital, Race, and Turnout," paper presented at the 2008 Midwest Political Science Association Annual Conference, Chicago, Illinois, April 2008.

Baodong Liu and Lori Weber. "Social Capital and Voting Participation," paper presented at the 2008 Southern Political Science Association Annual Meeting, New Orleans, Louisiana, January 2008.

Baodong Liu. "The 2006 New Orleans Mayoral Election," paper presented at the 2007 Midwest Political Science Association Annual Conference, Chicago, Illinois, April 2007.

James Vanderleeuw, Baodong Liu, and Erica Williams. "The Political Ramifications of a Large-Scale Natural Disaster," paper presented at the 2006 annual conference, the American Political Science Association, Philadelphia, September 2006.

Baodong Liu. "EI Extended Model and the Fear of Ecological Fallacy," paper presented at the 2006 Midwest Political Science Association Annual Meeting, Chicago, Illinois, April 2006.

Baodong Liu. "The Fear of Ecological Fallacy and the Methods to Conquer It" paper presented at the Western Political Science Association Annual Meeting, Oakland, CA, April 2005.

Baodong Liu. "The Whites Who Stayed in the City," paper presented at the 2004 Midwest Political Science Association Annual Meeting, Chicago, Illinois, April 2004.

Baodong Liu. "Whites as a Minority and the New Biracial Coalition," paper presented at the 2004 Southern Political Science Association Annual Meeting, New Orleans, Louisiana, January 2004.

Baodong Liu and James Vanderleeuw. "Economic Development Priorities and Central City/Suburb Differences," presented at the 2003 Midwest Political Science Association Annual Meeting, Chicago, Illinois, April 2003.

James Vanderleeuw, Baodong Liu, and Greg Marsh, "Divided Leadership and Racial Reflexivity in Memphis: An Analysis of the 1991, 1995 and 1999 Mayoral Elections," presented at the 2003 Southwestern Political Science Association Annual Meeting, San Antonio, Texas, April 2003.

Baodong Liu. "White Votes Count: The Effect of Black Candidates' Qualifications on White Crossover Voting," paper presented at the 98th American Political Science Association Conference, Boston, Massachusetts, September 2002.

Baodong Liu. "Searching for a 'Qualified' Black Candidate," *Proceedings of the 97th American Political Science Association Conference*, San Francisco California, September 2001.

Baodong Liu. "In Defense of an Ethical Rational Choice Theory," paper delivered at the 2001 Jessie Ball duPont Fund Summer Seminars for Liberal Arts College Faculty, the National Humanities Center, Research Triangle, North Carolina, June 2001.

Baodong Liu. "Reconsidering Social Interaction Theory," presented at the 2001 Western Political Science Association Annual Meeting. Las Vegas Nevada, March 2001.

James Vanderleeuw, Baodong Liu, and John Johnson. "Economic Development Priorities of City Administrators: A Report on a Survey of City Administrators in Texas," presented at the 2001 Louisiana Political Science Association Convention, Lamar Texas, March 2001.

Baodong Liu. "Racial Transition: Explaining the Curvilinear Relationship between Black Density and White Crossover Voting," *Proceedings of the 96th American Political Science Association Conference*, Washington DC, September 2000.

Baodong Liu and James Vanderleeuw. "Racial Transition: Explaining the Curvilinear Relationship between Black Density and White Crossover Voting," presented at the 96th American Political Science Association Conference, Washington DC, September 2000.

Baodong Liu. "Electoral Law and the Russian Party System: A Comparative Study," presented at the 58th Midwest Political Science Association Conference, Chicago Illinois, April 2000.

James Vanderleeuw and Baodong Liu. "Rolling Off in the Context of Context," presented at the 30th Southwestern Political Science Association Conference, Galveston Texas, March 2000.

Baodong Liu. "The Changing Nature of Electoral Competition in Japan." Roundtable Discussant, the 52nd Association of Asian Studies Annual Meeting, San Diego California, March 2000.

Baodong Liu. "Racial Context and White Voting Strategies," presented at the 95th American Political Science Association Conference, Atlanta Georgia, September 1999.

Baodong Liu. "The President's Support in Congress: A Test of U.S. China Policy, 1980-1994," *The 1997 Southern Political Science Association Convention*, Norfolk Virginia, November 1997.

Baodong Liu. "Examining the Race Line: White Voting Behavior in New Orleans, 1980-1994," *The 27th Southwestern Political Science Association Conference*. New Orleans Louisiana, March 1997.

Baodong Liu. "Intrapartisan Defeats and the Nomination Strategies of the Japanese Liberal Democratic Party in the 1993 Election," *The Sixth Annual Graduate Student Research Symposium*. Oklahoma State University. Stillwater Oklahoma, February 1995.

INVITED SPEAKER, ROUNDTABLE/PANEL DISCUSSANT

Baodong Liu. “The 2020 Presidential Election and the Future of American Democracy”, invited lecture given to Chinese Americans on Zoom. September 2020.

Baodong Liu, Michael Cobb, and Richard Engstrom. “Understanding the Support for Ranked-Choice Voting in Two Southern Cities” talk given at the Electoral Reform Research Group, Research Development Conference. Washington D.C. February 2020.

Baodong Liu. ““Nation-State Context and Authoritarian Value Changes of Ethnic Chinese.” Talk given at the workshop of The Clash of Authoritarianisms: Secularism versus Islamism in Turkey, University of Utah. April 2019

Baodong Liu. “Trump’s Voters,” Panel Discussion on Presidential Primaries. Hinckley Institute of Politics. The University of Utah. Salt Lake City, Utah. March 2016

Baodong Liu. “Big Data in the Social Sciences,” The Consortium for Research on China and Asia (CROCA) and Policy at the Podium. The University of Utah. Salt Lake City, Utah. November 2014.

Baodong Liu. “Deracialization in the Historical Perspective,” the National Black Political Scientist Association Annual Meeting. Las Vegas, Nevada. March 2012.

“Educating the Best Students in the 21st century: the New Ethnic Studies Major at the University of Utah,” a presentation provided to the University Diversity Division Fall Retreat (March 12, 2011), the Ethnic Studies Program (August, 17, 2011), and the Community Council (September 13, 2011), at the University of Utah.

“Quantitative Analysis: Ecological Inferences and the Voting Rights Law,” a Ford Foundation Project, Duke University. July 24-28, 2010.

“Election 2008: A Symposium,” Hinckley Institute of Politics, University of Utah. October 6, 2008.

“IMMIGRATION TODAY: What are the Issues?” League of Women Voters of the Oshkosh Area Public Forum, November 12, 2007.

Theme Panel: “Bleaching” New Orleans? Power, Race, and Place After Katrina, the American Political Science Association Annual Meeting, Philadelphia, September 2, 2006.

“2006 Midterm Election Preview,” American Democracy Project, the University of Wisconsin, Oshkosh, November 2, 2006.

“Analysis on the 2006 Midterm Election Results,” American Democracy Project, the University of Wisconsin, Oshkosh, November 9, 2006.

“The Politics of New Americans: Studying Asian American Political Engagement,” the American Political Science Association Annual Meeting, Washington, D.C. September 3, 2005.

“Significance of Voting Rights Act,” Lawyers’ Committee for Civil Rights under Law, National Asian Pacific American Legal Consortium, Mexican American Legal Defense and Educational Fund, Washington DC: June 17-18, 2004.

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

JOHN ROBERT SMITH, et al.

Plaintiffs,

v.

DELBERT HOSEMAN, et al.,

Defendants

and

BEATRICE BRANCH, et al.,

Intervenors

KELVIN BUCK, et al.,

Plaintiffs,

v.

HALEY BARBOUR, et al.,

Defendants.

3:01-cv-855-HTW-DCB

3:11-cv-717-HTW-LRA

BRIEF OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
MISSISSIPPI STATE CONFERENCE OF THE NAACP, ONE VOICE, AND BLACK
VOTERS MATTER CAPACITY BUILDING INSTITUTE AS *AMICI CURIAE*
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CORPORATE DISCLOSURE STATEMENT

The NAACP Legal Defense and Educational Fund, Inc., Mississippi State Conference of the NAACP, One Voice, and Black Voters Matter Capacity Building Institute certify the following:

1. The NAACP Legal Defense and Educational Fund, Inc., is a nonprofit organization with its principal place of business in New York. It has no parent corporation and no publicly-held company owns ten percent or more of the party's stock.
2. The Mississippi State Conference of the NAACP is a nonprofit organization that is a subsidiary of the NAACP with its principal place of business in Mississippi. No publicly-held company owns ten percent or more of the party's stock.
3. One Voice is a nonprofit organization with its principal place of business in Mississippi. It has no parent corporation and no publicly-held company owns ten percent or more of the party's stock.
4. Black Voters Matter Capacity Building Institute is a nonprofit corporation with its principal place of business in Georgia. It has no parent corporation and no publicly-held company owns ten percent or more of the party's stock.

STATEMENT OF INTEREST¹

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a nonprofit, nonpartisan legal organization founded in 1940 under the leadership of Justice Thurgood Marshall. LDF's mission is to achieve racial justice and to ensure the full, fair, and free exercise of constitutional and statutory rights for Black people and other people of color. Because the franchise is "a fundamental political right . . . preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), LDF has worked for over 80 years to combat threats to Black people's right to vote and political representation. LDF has been counsel of record or served as an *amicus* in many of the precedent-setting cases regarding racial discrimination in voting in the U.S. Supreme Court, the federal courts of Mississippi, and other courts. *See, e.g., Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254 (2015) ("ALBC"); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Bush v. Vera*, 517 U.S. 952 (1996); *Houston Lawyers' Assn. v. Attorney General of Tex.*, 501 U.S. 419 (1991); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Rogers v. Lodge*, 458 U.S. 613 (1982); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (*en banc*); *Miss. State Chapter, Operation PUSH, Inc. v. Mabus*, 932 F.2d 400 (5th Cir. 1991); *Milligan v. Merrill*, No. 21-cv-1530, 2022 WL 265001 (N.D. Ala. Jan. 24, 2022) (three-judge court); *Ga. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015); *Martin v. Mabus*, 700 F. Supp. 327, 329 (S.D. Miss. 1988). As such, LDF has a significant interest in ensuring the full, proper, and continued enforcement of the Voting Rights

¹ No counsel for a party in this case authored this brief in whole or in part, and no party or party's counsel made a monetary contribution to fund preparation or submission of this brief. No person or entity other than *amicus curiae* made a monetary contribution to the preparation or submission of this brief.

Act and the Constitution. LDF submits this brief to help the Court appreciate and understand the negative impact of Mississippi's Congressional Redistricting Plan on Black voters in Mississippi.

The Mississippi State Conference of the NAACP (MS NAACP) was at the forefront of major battles of the civil rights movement in Mississippi during the 1950s, '60s, and '70s. The first Mississippi NAACP branch was chartered in Vicksburg, Mississippi in 1918 and re-chartered on April 8, 1940. In 1945, members of branches from across the state came together to charter the Mississippi State Conference NAACP to coordinate the efforts of local branches and to carry out the mission and vision of the national organization statewide. The MS NAACP mission includes ensuring the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The MS NAACP has a significant interest in this case because of its mission and the interests of its members across the state.

One Voice is a nonprofit organization whose purpose is to improve the quality of life for African Americans and other disenfranchised communities while building local and regional ability to sustain hard-won battles. This is a vision that connects justice to political and economic opportunity. One Voice's work focuses on building power within underserved communities as a tactic to address the ongoing systemic disparities that plague these communities. For the past two years, One Voice has hosted workshops and community discussions about the importance of the redistricting process. COVID-19 has introduced a new reality for civic engagement work. One Voice has hosted a number of tele-townhalls, Zoom coalition meetings and Facebook Live events to discuss civic engagement and redistricting. One Voice's work has helped to bring a level of transparency to Mississippians who would otherwise be left out of the process. This case also represents inclusion for communities that continue to be disfranchised.

Black Voters Matter Capacity Building Institute (BVM) is a nonprofit, nonpartisan organization founded in 2017 to build political power in black communities in eleven core states. The work includes voter education and finding ways to make voting more accessible and inclusive for all communities, particularly historically marginalized communities. This work includes filing litigation against those states that have passed legislation that creates barriers to voting for Black and marginalized communities. As such, BVM has a significant interest in ensuring the full, proper, and continued enforcement of the Voting Rights Act and the Constitution. BVM submits this brief to help the Court appreciate and understand the negative impact of Mississippi's Congressional Redistricting Plan on Black voters in Mississippi.

INTRODUCTION

Early this year, in response to the release of the 2020 Census data, the Mississippi Legislature redrew the state's four Congressional districts. Before the State Legislature considered traditional redistricting principles such as compactness and preserving communities of interest, it made the central choice to set the exact racial makeup of one Congressional district: Congressional District 2 (CD 2). From the outset, the Legislature decided that CD 2 would have a Black voting age population (BVAP) of about 61%.

The State hit that target with surgical precision. Doing so required packing thousands of Black Mississippians into a district that already elected a Black-preferred candidate by generous margins, splitting more counties than necessary, and drawing a line through the state capital. The foreseeable consequence of the State's reliance on a racial target to pack CD 2 is the diminishment of Black political influence in the State's other three Congressional districts.

When the Vice-Chair of the Redistricting Committee defended the packed CD 2 on the Senate floor, he admitted the Legislature's predominant racial motive. He explained that the State

could have made CD 2 more compact, but the “numbers just didn’t work”—because it would have “decrease[d] [the district’s] BVAP” below the State’s racial target.²

The Constitution’s Equal Protection Clause forbids the predominate use of race in the redistricting process unless it is narrowly tailored to achieve a compelling state interest—like compliance with the Voting Rights Act (VRA). Absent narrow tailoring to satisfy a compelling interest, a state cannot arbitrarily set a racial target for a voting district and then subordinate race-neutral criteria to ensure that target is reached. *Cooper v. Harris*, 137 S. Ct. 1455 (2017); *ALBC*, 575 U.S. 254 (2015). Neither Mississippi, nor the Republican Party, presents any evidence to suggest that, prior to the enactment of the 2021 plan, the Legislature even considered the VRA’s requirements before assigning its racial target, nor do they present any evidence that the Legislature conducted any analysis of racial voting patterns or other election data to determine the Black population level needed to avoid vote dilution and satisfy the State’s VRA obligations. As the *Buck* Plaintiffs argue, this Court should allow discovery and an evidentiary hearing to allow the parties and *amici* to present evidence that the State’s congressional redistricting plan constitutes a racial gerrymander that discriminates against Black Mississippians.

BACKGROUND

The History of Congressional District 2

For decades, federal courts have closely scrutinized Mississippi’s congressional redistricting process. Following years of litigation after the 1980 Census, a three-judge court ordered that Section 2 of the Voting Rights Act required the creation of CD 2, a Black-majority district in the Delta region of Mississippi. *See Jordan v. Winter*, 604 F. Supp. 807, 808–09 (N.D. Miss. 1984) (three-judge court), *aff’d sub nom. Miss. Republican Exec. Comm. v. Brooks*, 469 U.S.

² Mississippi Legislature, *MS Senate Floor - 12 JAN 2022, 10 AM*, YouTube (Jan. 12, 2022), <https://www.youtube.com/watch?app=desktop&v=FdtZfyWf5bo&feature=youtu.be> (at 38:00).

1002 (1984). Two years later, residents of CD 2 elected the first Black federal representative from Mississippi since Reconstruction in the late 1800s.

The court-ordered plan created CD 2 with a Black voting age population (BVAP) of 52.83%. *Id.* at 814. Based on “[c]redible expert testimony,” the *Jordan* court concluded that this 52.83% BVAP was sufficient for Black voters to elect candidates of their choice. *Id.* It rejected plans that would pack CD 2 with significantly more Black residents, acknowledging that doing so “would diminish the impact of [B]lack voters” in an adjacent district. *Id.* at 815.

Following the 1990 Census, the Legislature redrew Mississippi’s Congressional map and for the first time, split Jackson between two districts. The Legislature significantly increased the BVAP of CD 2 as compared to the prior plan, creating a district with approximately at 58% BVAP.³ This set the basis for the district’s BVAP for the next two redistricting cycles.

Mississippi lost a Congressional seat following the 2000 Census, going from five districts to four districts. Due to the Legislature’s inability to enact a new plan, this Court enjoined the State from using its then-existing five-district plan and instituted a four-district plan. *Smith v. Clark*, 189 F. Supp. 2d 529 (S.D. Miss. 2002) (three-judge court), *aff’d sub nom. Branch v. Smith*, 538 U.S. 254 (2003). In drawing its plan, the Court was concerned with the risk of retrogression in violation of Section 5 of the Voting Rights Act, which prohibited covered jurisdictions from enacting redistricting plans that weakened the “position of racial minorities with respect to their effective exercise of the electoral franchise” as compared to the jurisdiction’s prior redistricting plan. *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003). The Court did not focus on the BVAP necessary to avoid Black vote dilution in CD 2; rather, it noted only that “[i]t is certain that

³ See Sid Salter, *Redistricting: Time Running Out; Minority voting rights evolved after civil rights struggles*, Clarion-Ledger – Mississippi’s Redistricting News (Oct. 28, 2001), <http://archive.fairvote.org/redistricting/reports/remanual/msnews3.htm>.

significant retrogression would result in District 2 if Black voting age population is shifted from District 2 to increase the percentage of Black voting age population in District 3.” *Clark*, 189 F. Supp. 2d at 538. Out of this concern of retrogression, the Court redrew CD 2 to include a BVAP of 59.2%. *Id.* at 540. In its opinion, however, the Court did not analyze whether this BVAP was necessary to comply with Section 2 or Section 5 of the VRA, instead simply noting that the one majority-minority district must be drawn to satisfy the VRA and that the Court’s plan did not result in vote dilution or retrogression. *Id.*

In drafting the state’s Congressional plan following the 2000 Census, this Court considered several “secondary criteria” in addition to the requirements of federal law, including (in order of priority):

(1) compactness and contiguity; (2) respect for county and municipal boundaries; (3) preservation of historical and regional interests; (4) placement of the major research universities and military bases, respectively, in separate districts; (5) placement of at least one major growth area in each district, and avoidance of placement of several major growth areas in the same district, so as to minimize population deviation among the districts as Mississippi's population changes; (6) inclusion of as much as possible of southwest Mississippi from former district 4, and east central Mississippi from former district 3, in the new District 3; (7) protection of incumbent residences; and (8) consideration of the distances of travel within each district.

Clark, 189 F. Supp. 2d at 541.

This Court again had to step in to draw the state’s Congressional plan after the 2010 Census. *Smith v. Hosemann*, 852 F. Supp. 2d 757 (S.D. Miss. 2011) (three-judge court). Using most of the same criteria it laid out in its opinion explaining its drafting of the state’s prior Congressional plan, the Court made relatively minor changes.⁴ Again concerned with avoiding retrogression under the VRA, the Court drew CD 2 to include a BVAP of 61.36%, but the Court

⁴ The Court noted that some of the criteria it established in its previous opinion were not required, such as maintaining major research universities and military bases in separate districts and considering incumbent residences.

again did not conduct or describe any analysis showing whether this specific BVAP was necessary to comply with the VRA. *Id.* at 765–66.

Outside of CD 2, Black Mississippians have continued to be unable to elect a representative of their choice to Congress.

The 2021-2022 Redistricting Process

The Mississippi Joint Congressional Redistricting and Legislative Reapportionment Committee (the “Redistricting Committee”) is tasked with redrawing Mississippi’s Congressional map following each Census. Miss. Code Ann. § 5-3-121. Much of the Committee’s work was done in private. Despite numerous statements by members of the Committee about the “great deal of work” that went into the process of developing the Committee’s map,⁵ the Committee met in public only three times over the course of approximately six months for a total of about 45 minutes, during which it elected the leadership of the Committee on June 30, 2021, adopted redistricting criteria on November 19, 2021, and proposed a Congressional redistricting plan on December 15, 2021.⁶ The Committee held nine hearings across the state to solicit input from members of the public between August 5 and August 23, 2021, but most were held before U.S. Census data was even released in August and September 2021, and all of them were held before the Committee had put forth any proposed plan that members of the public could review and respond to. In addition, the Committee took deliberate steps to shield its map drawing process from public scrutiny,

⁵ See, e.g., Mississippi Legislature, *Congressional Redistricting Committee - Room 216, 15 December 2021 10:00 A.M.*, YouTube (Dec. 15, 2021), <https://www.youtube.com/watch?v=-mDs-EzHZUg&t=942s> (at 1:34).

⁶ Mississippi Legislature, *Senate - Redistricting Committee - Room 216, 30 June 2021, 3:30PM*, YouTube (June 30, 2021), <https://www.youtube.com/watch?v=i13Dj0xYp84&t=314s>; Mississippi Legislature, *Legislative Redistricting Committee - Room 216, 19 November 2021 10:00 A.M.*, YouTube (Nov. 19, 2021), <https://www.youtube.com/watch?v=PhQAS6o3jXM>; Mississippi Legislature, *Congressional Redistricting Committee - Room 216, 15 December 2021 10:00 A.M.*, YouTube (Dec. 15, 2021), <https://www.youtube.com/watch?v=-mDs-EzHZUg&t=942s>.

adopting policies requiring that records “generated in the course and scope of carrying out redistricting activities” are “confidential and not subject to public records release.” Dkt. No. 151-

4. At no point did the public have the opportunity to provide public comment about the Committee’s proposed map.

The full Legislature took up the Committee’s proposed map as soon as the legislative session began on January 4, 2022, less than three weeks after the map was made available to the public. During the floor hearings, it became clear that the Committee had drawn the lines for CD 2 with a specific BVAP in mind. In response to a question about why the Committee chose to compensate for the more than 65,000 people that CD 2 lost by expanding the district southward, Senator Dean Kirby, the Vice-Chair of the Redistricting Committee, explained that CD 2 was not as compact as it could have been because the Committee chose to keep CD 2’s “[BVAP] percentage as close as it was” in the State’s prior court-drawn map, and adding people from more compact counties meant the “numbers just didn’t work” and would “decrease the BVAP” below the previous map’s 61.36%.⁷ There is no evidence that the Committee performed a racially polarized voting⁸ (RPV) or any other analysis to determine whether its BVAP target, in the presence of RPV, was necessary to provide Black voters in CD 2 an opportunity to elect candidates of their choice, and the Republican Party does not contend that it did so. *See* Dkt. No. 156.

The Mississippi Legislature adopted and the Governor signed the four-district congressional plan in January 2022. 2022 Miss. Gen. Laws Ch. _____ (H.B. 384). Hours later, the Republican Party, asked this Court to “vacate the current final judgment, declare that the new

⁷ Jan. 12, 2022 Mississippi Legislature, *supra* note 2 at 38:00.

⁸ Racially polarized voting refers to the continued pattern of voting along racial lines in which voters of the same race tend to support the same candidate, who is different from the candidate supported by voters of a different race.

statutory plan satisfies all state and federal statutes and constitutional requirements, and permit it to go into effect.” Dkt. No. 144 at 9.

The Enacted Map

The State’s congressional plan added the requisite number of votes to CD 2 to satisfy the one-person-one-vote requirement, which requires that districts generally attain equality of population “as nearly as is practicable.” *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964). And it maintained one district comprised of a majority of Black voters (“majority-Black district”), as it has done since after the 2000 Census. But it satisfied those basic obligations by violating another: the Legislature subordinated traditional redistricting principles to pack CD 2 with an unnecessarily high BVAP that deprives the remaining districts of Black population and that “diminish[es] the impact of [B]lack voters” in other districts. *Jordan*, 604 F. Supp. at 815.

Mississippi drew CD 2 with a 62.15% BVAP (Exhibit 1, Cooper Decl. ¶ 12)⁹—slightly *higher* than its stated racial target. Of the four counties added to CD 2, three have a BVAP equal or higher than Mississippi’s state-wide BVAP of 36.14%. One of those counties—Wilkinson—contains one of the highest BVAP of any county not already included in CD 2. The State also split Hinds County to add several majority-Black voting precincts to CD 2, including one precinct with a 76% BVAP. Meanwhile, eleven precincts in Hinds County were excluded from CD 2—eight of which were predominantly white.

The State’s map makes CD 2 the largest district in the State, comprising 40% of the land mass and adding four counties to the southern end of the district to stretch it from the top of the State to the bottom. The map also splits the City of Jackson, the state’s capital, and fails to include any high-growth areas of the state in CD 2, such as areas in northeast Jackson or southern Madison

⁹ Unless otherwise noted, this brief uses the “Any Part Black” measure of BVAP, which includes persons of two or more races and some part Black. *See* Cooper Decl. ¶ 9 n.2.

County. While a carryover from the prior map, Jackson's split is largely along racial lines. These decisions violated multiple of the Committee's stated redistricting criteria, including compactness, avoiding county and municipal splits, avoiding long distances to travel districts, and including high-growth areas in districts.

ARGUMENT

The State's enacted plan is likely a racial gerrymander. The available evidence suggests that the Legislature subordinated traditional redistricting principles for the predominately racial purpose of achieving a BVAP target for CD 2. This racial target for CD 2 was unnecessarily high to achieve Section 2 compliance, and it arbitrarily maintains a low BVAP in the surrounding Congressional districts. Neither the Legislature, nor the other proponents of the State's plan, provided any evidentiary basis to show that the Legislature's BVAP target was reasonably necessary to avoid a Section 2 violation. Indeed, it was not. Alternative maps show that CD 2 can be drawn with a BVAP below the State's target that *both* provides Black voters with the ability to elect a candidate of their choice and complies with traditional redistricting principles. Drawing such a district has the effect of avoiding BVAP reduction in surrounding districts such that Black voters will have the ability to impact, including influence, elections in districts outside of CD 2. To allow full development of the factual record concerning the Legislature's consideration of race in drawing district lines and the process for developing its map, the Court should permit discovery and order an evidentiary hearing to allow the Court to consider the Defendants' motion and any potential contrary evidence from Plaintiffs or *amici* based on a complete record.

I. THE STATE'S ENACTED MAP IS LIKELY AN UNCONSTITUTIONAL RACIAL GERRYMANDER.

Racial gerrymandering claims pursuant to the Equal Protection Clause of the Fourteenth Amendment require a two-step inquiry. First, a plaintiff must prove that race was the

“predominant factor” in a state’s choice to move voters in or out of a particular district. *Cooper v. Harris*, 137 S. Ct. 1455, 1463–64 (2017) (citation omitted). Second, if race predominated, strict scrutiny applies, and the state must prove that its predominate use of race was narrowly tailored to advance a compelling interest. *Id.* Compliance with Section 2 of the VRA is a compelling state interest. *Id.* However, the narrow tailoring requirement means that race must be considered only to the extent necessary to satisfy the State’s Section 2 obligations. *Id.* Applying that inquiry here, Mississippi’s plan is unlikely to pass constitutional muster.

A. The State allowed race to predominate by setting a mechanical racial target for CD 2 and subordinating race-neutral criteria to meet that target.

Racial considerations likely predominated the Legislature’s drawing of CD 2. Race predominates when a State prioritizes “racial considerations” above “traditional race-neutral districting principles,” such as compactness, contiguity, or maintaining communities of interest without a “strong basis in evidence” for doing so. *ALBC*, 575 U.S. at 272 (citations omitted). To determine whether a state allowed race to predominate, courts conduct a “holistic analysis,” heeding the “actual considerations” a legislature used in drawing districts. *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 799–800 (2017). A plaintiff can show racial predominance using either “direct evidence going to legislative purpose” or “circumstantial evidence of a district’s . . . demographics.” *ALBC*, 575 U.S. at 266–67 (quotation omitted). But in defending a plan, the legislature cannot rely on “*post hoc* justifications the legislature in theory could have used but in reality did not.” *Bethune-Hill*, 137 S. Ct. at 799–800. Here, for example, the Legislature cannot rely on evidence developed in litigation—after the enactment of the plan—to justify its use of racial targets.

The Equal Protection Clause limits a state’s ability to use “mechanical racial targets” in redistricting. *ALBC*, 575 U.S. at 267. New census data often requires a state to redraw district

boundaries—either by adding or subtracting voters. *Id.* at 273. While on its own, a state’s adoption of a “mechanical racial target[.]” is not enough to establish that race predominated in a challenged plan, a plaintiff can demonstrate predominance by showing that the state decided which voters to add or subtract to a particular district based on that target or by showing that a state subordinated race-neutral redistricting criteria in a particular district to meet that target. *Id.* at 267.

Here, ample evidence shows that Mississippi set a mechanical racial population target for CD 2 and subordinated traditional criteria to ensure that CD 2 reached that target. Indeed, the Vice-Chair of the Redistricting Committee, Senator Kirby, admitted as much during the Senate debate on the Committee’s proposed map. During the debate, Senator Horhn noted that the Committee’s plan made CD 2 less compact and asked why the Committee chose not to compensate for CD 2’s population loss by adding voters from counties adjacent to CD 2’s eastern border, like DeSoto County—an addition that would have improved CD 2’s compactness.¹⁰ Senator Kirby explained that the Committee considered this option, but it chose to keep CD 2’s “[BVAP] percentage as close as it was” in the state’s prior map.¹¹ Thus, the Committee chose not to add counties to the east of CD 2 because “those numbers just didn’t work,” meaning that doing so would “decreas[e] the BVAP” in CD 2 below what it was in the prior map: 61.36%.¹² In other words, the Committee *could have* drawn a district more aligned with traditional criteria like compactness, but it *chose not to* because prioritizing traditional criteria over racial consideration would decrease CD 2’s BVAP below the Committee’s mechanically-assigned racial target.

The Committee hit its target with surgical precision. Despite significant population and demographic changes in the 2020 Census that required the Legislature to add more than 65,000

¹⁰ Jan. 12, 2022 Mississippi Legislature, *supra* note 2 at 37:08.

¹¹ *Id.* at 38:00.

¹² *Id.* at 38:50.

voters to CD 2 to satisfy the one-person-one-vote rule, the Legislature managed to draw a district with a 62.15% BVAP—about 0.79% more than its stated racial target—a task that required adding tens of thousands of Black voters to the district. Cooper Decl. ¶ 14. The majority of the voting age population added to CD 2 was Black—with a 50.35% BVAP, higher than the state’s overall BVAP. *Id.* Indeed, the State added four counties to CD 2, three of which have a BVAP equal to or higher than Mississippi’s state-wide BVAP of 37%. One of those counties—Wilkinson—features one of the highest Black voting populations of any county not already included in CD 2.

Counties Added to CD 2:¹³

County	BVAP
Adams	55.36%
Franklin	33.19%
Wilkinson	66.86%
Amite	37.77%

The State also maintained the split of Hinds County, but added several precincts to CD 2 with significant BVAPs to maintain the artificially high BVAP of CD 2.

Precincts Added to CD 2:¹⁴

Hinds County Precinct	BVAP
47	77.38%
1	57.48%
37	49.75%
45	30.58%

To hit its racial target, the State ignored its own redistricting criteria, including compactness, avoiding county splits, minimizing travel distance, and including high-growth areas

¹³ Cooper Decl. Ex. B.

¹⁴ *Id.*

in each district. For instance, as compared to the benchmark plan enacted by this Court, the State's plan reduces CD 2's compactness based on two separate measures. *Compare* Dkt. No. 151-1, at 4 (showing CD 2's compactness scores in the benchmark plan), *with* Dkt. No. 151-2, at 2 (showing CD 2's compactness scores in the State's plan). It likewise splits the state's capital, the City of Jackson, into two separate Congressional districts.¹⁵ And while the State's redistricting principles call for including a high-growth area in each district, under the State's plan, CD 2 is the only district without one.

There were other possible alternatives more consistent with the State's non-racial redistricting principles while maintaining CD 2 as a majority-Black district that would satisfy the requirements of the VRA. For example, in the attached declaration of Mr. William Cooper, both illustrative plans create a more compact CD 2 than the State's plan. Using the Reock score, one of the most common measures of compactness, the CD 2 in both of *amici's* illustrative plans score higher than the State's plan on compactness, and both of *amici's* illustrative plans are virtually identical to the State's plan on the compactness of the overall map. Cooper Decl. ¶ 28. *Amici's* illustrative plans also avoid extending CD 2 down the entire length of the state, instead expanding it to the east to include Madison County (a high-growth area) and part of Rankin County. Cooper Decl. Figures 2 & 3. Both plans split fewer counties (three in both Plan 1 and 2) and precincts (zero in Plan 1 and three in Plan 2) than the State's plan (four and five respectively). *Id.* And both

¹⁵ The court's two prior plans also split Jackson, but it noted that it did so only because then-Mayor of Jackson preferred the city be represented by two members of Congress. *Smith*, 189 F. Supp. 2d at 542–43. The current mayor has said no such thing. And Black members of the legislature stated during floor debates that it was not useful for Jackson to have two representatives in Congress when one of them consistently voted against the interests of Jackson's residents. See Mississippi Legislature, *MS House Floor – 6 JAN 2022*, YouTube (Jan. 6, 2022), <https://www.youtube.com/watch?v=bf0ErpQPBKo&t=1292s> (at 30:40).

plans keep the City of Jackson wholly within CD 2, avoiding the split of Mississippi's capital city in the State's map. *Id.*

Both illustrative plans include a BVAP between 54%-55% in CD 2. Cooper Decl. ¶¶ 16, 22. Dr. Baodong Liu, *amici's* expert, conducted analyses showing that, in the presence of racial bloc voting, Black-preferred candidates in statewide elections would win a substantial majority of the votes in CD 2 under both illustrative plans. Exhibit 2, Liu Report at 6. In the last decade, Congressman Bennie Thompson won each election in CD 2 by at least two-thirds of the vote.¹⁶ And by unpacking CD 2, both illustrative plans increase the BVAP in CD 3. Cooper Decl. ¶¶ 16, 22. *Cf. Jordan*, 604 F. Supp. at 815 (rejecting proposed plans that increased the BVAP in a majority-Black congressional district in order to avoid reducing the Black population in an adjoining district below 41.99%). Indeed, the invalidation of a plan where race predominates “will require that many [B]lack voters formerly subjected to race-based inclusion in the invalidated districts will be assigned to surrounding non-challenged districts” resulting in an increase “in the BVAP of adjacent non-challenged districts.” *Bethune-Hill v. Va. State Bd. of Elections*, 368 F. Supp. 3d 872, 879 (E.D. Va. 2019); *see also Covington v. North Carolina*, 283 F. Supp. 3d 410, 455-56 (M.D.N.C.) (three-judge court) (ordering a 13%-point decrease of the BVAP in a challenged district, which increased the BVAP in an adjacent district from 11% to 40%), *aff'd in relevant part* 138 S. Ct. 2548, 2554 (2018); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 565 (E.D. Va. 2016) (three-judge court) (ordering that the BVAP in a challenged district be lowered to 45% and increasing the BVAP in a neighboring district from 30% to 41%).

In *ALBC*, the Supreme Court held that Alabama had likely engaged in unconstitutional racial gerrymandering by assigning a “mechanical racial target” for a particular district and then

¹⁶ *Bennie Thompson*, Ballotpedia, https://ballotpedia.org/Bennie_Thompson (last visited Feb. 24, 2022) (66% in 2020; 71.8% in 2018; 67.1% in 2016; 67.7% in 2014; 67.1% in 2012).

subordinating other redistricting criteria to ensure that target was reached without narrowly tailoring its use of race to achieve a compelling interest. 575 U.S. at 266–67. New census data required Alabama to redraw the lines of a majority-minority voting district. *Id.* at 259. At the outset, Alabama sought to ensure the district’s BVAP would remain about 72%. *Id.* at 259–60. To achieve its goal, the State added thousands of Black voters to the district (State Senate District 26) even though doing so subordinated criteria like maintaining compactness and avoiding county-splitting. *Id.* at 260. The Supreme Court concluded that Alabama’s “policy of prioritizing mechanical racial targets above all other districting criteria” was “evidence that race motivated” the State’s maps, and the Court vacated the order upholding the maps. *Id.* at 267–68. On remand, the three-judge court ruled that Senate District 26 and eleven other districts were unconstitutional racial gerrymanders. *See Ala. Leg. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1048 (M.D. Ala. 2017) (three-judge court).

The same logic applies to this case. Here, as in *ALBC*, Mississippi needed to add thousands of voters to a majority-Black district to balance the population following the 2020 U.S. Census. Here, as in *ALBC*, Mississippi set a “mechanical racial target” for that district. And here, as in *ALBC*, Mississippi pursued that racial target at the expense of race-neutral criteria, adding thousands of Black voters to a district with an already-high BVAP.

The Republican Party, joined by the State, contends that it could not maintain the compactness of and distance to travel CD 2 because the Legislature had to add voters to CD 2. Dkt. No. 156, at 13. But again, the two illustrative plans created by *amici*’s expert show that, but for Mississippi’s fixed racial target, it could have drawn maps that more closely comply with traditional redistricting principles while still maintaining CD 2 as a district that provides Black

voters with the ability to elect candidates of their choice.¹⁷ These illustrative maps do not use an inflated BVAP target, but as revealed by an analysis of racial voting patterns, would still provide Black voters in CD 2 with an opportunity to elect candidates of their choice in compliance with the VRA. And these maps adhere to traditional redistricting principles in drawing CD 2 better than the State’s enacted map while avoiding the packing of CD 2, allowing Black voters in another district to have greater impact, including influence, in elections in those surrounding districts.

For its part, Mississippi concedes that it sought to avoid “changing the [B]lack voting age population” in CD 2, but it argues that race still did not predominate because “achiev[ing] a [BVAP] consistent” with prior maps does not constitute invidious discrimination. Dkt. No. 156-8, at 10. First, Defendants misstate the law. The Constitution prohibits *both* intentional racial discrimination and racial gerrymandering. It is true that racial gerrymandering is a type of Equal Protection claim and so requires proof of intent or motive. But racial gerrymandering claims are “analytically distinct” from discriminatory purpose claims, which allege that “the State has enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities.” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (citation and internal quotation marks omitted). Unlike the discriminatory purpose cases that Defendants cite, racial gerrymandering claims require only proof that race was the predominant motive in the state’s redistricting decisions. *Shaw v. Reno*, 509 U.S. 630, 642–43 (1993) (“*Shaw I*”). For that reason, in a racial gerrymandering claim, it is irrelevant whether legislators acted for “benign” reasons, *id.*, or based on “good faith.” *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016) (three-judge court), *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017). In contrast, in discriminatory purpose cases, a plaintiff must prove the State had the goal of disadvantaging voters

¹⁷ The Legislature considered and rejected two alternative maps offered as amendments to H.B. 384 that also reduced the BVAP in CD 2.

based on race. *See, e.g., League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006) (“*LULAC*”).

In *ALBC*, the Supreme Court rejected Defendants’ argument that simply maintaining the BVAP in CD 2 satisfies its statutory and constitutional duties. There, Alabama likewise sought to “maintain[] roughly the same [B]lack population percentage in existing majority-minority districts” from its prior maps. 575 U.S. at 254. Far from accepting such a tactic as nondiscriminatory, the Court held that “adopt[ing] and apply[ing] a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines” in violation of the constitutional prohibition against racial gerrymandering. *Id.* at 267.

B. The State’s plan is unlikely to satisfy strict scrutiny because the State lacked a pre-enactment strong basis in evidence to show that its racial target was narrowly tailored to achieve Section 2 compliance.

When a plaintiff shows that race predominated a State’s line-drawing, strict scrutiny applies, and the State bears the burden of proving that the use of race was narrowly tailored to serve a compelling interest. *Cooper*, 137 S. Ct. at 1464. Senator Kirby appears to have suggested that the Committee established a racial target for CD 2 to ensure compliance with the VRA.¹⁸ To be sure, complying with the VRA is a compelling interest, *Cooper*, 137 S. Ct. at 1464, given the “significant state interest in eradicating the effects of past racial discrimination.” *Shaw I*, 509 U.S. at 656. But a State’s use of race must be narrowly tailored to achieve that interest. *Cooper*, 137 S. Ct. at 1463. The use of race is narrowly tailored to comply with the VRA only when the State has “good reasons” for drawing the specific majority-Black district. *ALBC*, 575 U.S. at 278.

¹⁸ Jan. 12, 2022 Mississippi Legislature, *supra* note 2 at 38:00 (explaining that Committee sought to keep the BVAP percentage in CD 2 “as close as it was” to the 2011 map’s BVAP so that it remained a minority-majority district).

A state will have “good reasons” if it conducts a “pre-enactment analysis with justifiable conclusions” of what the VRA demands before placing a significant number of minorities into a district. *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018). Section 2 of the VRA requires that a state create a majority-minority district where the *Gingles* preconditions are satisfied and the totality of the circumstances results in an unequal opportunity for minority voters to participate in the political process and to elect representatives of their choice. *LULAC*, 548 U.S. at 425. The *Gingles* preconditions are satisfied where: (1) Black voters are “sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) Black voters are “politically cohesive;” and (3) the white majority “votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.” *Id.* at 425 (2006) (cleaned up). Together, the *Gingles* preconditions require an analysis of racial voting patterns and the effectiveness of a given majority Black voting age population in electing their candidate of choice in a potential district.

A state that uses race as the predominant factor in drawing a district must perform this type of analysis to survive strict scrutiny. In particular, a state must conduct a “meaningful legislative inquiry” into what the VRA requires and develop “a strong basis in evidence” for arriving at its chosen racial target. *Cooper*, 137 S. Ct. at 1461. That inquiry requires the state to perform a “functional analysis of the electoral behavior within the particular . . . election district.” *Bethune-Hill*, 137 S. Ct. at 797. And when a state’s racial target is not supported by such an analysis, it fails strict scrutiny. *See Cooper*, 137 S. Ct. at 1461; *ALBC*, 575 U.S. at 275.

Here, there is no evidence that Mississippi *ever* considered whether a 61% BVAP is necessary to achieve Section 2 compliance with respect to CD 2. The State has presented no evidence that it performed a pre-enactment analysis of racially polarized voting, election returns,

or any other data. To the contrary, the State began with its assumption that CD 2 must retain at least a 61% BVAP and went on to accomplish that goal by any means necessary.

In *ALBC*, Alabama invoked VRA compliance to justify prioritizing its mechanical racial targets. 575 U.S. at 275. The district court found that avoiding retrogression under Section 5 of the VRA required the State to maintain BVAPs in its majority-minority districts that were roughly similar to those in its prior map. *Id.* But the Supreme Court rejected that reasoning. *Id.* To satisfy strict scrutiny under such a justification, States must ask: “To what extent must we preserve existing minority percentages in order to maintain the minority’s present ability to elect the candidate of its choice?” *Id.* at 279. Instead, Alabama—like Mississippi—assumed from the beginning that the VRA required the same BVAP it had enacted in a prior map, and it merely considered the feasibility of maintaining those percentages without ever questioning whether they had become outdated. *Id.* Thus, the state failed strict scrutiny because it failed to ask the right question at the outset. *Id.*

Nor can Mississippi justify setting a 62% BVAP for CD 2 simply because this Court once ordered it to impose a map featuring a majority-minority district with a similar BVAP. That argument misunderstands the redistricting process and ignores recent Supreme Court precedent. In reality, a district’s voting population often changes substantially between each decennial Census. A BVAP appropriate after one Census might very well be a poor fit after the next. For that very reason, the Supreme Court requires a State to re-examine the legality of its maps after each Census—in other words, the State must examine whether the VRA requires “the new districts [it] contemplates,” not “the old ones it sheds.” *Cooper*, 137 S. Ct. at 1471. A court order requiring a state to draw a majority-minority district with a certain BVAP is not a judicial blessing to forever

impose that same BVAP, no matter how much a district's or a State's population, demographics, and voting tendencies change.

The State's failure to conduct any analysis prior to establishing its racial target falls woefully short of the legislative inquiry the Supreme Court requires to satisfy strict scrutiny. In comparison to Mississippi's inaction, in *Bethune-Hill*, the Court held that Virginia's target BVAP satisfied strict scrutiny because, in choosing that racial target, the state's lead mapmaker conducted "functional analysis of the electoral behavior" in the redrawn districts by "careful[ly] assess[ing] . . . local conditions and structures." 137 S. Ct. at 801. The mapmaker discussed the target with incumbents from majority-minority districts, considered turnout rates and recent election results, and even accounted for "the district's large population of disenfranchised [B]lack prisoners." *Id.* Thus, the state satisfied strict scrutiny because, far from applying an arbitrary target carried over from a prior map, it instead enacted a redistricting plan that "reflected the good-faith efforts of [the mapmaker] and his colleagues to achieve an informed bipartisan consensus." *Id.* In stark contrast, there is no evidence that Mississippi engaged in that kind of careful assessment here. "[I]t is the State's burden to prove narrow tailoring," and Mississippi has failed to do so. *Perez*, 138 S. Ct. at 2335.

Moreover, there is ample reason to believe that the state's racial target is *not* necessary to ensure that minority voters can elect their preferred candidates in CD 2. Only *once* since the incumbent representative in CD 2 was initially elected¹⁹ in 1993 has he won reelection in CD 2 with less than 55% of the vote.²⁰ Since 2002, when CD 2 has had a BVAP of approximately 60%,

¹⁹ An analysis of voting patterns leaves no question that the incumbent representative, Bennie Thompson, is the candidate of choice of Black voters in CD2. For example, in 2020, Representative Thompson was the choice of over 94% of Black voters in the district. Liu Report at 4.

²⁰ *Candidate Detail – Thompson, Bernie*, Our Campaigns (Aug. 10, 2019), <https://www.ourcampaigns.com/CandidateDetail.html?CandidateID=1371>.

the Black-preferred candidate in CD 2 has won all but two elections with over 61% of the vote, and he has won more than 66% of the vote in every election since the previous map was enacted in 2011.²¹ When a district has a history of electing Black-preferred candidates by “handy margins,” the State is less likely to be justified in adding voters to that district on the basis of race in its purported pursuit of VRA compliance. *Cooper*, 137 S. Ct. at 1466.

To be clear, all parties agree that the VRA still requires a majority-Black district in Mississippi. Thus, the central question is not whether a majority-Black district is required; rather, it is whether the VRA requires Mississippi to draw such a district *with a 62% BVAP*. And the State has presented no evidence to suggest that it even bothered to ask—much less seriously consider—that question.

Of course, strict scrutiny does not require the legislature to “guess precisely what percentage” BVAP is required. *ALBC*, 575 U.S. at 278. Rather, the state need only conduct a “meaningful legislative inquiry” based on present census data and develop a “strong basis in evidence” for its conclusion regarding the district configuration needed to satisfy Section 2. *Cooper*, 137 S. Ct. at 1464. What a state cannot do—and what Mississippi by its own admission has done here—is simply assume that a more-than-decade-old racial target remains the right fit for its present-day voters.

II. THE COURT SHOULD PERMIT DISCOVERY, ORDER AN EVIDENTIARY HEARING, AND TOLL THE CANDIDATE FILING DEADLINE.

The facts raised in this brief establish that race likely predominated in the State’s drawing of CD 2 and that its consideration of race was not narrowly tailored to achieve a compelling government interest. However, these facts are but a small portion of the potentially relevant facts that the State has shielded from the public’s view.

²¹ *Id.*

On numerous occasions during the deliberations in the Legislature, legislators acknowledged the significant effort that went into the Committee’s work.²² But the Redistricting Committee held only three public meetings, which lasted for a total of approximately 45 minutes, during which there was minimal deliberation about how the map should be drawn and no opportunity for public comment on the Committee’s proposed map.²³ Moreover, the Committee’s policies require that records “generated in the course and scope of carrying out redistricting activities” are “confidential and not subject to public records release.” Dkt. No. 151-4. In fact, contrary to the Republican Party’s representation, Dkt. No. 156, at 9, the Committee has not even made the public’s proposed alternative maps, which are a matter of public record, Dkt. No. 151-4, at 5, available on its website.

As a result, beyond the facts recited in this brief, the public has very little insight into the process through which the map was drawn. Given the lack of transparency in the legislative process, the parties should have the opportunity to conduct discovery to obtain additional information about the legislature’s process in drafting its map. The Court should also allow an evidentiary hearing for the parties and *amici* to present evidence to support their positions.

Finally, given the impending date of the candidate filing deadline on March 1, 2022, just one day following the due date for Defendants’ reply briefs, the Court should toll the candidate filing deadline to allow for full development of the record. *Sixty–Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972) (“[T]he district court has the power appropriately to extend the time limitations imposed by state law.”); *Connor v. Johnson*, 402 U.S. 690, 693 (1971)

²² Mississippi Legislature, *MS House Floor – 6 JAN 2022*, YouTube (Jan. 6, 2022), <https://www.youtube.com/watch?v=bf0ErpQPBKo&t=1292s>.

²³ The Committee held nine public hearings across the state, but these were non-deliberative meetings that largely occurred prior to the release of census data. None of these meetings occurred after the Committee proposed its map.

(directing district court to suspend candidate filing deadline while it developed a new redistricting plan for Hinds County); *Thomas v. Bryant*, 919 F.3d 298, 316 (5th Cir. 2019) (affirming the suspension of election deadlines during development of remedial plan).

CONCLUSION

For these reasons, this Court should allow discovery and conduct a hearing to determine whether the map drawn by H.B. 384 meets constitutional and statutory requirements and it should reject the State's request to dissolve the final judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2022, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all counsel, who are registered users.

/s/ Fred L. Banks, Jr.