No. 24-109

IN THE

Supreme Court of the United States

LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Did the district court properly find that race predominated when the Louisiana Legislature openly admitted it was using a quota of two Black-controlled districts to draw SB8, and then drew a 250-mile-long district that duplicated a previously invalidated racial gerrymander, splitting municipalities, parishes, and communities, linking parts of four urban areas, and tracing the boundaries of Black and white-majority precincts?
2. Did the district court properly find that SB8 failed to satisfy strict scrutiny based on alleged attempts to comply with the VRA where the Legislature never conducted a VRA analysis on SB8, where the Attorney General told the Legislature that it was defending the prior map and didn't believe the VRA required a second Black district, and where the Attorney General admitted in court that SB8 was part of a litigating strategy?
3. Should this Court rework Equal Protection jurisprudence by declaring racial gerrymandering claims non-justiciable, or alternatively by holding that states satisfy strict scrutiny merely by citing a third-party's opinion regarding a racial seat quota and without undertaking any pre-enactment analysis or litigation showing of a strong basis in evidence for drawing a given district under the VRA?

PARTIES TO THE PROCEEDING

Appellees are Philip Callais, Lloyd Price, Bruce Odell, Elizabeth Ersoff, Albert Caissie, Daniel Weir, Joyce LaCour, Candy Carroll Peavy, Tanya Whitney, Mike Johnson, Grover Joseph Rees, and Rolfe McCollister. Appellees were plaintiffs below.

Appellant is the State of Louisiana, represented by Louisiana Attorney General Elizabeth B. Murrill. The State was an intervenor-defendant below.

Defendant below is Nancy Landry, in her official capacity as the Louisiana Secretary of State. Intervenor-defendants below are Alice Washington, Clee Earnest Lowe, Power Coalition for Equity and Justice, Ambrose Sims, Davante Lewis, Dorothy Nairne, Martha Davis, Edwin Rene Soule, Press Robinson, Edgar Cage, and the National Association for the Advancement of Colored People Louisiana State Conference (the "Robinsons"). And amici in the liability phase and intervenor-defendants in the remedial phase below are Edward Galmon, Sr., Ciara Hart, Norris Henderson, Tramelle Howard, and Ross Williams (the "Galmons").

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INTRODUCTION

The State of Louisiana should be ashamed. Under no compulsion, it used racial identity to sift Appellees and thousands of other voters into U.S. House districts for the 2024 election. Not only does this odious classification reinforce racial stereotypes, it resurrects a second Black-controlled congressional district that, when it last surfaced in the 1990s, was invalidated under the authority of *Shaw v. Reno*, 509 U.S. 630 (1993), as a brutal, bizarrely-shaped racial gerrymander unjustifiable under the Voting Rights Act ("VRA") despite the U.S. Department of Justice's ("DOJ") demand for a second Black district. This gerrymander's 2024 incarnation is far worse. It remains unjustifiable under the VRA, but now overrepresents Black voters in two Black-majority districts (out of six total). Nor can political calculation explain it. Republicans are surrendering a vital seat in Congress that could well squander their narrow majority, yet both the previous map and Appellees' alternative proposal in the district court protected all five Republican incumbents.

This Court should grant dismissal or summary affirmance. This is a standard *Shaw* case. The Legislature, and even the Attorney General at trial, admitted a racial quota of two Black-majority seats was Louisiana's prime and uncompromisable criterion. Factual and expert evidence clearly established Louisiana's meticulous manipulation of BVAP data to lock in 82% of the Black population of Louisiana's invalidated 1990s district[1] while

[1] Dkt.185, 308:5-9. Given the extensive record supporting Appellees' position, Appellees reference documents on the district court docket as "Dkt." followed by the docket and page

excluding everyone else. Louisiana tempted fate by purposely retracing the sinuous 250-mile-long district which it well knew federal courts had already excoriated as unconstitutional. The district court easily identified Louisiana's racial gerrymander and found it unjustified even with "breathing room" for legitimate VRA compliance efforts. The court's VRA holding flowed from the State and Robinson Intervenors' failure to fill their trial time, proffering not a single expert or exhibit to prove Louisiana had a strong basis in evidence to believe the VRA required SB8's sinuous second Black-majority district, "SB8-6."

In early May 2024, the district court was poised to order a remedial map by June 4, five months before Louisiana's primary. In one unified analysis, it would have adjudicated the Equal Protection and any VRA interests at stake (allowing parties to prove some other remedial two-Black-majority-district map was required by the VRA). That process remains unfinished today only because the State and Robinson Intervenors packed factual and legal misrepresentations into rapid-fire emergency docket filings.[2] Uncovering those misrepresentations reveals

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number(s). Sup. Ct. R. 12.7, 18.11. Appellees refer to the State Jurisdictional Statement by name followed by page number(s).

[2] In just four days, this Court was effectively forced to choose Louisiana's 2024 congressional map—impacting not only Appellees' right to vote in non-gerrymandered districts, but also, potentially, partisan control of the next Congress. The State's decision to seek a stay based on its representations was unfair both to the parties and this Court. Ryan Autullo & Chris Marr, *Kavanaugh, Thomas Raise Concerns Over Shadow Docket Pressure (2)*, Bloomberg Law (May 10, 2024), https://news.bloomberglaw.com/litigation/kavanaugh-laments-pressure-shadow-docket-puts-on-supreme-court.

this is not the titanic jurisprudential clash they promised this Court.

First, the State and Robinsons at trial primarily defended SB8-6 not as a Black-majority district required by the VRA but as motivated by incumbent protection over race. Only now, after a stay has ensured the gerrymander's use in 2024, does Louisiana find it safe to admit its racial target came first, and "only then" did it choose which Republican would be sacrificed for race. State Jurisdictional Statement 23.

Second, the State's sole VRA "defense" was to scoff that experts were unnecessary to "predict how the Courts might view" SB8-6 (Dkt.184, at 25) since it had "a factfinder who had already made her views abundantly clear" (Dkt.192, at 15). The State cynically replaced the objective analysis of SB8-6 under the VRA's elements with legal realism, prognosticating the proclivities of the *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La.), district judge. It thus mounted no fact or expert-based VRA defense below. When this district court invited the State to prove the relevance of specific facts in the *Robinson* record (Dkt.185, at 103-09) to the new SB8-6, the State never even tried. The Robinsons pushed their gamesmanship even further, seeking to *exclude* any evidence or argument regarding the VRA or reference to the *Thornburg v. Gingles*, 478 U.S. 30 (1986), factors. Dkt.144; Dkt.144-1.

The State's refusal to litigate the VRA began in *Robinson*. There, the U.S. Court of Appeals for the Fifth Circuit repeatedly emphasized the State's decision to float novel legal defenses rather than directly attack the plaintiffs' VRA evidence. Later, after this Court's decision in *Allen v. Milligan*, 599

U.S. 1 (2023), effectively foreclosed this strategy, Louisiana refused to retool. Instead, it pretended its hastily cobbled defense for an expedited preliminary injunction hearing back in 2022, pre-*Milligan*, remained its best and final effort. Why? Its Attorney General questioned the fairness and reliability of the proceedings, and the Fifth Circuit granted rare mandamus relief when the district court acted "ultra vires" in attempting to rush to a remedial hearing while the preliminary injunction was still on appeal. Perhaps cowed by its perceptions of the single-judge district court and worried no appeal could provide relief in time for the 2024 elections, Louisiana surrendered. It never took the VRA case to trial on the merits. It never raised core VRA defenses to the *Robinson* original proposals.

Its course set, Louisiana's Legislature attempted no VRA analysis of SB8-6. Stunningly, Louisiana maintained its position (which it still has not abandoned) that the *original map* challenged by VRA plaintiffs in the *Robinson* litigation—HB1—was lawful and *complied with the VRA*. It even said the quiet part out loud, conceding SB8 was merely a play to front-run the *Robinson* single-judge district court's expected adverse ruling at trial—which never came to pass—and "appease" the VRA plaintiffs by giving them a second majority-minority district. No matter that SB8-6 bore zero resemblance to the *Robinson* plaintiffs' proposed alternatives, had no basis in *Robinson*'s evidentiary record, and actually excluded many original *Robinson* plaintiffs. On this record, Louisiana's purported "VRA defense" may be the weakest this Court has ever encountered.

Third, given the State's and Robinsons' VRA dodge, the district court confined its analysis to SB8-

6 and never reached the question of whether *any two-Black-majority map* could be drawn. True, Appellees' rebuttal expert would have proved that not even the *Robinson* illustrative maps can reliably elect Black-preferred candidates (yet another VRA defense the State neglected in *Robinson*), but it was unneeded because the State and Robinsons offered no VRA performance evidence to rebut. Dkt.184, at 11:2-8. The May 2024 remedial phase would have necessarily reached this issue, forcing the State and Intervenors to finally present evidence that the VRA required some other two-Black-majority-district map in place of SB8. If and when these parties rise to the challenge, Appellees remain prepared to show a second Black-majority district can't be drawn.

Fourth, the State falsely argues that a suggestion that an additional majority-minority district can be created in one part of a State allows the creation of a different majority-minority district elsewhere. This has never been the law, and in almost every major *Shaw* case, starting with *Shaw* itself, this defense has failed. Even if the *Robinson* court had finally ordered something like the Robinsons' proposed majority-minority districts, it could provide no legal basis for SB8-6.

This ping-pong can end. It results from the Robinsons' gambit of trying to force resolution of VRA and Equal Protection interests in a single-judge court, and the State's equally cynical litigation responses. But if these appeals are promptly dismissed, the three-judge district court—where combined claims and defenses under the Equal Protection Clause and VRA truly belong—can order a remedy on a full record, not quite developed below due to the stay, that finally and fully considers both legal principles. The

facts will likely show that any proposed remedy with a second Black-majority district is not required under the VRA, advancing the State's supposed interests in incumbent protection by restoring five Republican seats and disappointing only the Intervenors by rejecting their invalid VRA claims. There this matter will end.

STATEMENT OF THE CASE

After the 2020 census, the Louisiana Legislature enacted HB1, a congressional redistricting law that divided the State into its six congressional districts. Dkt.165-1. HB1 followed the traditional boundaries of Louisiana congressional districts. Like Louisiana's 2011 congressional map, and all others since a second majority-Black district was struck down as an unconstitutional gerrymander in *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996), HB1 had one majority-Black district in southeastern Louisiana. Dkt.165-5; Dkt.185, at 57-60, 92; Dkt.198, at 6.

Just before HB1 passed, several groups filed complaints in the Middle District of Louisiana, alleging HB1 violated Section 2 of the Voting Rights Act ("VRA"). *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766, 768 (M.D. La. 2022), *vacated*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson I*"). By early January 2024, that case was finally on track for trial.

I. Louisiana Enacts SB8.

Claiming concern that the State would ultimately lose at trial, Governor Landry called a special legislative redistricting session on January 15, 2024, to repeal HB1 and impose a new map with two majority-Black districts. Dkt.165-9; Dkt.165-10; State Jurisdictional Statement 1-2.

a. Attorney General Murrill's Statements to the Legislature

On January 15, 2024, just before redistricting plans were introduced, Attorney General Murrill testified before the House and Governmental Affairs Committee. As the State's counsel, she advised the Legislature on the *Robinson* litigation. Dkt.182-31, at 7.

In *Robinson*, a VRA case before a single district judge, Louisiana suffered a "hasty and tentative" decision after a May 2022 expedited preliminary injunction hearing. *In re Landry*, 83 F.4th 300, 306 (5th Cir. 2023) (citation omitted). As *Robinson* resumed after a stay pending this Court's decision in the Alabama redistricting case, *Allen v. Milligan*, the Fifth Circuit observed, "[t]hat the state lacked a full opportunity to mount a defense on the merits is likely accurate." *Id.* at 305. It recognized "the need for further development of factual and legal aspects," particularly because "the state put all its eggs in one basket, litigating essentially that only with race-predominant considerations could the plaintiffs justify" the proposed second Black-controlled districts. *Id.* at 306 & n.6 (citation omitted). The Fifth Circuit's merits panel emphasized *Milligan* "largely rejected" this "initial approach" and the State had failed to provide evidence or meaningfully refute the plaintiffs' evidence. *Robinson v. Ardoin*, 86 F.4th 574, 592 (5th Cir. 2023) ("*Robinson III*"). An earlier panel of the Fifth Circuit also pointed out the district court had erred at *Gingles* prong 1 in its compactness analysis. *Robinson v. Ardoin*, 37 F.4th 208, 222 (5th Cir. 2022) ("*Robinson II*"). Though the merits panel ultimately did not reject the district court's conclusions, it vacated the preliminary injunction for equitable

reasons, emphasizing it was only applying clear error review to a situation where the State had not focused on the evidence. *Robinson III*, 86 F.4th at 592, 601-02. The merits panel, along with other Fifth Circuit panels, encouraged the State that its failure to address the VRA issues during the preliminary injunction stage did not bind the State in subsequent proceedings and at trial. *See id.* at 592; *Robinson II*, 37 F.4th at 217; *In re Landry*, 83 F.4th at 306 n.6. And at no point did the Fifth Circuit order or approve a second Black-majority district.

Fresh from this Fifth Circuit guidance, Murrill *never* told legislators the State believed the VRA required two majority-Black districts. Dkt.184, at 83. In fact, she professed the opposite, claiming HB1 remained defensible and not unlawful. Dkt.181-1, at 11 ("I am defending that map, and so you won't hear me say that I believe that that map violated the redistricting criteria."); *id.* at 13 ("I am defending it now."); *id.* at 14 ("I am defending what I believe to have been a -- a defensible map."), *id.* at 15 ("I'm defending the map."). The preliminary findings in the *Robinson* litigation, she said, had not led to a fair or reliable result. *Id.* at 17-18. She testified there had yet to be a trial on the merits; there was still an opportunity to try the case; and any preliminary order from the Middle District had been vacated. *Id.* at 13-14, 18-19.

Nonetheless, Murrill urged the Legislature to draw a map with two majority-Black districts—not to comply with the VRA, but to avoid trial before the single-judge district court. *Id.* at 14; *id.* at 19 ("[I]f you don't draw a map, then we will be back in front of her for the trial on the merits in very short order and that – that case will continue. If you do draw a map, then

the plaintiffs will have to decide whether they wish to challenge that map, whether they accept that map. And if they accept that map, then – then the whole case should be over.").

After her summary of the law and explanation of the purpose of the special session to draw a map with two majority-Black districts, Representative Farnum asked her: "Isn't [race] the only reason we're here right now . . . isn't that the predominant reason?" *Id*. at 15. The Attorney General admitted, "we're here because of . . . the court's telling us we have to be here. I mean, I – I think that's part of it. You know, the – I mean, I'm defending the map." *Id*.

b. Legislators' Statements

The same day, Senator Womack introduced SB8, a bill that repealed HB1 and answered the Attorney General's call to intentionally create two majority-Black districts. Dkt.165-5, at 2, 7; Dkt.165-10; Dkt.165-15, at 1, 3. Unlike the traditional districts in HB1 and other recently enacted maps in Louisiana, SB8 created a second majority-Black district that stretched 250 miles in a jagged slash mark from the State's high Black population in southeastern Baton Rouge, north to high BVAP precincts in Alexandria, southwest to high BVAP precincts in Lafayette, then back northwest to Natchitoches, and then north to high BVAP precincts in Shreveport, carefully splitting and dissecting four major metropolitan areas to carve in pockets of Black voters along the way. Dkt.182-10; Dkt.182-11; Dkt.182-12; Dkt. 182-13; Dkt.185, at 56-58; Dkt.198, at 13, 39. This slash district resembles the unconstitutional slash districts seen by this Court three decades ago in the seminal case *Shaw v. Reno*, 509 U.S. 630 (1993) ("*Shaw I*"), and in Louisiana's own prior failed attempt to create two majority-Black

districts in *United States v. Hays*, 515 U.S. 737 (1995). Dkt.182-17; Dkt.182-18; Dkt.185, at 57-60; Dkt.198, at 2-5, 14.[3] As a result, District 6's BVAP shot up 30% from 23.861% in HB1 to 53.990% in SB8,[4] and District 2's BVAP decreased from 58.650% to a bare majority at 51.007%. Dkt.165-5, at 2, 7; Dkt.165-15, at 1, 3.

Senator Womack conceded in multiple public legislative hearings that the two majority-Black districts in SB8 could not be compromised. He stated, "we had to draw two minority districts." Dkt.181-3, at 5; *id*. at 4 ("we must have two majority voting-age population districts"); *id*. at 4 ("we had to draw two districts"); *id*. (emphasizing Districts 2 and 6 "are over 50 percent voting – Black voting age population"). He professed: "[W]e all know why we're here. We were ordered to draw a new black district, and that's what I've done." Dkt.181-4, at 32. He repeatedly admitted:

> Given the state's current demographics, there is not enough high Black population in the southeast portion of Louisiana to create two majority Black districts, and to also comply with the US Constitution one person, one vote requirement. *That is the reason why* District 2 is drawn around the Orleans Parish and why District 6 includes the

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[3] Since *Hays*, Louisiana's BVAP percentage has remained relatively stagnant, Black voters have become more dispersed and more integrated, and Louisiana has lost a congressional seat. Dkt.185, at 60, 91-92; Dkt.198, at 58. Even under the Census "any part black" statistic, controversial but the highest possible, BVAP remains just 31.249%. Dkt. 165-6; 165-15 at 3.

[4] This is four times greater than the "sizable jump" of under 7% observed by this Court in *Cooper v. Harris*, 581 U.S. 285, 310 (2017).

> Black population of East Baton Rouge Parish and travels up I-49 corridor to include Black population in Shreveport.

Dkt.181-3, at 4 (emphasis added); *see also* Dkt.181-4, at 4. SB8 sponsor Representative Beaullieu repeated Senator Womack's statement on the House floor. Dkt.181-6, at 4. When Representative Beaullieu was asked during his presentation of SB8 by Representative Amedee, "Is this bill intended to create another Black district?" Rep Beaullieu responded, "Yes, ma'am, and to comply with the judge's order." *Id.*

Others echoed these racial motivations. SB8 supporter Representative Carlson admitted, "the overarching argument that I've heard from nearly everyone over the last four days has been race first" and "race seems to be, at least based on the conversations, the driving force" behind the redistricting plan. Dkt.181-4, at 26. Representative Carlson acknowledged integration made drawing a second majority-Black district difficult. *Id.* at 26-27. Representative Lyons, Vice Chairman of the House and Governmental Affairs Committee, stated the "mission that we have here is that we have to create two majority-Black districts." *Id.* at 21. Senator Pressly noted the lines were "based purely on race." Dkt.181-3, at 8. Senator Morris said "[i]t looks to me we primarily considered race." Dkt.181-7, at 4. Senator Carter pointed out "no sort of performance analysis had been conducted to determine whether or not District Two continues to consistently perform as an African American district." Dkt.181-3, at 6. He nonetheless expressed his support for SB8 precisely because it created a second district. *Id.* He read a statement from Congressman Troy Carter on the

Senate floor, reiterating the necessity of the two-district quota at all costs: "I am not married to any one map. I have worked tirelessly to help create two majority-minority districts that perform. . . . However, the Womack map creates two majority-minority districts, and therefore I am supportive of it." *Id*.

Legislators pushed proportional representation for Black population at the cost of other criteria in their support for SB8—Dkt.181-1, at 13, Dkt.181-4, at 27 (Marcelle); Dkt.181-4, at 24 (Newell); Dkt.181-1, at 16 (Boyd), Dkt.181-3, at 7 (Duplessis)—even though SB8 resulted in super-proportionate representation for Black voters (Dkt.165-6; Dkt.165-15) and Attorney General Murrill cautioned against this unlawful purely "proportionate dividing" (Dkt.181-1, at 13).

Legislators supporting SB8 disavowed that politics predominated. Dkt.181-4, at 23-24 (Beaullieu); *id*. at 24 (Newell); *id*. at 26-27 (Carlson: "I can assure you of this: that we are not – that we're not here today because we're caving to any kind of political pressure."). Instead, the Legislature first set out to draw a second Black-majority seat, and then, after the unavoidable resulting loss of an expected Republican seat, the Legislature then considered which incumbents to protect. Dkt.184, at 72, 79. The Legislature decided to protect Speaker of the House Mike Johnson, Majority Leader Steve Scalise, and Representative Julia Letlow in Districts 4, 1, and 5, respectively. Dkt.181-3, at 3. The Legislature did not espouse any political goals for SB8-6.

The final version of SB8 barely reached that promised 50% BVAP threshold for Districts 2 and 6. Dkt.165-15. Both the House and Senate passed SB8 by majority votes, and the Governor signed it into law on January 22, 2024. Dkt.165-10.

II. Louisiana Voters Challenge the Constitutionality of SB8.

A group of Louisiana voters ("Appellees") filed this lawsuit challenging SB8 against the Louisiana Secretary of State on January 31, 2024. Dkt.1. Appellees claimed SB8 impermissibly sifted them by race in violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution. Dkt.1. Specifically, they contended SB8-6, the new majority-Black district where several Appellees resided, was an unconstitutional racial gerrymander. Dkt.1, at 1-2. Appellees requested and received a three-judge district court under 28 U.S.C. § 2284. Dkt.198, at 16. Appellees moved for preliminary injunction. Dkt.17. The court bifurcated trial: first to determine SB8's constitutionality ("liability phase"), and second to determine any remedy ("remedial phase"). On February 21, 2024, the court set trial for April 8, 2024, consolidating the preliminary injunction hearing with trial on the liability phase. Dkt.63, at 1.

The State of Louisiana, represented by Attorney General Murrill, intervened as a defendant on February 26, 2024. Dkt.79; Dkt.156, at 2. Two groups of Louisiana voters, civil rights organizations, and plaintiffs in *Robinson* moved to intervene as defendants. Dkt.79, at 1; Dkt.156, at 2-3. The district court allowed the Robinsons to intervene permissively in the liability phase on March 15, 2024, Dkt.114, and the Galmons to intervene permissively in the remedial phase on May 3, 2024, Dkt.205.

III. The Three-Judge Court Holds the First Trial.

The trial's liability phase spanned April 8, 2024, to April 10, 2024. Dkt.198, at 17. The parties

introduced 13 witnesses and 110 exhibits, including the entire legislative record. Dkt.198, at 11, 17. Each side had eight hours for their case. Dkt.130.

Appellees presented overwhelming evidence of racial predominance in addition to the legislative excerpts. Multiple legislators testified to SB8's race-based purpose, and expert witnesses provided corroborating circumstantial evidence. Appellees presented an alternative map and other evidence showing the Legislature could have protected incumbents without violating traditional redistricting principles or racially gerrymandering. Dkt.182-14; Dkt.182-16; Dkt.184, 108-11, 140; Dkt.185, at 24-25, 27-28, 54-55; Dkt.198, at 44-45.

Defendants did not use all their allotted time. The Secretary presented no evidence. Dkt.186, at 91. The State only presented video excerpts from the public legislative session entered as joint exhibits by the parties. Dkt.186, at 85-91. Beyond the stipulated legislative record, only the Robinsons presented fact and expert witnesses and submitted reports; they tried and failed to admit *Robinson*'s preliminary hearing record *en masse*. Dkt.185, at 103-18; Dkt.186, at 85-91. The State, ceding its time, let these private voters defend its law.

At closing, the State admitted its only goal was to stay one step ahead of the federal court's predicted course in drawing maps—not to comply with the VRA. Dkt.186, at 123-24. The State admitted it did not think it needed to repeal HB1 or adopt a second majority-Black district to comply with the VRA. Dkt.184, 26-27; Dkt.186, at 121-22.

The State conceded it conducted no pre-enactment VRA analysis of SB8. Dkt.184, 25-26;

Dkt.186, at 123-24. The State neither hired nor consulted experts. Dkt.184, 25-26; Dkt.186, at 124. Instead, the State merely referenced *Robinson*'s preliminary findings, despite (i) admitting those preliminary decisions never evaluated the lawfulness of SB8 or any similar map; (ii) recognizing *Robinson* "did not squarely hold that the failure to draw a second majority black district would violate the VRA;" and (iii) never admitting any *Robinson* evidence, even its own experts who'd found no VRA violation. Dkt.184, 22-23; Dkt.186, at 85-91, 123-24.

No party presented a VRA claim or evidence that the VRA required a second majority-Black district. The Robinsons even moved in limine to *exclude* any evidence or argument on the VRA or *Gingles* factors, Dkt.144; Dkt.144-1. Thus, the district court did "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," and reserved the issue for additional record development in the remedial phase of the trial. Dkt.198, at 58-59.

IV. The Three-Judge Court Enjoins SB8 as Unconstitutional Before Proceeding to the Remedial Phase of the Trial.

On April 30, 2024, in a 60-page opinion analyzing the law and comprehensive record, the district court concluded SB8 was an unconstitutional racial gerrymander and prohibited the State "from using SB8's map of congressional districts for any election." Dkt.198, at 59. But the district court recognized its task was not complete and trial was not over. It set a status conference to "discuss the remedial stage of this trial." Dkt.198, at 60.

On May 7, 2024, after the conference, the district court issued an order scheduling the trial's remedial phase. Dkt.219. The court determined it would only order an interim map on June 4, 2024, if the Legislature failed to exercise "its 'sovereign interest' [to enact] a legally compliant map" by then. Dkt.219, at 2-3. It noted the Legislature was in session until June 3, 2024, and had ample time to do so. Dkt.219, at 3.

The district court allowed briefing to proceed concurrently and permitted "[e]ach party, intervenor and amici" to submit one proposed map with unlimited evidentiary support and respond to other parties' maps. Dkt.219, at 3. The order did not limit the parties to briefing on the Fourteenth Amendment; parties were encouraged to raise any VRA issues. Dkt.219.

The State filed an emergency application for stay in the district court, which was denied, and then in this Court. On May 15, 2024, this Court stayed the district court proceedings pending appeal. On July 30, the State filed its jurisdictional statement.

ARGUMENT

I. The District Court Correctly Determined Race Predominated in the Legislature's Enactment of SB8 Based on *Shaw* and Its Progeny.

"Racial considerations predominate when '[r]ace was the criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1234 (2024) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) ("*Shaw II*")) (footnote omitted). States can't escape strict scrutiny by relying on a court case

or purported goodwill. "Racial gerrymandering, even for remedial purposes" is still subject to strict scrutiny. *Shaw I*, 509 U.S. at 657. Challengers can show racial predominance through direct or circumstantial evidence, or as here, both. *Id.* Appellees presented "overwhelming" evidence of the sort "practically stipulated" as proving racial predominance in prior cases. *Miller v. Johnson*, 515 U.S. 900, 910 (1995) (quotation omitted).

a. Direct Evidence in the Record Proves Racial Predominance.

First, direct evidence abounds in Attorney General Murrill's statements to the Legislature (Dkt.181-1, at 11, 13-15, 17-19; Dkt.198, at 13) and in the confessions of her office during trial (Dkt.184, at 19-27; Dkt.186, at 121-25). *Alexander*, 144 S. Ct. at 1234 ("Direct evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines."). This evidence was not "smoked out over the course of litigation"; it was blatantly admitted. *Id.* "[D]irect evidence of this sort amounts to a confession of error," and the Court need not look further. *Id.*

The State's claim that SB8 was motivated by VRA litigation in *Robinson* that would purportedly lead to a two-Black-majority seat mandate, at least pre-appeal, also provides conclusive direct evidence. *Id.* (finding this type of direct evidence "not uncommon because States often admit to considering race for the purpose of satisfying our precedent interpreting the Voting Rights Act of 1965"). Thus, race predominated.

Direct evidence also saturates the legislative record. Dkt.198, at 11-13, 17-20, 41-45. Legislative

session transcripts and trial testimony demonstrate the Legislature established an unlawful racial target, the Legislature would not compromise it, and the Legislature subordinated traditional criteria to reach it.

The Legislature's purposeful racial quota of two Black seats demonstrates racial predominance. *Cooper v. Harris*, 581 U.S. 285, 299-301 (2017); *Bush v. Vera*, 517 U.S. 952, 962, 976 (1996) (plurality). SB8 author Senator Womack, sponsor Representative Beaullieu, and other legislators "repeatedly told their colleagues that [two districts] had to be majority-minority." *Cooper*, 581 U.S. at 299. They repeatedly cited and used a "50%-plus racial target." *Id.* at 300; Dkt.181-3, at 4 (Womack); Dkt.181-4, at 4 (same); Dkt.181-6, at 4 (Beaullieu).

Not only did the Legislature create a racial target, it relentlessly hewed to it as the overriding, nonnegotiable criterion for SB8. *See, e.g.*, Dkt.184, at 47-50, 68-69, 79-80. Senator Womack and others repeatedly declared the State "must" reach a certain BVAP in two districts and "had to draw two districts" with a majority BVAP. Dkt.181-3, at 4; Dkt.181-4, at 4, 5, 21; Dkt.181-6, at 4. That was "the only reason" the Legislature was drawing new maps. Dkt.184, at 47-48; *see also* Dkt.181-3, at 8; Dkt.181-4, at 26, 32. These statements prove racial predominance. *Cooper*, 581 U.S. at 300; *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017); *Shaw II*, 517 U.S. at 906-07.

Finally, while a violation of traditional redistricting criteria is unnecessary to show racial predominance, *Bethune-Hill*, 580 U.S. at 190, ample direct evidence establishes that the Legislature sacrificed traditional redistricting criteria in its

mission to create two majority-Black districts, Dkt.181-3, at 4, 8; Dkt.181-7, at 3-5; Dkt.184, at 72-74. The Legislature believed it "needed to have two majority-minority districts, and any other redistricting guidelines were secondary to that." Dkt.184, at 68; *id.* at 69 ("Certainly the racial component in making sure that we had two performing African American districts was the fundamental tenet that we were looking at. Everything else was secondary to that discussion."). It believed it had to "draw a second majority-minority district prior to any other consideration." *Id.* at 80.

All this evidence shows the State intentionally established unlawful "racial quotas." *Bush*, 517 U.S. at 976 (quotation omitted); *see also Bethune-Hill*, 580 U.S. at 187, 189, 191-92; *Cooper*, 581 U.S. at 299-301. And it shows "'[r]ace was the criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Alexander*, 144 S. Ct. at 1234 (quoting *Shaw II*, 517 U.S. at 907) (footnote omitted). Any "race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill*, 580 U.S. at 189 (quoting *Shaw II*, 517 U.S. at 907).

b. Direct Evidence Lies in the State's Brief.

But the Court need not even look to the record. The State concedes the point on appeal, recognizing "virtually every legislator (*and* the Governor *and* the Attorney General) proceed from that court-imposed baseline: Two majority-Black districts are mandated by the VRA." State Jurisdictional Statement 18-19. That uncompromisable racial quota underlying SB8 proves predominance. *Alexander*, 144 S. Ct. at 1234.

c. Circumstantial Evidence Also Proves Racial Predominance.

Appellees supplemented this direct evidence with extensive circumstantial evidence of racial predominance from credible experts. Dkt.198, at 22-31**.** The district court engaged in a sensitive inquiry of the record, expert testimony, and demographic maps and determined "District 6 slashes across the state of Louisiana and includes portions of four disparate metropolitan areas but only encompasses the parts of those cities that are inhabited by majority-Black voting populations, while excluding neighboring non-minority voting populations." Dkt.198, at 36 (quotation omitted). It further determined based on the same "outside of the New Orleans and East Baton Rouge areas, the state's Black population is highly dispersed across the state," *id.* at 39, and "the unusual shape of [SB8-6] reflects an effort to incorporate as much of the dispersed Black population as was necessary to create a majority-Black district," *id.* at 41. The record confirms the district court's findings.[5] SB8 sacrificed traditional redistricting criteria, including compactness, preservation of core districts, communities of interest, and political subdivisions, to reach this racial quota for SB8-6.[6] Like the offending districts in *Miller* and *Hays*, SB8-6 narrowly winds 250 miles from the northwest to southeast corners of the State and across culturally and economically divergent areas to selectively pick up pockets of Black

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[5] Dkt.165-17; Dkt.182-10; Dkt.182-11; Dkt.182-12; Dkt.182-13; Dkt.182-20; Dkt.182-21; Dkt.184, at 93-96; Dkt.185, at 24, 32-33, 35-43.

[6] Dkt.182-12; Dkt.182-13; Dkt.182-15; Dkt.182-22; Dkt.182-23; Dkt.182-24; Dkt.184, at 94-107; Dkt.185, at 35-37, 45-51, 54-55, 57, 63-68, 73-74.

voters and leave four major metropolitan areas segregated in its wake. *Miller*, 515 U.S. at 908-09 (noting a district "centered around four discrete, widely spaced urban centers that ha[d] absolutely nothing to do with each other, and stretch[ed] the district hundreds of miles across rural counties and narrow swamp corridors" was a geographic "monstrosity" (quotation omitted)); *Hays*, 936 F. Supp. at 370. SB8-6's 250-mile-long zigzag shape splitting municipalities, parishes, and traditional communities of interest and connecting the State's dispersed Black voters to increase its BVAP by 30% makes it "exceedingly obvious" that this "was a deliberate attempt to bring black populations into the district." *Miller*, 515 U.S. at 917 (quotation omitted); *see also Alexander*, 144 S. Ct. at 1234.

In sum, Appellees put on "persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing" SB8-6's lines. *Miller*, 515 U.S. at 912-13; *see also Shaw II*, 517 U.S. at 910-16; *Bush*, 517 U.S. 952.

d. The State's Attacks Fail to Disprove This Conclusion.

The State first claims race did not predominate because it relied on a preliminary, vacated decision of the Middle District of Louisiana that the VRA likely required a second majority-minority district. This is backwards: at *Shaw* step 1, this is precisely what *proves* racial predominance. Indeed, alleged VRA compliance efforts are how States *usually* trigger a finding of racial predominance under the *Shaw* line. *Alexander*, 144 S. Ct. at 1234; *Shaw II*, 517 U.S. at 911-12; *Miller*, 515 U.S. at 906-08, 917, 921; *Abrams v. Johnson*, 521 U.S. 74, 80-81 (1997). Louisiana

knows this: its 1990s claim that DOJ required a nearly identical copy of SB8-6 is exactly what triggered a finding of racial gerrymandering. *Hays*, 936 F. Supp. at 368-69. At any rate, the State's independent legislative action renders it responsible, regardless of whether its motive was remedial, strategic, or nefarious. *Miller*, 515 U.S. at 912.

Second, the Legislature's alleged political considerations are irrelevant on this record. Legislators espoused political goals of protecting four Republican incumbents. Dkt.181-3, at 3. But in a major reversal of its trial posture, the State now concedes the obvious: politics came *only after* the race-based decision to create another Black-majority district, forcing Louisiana to lose one of its five Republican seats:

> The Legislature did not eliminate a Republican-performing district merely for political purposes; it did so because the courts forced the Legislature to create a second majority-Black district. It was *only then*, in carrying out that directive, that the Legislature heavily weighted its political goals to draw the S.B. 8 map.

State Jurisdictional Statement 23. Nor would one expect the Republican Legislature to draw District 6 to forfeit a Republican seat—an outcome they expressly opposed. Dkt.181-4, at 23-24, 26-27; Dkt. 184, at 48-49, 70-72. The district court did not clearly err in finding it "not credible that Louisiana's majority-Republican Legislature would choose to draw a map that eliminated a Republican-performing district for predominantly political purposes." Dkt.198, at 44 n.10.

Finally, even though the racial decision preceded (and was not entangled with) any political consideration, Appellees submitted an "alternative map showing that a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance." *Alexander*, 144 S. Ct. at 1235. Expert testimony and simulations, Appellees' illustrative map, and HB1 itself show the Legislature could have protected five (and certainly four) Republican incumbents while avoiding racial gerrymanders and adhering to traditional redistricting criteria. Dkt.182-16; Dkt.184, at 108-111, 140; Dkt.185, at 24-25, 27-28; Dkt.198, at 44-45. As the district court reasoned: "[T]he record reflects that the State could have achieved its political goals in ways other than by carving up and sorting by race the citizens of Baton Rouge, Lafayette, Alexandria, and Shreveport. Put another way, the Legislature's decision to increase the BVAP of District 6 to over 50 percent was not required to protect incumbents . . . ." Dkt.198, at 45. The district court did not clearly err in weighing this evidence to conclude race predominated.

II. The District Court Properly Determined SB8 Could Not Survive Strict Scrutiny Based on *Shaw* and Its Progeny.

Since Appellees have satisfied their burden, the "burden shifts to the State to prove that the map can overcome the daunting requirements of strict scrutiny." *Alexander*, 144 S. Ct. at 1236.

a. The State Provided No Compelling Interest on This Record.

The State must first show its "decision to sort voters on the basis of race furthers a compelling government interest." *Id.* (citing *Cooper*, 581 U.S. at 292). The Court has assumed without deciding that the VRA is one such interest. *Bethune-Hill*, 580 U.S. at 193. But even with some breathing room for error, the State must still believe the racial gerrymander is "necessary under a proper interpretation of the VRA." *Wis. Legislature v. Wis. Elecs. Comm'n*, 595 U.S. 398, 403 (2022) (per curiam) (quoting *Cooper*, 581 U.S. at 306).

Here, the State fails that threshold inquiry: it repeatedly conceded it did not actually rely on the VRA or believe the VRA required it to draw a second majority-Black district. Dkt.184, at 24-27; Dkt.186, at 122-24. Instead, Louisiana's real "interest" was strategic: disposing of the *Robinson* litigation so it could draw its own gerrymander, a goal it achieved through the enactment of SB8. Ruling, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed Apr. 25, 2024). This sort of litigation strategy provides no compelling interest to justify "odious" racial sorting. *Shaw I*, 509 U.S. at 657 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)) (citing *Loving v. Virginia*, 388 U.S. 1, 11 (1967)).

Indeed, this tactic is not new, and this Court has long exercised vigilance when States defend strict scrutiny based *on third-party litigation threats regarding the VRA*, rather than asserting their own interest under the VRA itself. Thus, when Georgia claimed to satisfy strict scrutiny because it had acceded to repeated, aggressive DOJ preclearance demands, this Court instantly recognized "the State's

true interest in designing the Eleventh District was creating a third majority-black district to satisfy the Justice Department's preclearance demands." *Miller*, 515 U.S. at 921. That alone, however, did not suffice: "We do not accept the contention that the State has a compelling interest in complying with whatever preclearance mandates the Justice Department issues." *Id.* at 922. So too here: Louisiana has no compelling interest in appeasing litigants or front-running allegedly hostile district courts.

b. The State's Race-Based Decision Was Not Narrowly Tailored.

Even if the State proves it truly intended to comply with the VRA, rather than jumping ahead of a worrisome district court, its task has just begun. The Court must "then determine whether the State's use of race is 'narrowly tailored'—*i.e.*, 'necessary'—to achieve that interest. This standard is extraordinarily onerous because the Fourteenth Amendment was designed to eradicate race-based state action." *Alexander*, 144 S. Ct. at 1236 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 206 (2023)).

i. The District Court Applied the Correct Legal Standard.

The State must present a "strong basis in evidence" that the VRA "*required*" or "*demanded*" such racial sorting. *Wis. Legislature*, 595 U.S. at 404 (quotation omitted). Mere belief that "the VRA *might* support race-based districting—not that the statute required it" is insufficient. *Id.* at 403 (citation omitted).

But even a strong basis to believe a VRA violation necessitates two majority-Black districts

does not *alone* satisfy narrow tailoring. *Shaw II*, 517 U.S. at 915. That is because a VRA violation somewhere (assuming even that there was a fully litigated decision so holding, which did not happen here) does not permit the State to draw a majority-Black district just anywhere. *LULAC v. Perry*, 548 U.S. 399, 431 (2006); *Bush*, 517 U.S. at 979; *Shaw II*, 517 U.S. at 916-17 (rejecting that "once a legislature has a strong basis in evidence for concluding that a § 2 violation exists in the State, it may draw a majority-minority district anywhere, even if the district is in no way coincident with the compact *Gingles* district" (citation omitted)).

Rather, an intentionally created majority-Black district must remedy the alleged wrong in the particular area. *Shaw II*, 517 U.S. at 916-17. This requires at a minimum a "strong showing of a pre-enactment analysis with justifiable conclusions." *Abbott v. Perez*, 585 U.S. 579, 621 (2018); *Wis. Legislature*, 595 U.S. at 404 (noting that a State "must have a 'strong basis in evidence' to conclude that remedial action was *necessary*, '*before* it embarks on an affirmative-action program'" (quoting *Shaw II*, 517 U.S. at 910)).

Specifically, *before* enactment, the State must "carefully evaluate" whether the *Gingles* preconditions are met based on "evidence at the district level." *Wis. Legislature*, 595 U.S. at 404-05. The State may not "improperly rel[y] on generalizations" but must instead answer the "local" question—*i.e.* "whether the preconditions would be satisfied as to each district." *Id.* at 404 (quotation omitted). A remedial district that does not contain a "geographically compact" population cannot satisfy

Gingles 1 or strict scrutiny. *Shaw II*, 517 U.S. at 916; *LULAC*, 548 U.S. at 430-31.

Analysis and independent review are the State's responsibilities. The State cannot outsource this inquiry by relying on third party analyses, whether non-final judicial factfinding at an expedited hearing or a well-supported letter after months of analysis by experts at DOJ. *Shaw II*, 517 U.S. at 911-12, 918; *Miller*, 515 U.S. at 921-24; *Hays*, 936 F. Supp. at 369-71.

Finally, traditional redistricting principles matter here too. A state legislature must always satisfy traditional redistricting principles to comply with the VRA. *Milligan*, 599 U.S. at 30; *LULAC*, 548 U.S. at 431; *Bush*, 517 U.S. at 979. Thus, some earlier law's purported VRA noncompliance cannot justify a new, non-compact district. *Shaw II*, 517 U.S. at 915-17; *Bush*, 517 U.S. at 979. The "leeway" afforded States only allows for "reasonable compliance measures" once the State meets each of these requirements. *Wis. Legislature*, 595 U.S. at 404; *Cooper*, 581 U.S. at 293. It never permits them to forego analysis altogether.

In keeping with these requirements, the district court gave the State ample breathing room and properly concluded the State could not satisfy strict scrutiny based on the record.

ii. The Record Shows the State Failed to Show Its Decision Was Narrowly Tailored.

The State failed to satisfy its onerous burden to show that race-based sorting was necessary to remedy a VRA violation. It conceded at trial it conducted no pre-enactment analysis of whether the VRA required

its race-based steps or whether SB8 remedied any VRA violation. Dkt.184, at 24-26; Dkt.186, at 123-25. On strict scrutiny, this alone dooms the State. *Abbott*, 585 U.S. at 621.

The State's complete reliance on the allegedly ominous presence of the *Robinson* district court fails for four reasons.

First, the State did not admit any evidence from the *Robinson* litigation in the district court to satisfy its burden of showing a strong basis in evidence—assuming such facts exist in a case considering maps nothing like SB8. Instead, it relied on videos from the Attorney General referencing the litigation *writ large*.

Second, the State disavowed reliance on any *Robinson* expert reports. Dkt.186, at 124 ("[I]t was also not necessary for the legislators to parse the nuances of the expert reports themselves."); *cf. Shaw II*, 517 U.S. at 910. Instead, it argued preliminary "rulings," which "did not squarely hold that the failure to draw a second majority black district would violate the VRA," could alone "supply the strong basis in evidence." Dkt.186, at 123-25.

But third, reliance on preliminary opinions from *Robinson* to provide a strong basis in evidence is misguided. This Court has repeatedly insisted that States cannot simply cite pressure from threatened or ongoing litigation (from DOJ or otherwise) to establish a VRA defense. *Shaw II*, 517 U.S. at 911-14, 918; *Miller*, 515 U.S. at 921-24; *Hays*, 936 F. Supp. at 369-71 (Louisiana failed to show a strong basis in evidence that the VRA required a district nearly identical to SB8-6, despite DOJ's repeated refusal to preclear maps without two Black-majority districts out of seven).

Fourth, the *Robinson* opinions involved dissimilar voters and areas, and the State never frontally attacked the plaintiffs' VRA showings, leaving key arguments unaddressed. The Middle District's findings were based entirely on those plaintiffs' illustrative plans, none of which created majority-Black districts in northwest Louisiana. They instead "connect[ed] the Baton Rouge area to the Delta Parishes along the Louisiana-Mississippi border." *Robinson I*, 605 F. Supp. 3d at 785 (quotation and footnote omitted). The court repeatedly emphasized the State's failure to contest, challenge, or even present evidence in response to plaintiffs' evidence. *Id.* at 823. It decided based on this limited record plaintiffs would "likely" prevail; it did *not decide what the VRA actually required*. *Id.* at 766.

The Fifth Circuit, reviewing for clear error, cautioned that plaintiffs had yet to prove their case: "The Plaintiffs have prevailed at this preliminary stage given the record as the parties have developed it and the arguments presented (and not presented). But they have *much* to prove when the merits are ultimately decided." *Robinson II*, 37 F.4th at 215 (emphasis added). It also emphasized the State "put all their eggs" in one basket, a strategic misstep. *Id.* at 217. The Fifth Circuit reiterated its wariness after concluding the district court had erred in its compactness analysis. *Id.* at 222.

The Fifth Circuit merits panel again focused solely on the illustrative maps—each of which "connect[ed] the Baton Rouge area and St. Landry Parish with the Delta Parishes far to the north along the Mississippi River"—without analyzing other parts of the State. *Robinson III*, 86 F.4th at 590. The court stressed the limited nature of clear error review and

the lack of a merits trial. *Id.* at 592. It emphasized the State failed to provide evidence or meaningfully refute or challenge plaintiffs' evidence and the Supreme Court's decision in *Allen v. Milligan* "largely rejected" the "State's initial approach." *Id.* The Fifth Circuit encouraged the State that its failure to address the VRA issues during the preliminary injunction stage did not bind the State in subsequent proceedings and at trial. *Id.* The Fifth Circuit never ordered the State to create two majority-Black districts, and it vacated any order from the Middle District. *Id.* at 602. There was no court order or mandate to enact SB8 or repeal HB1 in January 2024.

The State cannot claim these opinions, which "did not squarely hold that the failure to draw a second majority black district would violate the VRA," gave it unfettered license or "breathing room" to enact this unconstitutional scheme, Dkt.186, at 123, when that scheme fell squarely outside the scope, reasoning, maps, and case or controversy in *Robinson*. Even an established duty to draw another VRA district in a particular area does not allow the State to draw a different majority-minority district elsewhere. *Shaw II*, 517 U.S. at 916-17. The State's reliance is nothing more than a "pure error of law" that cannot satisfy strict scrutiny. *Cooper*, 581 U.S. at 306 (citation omitted).

III. This Record Does Not Present the Titanic Legal Struggle the State Originally Sold this Court.

Louisiana, perhaps realizing this standard *Shaw* case is remarkable only for its own serial failures to mount any true VRA defense and thereby present the grand conflict it promised, asks the Court to rewrite Equal Protection law. But even if the

frontiers between the Fourteenth Amendment and VRA need revision, one could hardly imagine a worse vehicle.

First, as explained above, there is no tension to resolve between the *Robinson* litigation and the district court's decision below. *Robinson* was non-final, is moot, and involved proof of an allegedly suppressed majority-minority district in another part of the State. The State and Robinsons failed to include—and at times, vociferously opposed including—that evidence in the record below. Dkt.144-1; Dkt.185, at 103-18; Dkt.185, at 33-35. Instead, they wanted only to import as an established fact the Middle District's preliminary decision—vacated for procedural reasons—that Louisiana required a second district. That is not how the VRA works: the law doesn't fix a quota of majority-Black districts for each State, which is then free to draw them wherever it pleases. *Supra* Part II.b. Having done zero VRA analysis on SB8 before it passed, and presenting zero VRA evidence on SB8 at trial, the State lost.

Second, this case has not developed any conflict between the requirements of the VRA and Equal Protection Clause. The State and its Intervenors had a full opportunity to demonstrate a strong basis for believing the VRA required SB8-6—a showing that could have demonstrated tension between *Gingles* and the Equal Protection Clause. They never made that showing. Perhaps the Appellants prefer a different racial gerrymander, such as the Intervenors' proposed *Robinson* maps. The remedial phase before the district court can provide the opportunity to show that in place of SB8, the VRA requires a different two-Black-majority district map; it will likewise provide

Appellees a chance to directly attack any such VRA showing and also demonstrate whether the proposed remedy is a racial gerrymander. By seeking a stay, the State stunted the development of the record, and now this lies in the future. There is simply no record on which to explore any issues this combined Equal Protection-VRA analysis might uncover.

Starved of facts, the State's efforts to completely rework redistricting law—misguided already—are even less attractive. Thus, the State incorrectly urges that the strong basis in evidence inquiry should not consider the *Gingles* factors—contradicting this Court's numerous contrary holdings in *Wisconsin Legislature v. Wisconsin Elections Commission*, *Cooper v. Harris*, *Bush v. Vera*, and *Shaw II*—because "this case presents markedly different facts that warrant a markedly different approach." State Jurisdictional Statement 31. As Appellees show in their response to Robinsons' Jurisdictional Statement before this Court, it would eviscerate the Fourteenth Amendment to subject "odious" racial gerrymandering to anything less than strict scrutiny. *Shaw I*, 509 U.S. at 657 (quotation omitted).

IV. Appellees' Claims Are Justiciable.

The State argues for the first time that "constitutional racial-gerrymandering and vote-dilution claims are non-justiciable." State Jurisdictional Statement 32-33. But these challenges are plainly justiciable under this Court's precedent and the Fourteenth Amendment. *See, e.g.*, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). "*Shaw*'s basic objective" is to make "extreme instances of gerrymandering subject to meaningful judicial review." *Miller*, 515 U.S. at 929 (O'Connor, J.,

concurring). The "particular dangers" of "[r]acial classifications with respect to voting"—even "for remedial purposes"—have led this Court to reaffirm that "race-based districting by our state legislatures demands close judicial scrutiny." *Id.* at 912 (quoting *Shaw I,* 509 U.S. at 657); *see also Richmond v. J.A. Croson Co.*, 488 U.S. 469, 501 (1989) ("The history of racial classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis." (citing *Korematsu v. United States,* 323 U.S. 214, 235-40 (1944) (Murphy, J., dissenting))); *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 291 (1978) (opinion of Powell, J.) ("Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination."). In fact, the Fourteenth Amendment's "central mandate" of "racial neutrality" demands the Court engage in this very inquiry. *Miller*, 515 U.S. at 904; *Shaw I*, 509 U.S. at 642 ("Laws that explicitly distinguish between individuals on racial grounds fall within the core of [the Equal Protection Clause's] prohibition."); *Students for Fair Admissions*, 600 U.S. at 229-30; *Alexander*, 144 S. Ct. at 1262 (Thomas, J., concurring).

That's especially true in this case where there is not mere "smoking-gun evidence" of unlawful racial classifications and race was not merely the "predominant factor" motivating the decision to segregate voters into particular districts. *Alexander*, 144 S. Ct. at 1254 (Thomas, J., concurring) (quotation omitted). Rather, the evidence overwhelmingly shows race was the *sole reason* the State sorted voters inside and outside of SB8-6. Such egregious racial classification is plainly inconsistent "with our

colorblind Constitution." *Id.* at 1263 (Thomas, J., concurring); *see also Students for Fair Admissions*, 600 U.S. at 217-20, 229-30. Regardless of whether strict scrutiny is triggered by any sort of racial classification, racial predominance, or race as the sole reason behind the State action, *Alexander*, 144 S. Ct. at 1262 (Thomas, J., concurring), the overwhelming evidence from this race-based State action satisfies any standard. As a result, there is no lack of judicially manageable standards, and the Court can summarily affirm without revisiting the appropriate trigger for strict scrutiny.

V. The Court Should Allow the Remedial Phase to Continue.

The district court decided, in its proximity to the record and events, to conduct a remedial trial. *Cf. North Carolina v. Covington*, 585 U.S. 969, 977 (2018) (per curiam) (holding "District Court had its own duty to cure illegally gerrymandered districts through an orderly process in advance of elections" under *Purcell*, and did not abuse discretion when it determined "providing the General Assembly with a second bite at the apple risked further drawing out these proceedings and potentially interfering with the 2018 election cycle" and drew remedial districts (citation omitted)). It noted, however, the State could repeal the legislation at any time and enact a new law in regular course. Dkt.219. The State remains free to do so. But with the ever-encroaching 2026 election, the threat of another *Purcell v. Gonzalez*, 549 U.S. 1 (2006), problem, and the realized irreparable harm to voters for the 2024 election, the Court should not stay the district court's remedial phase so the State can enact its third map in this districting cycle.

This *Purcell* problem is especially concerning because the Louisiana Secretary of State, while represented by the same counsel, in a matter of months provided different federal courts with different final deadlines for redistricting maps for the 2024 election. Dkt.219, at 2-3. The State has already irreparably deprived Appellees of their constitutional rights for the 2024 election. The potential recurrence of shifting deadlines or an even earlier deadline for the 2026 election foretells the same fate. Accordingly, Appellees respectfully ask this Court to summarily affirm and remand the case so the district court can proceed with the remedial phase of the trial and ensure a map is in place for the 2026 election. Such an order would not prevent the State from repealing the old law and enacting a new one, as it did during the *Robinson* litigation.

CONCLUSION

For the foregoing reasons Appellees respectfully ask the Court to summarily affirm or dismiss and remand the case for remedial proceedings to continue.

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