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

LOUISIANA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,	§	
Plaintiffs,	§	
v.	§	**Case No. 3:19-cv-00479 -JWD-EWD**
STATE OF LOUISIANA, *et al.*,	§	
***Defendants*.**	§	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT STATE OF LOUISIANA'S MOTION TO DISMISS

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Plaintiffs Louisiana State Conference of the National Association for the Advancement of Colored People ("NAACP"), Anthony Allen, and Stephanie Anthony ("Plaintiffs") respectfully submit this Memorandum in Opposition to Defendant State of Louisiana's ("Defendant") Motion to Dismiss (ECF No. 27). For the reasons set forth below, the Court should deny the Motion.

I. INTRODUCTION

Defendant's arguments should be given short shrift. *First*, Defendant claims that a consent decree, issued nineteen years ago by the U.S. District Court for the Eastern District of Louisiana ("Eastern District"), in a different case dealing with different issues in a different judicial district which has now been fully implemented, somehow deprives this Court of subject matter jurisdiction. However, the decree in *Chisom v. Edwards*, has nothing to do with this Court's subject matter jurisdiction over this case. 659 F. Supp. 183 (E.D. La. 1987), *rev'd*, 839 F.2d 1056 (5th Cir. 1988), *overruled sub nom. League of United Latin Am. Citizens Council No. 4434 v. Clements*, 914 F.2d 620 (5th Cir. 1990). This case does not implicate in any way the terms of the decree in *Chisom*. Rather, Defendant's argument is nothing but a ploy to move this case to the forum of Defendant's choice. Plaintiffs' choice of this forum for this case, which focuses only on the judicial district in the Baton Rouge area, is unassailable.

Second, Plaintiffs have adequately pled facts to support their standing to bring a claim under section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301. At the outset, Defendants' attempt to present facts outside the record to attack Plaintiffs' claims on the merits on subject matter jurisdiction transforms that portion of its 12(b)(1) motion to a 12(b)(6) motion, thus providing Plaintiffs with the safeguard of the presumption of the truth of their allegations. Leaving aside the effect of Defendants' reliance on an extra-record, fact-based argument on this motion, Defendant's claim that this Court lacks subject matter jurisdiction because twenty-five years ago, courts rejected attempts to create additional majority-minority

congressional districts is bizarre. The "facts" based on the 1990 Census relating to congressional apportionment are simply not relevant to this case, which deals with the districting of a single Supreme Court district thirty years later.

In any event, the facts as pled are more than sufficient to support standing. Plaintiffs' averments are sufficient to demonstrate they will meet the "*Gingles* preconditions" to their Section 2 vote dilution claim, *see Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), including specific averments that a geographically compact and sufficiently large majority-minority district can be created, and that racially polarized voting has prevented Plaintiffs from electing candidates of their choice, when viewed in the totality of the circumstances. Plaintiffs are not required to do more at the pleadings stage.

Further, the averments of the organizational plaintiff, Louisiana NAACP, have easily met the specific standards to support both associational and organizational standing, alleging, first, that its core mission of furthering racial equality is frustrated by the lack of a majority-minority Supreme Court district in the Baton Rouge area and, second, that its members are specifically injured by that circumstance. Contrary to Defendant's claims, there is no requirement that the organization identify such members by name in the Complaint.

Contrary to Defendant's argument, the Supreme Court's recent decision in *Gill v. Whitford*, 138 S. Ct. 1916 (2018), has nothing to do with the standing issues presented in this case, let alone serve to bar Plaintiff NAACP from ever bringing a suit under the Voting Rights Act. In *Gill*, a partisan gerrymander case, the Court simply held that the plaintiff Democratic Party members had no standing, because they based their standing on a right to state-wide proportional representation, rather than focusing on injury in a specific district to support

their standing. Here, plaintiffs, including NAACP, base their standing on injuries flowing specifically from the Supreme Court district in the Baton Rouge area, not statewide.

Defendant's attack on the individual plaintiffs' standing, to wit, that they failed to allege that their place of residences could be within a remedial majority-minority district is frivolous on its face, as both individual plaintiffs explicitly made that averment—an averment that is not required in any event.

Finally, there is absolutely no support for Defendant's suggestion that the VRA "no longer" applies to judicial voting districts. (Def.'s Br. at 19.) The Supreme Court's seminal ruling in *Chisom v. Roemer*, 501 U.S. 380, 380 (1991)—that Section 2 of the VRA applies to judicial districts—remains the law of the land. The cases Defendant cites for its erroneous proposition do not involve VRA claims and contain nothing more than abstract dicta about the theoretical roles of judges and the electoral process. Defendant's motion should be denied in its entirety.

II. ARGUMENT

A. This Court Has Subject Matter Jurisdiction Over Plaintiffs' Claims

1. The *Chisom* Decree Has Nothing To Do With This Court's Subject Matter Jurisdiction Or with This Court Being the Appropriate Venue for this Case

Defendant contends, apparently, that only the Eastern District can ever take subject matter jurisdiction over any dispute involving Louisiana's Supreme Court districts as a result of the nearly three decades old *Chisom* Decree. (Def.'s Br. at 4.) Defendant's argument has nothing to do with subject matter jurisdiction, but is simply an attempt to have this case moved to a different federal district. And the *Chisom* Decree has nothing to do with this case, so as to support such a move.

The VRA allegations in this case focus solely on the single-member Supreme Court District 5 and the Baton Rouge area. Plaintiffs assert that the area in and around Supreme Court District 5 should be redrawn into a majority-minority district, so that African-American voters have an equal opportunity to elect candidates of their preference in accordance with Section 2 of the VRA. (See, *e.g.*, Compl. ¶¶ 10-13.) In contrast, *Chisom* and the resulting Decree concerned a multi-member district (Supreme Court District 1) that encompassed Orleans Parish and surrounding areas. The case was brought as a class action only "on behalf of all blacks registered to vote in Orleans Parish," *Chisom v. Edwards*, 659 F. Supp. at 183, and the overarching theory of the case was that Louisiana's system for electing Supreme Court judges "impermissibly diluted the voting strength of the minority voters in Orleans Parish." *Chisom v. Jindal*, 890 F. Supp. 2d 696, 702 (E.D. La. 2012). The *Chisom* Decree entered by the Eastern District created a single-member district for "electing justices of the Louisiana Supreme Court in the First Supreme Court District," which is "comprised solely of Orleans Parish." *Chisom* Decree, at 1, 2, 3, 6. Ultimately, the Louisiana legislature passed Louisiana Acts 1997, No. 776, which implemented the Consent Decree, and was deemed as "compliance with the mandates of said consent judgment." This case in no way implicates the final remedy in *Chisom*.

Furthermore, Plaintiffs are entitled to their choice of forum. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) ("[A] plaintiff's choice of forum should rarely be disturbed."). This Court—not the Eastern District—is the most sensible and convenient forum in which to litigate the claims at issue in this case concerning Supreme Court District 5 and the rights of

Louisiana citizens living in and around Baton Rouge. Plaintiffs do not ask this Court to decide any issue that must necessarily bear upon the *Chisom* Decree.[1]

2. **Plaintiffs Have Standing**

a. **Plaintiffs Have Sufficiently Alleged Facts as to Redressability**

Defendant argues that the Complaint does not sufficiently allege an injury-in-fact that is redressable and the Complaint fails "to meet the first *Gingles* precondition."[2] (*Id.*) But the Complaint appropriately alleges that the African-American population in Louisiana is sufficiently numerous and compact to create an additional fairly drawn African-American majority Supreme Court district beyond the one that now exists, as per the *Gingles* requirement. Nothing more – and certainly not a detailed, illustrative map, as Defendant would have it – is required at this stage. *See generally Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *True v. Robles*, 571 F.3d 412, 417 (5th Cir. 2009) (noting that a court considering a motion to dismiss must "accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiff.") (citations and internal quotations omitted).

Gingles stands for the basic proposition that "minority voters asserting a § 2 vote-dilution claim must first prove three 'necessary preconditions.'" *Thomas v. Bryant*, 938

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[1] It is also significant that the State's argument here is flatly inconsistent with its previous positions on the scope of the *Chisom* Decree. Defendant admits, as it must, that in *Chisom v. Jindal*, 890 F. Supp. 2d at 710, the State "moved to dismiss partially on the grounds that the [Eastern District] Court no longer had jurisdiction under the Consent Decree." (Def.'s Br. at 5 (emphasis added).) The State took this position even though *Jindal* involved the very district and seat on the Supreme Court created by the Decree. Here, the State takes the opposite position to suit its litigation objectives, even though the allegations in this case centering on Supreme Court District 5 and the Baton Rouge area are not implicated, much less preempted, by the *Chisom* Decree. If there is any doubt on the issue of the relevance of *Chisom* to this case, Plaintiffs will stipulate that any remedy they seek will not affect the Supreme Court District 1.

[2] Defendant's motion to dismiss does not contend that Plaintiffs failed to allege or satisfy *Gingles* preconditions two or three, so those preconditions are not analyzed here.

F.3d 134, 155 (quoting *Gingles*, 478 U.S. at 50-51), *rehearing en banc granted*, 939 F.3d 639 (5th Cir. 2019).

> First, the minority group must show "that it is sufficiently large and geographically compact to constitute a majority in a single-member district." Second, the minority group must demonstrate "that it is politically cohesive." And third, the minority group must establish "that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate."

Id.

This Court recently addressed the pleading requirements of *Gingles* one in *Johnson v. Ardoin*, 2019 WL 2329319, at *3 (M.D. La. May 31, 2019), *motion to certify appeal denied*, No. CV 18-625-SDD-EWD, 2019 WL 4318487 (M.D. La. Sept. 12, 2019) (denying motion to dismiss contending plaintiffs failed to plead sufficient facts under *Gingles* one). In *Johnson,* as here, the Defendant "argue[d] that 'Plaintiffs have failed to produce any proof that: (1) any of the plaintiffs would actually live in [a] newly created majority-minority district; and (2) the newly formed districts containing Plaintiffs would be reasonably compact.'" *Id.* at *3. The Court noted that while the first *Gingles* precondition "requires submitting as evidence hypothetical redistricting schemes in the form of illustrative plans," the *Johnson* plaintiffs met their burden "at the pleading stage" where they "alleged that an additional majority-minority district could be drawn incorporating the entirety of the parish where each Plaintiff resides." *Id.* The Court specifically rejected the State's contention that illustrative maps were required at the pleading stage.[3]

[3] Contrary to Defendant's assertion, the Eleventh Circuit also does not require plaintiffs to present a potential remedial map at the motion to dismiss stage. (Def.'s Br. at 2.) *See Chestnut v. Merrill*, 377 F. Supp. 3d 1308, 1313 (N.D. Ala. 2019) ("Plaintiffs alleged in the complaint that '[t]he African-American population in Alabama is sufficiently numerous and geographically compact to form a majority of eligible voters—meaning a majority of the voting age population—in two congressional districts.' Specifically, they seek the adoption of a new

Here, the Complaint alleges that "Louisiana's African-American population is sufficiently numerous and geographically compact to provide for two properly-apportioned, majority-black, constitutional single-member Louisiana Supreme Court districts in a seven-district plan"—i.e., one more majority-black district than currently exists. (Compl. ¶ 67 (emphasis added).) The allegation is supported by specific census data and specific allegations concerning the Baton Rouge area. This is all that is required at the pleading stage.

Indeed, the Complaint goes further. It contains numerous factual allegations that demonstrate the redressability of Plaintiffs' claims. The Complaint alleges, *inter alia*, that:

- "Although the voting-age population of Louisiana is approximately 30% African American, African Americans comprise a majority in only one of the seven Supreme Court electoral districts (i.e. 14% of districts)." (*Id.* ¶ 2.)
- "Louisiana's African-American population and its voting-age population are sufficiently large and geographically compact to constitute a majority in two fairly drawn, constitutional single-member districts for the Supreme Court; the State's African Americans are politically cohesive; and the State's white voting-age majority votes sufficiently as a bloc to enable it to defeat African-American voters' preferred candidates in six of Louisiana's seven Supreme Court districts. Because of these circumstances, as well as the historical, socioeconomic, and electoral conditions of Louisiana, the Supreme Court districts as currently drawn violate Section 2 of the Voting Rights Act." (*Id.* ¶ 4.)
- "An electoral regime that dilutes the voting strength of a minority community may deprive the members of that community of having an equal opportunity to elect representatives of their choice under Section 2." (*Id.* ¶ 16.)
- "Section 2 applies to the election of judges." (*Id.*)
- "In non-majority-black districts, bloc voting by white members of the electorate consistently defeats the candidates preferred by African-American voters." (*Id.* ¶ 36.)

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congressional redistricting plan that adds a second majority-minority district in Alabama. Defendant argues that Plaintiffs offered these conclusory allegations without factual support . . . . Plaintiffs argue that Defendant conflates the requirements for *pleading* with the requirements for *proving*. While Defendant is correct that Plaintiffs must eventually prove that a new redistricting plan would resolve the alleged Section 2 violation, such proof is not necessary at the pleading stage.") (citations omitted).

- The impact of Louisiana's unlawful electoral regime are directly felt by voters in the area in and around Baton Rouge. (*Id.* ¶ 46-48.)

The Complaint thus sufficiently alleges facts showing that Plaintiffs suffered an injury-in-fact that is traceable to both Defendants and redressable by this Court.

b. The Extra-Record Facts Are Insufficient to Defeat Jurisdiction on a Motion to Dismiss

Defendant also contends—incorrectly—that Plaintiffs lack standing because three previous "attempt[s] to draw two majority-minority districts out of seven total districts in Louisiana . . . have been rebuffed as unconstitutional gerrymanders." (Def.'s Br. at 10.) At the outset, Plaintiffs note that this portion of Defendant's argument must be treated as a Rule 12(b)(6) or Rule 56 motion, not a Rule 12(b)(1) motion. Although this Court may resolve 12(b)(1) motions for lack of subject matter jurisdiction on the basis of facts outside the record, *see, e.g., Den Norske Stats Oljeselskap v. Heere Mac VOF*, 241 F.3d 420, 424 (5th Cir. 2001), when the defendant's jurisdictional attack is an attack on the merits of the plaintiffs' claim, the 12(b)(1) motion is effectively transformed to a 12(b)(6) motion with the attendant safeguards for plaintiffs. As the court explained in one of the cases relied upon by Defendant:

> Where the defendant's challenge to the court's jurisdiction is also a challenge to the existence of a federal cause of action, the proper course of action for the district court . . . is to find that jurisdiction exists and deal with the objection as a direct attack on the merits of the plaintiff's case. The Supreme Court has made it clear that in that situation no purpose is served by indirectly arguing the merits in the context of federal jurisdiction. . . . This refusal to treat indirect attacks on the merits as Rule 12(b)(1) motions provides, moreover, a greater level of protection to the plaintiff who in truth is facing a challenge to the validity of his claim: the defendant is forced to proceed under Rule 12(b)(6) . . . or Rule 56 (summary judgment) – both of which place greater restrictions on the district court's discretion. . . . Therefore as a general rule a claim cannot be dismissed for lack of subject matter jurisdiction because of the absence of a federal cause of action.

Williamson v. Tucker, 645 F. 2d 404, 415-16 (5th Cir. 1981); *see Bell v. Hood*, 327 U.S. 678, 682 (1945).

In support of its "jurisdictional" attack, Defendant cites a line of cases stemming from *Hays v. State of Louisiana*, 839 F. Supp. 1188 (W.D. La. 1993), *vacated sub nom. Louisiana v Hays*, 512 U.S. 1230 (1994), in which the courts considered Louisiana's 1990 congressional redistricting plan after "Louisiana's Congressional delegation had been reduced from eight members of the [U.S.] House of Representatives to seven." *Hays v. State of La.*, 936 F. Supp. 360, 362 (W.D. La. 1996). This argument fails for several reasons.

The three *Hays* cases were about now thirty-year-old congressional voting districts. Those districts, which were based on 1990 Census data, unique political dynamics, and congressional-specific constitutional requirements, are not at issue in this case. *Compare Wesberry v. Sanders*, 376 U.S. 1, 8, (1964) (holding that congressional districts must contain equal populations "as nearly as practicable") *with Wells v. Edwards*, 347 F.Supp. 453 (M.D. La. 1972), *aff'd*, 409 U.S. 1095 (1973) (holding that the one-person one-vote standard does not apply to judicial districts). Moreover, this Court recently rejected the State's motion to dismiss in congressional redistricting where even fewer districts are at issue. *See Johnson v. Ardoin*, 2019 WL 2329319, at *1 (plaintiffs there assert that "Louisiana's failure to create a second majority-minority congressional district [out of six districts] in its 2011 Congressional Plan has resulted in the dilution of African-American voting strength."). In addition to a distinct one-person one-vote standard, the State's seven Supreme Court districts allow for even greater flexibility in formulating two majority-Black districts. The *Hays* cases are irrelevant and certainly do not provide any basis to dismiss the Complaint.

c. **Louisiana NAACP Adequately Pled Associational Standing**

Organizations can establish standing in one of two ways. *First*, an organization may assert standing on behalf of its members if (1) the members have standing to sue in their own right, (2) the interests the organization seeks to protect are germane to the organization's

purpose, and (3) neither the claim nor the relief requires the participation of each individual plaintiff. *Hunt v. Washington*, 432 U.S. 333, 343 (1977); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). *Second*, direct organizational standing is established by demonstrating a diversion of resources to counteract the alleged unlawful practice, or when such a practice frustrates the organization's mission. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Here, Plaintiff NAACP sufficiently alleges both types of standing.

The plain text of the Complaint pleads facts sufficient to establish associational standing There is no doubt that individual NAACP members would have standing to sue; "the Louisiana NAACP has members throughout the State, including members whose votes are unlawfully diluted by the current Supreme Court districts and whose injury would be redressed by the creation of a second majority-black district in the State" and the interests at issue in this case are central to the organization's purpose; "[t]he Louisiana NAACP is the oldest and one of the most significant civil rights organizations in Louisiana, and it works to ensure the political, educational, social, and economic equality of African Americans and all other Americans. Two central goals of the Louisiana NAACP are to eliminate racial discrimination in the democratic process, and to enforce federal laws and constitutional provisions securing voting rights." (Compl. ¶ 10.) Further, the participation of the Louisiana NAACP's members is not required.

The relief requested here is prospective and applicable to all voters whose rights have been injured by Louisiana's system for electing Supreme Court justices. The participation of individual members of the Louisiana NAACP is not necessary to obtain that relief. Defendants claim that "[t]o maintain associational standing there must be something on the face of the complaint showing harm to a *specific* member of the organization." (Def.'s Br. at 15.)

Yet, Defendants ignore the fact that for decades, voting rights and community organizations have prosecuted civil rights suits, and have done so under organizational or associational standing, without identifying specific members. *See, e.g.*, *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 459 (1958); *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 428 (1963); *McIntosh Cty. Branch of the NAACP v. City of Darien*, 605 F.2d 753 (5th Cir. 1979). In any event, Plaintiffs certainly need not, and could not, provide a list of Louisiana NAACP members that *will* reside in a yet-to-be-drawn remedial district. For now, the Louisiana NAACP, which is headquartered in Baton Rouge, has sufficiently alleged that members are injured by the current districts and that the injury would be redressed by full compliance with the Voting Rights Act.[4]

Additionally, the Complaint includes allegations supporting direct organizational standing. Though associational standing alone is sufficient, *see Warth v. Seldin*, 422 U.S. 490, 511 (1975), here, the Louisiana NAACP alleges that its mission – "to eliminate racial discrimination in the democratic process, and to enforce federal laws and constitutional provisions securing voting rights" – "is frustrated by the current Supreme Court districts, which inhibit the organization's ability to fulfill its objectives, including the promotion of political

[4] Defendant's reliance upon *NAACP v. City of Kyle, Texas* does not change the analysis. 626 F.3d 233, 237 (5th Cir. 2010). The *Kyle* court did not hold, as Defendant contends, that "there must be something on the face of the complaint showing harm to a *specific* member of the organization." (Def.'s Br. at 15.) Rather, the Court found, *after a bench trial*, only that "there [wa]s no evidence in the record showing that a specific member of the NAACP ha[d] been unable to purchase a residence in Kyle as a result of [certain] revised [zoning and subdivision] ordinances." *Id.* But finding a lack of evidence showing that a specific member of the NAACP was unable to purchase a residence in a particular Texas town after a trial is a far cry from requiring that, in every case asserting associational standing, the associational plaintiff must demonstrate harm to a "specific member" *in the complaint*. *See Hancock Cty. Bd. of Sup'rs v. Ruhr*, 487 F. App'x 189, 198 (5th Cir. 2012) ("[A]ppellees offer no authority for the proposition that an NAACP branch must identify a particular NAACP member *at the pleading stage*.") (emphasis in original).

equality for black voters." (Compl. ¶ 10.) Such frustration of purpose is central to a claim of organizational standing. *See Havens*, 455 U.S. at 379 (finding organizational standing where an organization plead that a defendant had impaired its ability to fulfill organizational objectives); *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017) (finding organizational standing in a VRA suit where plaintiff alleged that "addressing the challenged provisions frustrates and complicates its routine community outreach activities."). The Complaint fully supports allegations of both associational and direct organizational standing.

d. ***Gill v. Whitford*, 138 S. Ct. 1916 (2018), Is Irrelevant**

Defendant contends that the Supreme Court's recent decision in *Gill v. Whitford*, 138 S. Ct. 1916 (2018), prohibits organizations like Plaintiff NAACP, that seek to secure political, educational, social, and economic rights for its members, from ever bringing a voting rights claim. (Def.'s Br. at 14.) *Gill* has nothing to do with NAACP's standing in this case.

First, the *Gill* plaintiffs did not allege organizational or associational standing. In fact, they were not organizations, but, rather, individual members of the Democratic Party. *Second*, the reason that the Court ruled that the *Gill* plaintiffs lacked standing was that they had characterized their partisan gerrymander challenge to Wisconsin's state legislative redistricting plan as "statewide in nature." *Id.* at 1930. The Court rejected this as a basis for standing: "To the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific." *Id.* Here, the NAACP has limited their claims to the area in and around one district, the Fifth Supreme Court District. The issue in *Gill* was whether individuals could assert a statewide challenge to a redistricting plan, and the Court said they could not. It had nothing to do with organizational standing to assert statewide challenges, let alone with, as here, the right of an organization to assert a district-specific challenge.

e. **The Individual Plaintiffs Have Standing**

Defendant contends that the individual Plaintiffs lack standing because "there is no indication [in the Complaint] as to what Supreme Court district they currently reside in" and that "there is no allegation or factual matter that a second majority-minority district could be drawn encompassing either individual Plaintiff." (Def.'s Br. at 16.) That is untrue. The Complaint alleges that each individual Plaintiff "is an adult African-American United States citizen who is a resident of and a registered voter in East Baton Rouge Parish, Louisiana" and that a "majority-black district including" each plaintiff's home, "could be drawn to provide a remedy for the Section 2 violation." (Compl. ¶¶ 12-13.) Nothing more need be averred at this point, and, indeed, nothing more could be averred, because if this Court awards the requested relief, the act of reapportioning Supreme Court districts and drawing maps in a lawful manner will be up to the State Legislature, subject to review by this Court. For now, Plaintiffs have sufficiently alleged that a majority-black district including both of their homes could be drawn to provide a remedy. *Id.*[5]

B. **The VRA Applies to Judicial Districts**

Defendant also appears to argue that the VRA no longer applies to judicial districts at all. This is not the law. The Supreme Court's holding in *Chisom v. Roemer* that Section 2 of the VRA applies to judicial districts has not been reversed and remains the law of the land. 501 U.S. 380. None of the cases Defendant cites either involve VRA claims or give any indication that "the Court has essentially reversed itself and no longer considers elected Judges as

[5] If this Court concludes that one Plaintiff has standing, it need not decide whether the other Plaintiffs also have standing. *See, e.g., Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008).

representatives" for purposes of the VRA.[6] (Def.'s Br. at 16.). Louisiana's Supreme Court justices, like members of congress and state legislators, are elected in partisan contests in which they must obtain majority-support to obtain office. As such, "the fundamental tension between the ideal character of the judicial office and the real world of electoral politics cannot be resolved by crediting judges with total indifference to the popular will while simultaneously requiring them to run for elected office." *Chisom*, 501 U.S. at 400-01.

C. **A More Definite Statement is Unwarranted**

Under Rule 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). "The standard for evaluating a motion for more definite statement is whether the complaint 'is so excessively vague and ambiguous as to be unintelligible and as to prejudice the defendant seriously in attempting to answer it.'" *Williams v. United Parcel Servs., Inc.*, Civil Action 17-483-SDD-RLB, 2018 WL 1189689, at *3 (M.D. La. Mar. 07, 2018) (quoting *Babcock & Wilcox Co. v. McGriff, Seibels & Williams, Inc.*, 235 F.R.D. 632, 633 (E.D. La. 2006) (citation omitted)). "When evaluating a motion for more definite statement, the Court must assess the complaint in light of the minimal pleading requirements of Rule 8 of the Federal Rules of Civil Procedure." *Williams*, 2018 WL 1189687, at *4. "Given the liberal pleading standard set forth in Rule 8, Rule 12(e) motions are disfavored." *Id.*

[6] For example, in *Williams-Yulee v. Fla. Bar*, the Supreme Court considered whether the First Amendment permits restrictions on judicial candidates personally soliciting funds for their campaigns for judicial positions in light of the potential for bias. 135 S. Ct. 1656, 1662 (2015). Similarly, in *Caperton v. A.T. Massey Coal Co.*, the Court was concerned with persons who may have "disproportionate influence" over judges. 556 U.S. 868, 884 (2009) ("[T]here is a serious risk of actual bias . . . when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent."). None of these cases has anything to do with the applicability of the VRA to judicial districts.

Defendant contends that "there are so many ambiguities throughout the Complaint that, if dismissal is inappropriate, a more definitely statement certainly is appropriate." (Def.'s Br. at 19.) Defendant offers almost no support for this claim, but states that it is "unclear from the face of the Complaint if any remedy is possible, especially considering the previous history found in the *Hays* cases." This argument fails for two reasons. *First*, as discussed above, the *Hays* cases are irrelevant here. And even if they were relevant, this Court recently denied a motion to dismiss—brought by one of the Defendants in this case—arguing that it is impossible to draw two majority-minority districts out of seven total districts in Louisiana. *See Johnson*, 2019 WL 2329319, at *1. *Second*, as detailed above, the Complaint meets and surpasses the pleading standards under Rule 8 and states each of the necessary elements for a claim under VRA section 2. A more definite statement is unwarranted, and this Court should deny both Defendant's motion to dismiss and its motion for a more definite statement.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant State of Louisiana's Motion to Dismiss.

Dated: October 25, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2019, I electronically filed the foregoing Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant State of Louisiana's Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record identified below.

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