

Attachment 6

STATEMENT OF ANTICIPATED MINORITY IMPACT

The current redistricting plan includes 25 House of Representatives districts in which African-Americans compose a majority of the total and voting age population.¹ Attached Table 5.1 lists these districts and presents information relating to demographic change in the districts between 2003 and 2010 and the effect of Act 1 on the minority total and voting age percentages in these districts. Act 1 complies with the requirements of Section 5 of the United States Voting Rights Act by including 29 House of Representatives districts that are majority minority districts, an increase of four districts from the benchmark.

Minority Population Trends

Louisiana's African-American population increased from 1,452,396 (32%) to 1,451,944 (32.5%). (The data used by the House of Representatives in redistricting allocated those who included Black as part of their multiple race identity to the minority race group. The data used in the following analysis are based on this allocation.)

While the African-American population grew at a significantly slower rate than the overall state average, there were significant patterns in terms of the areas of the population changes. In the New Orleans area, it was some of the most heavily concentrated areas of population that were most damaged in the aftermath of Katrina. As a result, these areas lost significant population. The Greater New Orleans Community Data Center summarized the population changes this way:

¹ As noted in Attachment 20, the 2003 redistricting plan contained 27 majority minority districts at the time of enactment. Due to the population shifts noted in Attachment 20, two of these districts were no longer majority minority districts. No other district added enough African-American population to move it to the status of a majority minority district during the decade.

Since 2000, the metro population declined 11 percent, a reflection of the destruction of jobs associated with the Katrina disaster more than loss of housing. In August 2005, Hurricane Katrina and the levee failures displaced much of the metro area population and left only 36 percent of homes undamaged...The population of metro New Orleans declined 11 percent since 2000, largely reflecting the significant job losses associated with Katrina and the 'Great Recession.' However, population has shifted away from coastal and more damaged areas resulting in growth in the exurban parishes of St. Tammany, St. Charles, and St. John....Many workers and their families returned to areas that were less damaged such as the north shore, upriver, and the west bank of Orleans Parish. By April 2010, the metro had regained 85 percent of its pre-Katrina jobs. And although Census 2010 results confirm there has been notable population growth in areas less damaged by Hurricane Katrina and the levee failures, the 2010 head count also reminds us that the overall population of the metro area is much smaller than it was ten years ago. In fact, the metro population is now nearly back to what it was in 1970.

Allison Plyer and Elaine Ortiz, Greater New Orleans Community Data Center, "Shifts in Population and Loss of Children Across the New Orleans Metro Area," Feb. 17, 2011, available at https://gnocdc.s3.amazonaws.com/reports/GNOCDC_ShiftsInPopulationAndLossOfChildrenAcrossTheNewOrleansMetroArea.pdf.

The most dramatic change in Louisiana's demographic base was the overall loss in population from the New Orleans metro area. These patterns are reflected in the statistics for the current House districts and had implications for drawing the new districts. As Attachment 20 demonstrates, population declines left a significant number of the New Orleans area majority minority districts significantly below ideal district size. These deviations are well outside the judicially recognized population deviation

tolerances and the tolerances adopted by the Committee on House and Governmental Affairs.

There have been some increases in Hispanic population in Louisiana, with the largest concentration in the Kenner area. While the greater New Orleans area has approximately 63,000 residents of Hispanic origin, these residents appear to be geographically disbursed throughout the area and concentrated in Jefferson and Orleans Parish. No Member of the House proposed, and no group brought forward a proposal, demonstrating that a majority Hispanic district should be created to comply with Section 2 of the Voting Rights Act. Act 1 contains 6 districts with Hispanic-origin population of over 10%, with none exceeding 22%. However, the American Community Survey Data special release from January of 2011 indicates that in the Orleans Parish only 45.7% of Hispanic residents of voting age population are citizens. In Jefferson Parish, only 47.4% of Hispanic residents or voting age population are citizens.

Benchmark Majority African-American Districts

The current House of Representatives plan contains 25 districts with majority African-American total populations (see Attachment 20), and 23 districts with majority African-American voting age population.

One of these districts – district 67 – contains Louisiana State University. This district is majority in total black population, but the voting age population is a bare minority. The black voter registration percentage in the proposed district as configured is 66.291%. This is identical to the black voter registration in the proposed District 67.

Of the existing 25 districts, two of the districts – both with total African-American population of under 55% do not currently appear to be electing a candidate of choice of

the African-American community.² The African-American voter registration rate in January of 2011 in District 98 was 47.481%. There are indications that the white representative elected in 2007 (first election after the post-Katrina migration from New Orleans) is not a candidate of choice (white candidate defeated black candidate in runoff election). Similarly, the African-American voter registration rate in January of 2011 in District 57 was 45.476%. There are indications that the white representative election in 2007 from that district was also not a candidate of choice (white candidate defeated black candidate in runoff election).

For a third district – District 21 – despite black voting age population 56.5% - there are indications that the district may not be electing a candidate of choice. In 2006, a white candidate defeated a black candidate in a election runoff. The white representative elected in that race continues to represent the district, and defeated three black candidates in the general election in 2007. The black voter registration for the district as of January of 2011 was 55.933%.

Act 1 Majority African-American Districts

Act 1 includes a total of 29 districts with a majority of African-American total population, and includes 27 districts with African-American total population over 55%. Act 1 includes a total of 24 districts with African-American voting age population over under 55%, including district 67 as noted above.

² This is consistent with the testimony of Dr. Ted Arrington during the 2002 House of Representatives litigation. Dr. Arrington testified for the Department of Justice that African-American voting age population and voter registration has to be at approximately the 55% level in order to be effective districts to elect a candidate of choice.

Of the five districts with voting age population under 55%, this table shows the voter registration of African American population as a percentage of registered voters as of January 2011:

District	Percentage of Registered Voters
21	57.344%
23	54.909%
67	66.291%
83	54.516%
96	57.671%

As noted in Attachment 20, all but three of the existing 25 majority minority districts were all significantly under populated. The negative deviations ranged from as little at .13% underpopulated to 61.97% underpopulated. The positive deviations ranged from 1.26% to 12.46%. The average showed an under population of 13.22%.

The African-American total percentage and voting age percentage in most of the existing districts are reduced slightly in Act 1, compared to the 2010 census composition of the current districts, as a necessary result of rearranging and adding population from adjoining precincts and localities with lower minority populations. Among the benchmark districts maintained in Act 1,³ the average TBPOP % was reduced by 4.79%, and the average VBPOP was reduced by 5.10%.

Of the districts in the benchmark plan, the incumbent representative continues to reside in 98 the districts contained in Act 1. Of the five new majority minority districts created in Act 1, 3 are open seats, and 2 contain a current white incumbents.

Comparison of Effect

³ Note that District 98 – which was under populated by 25% and is centered in New Orleans – is not retained as a majority minority district in Act 1.

As noted above, the benchmark plan with 25 majority minority districts contains three districts that are not electing a candidate of choice of the black community in those districts, meaning that the benchmark plan has either 22 performing districts.

Retained Districts

District 57's black voter registration percentage is improved by Act 1 from 45.476% to 56.754% in the proposed plan, and its black voting age population is increased from 47.59% to 57.07%, an increase of 9.48%.

District 21's black voter registration percentage is improved by Act 1 from 55.933% to 57.344% in the proposed plan, and its black voting age population is increased from 53.66% to 54.66%, an increase of 9.48%.

These districts were likely not electing candidates of choice in the benchmark plan. As noted above, black candidates lost elections in the existing districts to white candidates. Furthermore, the Louisiana House of Representatives was guided by two key data points for determining whether a district is effective.

First, as noted above, Dr. Ted Arrington's research from 2002 shows that in Louisiana, districts with approximately 55% voting age population are required to give candidates of choice a "reasonable opportunity" at success as long as black voter registration is at about the same level.

Second, according to the Legal Requirements paper authored by the Clerk of the House, the Secretary of the Senate and a House and Governmental Affairs staff attorney, under the existing plan "the lowest minority population or registered voter population which ever elected a Black candidate was a district with a 57% Black registration (60% Black population)." This same paper also noted that "[i]n 2003, one of Louisiana's

House districts with a Black population of 57.5% was precleared by Justice as an effective minority district and one district with a Black registration of 54.7% was also precleared.”

Removed Districts

As noted above, District 98’s population in Act 1 is no longer majority African American. It has been removed from the plan created by Act 1.

New Majority Minority Districts

District 16 is a newly created majority minority district in the Monroe area, and includes parts of both Ouachita and Morehouse Parishes. Act 1 creates this district with a 62.98% total black population, a 58.40% black voting age population, and a 60.219% black voter registration percentage.

District 23 is a newly created majority minority district including parts of both DeSoto, Natchitoches and Red River Parishes. Act 1 creates this district with a 58.18% total black population, a 54.10% black voting age population, and a 54.909% black voter registration percentage.

District 83 is a newly created majority minority district wholly contained within Jefferson Parish. Act 1 creates this district with a 54.57% total black population, a 51.16% black voting age population, and a 54.516% black voter registration percentage.

District 91 is a newly created majority minority district wholly contained within Orleans Parish. Act 1 creates this district with a 61.11% total black population, a 57.03% black voting age population, and a 62.341% black voter registration percentage.

District 93 is a newly created majority minority district wholly contained in Orleans Parish. Act 1 creates this district with a 64.43% total black population, a 59.59% black voting age population, and a 60.976% black voter registration percentage.

Summary of Effect

The following chart compares the number of majority minority districts and the number of districts electing candidates of choice between the existing and the benchmark plans:

	Benchmark Plan	Act 1
Number of Majority Minority Districts	25	29
Number of Effective Majority Minority Districts (Arrington 55% Voter Registration measure)	23	27/28/29 ⁴
Number of Effective Majority Minority Districts (Actual elections 57% Voter Registration measure)	22	25
Number of Effective Majority Minority Districts (2003 preclearance 54.7% Voter Registration measure)	23	28
Number of Effective Majority Minority Districts (57.5% Voting Age measure from 2003 preclearance)	19	19

Using any of the four measures previously applied, the above chart demonstrates that Act 1 does not retrogress. By three of the four measures, the number of effective seats actually increases under Act 1, and by the fourth measure the number of effective seats remains the same.

Alternative Plans

The only major alternative plan that impacted the majority minority districts in a significant way was Amendment 151 introduced in the House and Governmental Affairs Committee by Chairman Gallot. This amendment would have redrawn the districts in northwest Louisiana – specifically in Caddo Parish. It would have reconfigured the three districts that are wholly contained in Caddo Parish such that 4 instead of the three districts would be majority minority districts. The proposed amendment was adopted by

⁴ One district has a voter registration rate of 54.52% and another has a voter registration rate of 54.91%, so rounding decisions impact which districts are effective under the Arrington “55% test.”

a vote of 14-4 on March 23, 2011 by the Committee. It was included in the proposal as adopted by the Committee on March 25, 2011. On the floor of the House of Representatives on March 28, 2011, an amendment by Representative Seabuagh restored the plan in the area of Caddo Parish to its originally introduced configuration.

The districts as configured in the proposal are as follows:

District	% AP Blk	% 18+ AP Blk	Voter Registration %
2	66.62%	63.13%	69.31%
3	67.698%	63.7%	64.01%
4	71.71%	68.08%	64.72%
5	61.74%	57.74%	57.16%

Act 1 contains three districts in that geographic area that are majority black, with statistics as follows:

District	% AP Blk	% 18+ AP Blk	Voter Registration %
2	68.35%	64.97%	70.40%
3	89.01%	86.69%	87.05%
4	71.71%	68.08%	67.96%

Applying these changes to the chart presented above to provide a summary of the total plan is as follows:

	Benchmark Plan	Gallot Proposal
Number of Majority Minority Districts	25	30
Number of Effective Majority Minority Districts (Arrington 55% Voter Registration measure)	23	27/28/29 ⁵
Number of Effective Majority Minority Districts (Actual elections 57%)	22	26

⁵ One district has a voter registration rate of 54.52% and another has a voter registration rate of 54.91%, so rounding decisions impacts which districts are effective under the Arrington “55% test.”

Voter Registration measure)		
Number of Effective Majority Minority Districts (2003 preclearance 54.7% Voter Registration measure)	23	28
Number of Effective Majority Minority Districts (57.5% Voting Age measure from 2003 preclearance)	19	20

Chairman Gallot explained during the March 23, 2011, Committee hearing that he believed an obligation existed to create this additional district. The amendment is numbered Amendment 151, and a block assignment file for this amendment is included on the CD-ROM. During the debate over this amendment, Chairman Gallot, a Democrat, began by indicating that he had sought the Chairmanship of the House and Governmental Affairs Committee, and been given the Chairmanship by Speaker Tucker, a Republican on January 14, 2008.

Chairman Gallot indicated that he believed that creating a thirtieth majority black district in Caddo Parish was required to comply with both Section 2 and Section 5 of the Voting Rights Act. Chairman Gallot explained that “there was an obligation, not just a choice” about drawing this district. This additional district would have been entirely within Caddo Parish and centered in the City of Shreveport. Chairman Gallot indicated that this district was considered by Speaker Tucker, but removed from original drafts prior to introduction because of analysis indicating the additional district would not be an effective majority minority district.

Chairman Gallot requested analysis from Dr. Blair – a Louisiana House of Representatives demographer – to determine if the new district would be “effective.” A

copy of Dr. Blair's vita and analysis discussed during committee is included as Attachment 21. Dr. Blair presented 8 pages of analysis of the 4 minority districts as proposed by Chairman Gallot. He presented information he claimed is required under *Thornburg v. Gingles*, 478 U.S. 30 (1986), to be considered determining "effectiveness" of populations. Dr. Blair explained that he examined only the 2008 Presidential election and the 2010 Shreveport mayoral race.

During his testimony, Dr. Blair explained that his analysis was limited. Said Blair, "[t]he caveat to all of this is that the two elections used were 2008 president and 2010 mayoral. These are clearly high turnout high profile elections with clear candidates of choice for minority voters." Chairman Gallot asked Dr. Blair specifically whether the 4 districts would be "effective" majority minority districts. Dr. Blair gave a carefully worded answer –responding, "My professional opinion as a political science professor is that the analysis of these two elections suggests quite strongly that these four districts are effective as minority districts."

During this same Committee hearing, Chairman Gallot testified that where a majority minority district could be created, there was a legal obligation to create such district. Chairman Gallot expressed his opinion that failure to include this additional district would be an impediment to preclearance. Chairman Gallot also referenced his discussions with Speaker Tucker in which the Speaker stated that analysis indicated that the district would not be effective.

Representative Norton – the representative from District 3, which would go from 87.05% black voter registration to 64.01% black voter registration – testified that her district has had the same core for nearly 30 years. She said, "This amendment will

destroy the core of my district.” She urged that the Committee not adopt Chairman Gallot’s amendment. Representative Norton told the Committee that she was not consulted by Chairman Gallot before he introduced his amendment, despite her requests to be included. Later in the same hearing, Chairman Gallot claimed that Representative Norton was included in discussions. Representative Norton testified again, and insisted that Chairman Gallot “lied.”

Representative Seabaugh testified against the amendment, explaining that the existing lines were previously precleared, and that Section 5 did not require the adoption of this amendment.

Louisiana Legislative Black Caucus (LLBC) Chairwoman Patricia Haynes Smith testified that the Caucus would oppose the plan unless it included a fourth majority minority district. She indicated that she had a 32 seat plan, but chose not to bring it to the committee. According to the Chairwoman, 18 of the 20 members of the Black Caucus voted to support the amendment. She claimed that the Black Caucus voted to oppose districts with black populations that were too high unless the voting patterns have shown that it was needed. Specifically, Chairwoman Smith noted that Representative Norton won in 2007 with 56% of the vote. She also indicated that the LLBC hired a demographer, and that Representative Norton had not spoken to the LLBC’s demographer.

Representative John Bel Edwards testified with respect to the *Gingles* factors, and indicated that he believed all of the requirements of *Gingles* were satisfied.

Representative Burrell testified that his district – despite its reduction in black population under the proposal – would satisfy him.

Speaker Tucker testified about meetings that he and Chairman Gallot had with members from across the state regarding the creation of the initial draft of the proposal. Speaker Tucker expressed that Representative Norton had a “visceral” reaction to the concept of a fourth majority minority district in Caddo Parish. Speaker Tucker described Representative Norton’s concerns as “grave.”

Speaker Tucker explained that he then conducted an analysis of Caddo Parish to determine if the ability to elect a candidate of choice existed in Caddo Parish if it were configured with four majority minority districts. Speaker Tucker pointed out that Dr. Blair looked at only two specific elections. Speaker Tucker said, “Those elections are like comparing apples to oranges.” He pointed out that turnout in the black community was driven to record levels in the 2008 presidential elections. The 2010 Shreveport Mayoral election – the re-election of Cedric Glover – involved the re-election of a very popular black Mayor who received significant white crossover vote.

Speaker Tucker then testified and presented an analysis of the turnout in the 2007 elections in the proposed District 5. His testimony is summarized here:

Election	Total Turnout	Black Turnout	Black % of Electorate	White Turnout	White % of Electorate
2007 General	9984	4693	47%	5291	53%
2007 Primary	2742	802	29.24%	1905	69.47%

Speaker Tucker said the addition of precincts south of Brancone’s Loop will almost ensure that a non-minority could be elected to the seat. He testified that 2011 will be a “quiet” election season – noting that the Governor and none of the other statewide office holders are facing any significant opposition. He said that if the 2011 election were to occur with the low turnout expected, it “would disenfranchise voters currently in

district from the ability to have a minority representative.” Speaker Tucker stated that the proposed amendment would not ensure the election of a minority representative in proposed District 3.

Representative Jones questioned Speaker Tucker about his numbers. She asked about the 2007 primary and 2007 general elections. Representative Jones noted that Representative Norton was elected at the primary in 2007, and indicated that this puts the analysis Speaker Tucker presented “in perspective.” Representative Norton pointed out that other members in the Caddo Parish area were not involved in contested elections in 2007. Speaker Tucker indicated that the analysis of turnout varies significantly based on the contested races in the area. Speaker Tucker indicated that Dr. Blair’s analysis was statistical analysis, and the numbers he reviewed for 2007 were actual turnout. Speaker Tucker indicated that he was not willing to rely on regression analysis of two elections to jeopardize the election of a minority candidate when the 2007 election turnout information was available by race. Speaker Tucker indicated that he had looked at various minority districts using different methods of analysis, and he intended to protect minority districts.

The vote in committee to adopt the amendment Amendment 151 was 10-9. On adoption by the Committee, HB1 as adopted was 16-0.

The Chairwoman of the House of Representatives Black Caucus mentioned but in Committee and during the floor debate that she has seen a map that draws 32 majority black districts, but that proposal was never introduced as an alternative.

Chairman Gallot submitted an alternative proposal designated as HB 35. It was presented to the Committee, but no further action was taken on it. Senator Ed Murray

introduced S 34 which was a redistricting plan for the House of Representatives, and was referred to the Senate and Governmental Affairs Committee. The proposals contained in Senator Murray's bill were incorporated into Senator Jackson's floor amendment in the Senate, but the amendment was rejected. Neither the NAACP, the ACLU, nor any other group purporting to represent the interests of minority voters, proposed a state wide alternative to Act 1.

Analysis of Dr. Blair's Testimony

The regression analysis in the election studies performed by Dr. Blair appear to be seriously flawed.

With respect to the 2010, election results, Dr. Blair looked only at the results of the Shreveport Mayor's race. With respect to District 5 and District 3, the turnout and regression analysis provided by Dr. Blair appears to exclude the portions of the districts outside of the city limits of Shreveport from the analysis of the turnout. The precincts outside of the city limits are predominantly white, and do not appear to have been included in his regression or turnout analysis for the district as a whole.

The 2010 Shreveport Mayoral election resulted in the re-election of the first ever African-American mayor of Shreveport. This race featured an incumbent facing his first re-election, and an individual who had held elected office in Shreveport since 1990 as a city council member and then as a member of the Louisiana House of Representatives. During the testimony in committee, the fact that the Mayor was an incumbent running for re-election was not mentioned – and apparently not considered in the analysis.

Furthermore, it appears that the regression analysis performed by Dr. Blair on the Shreveport Mayoral race excluded the majority white precincts outside the city limits

from his analysis. Dr. Blair’s reported turnout figure for the 2010 election show a 41.2% black turnout (as a percentage of registered voters) on Election Day, and a 28% turnout among white voters. In reality, when lining up the precincts that make up the entirety of District 5 with the reported voter turnout from 2010, the black turnout appears to be 42.1% and the white turnout appears to be 47.7%.

As is well known, the 2008 presidential election generated high turnout in minority communities across the country. Nationwide, turnout in the 2008 election was 66.1% for white voters and 64.7% for African-American voters. In Louisiana, turnout among white voters in the 2008 presidential election was 72.1%, and 66.2% for black voters. Specifically for the precincts making up the proposed district 5, 2008 turnout for black voters was 65.6% and turnout for white voters was 65.5%. Turnout in the years when House of Representatives candidates are on the ballot is significantly lower. The chart below summarizes by race the turnout (as a percentage of the total electorate) within the proposed district 5 in 2003 and 2007:

Race	White Turnout %	Black Turnout %
2007 General	69.3%	29.5%
2007 Primary	50.7%	47.5%
2003 General	55.9%	42.6%
2003 Primary	51.3%	47.2%

Unlike Dr. Arrington’s approach in 2002, Dr. Blair’s analysis looked only at two specific elections that may not have been representative of the normal and usual elections in the Caddo Parish area for the reasons outlined above.

The only white versus black election in 2007 or 2003 encompassing the whole of proposed district 5 was the 2007 Caddo Parish coroner's race pitting a white Republican against a black Democrat. As noted above, white turnout in the 2007 elections for both the primary and general exceeded black turnout. In the 2007 primary, the white candidate defeated the black candidate by 56% to 44% to win the election with a vote total of 34,811 to 27,616 Parish-wide. Within the precincts making up proposed district 5 in the 2007 primary, the black candidate won 4,890 votes to 4,059 votes for the white candidate.

The other important consideration here is the unique nature of Louisiana's elections. Under Louisiana's election system, anyone paying a qualifying and who otherwise meets the legal requirements for office is placed on the "Primary" election ballot. If a candidate wins the "Primary" election with more than 50% of the vote, that candidate has won the office. If no candidate wins 50% of the vote, then the top two candidates proceed to a "General" election (which is often called a run-off). The filing fee to run for House of Representatives in Louisiana is \$225, with potential additional fees of \$225 in total to the state party and the parish party committees. Given this, it makes sense to explore the results of General elections in proposed district 5.

Applying the turnout percentages from prior elections to the proposed district 5, it becomes clear that if there were a single black candidate against a single white candidate in a primary election, the black candidate would regularly win. However, when examining turnout percentages in runoff elections, it is less than clear that a candidate of choice would be election. The following table assumes that black voter cohesion is at

95%, and that turnout numbers match the 2010 runoff and examines the outcome of the races with white cohesion at 95% and at 75%.

Election	95% White Cohesion Total Vote for Black Candidate	95% White Cohesion Total Vote for White Candidate	75% White Cohesion Total Vote for Black Candidate	75% White Cohesion Total Vote for White Candidate
2008 General	6381.5623	4946.104	7354.834	3972.833
2007 General	3667.23	7858.35	5285.468	6240.112
2006 General	6100.408	4843.072	7055.052	3888.428
2003 General	5036.9113	6430.459	6338.487	5128.883

This chart demonstrates that with high cohesion among white voters, a white candidate would defeat a black candidate in run-offs in years with House of Representatives races in proposed District 5.

Legal Analysis

Section 5 Effects

With respect to Section 5’s “effects” prong, it is clear that under Act 1, the number of effective majority minority districts across the state increases despite the population loss in the New Orleans area. It is also clear from the testimony in Committee and debate on the floor of the House that Speaker Tucker and Chairman Gallot worked to carefully craft a plan that will have the effect of increasing the number of districts across the state that demonstrate an ability to elect a minority candidate of choice. As stated in the House Committee Report accompanying the renewal of Section 5 in 2006:

Thus, in amending Section 5 to add a new subsection (b), the Committee makes clear that in making preclearance determinations under Section 5, the comparative `ability [of

the minority community] to elect preferred candidates of choice' is the relevant factor to be evaluated when determining whether a voting change has a retrogressive effect. This change is intended to restore Section 5 and the effect prong to the standard of analysis set forth by this Committee during its examination of Section 5 in 1975, such that a change should be denied preclearance under Section 5 if it diminishes the ability of minority groups to elect their candidates of choice.

Such was the standard of analysis articulated by the Supreme Court in *Beer v. United States*, the retrogression standard of analysis on which the Court, the Department of Justice, and minority voters relied for 30 years, and the standard the Committee seeks to restore.

Voting changes that leave a minority group less able to elect a preferred candidate of choice, either directly or when coalesced with other voters, cannot be precleared under Section 5. Furthermore, by adding the adjective 'preferred' before 'candidate,' the Committee makes clear that the purpose of Section 5 is to protect the electoral power of minority groups to elect candidates that the minority community desires to be their elected representative.

Given the increases, or in one case, maintenance of, effective majority minority districts over the benchmark plan using any of the four measures previously identified to determine effective districts demonstrates that Act 1 does not have a retrogressive effect with respect to the benchmark plan.

Section 5 Intent

In guidance issued by the Department of Justice on February 9, 2011, the Attorney General identified the factors it would use to assess the absence of discriminatory purpose in adopting a redistricting plan. See Department of Justice, *Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act*, 76 Fed.

Reg. 7470 (Feb. 9, 2011) (“Guidance”). As explained in that Guidance, an assessment of “intent” under Section 5 includes an overall analysis of the intent to discriminate and is no longer limited to an intent to retrogress.

The Guidance indicates that the Attorney General will rely on the factors identified in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 (1977). The five factors identified include:

- (1) The impact of the decision;
- (2) The historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent;
- (3) The sequence of events leading up to the decision;
- (4) Whether the challenged decision departs, either procedurally or substantively, from the normal practice; and
- (5) Contemporaneous statements and viewpoints held by the decision-makers.

Guidance, 76 Fed. Reg. at 7,471. With respect to each of these factors, the Louisiana House of Representatives can demonstrate an absence of discriminatory intent. We address each factor in turn.

Impact of Decision

From a baseline of 25 black majority districts, Act 1 brings the number of such districts to 29 across the state. The overall impact of Act 1 is not discriminatory. If anything, it brings the number of majority black districts in Louisiana closer to the proportion of black population in the state than in any previously adopted redistricting plan for the Louisiana House of Representatives. Act 1 increases the number of effective majority minority districts throughout the state by three of the four measures previously

identified, and to maintain the number of majority minority districts under the fourth measure.

With respect to the proposal for the 30th black majority district in Caddo Parish, Speaker Tucker explained his concern before the Committee that based on his analysis of turnout in the proposed districts, he had serious concerns about whether the number of effective majority black districts in Caddo Parish would be reduced from 3 to 2, rather than increased to 4 if turnout holds and in the years where the House of Representatives is elected black turnout remains as low as it was in 2007. Further, Representative Norton, the current representative of the district whose population number would be most impacted by the proposed change virtually pleaded both in Committee and on the floor of the House for rejection of Chairman Gallot's proposed amendment to reconfigure Caddo Parish.

Historical Background

The redistricting plan introduced by Speaker Tucker was jointly developed with Chairman Gallot – the black representative appointed by Speaker Tucker to Chair the House and Governmental Affairs Committee. As discussed during the Committee hearings, the Speaker and Chairman held a series of regional meetings with incumbent members of the House beginning in 2010. There was no allegation of discriminatory intent or actions during the process of developing the plan.

The fundamental disagreements brought to light during both the Committee hearings and during the floor debate centered on two points. The first was whether there was a legal obligation to create the additional black majority district in Caddo Parish to comply with legal obligations of Section 2 and of Section 5. During Committee, it was

strongly suggested by a number of witnesses, including the Clerk of the House, Dr. Blair and Chairman Gallot, that there was no legally available option but to create this additional district. There was no discussion of this portion of the Attorney General's Guidance until the debate on the floor of the House:

The single fact that a jurisdiction's proposed redistricting plan does not contain the maximum possible number of districts in which minority group members are a majority of the population or have the ability to elect candidates of choice to office, does not mandate that the Attorney General interpose an objection based on a failure to demonstrate the absence of a discriminatory purpose. Rather, the Attorney General will base the determination on a review of the plan in its entirety.

Guidance, 76 Fed. Reg. at 7,741.

There was also further discussion of the legal requirements of Section 2, including the Supreme Court's decisions in *Thornburg v. Gingles*, *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), *Johnson v. DeGrandy*, 512 U.S. 997 (1994), and *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009). It seems clear that Members of the House of Representatives had fundamentally different understandings of the legal requirements of these cases and their application to the facts before them. There was no indication or suggestion by anyone during the course of these debates that these disagreements were motivated by any discriminatory purpose or were motivated by any discriminatory intent.

The second fundamental disagreement was whether the proposed 4 majority minority district configuration in Caddo Parish would actually result in 4 effective majority minority districts. As noted, several members expressed concerns both in Committee and on the floor of the House about the completeness of the regression

analysis prepared and presented by Dr. Blair – especially when contrasted with the in-depth regression analysis conducted by the Department of Justice expert in the 2002 Louisiana redistricting litigation. And upon further review, as noted above, Dr. Blair’s analysis of one of the two elections (the 2010 Shreveport mayoral race) seemed to ignore the voting behavior and turnout patterns in precincts outside of the city limits. Speaker Tucker expressed his concerns about turnout patterns in the area as well. Again, these disagreements seemed to center on factual analysis, and once again there was no suggestion or indication of discriminatory intent during these discussions.

Sequence of Events

The sequence of events leading to Act 1 demonstrate that white and black members participated equally in the process, and that the process itself was jointly lead by Chairman Gallot and Speaker Tucker.

With respect to the proposal for the fourth district, Chairman Gallot introduced this amendment during the Committee hearings on the bill. There was significant debate over the amendment in committee, and in the end the amendment was support by 10 members of the committee, including all 5 black members, and 2 of the Republican members. Representative Norton also claimed that she was not informed about the development or introduction of the amendment. This claim was denied by Chairman Gallot.

On the floor of the House, the amendment by Representative Seabaugh to restore the Caddo Parish configuration as introduced in committee was significantly debated. The debate included impassioned speeches by members of both political parties and by members of the black caucus who supported the addition of the additional district. The

debate over the bill also included strong pleas by Representative Norton for her district to remain as close to its current configuration as possible given the relatively small demographic changes over the decade.

There was nothing about the sequence of events that was outside of the normal and usual Louisiana legislative process, and input was sought from all of the affected parties.

Normal Practice

In the legislative context, the consideration of Act 1 proceeded through the normal and usual channels and was conducted in a collegial manner involving significant input from both white and black members of the House of Representatives.

The current configuration of Caddo Parish being carried over into Act 1 has been in effect in its general nature since at least 1991. To reconfigure Caddo Parish as proposed by Chairman Gallot's amendment would actually depart further from the normal practice in the area than the districts included in Act 1. The reconfiguration of Caddo Parish as proposed would be the only portion of the state to undergo significant reconfiguration that did not experience substantial demographic changes as a result of population shifts caused by Hurricane Katrina.

Contemporaneous Statements and Viewpoints

As was clear during the course of the overall debate on Act 1, there were no significant disagreements over changes impacting the minority community in the state other than the Gallot amendment. With respect to the remainder of the demographic changes, Speaker Tucker and Chairman Gallot both indicated that where an effective majority minority district could reasonably be drawn it was included in the plan.

Most of the disagreement over the creation of the additional majority minority district in Caddo Parish was characterized by legitimate disagreements over the legal requirements and voter performance analysis. There was some suggestion during the debate that the reconfiguration of Caddo Parish such that 4 of 6 districts would be majority minority districts would discriminate against white residents of Caddo Parish.

Section 2 Compliance

With respect to Section 2, the effect of this plan is in full compliance. In Section 2 cases, it is the burden of the plaintiffs to establish the three *Gingles* factors and the totality of the circumstances test. See *Bartlett*, 129 S.Ct. at 1241 (“In a § 2 case, only when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances.”); *Gingles*, 478 U.S. at 44 (“Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process.”)

For several reasons, the tests of *Gingles* are not met here. First, while the population is large enough to form a majority in four districts (instead of the existing three districts), there has been no evidence demonstrating that the communities joined together to form the four districts are sufficiently compact to meet the requirements of Gingles.

With respect to the second *Gingles* factor, there is little doubt as to the politically cohesive character of the black community in Caddo Parish. There was no evidence in front of the Committee or the House to demonstrate anything other than cohesive voting among black voters in Caddo Parish.

With respect to the final *Gingles* factor, it has also not been established that the majority population in the area usually votes to defeat black candidates of choice in Caddo Parish. Caddo Parish is nearly evenly split between white and black citizens, and between white and black citizens of voting age population. The population of Caddo Parish changed little over the last decade. At least since 1991, Caddo Parish has been configured with three majority minority districts. These three districts as configured in the benchmark plan have consistently elected candidates of choice to the Louisiana House of Representatives. To say that a bare white majority in Caddo Parish has “usually” defeated candidates of choice throughout the parish is not correct.

The totality of the circumstances test must then be applied. The Supreme Court has taken two different [approaches?] to the frame of reference for assessing proportionality when assessing the totality of the circumstances under Section 2. In *LULAC v. Perry*, the Court noted that in the challenged area there was “growing Latino political power” in the area. *LULAC*, 548 U.S. at 442. The Court determined that the State of Texas should be the frame of reference for determining proportionality. See *LULAC*, 548 U.S. at 437 (“We conclude the answer in these cases is to look at proportionality statewide.”). However, the Court also noted that regional considerations of proportionality should also be considered as they were in *De Grandy*. See *id.* (“this inquiry requires an ‘intensely local appraisal’ of the challenged district.”). Furthermore, the Court noted several times throughout *LULAC* that its decision was framed in the context of protecting the power of a growing minority population within the state – both in terms of raw numbers and sheer political power. See, e.g., *LULAC*, 548 U.S. at 469 (“In response to the growing participation that threatened Bonilla’s incumbency, the State

divided the cohesive Latino community in Webb County, moving about 100,000 Latinos to District 28, which was already a Latino opportunity district, and leaving the rest in a district where they now have little hope of electing their candidate of choice. The changes to District 23 undermined the progress of a racial group that has been subject to significant voting-related discrimination and that was becoming increasingly politically active and cohesive.”).

There is no doubt that the proportionality test is met within the current configuration of districts wholly within Caddo Parish. In a Parish with 6 members of the House of Representatives and nearly evenly divided between white and black residents, the current configuration of the districts creates 3 majority minority districts offering the opportunity to elect a candidate of choice and 3 majority white districts. In addition, Caddo Parish, there is no “growing” black community – in stark contrast to the Latino community at issue in LULAC. In fact, the black population of Caddo Parish in 2010 is actually 47.2% of the population of the parish, while what is being sought is a configuration that would have black majority districts control two thirds (66%) of the districts in the Parish. Overall throughout the state, the black population of Louisiana as a whole is one half percent lower in 2010 than it was in 2000.

Conclusion

Act 1 as enacted by the State of Louisiana is in full compliance with Section 5 of the Voting Rights Act. Act 1’s effect does not retrogress with respect to the position of minority voters in the benchmark plan, and was not adopted with discriminatory intent. On both of these points, the Louisiana House of Representatives has met its burden of proof to demonstrate that it is entitled to preclearance.