No. 24A_______

In the Supreme Court of the United States

PRESS ROBINSON, et al.,
Applicants,

v.

PHILLIP CALLAIS, et al.,
Respondents.

On Appeal from the
United States District Court for the
Western District of Louisiana

EMERGENCY APPLICATION FOR STAY OF INJUNCTION

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TO THE HONORABLE SAMUEL ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT.

INTRODUCTION[1]

Robinson Applicants ("Applicants") are Black voters and civil rights organizations who, after years of litigation, successfully resolved their challenge under the Voting Rights Act ("VRA") to Louisiana's 2022 congressional map ("HB1"). *See Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022) ("*Robinson I*"). Two separate, unanimous panels of the Fifth Circuit agreed with the district court that Louisiana likely violated the VRA in adopting a congressional plan with only one Black opportunity district. *See Robinson v. Ardoin*, 37 F.4th 208 (5th Cir. 2022) ("*Robinson II*"); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson III*"). In so concluding, these courts recognized that Louisiana could draw a second opportunity district that was geographically compact and respected traditional redistricting principles, which could be done without race becoming the predominant factor in drawing district lines. *See Robinson I*, 605 F. Supp. 3d at 822–39; *Robinson III*, 86 F.4th at 592–96. After this Court remanded the case to the lower courts to resolve *Robinson* "in advance of the 2024 congressional elections," *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023), Louisiana was given the chance to remedy the likely VRA violation, *Robinson III*, 86 F.4th at 583.

Governor Jeff Landry and Attorney General Elizabeth Murrill—both of whom were counsel for Louisiana in the *Robinson* litigation—urged the Louisiana

[1] On May 7, 2024, the State of Louisiana filed a notice of appeal, and Applicants understand the State intends to seek a stay from this Court by tomorrow, May 9, 2024.

Legislature to adopt a plan that complies with Section 2 as determined by the district and appellate courts, because, if the Legislature failed to act, a federal court would likely draw a new plan instead. App. 879–880; App. 573–575; App. 597; App. 700; 702. Having retained control of the process, the Legislature and Governor devised a map predominately motivated by a desire to protect certain incumbents and achieve other policy objectives while also satisfying the VRA. App. 758–59; App. 778–79, 782; App. 795; App. 861–62; App. 561–62, 567–68, 571; App. 597–98; App. 652, 656–59, 681–82, 690–91. In January 2024, the Legislature adopted a new plan ("SB8") with two majority-Black districts, and the Governor signed it into law. App. 734–35. SB8 was chosen over another plan with two Black opportunity districts, SB4. *See* App. 637; App. 655. SB4, like the plans proposed by the Applicants in the *Robinson* litigation, connected Baton Rouge to the Delta. App. 608; App. 656, 670; App. 1035–37; App. 1077; App. 890. SB4 was more compact and split fewer parishes and municipalities than SB8 and HB1. App. 890. But SB4 did not achieve the Governor and Legislature's overriding goal of protecting the seats of U.S. House Speaker Mike Johnson, Majority Leader Steve Scalise, and Representative Julia Letlow at the expense of Congressman Garret Graves. App. 656; App. 673.

Accomplishing these goals required a district configuration very different from HB1 and different from SB4 and the *Robinson* illustrative plans that had been found to satisfy *Gingles* I. Accordingly, rather than a Delta-based plan that would have placed Congresswoman Letlow in the new majority-Black district, the Legislature chose SB8, in which the new district followed the Red River and I-49 corridor,

connecting communities from Baton Rouge to Shreveport, leaving Congresswoman Letlow's district largely intact. The Legislature had other reasons to choose this configuration over more compact VRA-compliant alternatives, such as the common economic and healthcare interests of its residents and the desire of one state senator to keep her senate district in Congresswoman Letlow's congressional district. App. 1047–49; App. 761–762; App. 677. The overriding objective, however, was political.

"Redistricting is 'primarily the duty and responsibility of the State.'" *Perry v. Perez*, 132 S. Ct. 934, 940 (2012) (citing *Chapman v. Meier*, 95 S. Ct. 751 (1975)). In the wake of *Robinson*, Louisiana took up that duty to draw a plan that "reflects the State's policy judgments on where to place new districts and how to shift existing ones." *Id.* at 941. But the *Callais* Plaintiff-Respondents, unhappy with the Legislature's choices, successfully petitioned the split District Court panel—circumventing the *Robinson* district court—to enjoin SB8.

The *Callais* majority's injunction is an "aggressive incursion on state sovereignty." App. 445. It deprives the Legislature of the flexibility needed to remedy an identified VRA violation in accordance with its own policy priorities and leaves Louisiana "trapped between the competing hazards of liability under the Voting Rights Act and the Equal Protection Clause." *Bethune-Hill v. Va. St. Bd. of Elec.,* 580 U.S. 178, 196 (2017) (cleaned up). It is precisely to preclude cases like this one that the Court recognized the principle that government actors must be given "breathing room" to comply with the VRA, when they have good reason to believe they must, without facing constitutional liability. *Id.* The panel majority's decision denies the

State this breathing room, precluding it from "balancing . . . competing considerations." *Bethune-Hill v. Va. St. Bd. of Elec.*, 580 U.S. 178, 187 (2017). It forces the Legislature instead to prioritize compactness and other traditional redistricting principles not just over race, but over other legitimate political and policy objectives.

To begin, the District Court's conclusions rest on a flawed racial predominance analysis. This Court recognized just last term that "Section 2 . . . 'demands consideration of race.'" *Allen v. Milligan*, 599 U.S. 1, 30–31 (opinion of Roberts, C.J.) (quoting *Abbott v. Perez*, 585 U.S. 579, 587 (2018)); *id.* at 34 n.7 ("[t]he very reason a plaintiff adduces a map at the first step of *Gingles* is precisely because of its racial composition"). And it long ago recognized that "race consciousness does not lead inevitably to impermissible race discrimination." *Shaw v. Reno*, 509 U.S. 630, 646 (1993) ("*Shaw I*").

Indeed, at the § 2 liability phase, attempting to draw an "additional majority-minority district . . . is the whole point of the enterprise." *Milligan*, 599 U.S. at 33 (Roberts, C.J.). Given that recognition, it would be incongruous if purposefully creating an additional district as a remedy for a § 2 violation constituted unlawful racial gerrymandering. Yet, the District Court found that the Legislature's intent to satisfy § 2, and to consider race in doing so, necessarily meant that race predominated. Although the court recognized that the Legislature sought to accomplish political objectives as well as comply with the VRA, it rejected political concerns as an explanation for line drawing decisions reflected in SB8—not because they do not plausibly explain the Legislature's choices, but because they came after

the decision to comply with the VRA. In other words, in the District Court's view, and contrary to this Court's precedents, once the Legislature concluded that it must consider race to comply with the VRA, any other considerations that entered its redistricting calculus were necessarily subordinate to race. That is reversible error.

The District Court also wrongly constrained the Legislature by holding that the new opportunity district the State created must itself comply with *Gingles*, as if it were an illustrative map proposed by voting rights plaintiffs. The District Court recognized that *Robinson* held that the plaintiffs there satisfied *Gingles* and were likely to prevail on their claim that HB1 violated § 2. But the panel majority then held, erroneously, that narrow tailoring required the State's remedial map itself to satisfy the first *Gingles* precondition—that is, SB8 must adhere sufficiently to traditional redistricting principles such that if offered as an illustrative map in a § 2 case, plaintiffs would prevail. But this Court has never held that, once a state has a strong basis in evidence to believe that the VRA requires race-conscious remedial action, it loses flexibility to consider factors other than traditional redistricting principles. Nor has it held that the State's own map must satisfy the same compactness test that plaintiffs' illustrative maps must meet under the first *Gingles* prong. The District Court's strict scrutiny analysis leads to an incongruous result, eliminating states' lawmaking flexibility when they redistrict in response to successful § 2 litigation. A stay is therefore warranted.

Beyond the merits, a stay is warranted here because the District Court left Louisiana without a congressional map just months away from the 2024 elections,

with insufficient time to ensure any remedial plan protects Applicants' rights. Developing a remedy in this case is a uniquely complex endeavor because there have been two court rulings, both of which need to be accommodated. First, the *Robinson* decision, affirmed by the Fifth Circuit, held that a congressional map containing only one majority-Black district likely violates § 2 of the VRA. *Robinson I,* 605 F. Supp. 3d at 766; *Robinson II*, 37 F.4th at 224–25; *Robinson III*, 86 F.4th at 599. Second, the decision below concluded that the Legislature's initial effort to remedy the § 2 violation was an unlawful racial gerrymander. App. 443. But Black voters have already been compelled, by this Court's earlier stay, to undergo an election under a map that, according to all courts that have examined the issue, likely violated the VRA. A stay is needed to ensure that harm is not repeated.

In this redistricting cycle, in circumstances far less complex, this Court and others have repeatedly stayed rulings that were in favor of voters of color who challenged congressional maps as § 2 violations or racial gerrymanders, reasoning that there was not enough time for orderly proceedings to occur (including initial appellate review) given key dates on the election calendar. *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022); *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022); *S.C. State Conf. of NAACP v. Alexander*, No. 3:21-CV-03302-MGL-TJH-RMG, 2024 WL 1327340, at *2 (D.S.C. Mar. 28, 2024). Those decisions show that a stay is likewise required here.

The State has argued that a decision on what map will be used in the 2024 congressional elections must be final in just seven days, by May 15, 2024, to allow the Secretary of State sufficient time to administer congressional elections this fall. App.

1083. Indeed, the Secretary of State represented to the District Court that work remains to implement SB8, which cannot be completed while the injunction in is in place. App. 1089. While the District Court has ordered a remedial schedule that would allow for a plan imposed by June 4, 2024, the State's position on the timeline only further compels a stay here. Under either deadline, there is not enough time for a remedial process to play out that protects Applicants' and the other parties' rights. *Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring) (granting stay where "[t]he District Court ordered that Alabama's congressional districts be completely redrawn within a few short weeks").

Moreover, although the District Court paid lip service to the need to allow the Legislature an opportunity to adopt a remedial plan, as the State has requested, the court's schedule forecloses that possibility, in contravention of repeated holdings of this Court in similar cases. *See*, *e.g.*, *McDaniel v. Sanchez*, 452 U.S. 130, 150 n.30 (1981) ("[E]ven after a federal court has found a districting plan unconstitutional, redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt.") (cleaned up). Under the Louisiana Constitution, there is no way for the Legislature to pass a remedial map in the ongoing regular session, La. Const. Art. III, § 2(A)(2)(a), (3)(a), and because any legislative enactment in a special session would take at least twelve days from the Governor's call to passage, La. Const. Art. III, §§ 2(B), 15(D); *see also* La. S. Rule 10.6, there is simply not enough time for the Legislature to be given the opportunity to propose a new map by May 15.

Even under the District Court's modestly longer deadline, the court's schedule poses the prospect of severe irreparable harm to Applicants. Remedial proceedings in similar cases have taken months.[2] Even if a map that passed muster with the District Court could be developed in a matter of weeks, approaching (or, according to the Secretary of State, surpassing) the last possible deadline for implementation of a new plan risks that there will be insufficient time for the State to change course—let alone for review by this Court to ensure that the State's legislative choices were fairly considered and that any new map also remedies the likely § 2 violation identified in *Robinson*. *Cf. Robinson III*, 86 F.4th at 584 (remedial proceedings must allow for "at least initial [appellate] review . . . and for the result to be used for the 2024 Louisiana congressional elections"); *accord Robinson*, 143 S. Ct. at 2654 (remanding case to Fifth Circuit and district court "for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana"). There is instead a serious risk that a single district court would ultimately have the final say in imposing a map that displaces the considered policy determinations of the Louisiana Legislature and the rulings of two other federal courts— in litigation that had been up and down the federal court system multiple times, including to this Court—that a VRA remedy was needed.

At minimum, this Court should enter a conditional stay that the District Court's injunction preventing the Legislature from using SB8 may not be

[2] In one recent example, in the *Milligan* proceedings in Alabama, the time from this Court's remand on June 8, 2023, to the district court's order adopting a new court-developed map on October 5, 2023, *see Singleton v. Allen*, No. 2:21-CV-1291-AMM, 2023 WL 6567895, at *1 (N.D. Ala. Oct. 5, 2023), was approximately four months.

implemented unless and until remedial proceedings, including an opportunity for appellate review by this Court, are completed in sufficient time for the result to be used in the 2024 congressional elections. There is no basis for leaving the State without any congressional map when it is, at best, doubtful that new remedial proceedings can be completed that will respect the particularly complex circumstances of this case, including the need to ensure that Applicants do not have their rights under the VRA denied in yet another election cycle.

Given the serious legal flaws in the District Court's injunction, and the risk that remedial proceedings and appellate review cannot be completed sufficiently in advance of the 2024 congressional election to avoid disruption and ensure Applicants' § 2 rights are vindicated, a stay is appropriate here. Accordingly, Applicants respectfully ask this Court to stay proceedings pending appeal to avoid irreparable harm to Applicants, the State, and voters across Louisiana.

STATEMENT OF THE CASE

A. Redistricting Process Begins After 2020 Census Sustains Louisiana's Six Congressional Seats and Reveals Increase in Black Population

The 2020 Census revealed that Louisiana's population increased since 2010, with all gains attributable to minority population growth. *Robinson I*, 605 F. Supp. 3d at 778. Black Louisianans accounted for roughly half of this population growth, with Black people now comprising about a third of the state's voting age and total populations. *Id*. Meanwhile, the White population has declined since the 1990s. *Id*.

In 2022, following the Census, Louisiana redrew its congressional districts. *Id*. at 767–68. In June 2021, the Legislature enacted Joint Rule 21, codifying a set of

principles for the redistricting process. *Id.* at 767; App. 705. From October 2021 through January 2022, the Legislature embarked on a statewide "roadshow" tour, soliciting public input on the redistricting process. *Robinson I*, 605 F. Supp. 3d at 767. In these hearings, Black voters from around the State testified to their communities' needs and the lack of responsiveness of their representatives, and called on the Legislature to adopt a map that would provide fair representation and ensure their voices were heard. *Id.* at 813–15.

When the Legislature convened on February 1, 2022, to begin its redistricting session, it was presented with multiple options for maps that created two majority-Black congressional districts. *See* App. 1071 n.6. Those included a plan that, like SB8, connected communities in Baton Rouge and Shreveport as well as other plans with a new majority-Black district running from Baton Rouge north along the Mississippi border and Delta Region instead. *See, e.g.*, App. 1077; *see also* App. 607; App. 648; App. 667. Nevertheless, ignoring the calls from Black voters for more responsive government and more representative districts, on February 18, 2022, the Legislature rejected these plans and adopted HB1. *Robinson I*, 605 F. Supp. 3d at 768. HB1 had only one majority-Black district, stretching from New Orleans to Baton Rouge, and five districts with large White voting age majorities across the rest of the state. *Id.*; App. 706–25. On March 30, 2022, HB1 was adopted over the veto of then-Governor John Bel Edwards. *Robinson I*, 605 F. Supp. 3d at 768.

B. 2022 Redistricting Process Leads to Litigation

Immediately after the veto override, civil rights organizations and individual Black voters from across the state filed lawsuits and moved for a preliminary

injunction against the Secretary of State in the U.S. District Court for the Middle District of Louisiana. *See id.* The plaintiffs challenged HB1 as a violation of § 2 of the VRA because it diluted the voting strength of Black voters. *Id.* The Attorney General and the leaders of both chambers of the Legislature intervened as defendants, and the Legislative Black Caucus intervened as a plaintiff. *Id.* In May 2022, the district court held a five-day evidentiary hearing on the plaintiffs' preliminary injunction motions. *Id.* at 766. The parties presented testimony from seven fact witnesses and fourteen experts and filed extensive pre- and post-hearing written submissions. *See generally id.*

C. The District Court and Two Panels of the Fifth Circuit Identify a Likely VRA Violation

In June 2022, the Middle District issued a 152-page opinion granting the plaintiffs' motions for a preliminary injunction. *Id.* at 766. The court concluded that the plaintiffs were likely to prevail in establishing the preconditions and totality of circumstances necessary to prove § 2 liability under *Thornburg v. Gingles*, 478 U.S. 30 (1986). The court credited testimony from the plaintiffs' experts that they had balanced consideration of race among a host of factors in developing their illustrative maps and found that race had not predominated. *Robinson I*, 605 F. Supp. 3d at 838–39.

The court found that the Black population was sufficiently large and geographically compact to form a voting majority in two congressional districts consistent with traditional redistricting principles, and that, without such districts, bloc voting by White voters would invariably lead to the defeat of the congressional

candidates of choice of the overwhelming majority of Black voters. *Id*. at 820–31, 839–44. And it found that the historical and ongoing discrimination faced by Black Louisianians and the tenuous justifications supporting HB1 demonstrated that, in the totality of the circumstances, HB1 diluted the votes of Black voters in violation of § 2. *Id.* at 844–51. The court rejected arguments that congressional maps with two majority-Black districts were racial gerrymanders and that the *Hays* cases from the 1990s precluded enactment of such a map. *Robinson I*, 605 F. Supp. 3d. at 831–39 (citing *Hays v. Louisiana*, 839 F. Supp. 1188, 1195 (W.D. La. 1993) ("*Hays I*"); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996) ("*Hays IV*")).

The court provided the Legislature an opportunity to adopt a remedial plan that included two Black opportunity districts before commencing remedial proceedings. *Id.* at 766. It emphasized that "[s]tates retain broad discretion in drawing districts to comply with the mandate of § 2," and that the State is not required to "draw the precise compact district that a court would impose in a successful § 2 challenge." *Id.* at 857 (quoting *Shaw v. Hunt*, 517 U.S. 899, 917 n.9 (1996), and *Bush v. Vera*, 517 U.S. 952, 978 (1996)); *see also id*. at 857–58 (noting that "deference is due to [the State's] reasonable fears of, and to their reasonable efforts to avoid, § 2 liability") (quoting *Vera*, 517 U.S. at 978).

Defendants and the Legislative Intervenors filed notices of appeal and moved for a stay pending appeal. *Robinson I*, Doc. 174-176. On June 12, 2022, a Fifth Circuit motions panel unanimously denied the motion, concluding that the defendants had "not met their burden of making a strong showing of likely success on the merits."

Robinson II, 37 F.4th at 215. The panel agreed with the district court that the plaintiffs' illustrative majority-Black district was compact visually, as measured by traditional redistricting metrics, and that it preserved communities of interest. *Id.* at 218–19. The court rejected defendants' arguments that "complying with the district court's order [to adopt a plan with two majority-Black districts] would require the Legislature to adopt a predominant racial purpose." *Id.* at 222–24. Reviewing the evidence of compactness, the testimony of the expert witnesses, and the applicable legal principles, the panel held that "the defendants have not overcome the district court's factual findings indicating that the illustrative maps are not racial gerrymanders." *Id.*

The Legislature convened later in June 2022 but failed to enact a new map. App. 650:3–15. However, before the district court imposed a map, this Court ordered that the case be held in abeyance pending the decision in a § 2 challenge to Alabama's congressional map. *Robinson*, 142 S. Ct. at 2892. After its decision in *Milligan*, 599 U.S. at 17, this Court lifted the stay and remanded "for review in the ordinary course and in advance of the 2024 congressional elections." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023).

On November 10, 2023, a Fifth Circuit merits panel unanimously affirmed the *Robinson* court's ruling that plaintiffs were likely to succeed on the merits of their § 2 claim. *Robinson III*, 84 F.4th at 583. Consistent with precedent and *Milligan*, the panel concluded that a redistricting objective to establish two majority-Black districts "does not automatically constitute racial predominance." *Id.* at 594 (citing *Milligan*,

599 U.S. at 32–33). The Fifth Circuit reasoned that "[a]ttempting to reach the needed 50 percent threshold does not automatically amount to racial gerrymandering," so long as the "target of reaching a 50 percent BVAP was considered alongside and subordinate to the other race-neutral traditional redistricting criteria," such as "communities of interest, political subdivisions, parish lines, culture, religion, etc." *Id.* at 595.

The court concluded that "[t]he district court's preliminary injunction … was valid when it was issued." *Id.* at 599. Nevertheless, it vacated the preliminary injunction on the ground that a trial on the merits could be held before the 2024 election, so emergency relief was unnecessary "to prevent the alleged elections violation." *Id.* at 600. Noting the State's representation that a new map was needed by May 2024 to complete preparations for the 2024 elections, *id.* at 584, the court allowed the Legislature until January 2024 to enact a new congressional plan and held that "[i]f no new plan is adopted, then the district court is to conduct a trial and any other necessary proceedings to decide the validity of the H.B. 1 map, and, if necessary, to adopt a different districting plan for the 2024 election." *Id.* at 601–02. On December 15, 2023, the Fifth Circuit denied defendants' motion for reconsideration *en banc*. *Robinson III,* Doc. 363-2 at 2.

D. 2024 Legislative Process Achieves VRA Remedy while Prioritizing Political Policy Choices

Members of the Legislature understood the courts' rulings to mean that if the State proceeded to a trial on HB1, the courts were likely to find that it violated the VRA and may, at least for the 2024 election, impose a judicially-crafted map that

would likely resemble the maps proposed by the *Robinson* plaintiffs. *See* App. 563; App. 573; App. 649–50; App. 660–61; App. 664. Rather than accede to a court-ordered map that the Legislature would have little control over, the State opted to forgo a trial and itself remedy the § 2 violation the courts had identified. On January 8, 2024, Governor Jeff Landry called the Legislature into session to "legislate relative to the redistricting of the Congressional districts of Louisiana," as one of his first acts upon inauguration. App. 726. The Legislature convened one week later on January 15, 2024, the earliest time permitted under the Louisiana Constitution following the call of the session. *Id.*; *see also* La. Const. art. III, § 2(B).

In addressing the Legislature at the start of the session, the Governor made a clear call to action for legislators to enact a map through the legislative process to avoid a court-drawn map. App. 880; App. 596–97; App. 652. By the end of the day, six congressional maps were filed across both chambers. App. 922–45; App. 946–66; App. 967–86; App. 987–1013; App. 1014–37; App. 1038–45. Five included two majority-Black districts, including the Governor's preferred map, SB8, which included a second majority-Black district connecting Baton Rouge and Shreveport, and the *Robinson* plaintiffs' preferred map, Senate Bill 4 ("SB4"), which contained a second majority-Black district connecting Baton Rouge with parishes along the Mississippi Delta to the north. App. 597; App. 637. Along with District 2, SB8 encompassed a majority of Black voters in District 6, currently represented by Congressman Garret Graves, App. 730, while SB4 created an additional majority-Black district in District

5, currently represented by Congresswoman Julia Letlow. *See* App. 1038; *see also* App. 670; App. 673.

Senator Glen Womack, SB8's sponsor, stated that SB8 was the only map he reviewed that would satisfy the courts and that "accomplished the political goals" he found important. App. 759. Legislators that voted for SB8 understood that it was Governor Landry's preferred map because it would likely result in the unseating of Congressman Graves, who is a political rival. App. 597; App. 637. In support of SB8, Senator Womack and other supporters also highlighted the interests tied together along the Red River and I-49 corridor in District 6, whose residents share economic and agricultural interests, as well as educational and healthcare infrastructure. App. 778;[3] App. 799–98 (exchange between Representative Larvadain and Senator Womack).

SB8 was the only congressional map to advance out of committee and through the legislative process. App. 1046. As enacted, SB8 reflected only one amendment made during the legislative process. That amendment, supported by Senator Heather Cloud, was adopted for the express nonracial purpose of moving part of her district into Congresswoman Letlow's district. App. 1047–49; App. 991–92; App. 677. The amendment

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[3] "The corridor that you see on the map … if you'll notice the map runs up Red River, which is barge traffic, commerce. It also has I-49, which … goes from Lafayette to Shreveport, which is also a corridor for our state that is very important to our commerce. We have a college. We have education along that corridor. We have a presence with ag[riculture] with our row crop, as well as our cattle industry all up along Red River in those parishes. A lot of people from that area, the Natchitoches Parish, as well as Alexandria, use Alexandria…for their healthcare, their hospitals, and so forth in that area."

added a single parish split, bringing the total to sixteen (one more than HB1, the map enacted in 2022). *Id.*

The final version of SB8 did not include other proposed amendments that would have increased BVAP. For example, an amendment offered by Representative Farnum would have increased the BVAP in Districts 2 and 6 and resulted in a three-way split of East Baton Rouge Parish. App. 1050–67; App. 795–98; App. 684–88. The amendment was initially adopted by the House and Governmental Affairs Committee, but then struck out of the final bill in a bipartisan vote on the House floor. *See* App. 1050–67; App. 1068; *see also* App. 861.

The Legislature passed SB8 on Friday, January 19, 2024. App. 728–29. The Governor signed it into law as Act 2 on January 22, 2024. *Id.*

E. *Callais* Lawsuit Unravels VRA Remedy Enacted by the Legislature

On January 31, 2024, *Callais* Plaintiffs filed suit challenging SB8 as an unconstitutional racial gerrymander, and on February 7, 2024, moved for a preliminary injunction. App. 1, 33. Applicants moved to intervene on February 7, 2024. App. 78. On February 21, 2024, prior to ruling on the motion to intervene, the District Court entered a scheduling order calling for a preliminary injunction hearing consolidated with the trial on the merits commencing on April 8, 2024. App. 164. On February 26, 2024, the District Court entered an order granting Applicants motion to intervene limited only to the remedial phase, if one was needed. App. 167. The District Court found that Intervenors satisfied three of the four requirements for intervention

as of right but had not established that the State would inadequately represent their interests to warrant intervention with respect to the merits. *Id.*

On March 9, 2024, Applicants moved for reconsideration of the District Court's denial of their request to participate in the merits phase of the case, arguing the State's opposition to the preliminary injunction demonstrated that it was not adequately protecting Applicants' interests. App. 218. On March 15, 2024, the District Court granted the motion for reconsideration, ruling that "the existing representation of [Applicants'] interests may be inadequate for the initial phase of the case," thus establishing the fourth requirement for intervention as of right. App. 255. Its order limited Applicants' participation in the merits phase to the issues of: (1) whether race was the predominant factor in the creation of SB8; and (2) if so, whether SB8 can pass strict scrutiny review. App. 256.

From April 8 through 10, 2024, the three-judge panel held a joint preliminary injunction hearing and trial, after denying Applicants' motion for continuance or to deconsolidate the preliminary hearing from the merits trial. App. 289. With only eight hours allocated per side to put on their case, the District Court heard testimony from a dozen witnesses, including two fact witnesses and two experts for Plaintiffs as well as Applicants' two rebuttal experts and six fact witnesses: a state senator, a state representative, the former mayor of Shreveport, a pastor serving communities in the challenged district, and two of the *Robinson* Applicants (Davante Lewis, a public service commissioner living in the challenged District 6 and Ashley Shelton, President/CEO of Power Coalition for Equity and Justice, which serves communities

across the state and has full-time staff in cities across District 6). App. 403–15. Witnesses for Applicants testified to the political motivations behind the enactment of SB8, *see* App. 758–60; App.647, App. 680–81; App. 782; App. 659; App. 597, 598; App. 659; App. 690–91, as well as the communities of interest connected throughout District 6. *See, e.g.*, App. 778; App. 1078; App. 612; App. 613–14; App. 620–22; App. 617; App. 620–21; App. 621–622; App. 626; App. 626–628; App. 629–631; App. 631–632; App. 632–33; App. 634; App. 639; App. 640–42; App. 642–43; App. 689; App. 691–92; App. 692–94; App. 697.

On April 30, 2024, the divided three-judge District Court ruled that race had predominated among the Legislature's considerations in the enactment of SB8 and that the Legislature's consideration of race in crafting SB8 was not narrowly tailored to remedy the likely § 2 violation. App. 443–44. Accordingly, it enjoined the State from using SB8 in any election and ordered remedial proceedings. *Id*. In the interim, no map remains in effect.

The majority acknowledged "this case presents evidence of 'mixed motives' in creating District 6—motives based on race and political considerations." *Id*. at 38. The court further affirmed "that the record includes evidence that race-neutral considerations factored into the Legislature's decisions, such as the protection of incumbent representatives." *Id*. at 43–44. Nonetheless, the court found racial predominance in SB8 because, at the time these political considerations came into play, the Legislature's decision to comply with the *Robinson* rulings had already been

made and because, in the court's view, the Legislature could have accomplished these political goals without complying with § 2. *Id.* at 34–45.

Turning to whether the racial predominance was justified by a compelling state interest, the court engaged in a *de novo* analysis of SB8 under the framework set forth in *Thornburg v. Gingles*, 478 U.S. 30, 49 (1986). Notwithstanding this Court's recognition that a legislature has flexibility in remedying a § 2 violation and need not choose the compact districts a plaintiff must present as illustrative districts in a vote dilution claim, *see, e.g.*, *Bethune-Hill*, 580 U.S. at 194–96; *see also Vera,* 517 U.S. at 977, the District Court applied the elements of the *Gingles* analysis and concluded that District 6 was not reasonably compact, ignoring the record evidence and rulings of the Middle District of Louisiana and two panels of the Fifth Circuit Court of Appeals in *Robinson* that already found vote dilution under the *Gingles* framework. Bypassing this precedent, the District Court claimed it could not decide on the record before it "whether it is feasible to create a second majority-Black district in Louisiana that would comply with the Equal Protection Clause of the Fourteenth Amendment." App. 442–43. In evaluating whether SB8 satisfied the *Gingles* standard, the District Court relied heavily on extra-record evidence and assumptions about political priorities rebutted in the trial record, while failing to account for any redistricting considerations beyond § 2 compliance and strict adherence to traditional redistricting principles. App. 429–44.

During a status conference on May 6, 2024, which the District Court called to hear from parties concerning remedial proceedings, counsel for the Secretary of State

represented that May 15, 2024 was the latest possible deadline to adopt a new map for use in the November 5, 2024 congressional elections. The State further explained that, at this point in the legislative calendar, state constitutional guidelines prevent the Legislature from adopting a new map in fewer than twelve days.

The State maintained that the District Court should allow SB8 to be used in the 2024 elections, but both the State and the Secretary of State suggested that reverting to HB1, the map found to violate § 2 in *Robinson*, offered another remedial possibility. Counsel for the Respondents proposed the readoption of the map enacted by the Legislature in 2011, which like HB1 contained only one majority-Black district, with adjustments made to account for population equity.

On May 7, 2024, the District Court issued an order setting a remedial schedule that would lead to a map being imposed by June 4, 2024. App. 1079–82.

ARGUMENT

A stay pending appeal is appropriate when there is (1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction;" (2) "a fair prospect that a majority of the Court will vote to reverse the judgment below;" and (3) "a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (*per curiam*). In election cases such as this one, involving an injunction against a state's duly enacted election laws in the period leading up to an election, a stay is appropriate unless "the underlying merits are entirely clearcut in favor of the plaintiff." *Merrill*, 142 S. Ct. at 881 (2022) (Kavanaugh, J., concurring). Here, each of the *Hollingsworth* factors is established and, given the *Robinson* courts' rulings that

the State had to remedy HB1's violation of § 2 and disagreement among the three-judge panel on the merits of the Plaintiffs' equal protection claim, the merits are far from "entirely clearcut" in Plaintiffs' favor.

I. The District Court's Unwarranted Constriction of the Legislature's Leeway to Balance § 2 Compliance with Other Policy Considerations Is Sufficiently Meritorious for the Court to Note Probable Jurisdiction

"Redistricting is primarily the duty and responsibility of the State, and federal court review of districting legislation represents a serious intrusion on the most vital of local functions." *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (cleaned up). "In assessing the sufficiency of a challenge to a districting plan, a court must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." *Id*. States have significant "breathing room" to remedy identified violations of the VRA while complying with the Constitution and other policy goals. *Bethune-Hill*, 580 U.S. at 194-196.

In the *Robinson* litigation, the district court and the Fifth Circuit held that the *Gingles* preconditions and totality of the circumstances were satisfied, and that Louisiana's congressional redistricting map likely violated the VRA. Remedying this violation required the creation of a second district in which Black voters would have an opportunity to elect representatives of their choice. Both federal courts had rejected the State's arguments that creating a second majority-Black district would inevitably require race to predominate over all other considerations.

Against this background, the Legislature sought to comply with § 2 while also prioritizing its own political and policy goals. It is precisely because legislatures, unlike courts, can and should consider such goals, even as they meet their obligations

under federal law, that this Court has so often emphasized the necessity of allowing States the first opportunity to draw remedial plans and has emphasized the leeway states have in doing so. *See, e.g., North Carolina v. Covington*, 585 U.S. 969, 977 (2018); *White v. Weiser*, 412 U.S. 783, 794–95 (1973). The Legislature took advantage of that opportunity to enact a map that provided a second majority-Black district as required by the VRA while realizing the Legislature's nonracial policy preferences. In other words, SB8 was well within the "breathing room" this Court has instructed must be afforded to states when they seek to comply with the VRA.

In striking down SB8—and providing the Legislature no deference in its effort to remedy the likely § 2 violation identified by the *Robinson* court—the panel below crossed a boundary. The District Court sharply departed from this Court's precedent, and the result was an intrusion on state sovereignty that deprived Louisiana of the breathing room necessary to allow it to comply with both the Constitution and the VRA while also serving its legitimate legislative goals. The result in this case will further inject the federal courts into the redistricting process as states and VRA plaintiffs become unwilling to risk a second lawsuit if they choose to settle VRA claims or otherwise voluntarily comply with an adverse § 2 ruling. Accordingly, it is likely that at least four justices will vote to note probable jurisdiction.

II. This Court Is Likely to Reverse the Lower Court's Ruling

The Court is likely to reverse the lower court's ruling for three reasons. First, this Court has long cautioned lower courts against "afford[ing] state legislatures too little breathing room, leaving them trapped between the competing hazards of liability under the Voting Rights Act and the Equal Protection Clause," which, by

striking down a map driven predominantly by politics because of its shape, is exactly what the court below has done to Louisiana. *Bethune-Hill*, 580 U.S. at 196. Second, the panel's conclusion that race predominated in SB8 based on the Legislature's desire to resolve the *Robinson* litigation penalizes states for their voluntary efforts to remedy § 2 violations. The panel's ruling contravenes this Court's teaching that a map drawn primarily for political or other policy reasons is not a racial gerrymander, even where race or VRA compliance played a role in that map's creation. *Easley v. Cromartie*, 532 U.S. 234, 241–42 (2001); *Lawyer v. Department of Justice*, 521 U.S. 567, 581–82 & n.10 (1997); *Bush v. Vera*, 517 U.S. 952, 958, 962 (1996). Third, in demanding that SB8 satisfy the *Gingles* preconditions, the panel ignored that the *Robinson* rulings had already provided the Legislature with its "good reasons" to believe that the VRA required some race consciousness. *See, e.g.*, *Abbott*, 585 U.S. at 616 (concluding that rulings in earlier litigation provided a state with "good reasons" to believe that a noncompact district was necessary to comply with the VRA).

A. The District Court Puts Defendants in an Impossible Bind between the Constitution and VRA

The panel majority concluded, based largely on its assumption that the Legislature's acknowledgment that it had set out to resolve the *Robinson* litigation constituted direct evidence of racial predominance, that race had predominated in SB8. But even if the Legislature's intentional drawing of a second majority-Black district were in and of itself sufficient to find racial predominance (which this Court's case law makes clear, it is not), SB8 would still be lawful because it falls within the legislative breathing room this Court has emphasized states must have in complying

with the VRA. The *Robinson* litigation provided the Legislature with more than sufficient reasons to conclude that it needed to draw a second majority-Black district, and it was the Legislature's prerogative to choose a plan with a less compact majority-Black district than the maps proposed by the plaintiffs in *Robinson* because doing so served the Legislature's political ends. In depriving the Legislature of that flexibility, the District Court erred, and its injunction should be stayed.

1. Louisiana had a strong basis in evidence to believe it needed to comply with § 2 of the VRA.

"When a State invokes the VRA to justify race-based districting …, the State must establish that it had 'good reasons' to think that it would transgress the Act if it did not draw race-based district lines." *Cooper v. Harris*, 581 U.S. 285, 293 (2017) (cleaned up). "If a State has good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district." *Id.* at 302 (citing *Bush v. Vera*, 517 U.S. 952, 978 (1996) (plurality opinion)). In this case, the *Robinson* litigation provided the State with good reason to think that all the *Gingles* preconditions could be met—because the Middle District and the Fifth Circuit had already found that they had been. *Robinson I*, 605 F. Supp. 3d at 820–31, 839–44 (M.D. La. 2022); *Robinson II*, 37 F.4th at 218, 224–27; *Robinson III*, 86 F.4th at 592, 597–99. Rarely does a state have a stronger basis in evidence to conclude that § 2 requires remedial districting.

In *Robinson*, the district court had before it a robust record, consisting of testimony of fourteen expert witnesses, seven fact witnesses, and 244 exhibits. On the basis of that record, the district court concluded that the Plaintiffs were

"substantially likely to prevail on the merits of their claims brought under § 2 of the Voting Rights Act." *Robinson I*, 605 F. Supp. 3d at 766.

The court went on to hold that "[t]he appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional majority-Black congressional district." *Id.* Among the other arguments addressed by the *Robinson* court was the contention by the defendants in that case—also made by the *Callais* Plaintiffs here—that it would be impossible to create "a second majority-minority district . . . without impermissibly resorting to mere race as a factor."[4] The *Robinson* court rejected that argument, finding that "the record does not support a finding that race predominated in the illustrative map-making," and that "the illustrative plans [with two majority-Black districts] developed by Plaintiffs' experts satisfy the reasonable compactness requirement of *Gingles* I," because they scored well on mathematical measures of compactness, split fewer parishes and municipalities, and protected communities of interest. *Id.* at 831. Accordingly, the *Robinson* court found the *Gingles* preconditions satisfied and concluded that, under the totality of the circumstances, providing Black Louisianians with an equal opportunity to their elect candidates of choice to Congress required a second majority-Black district.

The *Robinson* district court's findings on the lack of racial predominance and on Applicants' satisfaction of *Gingles* were upheld by the Fifth Circuit not once but twice: First, when the Fifth Circuit denied a stay pending appeal, *see Robinson* II, 37

[4] Intervenor-Defendant the State of Louisiana's Combined Opposition to Plaintiffs' Motions for Preliminary Injunction at 15, *Robinson I*, Doc. 108.

F.4th at 208–32, and second, in its merits decision, which came after two rounds of briefing and oral argument. *See Robinson* III, 86 F.4th at 583. Although the court vacated the preliminary injunction, it did so only because "the balance of the equities ha[d] changed." 86 F.4th at 589. Indeed, the Fifth Circuit was so persuaded that Applicants were likely to prevail on the merits that it imposed a deadline on the Legislature to adopt a remedial map, even though no trial had taken place. *Id.* at 583–84. This Court, after initially staying the preliminary injunction pending its decision in *Milligan*, declined to intervene. Instead, the Court instructed the lower courts to complete further proceedings "in advance of the 2024 congressional elections." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023).

The District Court in this case does not—and could not—dispute the *Robinson* court's findings that *Gingles* was satisfied, such that the Legislature needed to create a map with a second opportunity district to satisfy the VRA. Indeed, the District Court declined to find, despite Plaintiffs' contrary assertions, that it is impossible to create a second reasonably configured majority-Black district in Louisiana consistent with traditional redistricting principles, App. 442–43, and assumed "that compliance with Section 2 was a compelling interest for the State to attempt to create a second majority-Black district," *id.* at 47. There is thus no credible dispute that the Legislature had good reasons to believe that any remedial map would have to include two districts in which Black voters would have the opportunity to elect their preferred candidates.

2. States are entitled to "breathing room" when adopting a remedial map under the VRA.

"Electoral districting is a most difficult subject for legislatures, requiring a delicate balancing of competing considerations." *Bethune-Hill v. Va. St. Bd. of Elec.*, 580 U.S. 178, 187 (2017) (citing *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (internal quotation marks omitted)) (cleaned up). "Districting inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task." *White v. Weiser*, 412 U.S. 783, 795–96 (1973). "[I]n assessing the sufficiency of a challenge to a districting plan," then, federal courts engage in "a serious intrusion on the most vital of local functions" and "must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." *Miller*, 515 U.S. at 915. "[T]he legislature must have discretion to exercise the political judgment necessary to balance competing interests and courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (emphasis in original) (cleaned up).

This sensitivity to the complexity of redistricting decisions is especially important where a state is attempting—with requisite "good reasons"—to comply with the VRA. "The law cannot lay a trap for an unwary legislature, condemning its redistricting plan as either (1) unconstitutional racial gerrymandering should the legislature place a few too many minority voters in a district or (2) [violative of the VRA] should the legislature place a few too few. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015) ("*ALBC*").

Accordingly, "[s]tates retain broad discretion in drawing districts to comply with the mandate of § 2," *Shaw II*, 517 U.S. at 917 n.9, and § 2 imposes "no *per se* prohibitions against particular types of districts." *Voinovich v. Quilter*, 507 U.S. 146, 155 (1993); *see also Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) ("§ 2 allows States to choose their own method of complying with the Voting Rights Act"). This discretion allows lawmakers to balance redistricting priorities without needing to optimize every traditional redistricting principle. A map can be narrowly tailored to comply with the VRA without each traditional redistricting principle being held to a requirement of perfection. For example, this Court has held that "[t]he law cannot insist that a state legislature, when redistricting, determine *precisely* what percent minority population § 5 demands." *ALBC* (emphasis in original). Likewise, a map drawn to satisfy § 2 need not win endless "beauty contest[s]" against rival maps to be compliant with the Equal Protection Clause. *Milligan* (quoting *Vera*, 517 U.S. at 977). By the same token, "§ 2 does not forbid the creation of a noncompact majority-minority district," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 430 (2006) ("*LULAC*"), and this Court has accordingly rejected as "impossibly stringent" a requirement that a district drawn to comply with the VRA have the "least possible amount of irregularity in shape." *Vera*, 517 U.S. at 977; *see also LULAC*, 548 U.S. at 494 (Roberts, C.J., dissenting) (Section 2 does not prohibit a legislatively enacted plan that "achieves the maximum number of possible majority-minority districts, but loses on style points, in that the minority voters in one of those districts are not as 'compact' as the minority voters would be in another district were the lines drawn differently.").

Accommodating this breathing room recognizes that government actors cannot always act with perfect information, and, that states, unlike courts, must balance many competing demands when redistricting—not just the requirements of the VRA and Constitution.

3. The District Court Denied the State Flexibility to Consider Nonracial Policy Objectives when Complying with the VRA.

In this case, the Legislature choose a plan, SB8, that was less compact and more irregularly shaped than its prior plan. The Legislature chose that plan over SB4, a plan that also had two majority-Black districts and was more compact than either SB8 or HB1. As the evidence showed, and the District Court did not find to the contrary, that choice was made for the predominant political priority of protecting favored incumbents at the expense of a disfavored one—not for racial reasons. App. 758–59; App. 778–79, 782; App. 795; App. 861–62; App. 561–62, 567–68, 571; App. 597–98; App. 652, 656–59, 681–82, 690–91. The District Court's analysis of racial predominance and its application of strict scrutiny allowed the Louisiana Legislature insufficient breathing room to account for these political objectives in its effort to comply with § 2. The District Court repeatedly intones this Court's observation that § 2 "never require[s] adoption of districts that violate traditional redistricting principles." *See* App. 418, 432, 443 (citing *Milligan*, 599 U.S. at 29–30). But the fact that noncompact districts are never *required* to remedy a VRA violation does not mean, as this Court has also observed, that they are *forbidden*. *LULAC*, 548 U.S. at 430 ("Section 2 does not forbid the creation of a noncompact majority-minority district.") Yet that is the rule the District Court imposes, erroneously holding that

the Equal Protection Clause prohibits noncompact districts when they are adopted to remedy a § 2 violation, even when the departures from traditional redistricting principles were driven by political considerations. That error warrants a stay of the District Court's injunction.

B. The Court Below Erred in Concluding that the Legislature's Intentional Compliance with § 2 Was Racial Predominance.

"Strict scrutiny," as this Court has explained, neither applies "merely because redistricting is performed with consciousness of race" nor to "all cases of intentional creation of majority-minority districts." *Vera*, 517 U.S. at 958. In reaching its conclusion that race predominated in SB8 based exclusively on the Legislature's acknowledgment that it sought to create a second majority-Black district to comply with § 2 and the *Robinson* rulings, the court below violated this precept.

As direct evidence that race was the Legislature's predominant motive in choosing SB8, the District Court cites "statements made by key political figures such as the Governor of Louisiana, the Louisiana Attorney General, and Louisiana legislators, all of whom expressed that the primary purpose guiding SB8 was to create a second majority-Black district due to the *Robinson* litigation." App. 425–27. Although there are many of these statements (the District Court includes nearly two pages of quotations from the legislative record), they all show the same thing—that legislators understood their obligation to remedy the § 2 violation identified in the *Robinson* litigation by creating an additional majority-Black district. Other than this acknowledgment that SB8 was the result of the Fifth Circuit and district court decisions in *Robinson* and legislators' statements of their belief that SB8 met those

courts' demands, the District Court cites no other "direct evidence" that race was the predominant consideration in the creation of SB8. Under this Court's jurisprudence, however, statements that state actors sought to comply with the VRA are consistent with a proper consideration of race, and do not in themselves show that race predominates. *Vera*, 517 U.S. at 958, 962; *Shaw I*, 509 U.S. at 646 ("race consciousness does not lead inevitably to impermissible race discrimination"); *Milligan*, 599 U.S. at 34 n.7 (rejecting state's argument that the intentional creation of a majority-minority district in an illustrative plan dooms the enterprise and observing that "[t]he very reason a plaintiff adduces a map at the first step of *Gingles* is precisely because of its racial composition—that is, because it creates an additional majority-minority district that does not then exist."); *id.* at 31–32 (plurality) (holding that race did not predominate in an illustrative map drawn to satisfy *Gingles* by including a greater than 50% Black Voting Age Population).

The District Court attempts to explain away the extensive and unrebutted evidence in the legislative (and trial) that the political considerations drove the Legislature's decision to draw a new majority-Black district along the Red River rather than, as SB4 had done, in the Delta. Although the District Court acknowledged that incumbency and other political considerations were also at play, it concluded that the statements of intent to comply with § 2 show that "the State first made the decision to create a majority-Black district and, only then, did political considerations factor into the State's creation of District 6." *Id.* at 44. This conclusion, too, runs headlong into this Court's holding in *Vera* that evidence that the State was

"committed from the outset to creating majority minority districts" is not "independently sufficient to require strict scrutiny." 517 U.S. at 962. That is especially true here, where the Legislature sought to comply with § 2 after two federal courts had already concluded that it was possible to create a second majority-Black district without subordinating nonracial considerations to race.

In addition, the panel improperly asserts that the Legislature could have accomplished its political goals without creating a new majority-Black district at all. App. 428–29 ("the Legislature's decision to increase the BVAP of District 6 to over 50 percent was not required to protect incumbents"). In a footnote, the panel comments that "it is not credible that Louisiana's majority-Republican Legislature would choose to draw a map that eliminated a Republican-performing district for predominantly political purposes." App. 428 n.10. But that observation is a non sequitur. The Legislature was not creating a new map in a vacuum; it was creating it in response to multiple federal court decisions requiring a second majority-Black district. How it went about that task—once it accepted it had to—was driven by politics.

The District Court purports also to rely on circumstantial evidence of racial predominance, but its analysis of that evidence is infected by the same legal flaw. The court acknowledges that this Court's precedent required it to "disentangle race from politics and prove that the former drove a district's lines." *Id.* at 38–39 (quoting *Cooper*, 581 U.S. at 308). But the court makes no effort to do so. Instead, it accepts the *ipse dixit* of Plaintiffs' experts that precincts drawn into District 6 contain higher percentages of Black voters than those drawn into neighboring majority-White

districts as evidence of racial predominance. *Id.* at 29–30. But under that theory, any majority-Black district would necessarily be the result of racial predominance: as the expert acknowledged on cross-examination, it is not possible to create a majority-Black district without drawing more Black voters than other voters into that district. In other words, the "indirect evidence" of the racial composition of the precincts included in District 6 proves no more than that the Legislature intentionally created a majority-Black district by ensuring that a majority of voters in that district were Black. App 580–81. For the reasons explained above, that evidence is insufficient as a matter of law to establish racial predominance and adds nothing to the direct evidence of the Legislature's intent to comply with § 2.

The District Court also cites "the unusual shape" of District 6 and specific lines that it says divide cities in SB8 along racial lines as evidence that District 6 was drawn "to achieve the goal of a functioning majority-Black district." App. 428. As SB4 and the illustrative maps offered in *Robinson* demonstrate, however, an unusual shape was not necessary to create a functioning majority-Black district. But according to SB8's sponsor, they were necessary to create a functioning majority-Black district that also "accomplished the political goals" he found important. App. 759. Yet according to the panel majority, even if the choice to draw a majority-Black district that connected Baton Rouge to Shreveport instead of Monroe (and was therefore less compact) could be explained on political grounds, in the District Court's view, the decision to comply with § 2 had already been made, and any other reason for the district's specific configuration was necessarily secondary. This approach to

the indirect evidence is just another way of saying that intentionally complying with § 2 necessarily requires racially predominant redistricting and trumps all other explanations for the specific districting choices the Legislature made—a proposition this Court has repeatedly rejected. *See supra*; *see also Milligan*, 599 U.S. at 30–31 (collecting cases).

C. The Panel Improperly Required SB8 to Satisfy *Gingles*

The District Court applied an incorrect legal standard when it required the State's remedial redistricting plan to adhere to the *Gingles* standard to satisfy the narrow tailoring component of the strict scrutiny analysis. After "assum[ing] without deciding" that the *Robinson* litigation provided a compelling state interest to create a remedial majority-Black district, the District Court then puts forward the view that the narrow tailoring requirement prohibited the Legislature from drawing a district that "does not comply with the factors set forth in *Gingles* or traditional districting principles" in its assessment of strict scrutiny. App. 432; App. 433 ("whether District 6, as drawn, is 'narrowly tailored' requires the Court to address the *Gingles* factors as well as traditional districting criteria."). In other words, in the District Court's view, once the VRA requires remedial consideration of race, the Constitution prohibits consideration of anything that may cause a deviation from traditional redistricting principles. That approach improperly wipes away the breathing room in which the Legislature's "political judgment[s]" or its members' and constituents' "competing interests" might come into play. *See Miller*, 515 U.S. at 915–16.

When a State draws a majority-minority district to comply with the VRA, "the narrow tailoring requirement insists only that the legislature have a strong basis in

evidence in support of the (race-based) choice that it has made." *ALBC*, 575 U.S. at 278 (cleaned up). "That standard does not require the State to show that its action was actually necessary to avoid a statutory violation, so that, but for its use of race, the State would have lost in court." *Bethune-Hill*, 580 U.S. at 194 (cleaned up). This Court has never held that when a state enacts districts to comply with § 2, strict scrutiny requires its plan to satisfy the first *Gingles* precondition or adhere to traditional redistricting principles. To be sure, in cases where a state asserts compliance with § 2 as a defense to a racial gerrymandering claim and identifies no strong basis in evidence for its race-based action other than its own noncompact enacted districts, this Court has scrutinized whether a § 2 plaintiff could satisfy *Gingles*, *see*, *e.g.*, *Cooper*, 581 U.S. at 301–02, and has treated the enacted plan as an illustrative plan for purposes of that analysis, *see*, *e.g.*, *Bartlett*, 556 U.S. at 18 (numerosity), *Shaw II,* 517 U.S. at 916 (compactness). But that is not the situation here. Here, the Legislature already knew it could draw a second district that would be compact because Applicants, as plaintiffs in the *Robinson* litigation, had already demonstrated that a second reasonably compact majority-Black congressional district could be drawn when the Robinson court found that their illustrative maps satisfied *Gingles* preconditions. *See Robinson I,* 605 F. Supp. 3d at 820–831, 839–844. Under these circumstances, the State did not need to reprove the necessity of complying with the VRA or to satisfy *Gingles* a second time for its plan to constitute an appropriate remedial plan. *See, e.g.*, *Theriot v. Par. of Jefferson*, 185 F.3d 477, 490 (5th Cir. 1999) ("Once a litigant has demonstrated vote dilution and the court has directed redress,

the litigant need not prove vote dilution once again before a court can assess the merits of the proposed remedy."); *cf. Singleton v. Allen*, No. 2:21-CV-1291-AMM, 2023 WL 5691156, at *45 (N.D. Ala. Sept. 5, 2023), *stay denied sub. nom. Allen v. Milligan*, 144 S. Ct. 476 (2023) ("[W]e reject the assertion that the Plaintiffs must reprove Section Two liability under *Gingles*" in challenge to state's remedial plan).

Robinson provided the State with the necessary "strong basis in evidence" that § 2 required race conscious remedial action, but it did not divest the State of its discretion about how to go about that task. This is not to say that there are no limits on the State's remedial redistricting once a § 2 violation has been found. "[T]he district drawn in order to satisfy § 2 must not subordinate traditional districting principles *to race* substantially more than is 'reasonably necessary' to avoid § 2 liability." *Vera*, 517 U.S. at 979 (emphasis added). But the Legislature remains free to consider other policy goals and to subordinate traditional redistricting principles to those nonracial considerations if it chooses, so long as it sufficiently remedies the legal violation.

Put differently, the *Gingles* preconditions do not impose an independent statutory or constitutional requirement of compactness that the State's district must satisfy. *See*, *e.g.*, *LULAC*, 548 U.S. at 505 (Roberts, C.J., dissenting) (§ 2 does not "impos[e] a freestanding compactness obligation on the States"). While a state might in some circumstances need to assess *Gingles* compactness to determine *whether* it needs to draw a VRA-compliant district (such as when, unlike here, a court has not already done so), once that question has been decided, the state retains substantial

discretion on *how* to draw that district. *See, e.g.*, *Cooper*, 581 U.S. at 305. A § 2 district need not "defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'" *Vera*, 517 U.S. at 977.[5]

The State was thus free to do what it did in SB8: draw a plan that complies with the VRA while also including less-than-compact districts to achieve the political goals that indisputably drove the choice of SB8. The District Court's insistence that any § 2 remedial district must adhere to traditional redistricting principles violates this legislative prerogative, forcing states to hew to *Gingles* compactness at the expense of other permissible goals.

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[5] Even if the District Court's application of *Gingles* had been proper, the District Court abused its discretion in relying on improper extra-record evidence, rendering its factual findings clearly erroneous. In finding that the districts in SB8 do not encompass cohesive communities of interest, the majority does not cite a single piece of evidence or testimony admitted at trial. App. 438–41. Instead, the judgement relies on an unattributed, satiric quote from former Governor and Senator Huey Long about faith community divides, App. 440 n.13, as well as hearsay books, articles, and websites cited in a soliloquy about the French Acadian ("Cajun") population, a subethnic group of French descent—none of which is in the record. App. 439 n.12. Meanwhile, the majority ignores the community interests SB8's sponsor and supporters stated were reflected in the plan and in District 6 in particular, *see e.g.*, App. 778; *see also* App. 798, as well as the ample and unrebutted trial evidence about the communities of interest that are united for the first time in District 6. *See, e.g.*, App. 691:8–694:22 (testimony of Commissioner Davante Lewis); App. 617, 620–21, 621–622 (testimony of Mayor Cedric Glover); App. 626–28; App. 630–33, App. 634, App. 632 (testimony of Pastor Steven Harris); App. 639, 640–42; App. 643 (testimony of Ashley Shelton); App. 612, 613–14; App. 614 (testimony of Tony Fairfax); *see also* App. 1078. It is a "clear abuse of discretion" when a district court "fails to consider an important factor, gives significant weight to an irrelevant or improper factor, or commits a clear error of judgment in weighing those factors." *U.S. ex rel. Raynor v. Nat'l Rural Utils. Coop. Fin., Corp.*, 690 F.3d 951, 957 (8th Cir. 2012) (cleaned up). And this Court has made clear in other contexts that "[n]othing can be treated as evidence which is not introduced as such." *United States v. Abilene & S. Ry. Co.*, 265 U.S. 274, 288 (1924); *cf. Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) ("[T]he decisionmaker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing."). The District Court's abuse of discretion in relying on extra-record facts accentuates the reversable error in its inappropriate application of the *Gingles* framework to begin with.

III. Denial of a Stay Would Result in Irreparable Harm to the State, to *Robinson* Applicants, and to Louisiana Voters

Robinson Applicants and voters across the State of Louisiana have already been forced to vote under a map that was found to likely violate the VRA after their challenge in *Robinson I* was held in abeyance by this Court pending the outcome in *Milligan*. *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022). In remanding the *Robinson* case after the *Milligan* decision, this Court instructed that "the matter . . . proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). The circuit and district court endeavored to do that consistent with this Court's precedents requiring the State be given the first opportunity to enact a remedial map, which it did. *See, e.g., Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) ("[I]t is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet [applicable federal legal] requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan."). The Legislature proceeded to enact a map with a second majority-Black congressional district, which was the remedy that *Robinson* Applicants sought through years of litigation and advocacy.

As a result of the District Court's order, there is currently no congressional map in place well into an election year, resulting in uncertainty and confusion for voters, voter advocacy organizations, political candidates, and election officials alike. The State has indicated that it prefers SB8 to remain in place for 2024, and that the only feasible alternative would be to return to HB1, the plan challenged as a § 2

violation in the *Robinson* litigation. The Applicants and other Black voters will be irreparably harmed once again if they are deprived of a map that provides a second district in which Black voters have an opportunity to elect their candidates of choice, which multiple federal courts—including two separate panels of the Fifth Circuit—have found they are likely entitled under the VRA. Failure to stay the injunction will also irreparably harm the State, which will be deprived of a map duly enacted by its Legislature that complies with federal law and orders from the Middle District and Fifth Circuit and reflects the Legislature's policy priorities.

Simply put, without SB8 in place for the 2024 elections there is a significant risk—accounting for the time it will take for adequate remedial proceedings to occur and for possible appeals to be litigated to conclusion and given the State's position that reinstating HB1 is the only viable alternative to keeping SB8 in place—that no VRA-compliant map will be in place for the 2024 elections. That outcome irreparably harms *Robinson* Applicants and the State of Louisiana and its voters and contravenes this Court's expectation that a map compliant with § 2 will be in place ahead of the 2024 elections.

CONCLUSION

For the foregoing reasons, *Robinson* Applicants respectfully request a stay of the District Court's injunction pending resolution of their appeal.

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Respectfully submitted,

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