IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, VERMILION PARISH CHAPTER *Plaintiff*, v. CITY OF ABBEVILLE *Defendant*.	No. 6:23-cv-01463-RRS-DJA

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The City of Abbeville's ("Abbeville") response in opposition to Plaintiff's Motion for Preliminary Injunction fails to articulate a sufficient basis to allow the March 29, 2025, special election to proceed. The City failed to provide a justification for its malapportioned city council districting plan and admits that the plan's 19.3% overall maximum deviation is not "less than ten precent" and is, therefore, presumptively unconstitutional. Dkt. 39 at 6. Consequentially, the "underlying merits are entirely clearcut in favor" of the National Association for the Advancement of Colored People, Vermilion Parish chapter ("Vermilion NAACP"). *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

Vermilion NAACP challenges the entire plan enacted under Ordinance 22-12, given its presumptively unconstitutional 19.3% deviation. *See e.g.*, Dkt. 31-1 at 12 ("Abbeville ran afoul of the OPOV principle by adopting Ordinance 22-12."). Abbeville is utilizing this unlawful plan to hold a special election in District B. Without Court intervention, Vermilion NAACP members in District B will be irreparably harmed.

Abbeville's overreliance on *Perez v. Abbott* does not permit it to conduct an election with a malapportioned plan, *Perez* simply explains that One-Person, One-Vote ("OPOV") claims may be brought against: (1) an entire plan; (2) an individual district; or (3) "both." 250 F. Supp. 3d 123, 194 (W.D. Tex. 2017). *Perez* does not hold that the Court may ignore a plan's maximum deviation and instead focus solely on the deviation in the district in which the special election occurs. Indeed, this argument refutes *Perez* because the court there held the scope of an OPOV claim "is whatever the plaintiff makes it." *Id*. Moreover, even if the Court examined the 10.3% deviation in District B by itself, "a maximum population deviation **of 10%** or greater creates a prima facie case of discrimination and therefore must be justified by" Abbeville. *Coleman v. Winbigler*, 615 F. Supp.

3d 563, 573 (E.D. Ky. 2022) (emphasis added and internal quotation omitted). The City provides no such justification.

The remaining injunction factors favor Vermilion NAACP: Abbeville does not dispute District B members will face irreparable harm, and the public interest and the balance of the equities favor a constitutional election. Abbeville merely assumes a burden without providing any support for it. Also, Vermilion NAACP's motion was timely because it was filed prior to the start of qualifying. Abbeville does not dispute any of the factors regarding associational standing. Furthermore, due to the Protective Order, Dkt. 37, Vermilion NAACP attaches herein documentary evidence that negates Abbeville's qualms with the Vermilion NAACP Declaration, which goes to weight and not admissibility. Accordingly, this Court should grant the injunction.

ARGUMENT

I. Vermilion NAACP Has Established All Four Factors of Its Preliminary Injunction Motion.

a. The challenged plan is presumptively unconstitutional, and Abbeville failed to justify its malapportionment.

Vermilion NAACP satisfied its burden of irreparable harm by establishing that the challenged plan is likely a "prima facie" OPOV violation, *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983), due to its 19.3% deviation. Dkt. 31-1 at 7 (citing to Pl. Ex. 6). Thus, the burden shifts to Abbeville to demonstrate that a 19.3% deviation is necessary because of "legitimate considerations incident to the effectuation of a rational state policy," *Reynolds v. Sims*, 377 U.S. 533, 579 (1964), and that the deviation is within "tolerable limits," *Mahan v. Howell*, 410 U.S.

315, 329 (1973).[1] By omitting a justification, Abbeville failed its burden. Thus, Vermilion NAACP satisfies the first injunction factor.

Abbeville pins its entire merits response on a portion of *Perez* that is insignificant in this case. Dkt. 39 at 6. In *Perez*, the court explained that an OPOV challenge may be brought "plan-wide, location-specific, or both." 250 F. Supp. 3d at 194 (stating that the scope of an OPOV claim "is whatever the plaintiff makes it"). There, the court "broad[ly]" reviewed the plaintiffs' "pleadings and briefings" to conclude they brought both claims. *Id.* at 195-97.

Here, the Court does not need to interpret anything "broad[ly]" because Vermilion NAACP's "pleadings and briefings" precisely challenge the entire plan. *Id.* For example, the relief in the Complaint is to "[d]eclare that Ordinance 22-12 violates the OPOV requirement of the Fourteenth Amendment of the U.S. Constitution." Dkt. 1 at 11. In the Motion for Preliminary Injunction, Vermilion NAACP argues that "Abbeville ran afoul of the OPOV principle by adopting Ordinance 22-12." Dkt. 31-1 at 12, and the injunction seeks to enjoin the use of the unconstitutional map in District B's special election. *Id*. at 1.

In short, this challenge is against the entire plan, based on its 19.3% deviation. Abbeville lacks any support for the proposition that an injunction of a special election in one district of an unconstitutional plan is any less proper because the population deviation in that district (which itself exceeds 10%) is not the same as the plan's overall maximum deviation. Not only is there no

[1] Abbeville filed a Motion to Strike challenging Pl. Ex. 1, 7, 10, and 11. Dkt. 38. These are transcripts of city council meetings, the relevant portions of which were confirmed as accurate by Mayor Roslyn White who was present at those meetings. For completeness, Vermilion NAACP provides the underlying audio for these transcripts as Pl. Ex. 16-18, and a table with the corresponding cites. Pl. Ex. 19.

legal justification for this, but it is also antithetical to what *Perez* held: that the claim "is whatever the plaintiff makes it." 250 F. Supp. 3d at 194.

Even if the court were to accept Abbeville's suggested fantasy, both the total plan and District B's deviation cause a "prima facie" violation. *Brown*, 462 U.S. at 842-43. The total plan deviation is 19.3%. Pl. Ex. 6. And District B's deviation—according to Abbeville's own redistricting consultant—is 10.3%. *Id.* Contradicting itself, Abbeville argues that District B has a 10% deviation, and it declares that the burden of proof does not shift to it. Dkt. 39 at 6-7. This is not the rescue ship Abbeville makes it out to be for two reasons.

First, in support of the 10%, Abbeville only cites to Vermilion NAACP's data table in the Complaint as a "judicial admission." Dkt. 39 at 6-7 n.19. While the table lists out the rounded deviations for all four districts, it also specifies the exact population for each district and that reveals a 10.3% deviation.[2] Dkt. 1 ¶ 2. This does not "qualify as a judicial admission." *See PHI, Inc. v. Apical Indus., Inc.*, 2020 WL 2220315, at *2 (W.D. La. May 7, 2020) (A judicial admission must be "deliberate, clear, and unequivocal.").

Second, a 10% deviation is still a prima facie violation. "[A] maximum population deviation of *10% or greater* creates a prima facie case of discrimination and therefore must be justified by the state." *Coleman*, 615 F. Supp. 3d at 573 (emphasis added and internal quotations omitted). As Abbeville admits in its response, Vermilion NAACP only has the burden if the deviation is "less than ten precent." Dkt. 39 at 6. Having 10 of something is not less than 10. *See also Larios v. Cox*, 300 F. Supp. 2d 1320, 1352 (N.D. Ga.), aff'd, 542 U.S. 947 (2004) ("First,

[2] A single district's deviation is "measured by dividing the absolute deviation of the district from the ideal by the ideal population." *Perez*, 250 F. Supp. 3d at 183 n.67. Here is the equation for District B: (1) 3,086 – 2,796.5 = 289.5; (2) 289.5/2796.5 = 0.1035; and (3) 0.1035 x 100 = 10.3%. *See* Dkt. 1 ¶ 2 n.3.

while a 9.98% total deviation is not presumptively unconstitutional, the plans' drafters pushed the deviation as close to the 10% line as they thought they could get away with. . . ."); *Brown*, 462 U.S. at 842 ("Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations."); *Moore v. Itawamba Cnty., Miss*., 431 F.3d 257, 259 (5th Cir. 2005) (Only population deviation less than ten percent is not per se nondiscriminatory, and this threshold "effectively allocates the burden of proof."). Hence, as the Supreme Court held in *Swann v. Adams*, omitting a deviation justification ends the inquiry, and Vermilion NAACP succeeds on the merits. 385 U.S. 440, 444-45 (1967).

b. The remaining injunction factors favor Vermilion NAACP.

Abbeville does not dispute that Vermilion NAACP members will suffer irreparable harm. Regarding the public interest and the balance of the equities, Abbeville claims: (1) that the motion is untimely; (2) an injunction would cause undue burden; and (3) Vermilion NAACP did not request a bond. Dkt. 39 at 4, 8. All three arguments fail.

i. Vermilion NAACP's motion is timely.

Vermilion NAACP filed its injunction prior to the qualifying period, which is the beginning of the "election machinery." [3] *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 361 F. Supp. 3d 1296, 1303 (M.D. Ga. 2018), aff'd, 979 F.3d 1282 (11th Cir. 2020) (granting an injunction, in part, due to the "election machinery . . . just beg[inning]"). Moreover, Vermilion NAACP waited till the irreparable harm was "likely" and not simply a "possibility." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 22 (2008).

[3] Vermilion NAACP was prepared to file a week before the qualifying period, but Abbeville requested more time due to the snowstorm. Dkt. 31-3.

This meant awaiting Abbeville's adoption of the proclamation calling for the election. *See* La. Stat. Ann. § 18:402(E)(1); La. Stat. Ann. § 18:602(E)(2)(a). On October 15, 2024, Abbeville voted "*to pass* a proclamation." Dkt. 31-1 at 6 n.6. The meeting's minutes even states: "*to adopt*[] a proclamation calling for a special election . . . ." Pl. Ex. 20 at 4, October 15, 2024, City of Abbeville Meeting Minutes. What occurred on that day was not the passing of a proclamation. And to Vermilion NAACP's knowledge, that has not occurred yet.

Louisiana law requires Abbeville to pass a proclamation for a special election "at least four weeks prior to the opening of the qualifying period. . . ." La. Stat. Ann. § 18:402(E)(1). The final day to pass the proclamation for the January 29, 2025, qualifying date was December 31, 2024. Vermilion NAACP's counsel contacted the Vermilion Parish Clerk of Court twice, once on December 11, 2024, and the other on January 14, 2025, to determine whether the Clerk received the proclamation. Both times the Clerk did not know about it. Under La. Stat. Ann. § 18:602(E)(2)(c), the Clerk of Court is required to receive the proclamation "within twenty-four hours after [it was] issu[ed]."

Nevertheless, in the alternative, Abbeville has not constructed an adequate response to prevent this Court from granting the injunction. While timeliness is imperative—it is not the sole determining factor. *See Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). First, the "underlying merits are entirely clearcut in favor" of Vermilion NAACP. *Id.* Second, permitting an election with an overpopulated district is an irreparable harm. *See Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Third, as explained below, Abbeville simply states that an injunction would cause "undue burden" without any explanations or examples. Dkt. 39 at 9. That is not sufficient. *Cf. Disability Rts. Louisiana v. Landry*, 2024 WL 3566698, at *2 (M.D. La. July 29, 2024) (finding a "significant burden" due to the evidence presented).

Abbeville cites to *Miller v. Bd. of Comm'rs of Miller Cnty*., but it is distinguishable. 45 F. Supp. 2d 1369 (M.D. Ga. 1998). The court in *Miller* reasoned that there was not irreparable harm because "another round of primary elections" could occur, and that there was still a general election. *Id.* at 1372. First, this is inconsistent with what "[c]ourts routinely deem" as an irreparable harm—including the *Miller* court—because "once the election occurs, there can be no do-over and no redress." *Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1356 (M.D. Ga. 2020) (internal quotations omitted). Second, with two candidates qualifying in Abbeville, it is unlikely there will be a general election. *See* La. Stat. Ann. § 18:511(A). Third, unlike Abbeville, the defendant provided evidence of the impact of the injunction. *Miller,* 45 F. Supp. 2d at 1372 (relying on the defendant's affidavit).

ii. Abbeville will not be burdened by halting an unconstitutional election.

Abbeville contends—without evidence—that it would suffer "significant administrative and financial burdens" if the Court were to enjoin the election.[4] Dkt. 39 at 4. It also claims that an injunction would "deprive" District B voters "their right to elect a new" member of the city council. *Id.* at 10. But Vermilion NAACP's "request for relief to protect . . . [the] right to vote and to dispel any inequality in citizens' opportunity to cast a vote outweighs the State's harm." *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 219–20 (W.D. Tex. 2020). *See also Coleman*, 615 F. Supp. 3d at 576 (explaining that protecting OPOV "surely serves the public interest").

Moreover, Abbeville's justification that Lousiana law requires it to hold an election, Dkt. 39 at 9, fails because a state law may not violate the United States Constitution. U.S. CONST. art.

[4] Abbeville also mentions that "the candidates" will be "financially aggrieved," but that is not applicable to the analysis because they are not parties to the suit. Dkt. 39 at 5.

VI, cl. 2. In any event, Louisiana law *does not* require Abbeville to hold a special election for District B. Under La. Stat. Ann. § 18:602(E)(4), "no special election will be called" if the vacancy occurred within "eighteen months of the regularly scheduled primary" and "the appointee shall serve for the remainder of the term of office." Councilwoman Rachel Mouton could thus lawfully complete the term because the vacancy occurred on September 30, 2025, and the next regularly scheduled primary would be March 28, 2026. La. Stat. Ann. § 18:402(C)(1).[5]

Lastly, Abbeville argues that a bond request is necessary. Dkt. 39 at 3. It is not. As this Court explained, "the amount of security required is a matter for the discretion of the trial court, and the Fifth Circuit has held district courts have discretion to require no security at all." *Teche Vermilion Sugar Cane Growers Ass'n Inc. v. Su*, 2024 WL 4246272, at *24 (W.D. La. Sept. 18, 2024) (internal quotation omitted). Furthermore, bonds are often waived for constitutionals claim. *See NetChoice, LLC v. Fitch*, 738 F. Supp. 3d 753, 779 (S.D. Miss. 2024) (waving the bond because plaintiffs were engaged in "'public-interest litigation'" to protect their constitutional rights) (quoting *City of Atlanta v. Metro. Atlanta Rapid Transit Auth*., 636 F.2d 1084 (5th Cir. 1981)).[6]

Abbeville inflates a portion of *Chisom v. Jindal*, 890 F. Supp. 2d 696 (E.D. La. 2012) to support their claim that a bond is mandatory. Dkt. 39 at 4. That is not what the case held. First, the Fifth Circuit established that a bond is not mandatory. *Kaepa, Inc. v. Achilles Corp*., 76 F.3d 624,

[5] La. Stat. Ann. § 18:402(C)(1) was amended in 2024 to reschedule the 2026 primary in April instead of March, but this change is not effective until August 1, 2025. Pl. Ex. 21 at 22, Act 640 (2024). Because the vacancy and the appointment occurred prior to the amendment going into effect, it does not impact this case.

[6] Without any citation, Abbeville also requests "legal expenses incurred" to be included in the bond. Dkt. 39 at 5. That is not part of the "monetary damages" that may "result [due to] the preliminary injunction." *Thomas v. Varnado*, 511 F. Supp. 3d 761, 766 (E.D. La. 2020).

628 (5th Cir. 1996). Second, the parties' motions did not "seek" a preliminary injunction "under Rule 65. . . ." *Chisom,* 890 F. Supp. 2d at 725. Whereas the Vermilion NAACP did. Dkt. 31, Dkt. 31-1 at 6-7.

II. Vermilion NAACP Has Associational Standing to Seek an Injunction.

Abbeville does not dispute any of the elements of Vermilion NAACP's associational standing. Instead, it claims that the Vermilion NAACP Declaration, Pl. Ex. 3, is improper evidence to demonstrate it has a member with standing because of the differences between the declaration and the deposition. Dkt. 39 at 2-3. Abbeville also claims that President Linda Cockrell does not have personal knowledge of the organization's members.[7] *Id*. But Abbeville did not include Pl. Ex. 3 in its Motion to Strike filed the same day as its response. Dkt. 38. Nonetheless, the declaration is proper evidence for the injunction.[8] *See Mi Familia*, 497 F. Supp. 3d at 209 (relying on a declaration to establish standing).

"[A]ny difference between [the] deposition testimony and [the] declaration go to weight, not the admissibility of [the] testimony." *Emerald Land Corp. v. Trimont Energy (BL) LLC*, 2021 WL 2942912, at *4 (W.D. La. July 13, 2021). Here, there is not a difference because President Cockrell explained in her deposition that she could not remember information such as the District

[7] Abbeville also states the Declaration is hearsay, Dkt. 39 at 3, but "fails to identify specific statements in [the] Declaration which are conclusory," "cannot meet any hearsay exception," or that "cannot be presented in a form that would be admissible at trial." *Arceneaux v. City of Houston*, 2024 WL 5248432, at *3 (S.D. Tex. Nov. 22, 2024), report and recommendation adopted, 2024 WL 5247204 (S.D. Tex. Dec. 30, 2024).

[8] Furthermore, Abbeville cites to Rule 56, Dkt. 39 at 3, which deals with Summary Judgment and not injunctions. "The law is well-settled that . . . the court may rely upon otherwise inadmissible evidence when considering a preliminary injunction." *Half Price Books, Recs., Mags., Inc. v. Barnesandnoble.com, LLC*, 2003 WL 23175432, at *1 (N.D. Tex. Aug. 15, 2003) (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)).

B member's address "offhand" but that the Vermilion NAACP has documents with this information on it. Pl. Ex. 15 at 74:10-75:11.

Regarding personal knowledge, President Cockrell may declare that there are members in District B who are voters. *See Ann v. Lone Star Fund IV (U.S.), L.P.*, 2023 WL 5727317, at *3 n.4 (N.D. Tex. Aug. 22, 2023), report and recommendation adopted, 2023 WL 5725538 (N.D. Tex. Sept. 5, 2023) (clarifying that a declarant's title "supports a reasonable inference that she may provide testimony" about the organization); *see also DIRECT TV, Inc. v. Budden*, 420 F.3d 521, 530 (5th Cir. 2005) (similar).

While testimonial evidence alone is sufficient to establish the first element of associational standing, *see Nairne v. Ardoin*, 715 F. Supp. 3d 808, 828 (M.D. La. 2024), Vermilion NAACP may now further bolster its standing claim with documentary evidence due to the Protective Order. Dkt. 37. Vermilion NAACP provided these documents to Abbeville before it filed its response.

The District B member that Vermilion NAACP agreed to identify was a member when the suit was filed. Pl. Ex. 22, Vermilion NAACP Active Membership list (demonstrating the membership has been effective since 2020 and the renewal is not due till March 2025); *see also* Pl. Ex. 23, 2023 Vermilion NAACP dues payment; Pl. Ex. 24, 2024 Vermilion NAACP dues payment; Pl. Ex. 25, District B member's 2022-2024 Vermilion NAACP membership cards.

In addition, the member resides and votes in District B. *See* Pl. Ex. 26, District B member's driver's license; Pl. Ex. 27, District B member's voter information report; Pl. Ex. 28, March 29, 2025, sample ballot. Thus, the Vermilion NAACP has standing.

CONCLUSION

Plaintiff's Motion for Preliminary Injunction should be granted.

Dated: February 21, 2025.

Respectfully submitted,

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