No. 24-110

IN THE

Supreme Court of the United States

PRESS ROBINSON, ET AL.,

Appellants,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

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

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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INTRODUCTION

The Louisiana Legislature acted within the breathing room the Constitution affords when it pursued political goals in redrawing Louisiana's congressional map in response to multiple federal court rulings finding that the State's 2022 plan (HB1) likely violated §2 of the Voting Rights Act (VRA). *See Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023); *Robinson v. Ardoin*, 37 F.4th 208 (5th Cir. 2022); *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022). In an extraordinary request, Appellees ask this Court to deny Louisiana any presumption of good faith, ignore court decisions in *Robinson*, and reject decades of precedent. This Court has consistently held that "race consciousness does not lead inevitably to impermissible race discrimination," *Shaw v. Reno*, 509 U.S. 630, 646 (1993), and that states "retain broad discretion" in complying with the VRA, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 429 (2006) ("*LULAC*"); *see also Bethune-Hill v. State Bd. of Elections*, 580 U.S. 178, 193–196 (2017); *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) ("§2 allows States to choose their own method of complying with the Voting Rights Act").

Appellees concede that protecting specific incumbents, not race, was the Legislature's primary motive for choosing the plan it adopted (SB8). *See* Mot.8–9. This includes Louisiana's placement of a new majority-Black district along the Red River between Shreveport and Baton Rouge instead of creating a more compact district in the Delta as Appellants proposed in *Robinson*. This concession requires reversal and should end this appeal. *See*

Alexander v. S.C. State Conf. of the NAACP, 144 S. Ct. 1221, 1241–1243 (2024). Appellees insist these political considerations do not matter, arguing that Louisiana's decision to create a second majority-Black district itself constitutes racial predominance, regardless of the motivations for the plan's specific configuration. But this Court has repeatedly and unequivocally rejected that premise. A legislature's consideration of race for the "lawful purpose" of complying with §2—and then prioritizing politics with respect to the specific district it creates—is not racial predominance. *Id.* at 1242; *see also North Carolina v. Covington*, 585 U.S. 969, 977–978 (2018) (permitting race-conscious remedial districts); *Abbott v. Perez*, 585 U.S. 579, 616 (2017) (same). Even if it were, Louisiana's balancing of race with political considerations in SB8 would satisfy strict scrutiny. *Bethune-Hill*, 580 U.S. at 193–195. Any other decision would leave states no breathing room between VRA-compliance and racial gerrymandering—the very bind this Court has repeatedly warned lower courts not to impose.

Appellees' motion should be denied.

ARGUMENT

I. Appellants Have Standing Because the Panel's Decision Threatens to Once Again Dilute Their Votes.

Contrary to Appellees' contention, Appellants have "a direct stake in the outcome" of this appeal. As the panel and this Court's settled precedent recognize, the substantial harm the current

injunction would cause to Appellants' individual right to cast undiluted votes constitutes a direct and concrete injury. App.16a. In redistricting cases, this Court has repeatedly entertained similar appeals by private intervenors alone, *Abrams v. Johnson*, 521 U.S. 74, 78 (1997), or in conjunction with State officials, *Easley v. Cromartie*, 532 U.S. 234, 241 (2001); *Bush v. Vera*, 517 U.S. 952, 957 (1995). Additionally, Appellant Davante Lewis resides in the enjoined majority-Black district, CD6. App.145a. If the district court's injunction is upheld, Mr. Lewis, like other Black voters in CD6—and not like every Louisiana voter—would be deprived of his individual right to an undiluted vote. That is all that is required.

The threatened dilution of Appellants' votes is a particularized injury that is "personal and individual" and traceable to the district court's injunction. *Gill v. Whitford*, 585 US 48, 65 (2018) (citations omitted). Appellants' interest in avoiding that dilution is wholly distinct from the State's interest in enforcing its laws. Thus, Appellants neither seek to vindicate a generalized "interest in proper application of the Constitution and laws" shared by every citizen, *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013), nor to assert the State's interest as the basis for their standing.

The risk that Appellants will be made to vote under a map that dilutes their vote is not speculative or abstract. In 2022, Appellants were forced to vote under a map that the *Robinson* courts found likely diluted their votes. Appellees would impose a map that reproduces that same illegal dilution. Mot.22. Appellants have standing to maintain this appeal. *Cf.*

Abrams, 521 U.S. at 78 (permitting private intervenors to appeal court-ordered plan that allegedly failed to comply with §2).

II. Appellees and the Panel Fail to Disentangle Race and Politics.

This Court has held that racial-gerrymandering plaintiffs and the district court must "disentangle race from politics." *Alexander*, 144 S. Ct. at 1233. Appellees acknowledge that the Legislature pursued political goals in SB8, specifically the desire to protect favored incumbents over the Governor's political rival.[1] Mot.8. Appellees say none of this political context matters—even though politics alone explains the preference for SB8 over more-compact alternatives, App.395a—because the State considered politics only after concluding that the *Robinson* decisions required a §2 remedy. They contend race would predominate in any map that intentionally complied with §2, and they dismiss the Legislature's district-specific considerations. Mot.21–22.

But the use of race to remedy racial discrimination, without more, cannot establish racial predominance or violate the Constitution. *See Covington*, 585 U.S. at 978; *Allen v. Milligan*, 599 U.S. 1, 41 (2023). Even where a State employs an "express

[1] Appellees assert that the Legislature espoused no policy goal for CD6, but the Legislature identified social, religious, healthcare, and economic interests that CD6 protected, App.224a-226a, 252a, and sought to craft CD6 so that the preferred incumbents remained unpaired in their districts without violating one-person-one-vote—no easy task according to Appellees' own expert. App.220a–221a.

racial target," a "holistic analysis" is necessary to evaluate claims of racial predominance. *Bethune-Hill*, 580 U.S. at 192. Here, the *Robinson* courts' finding that a reasonably configured majority-Black district could be drawn provided "good reasons" for Louisiana to believe it could draw a remedial district without violating the Constitution. *See Abbott*, 585 U.S. at 616 (legislature had "good reason" to believe §2 required majority-minority district based on court's prior "extensive[]" analysis). The Legislature's exercise of its leeway to draw a less-compact remedial district for political reasons is not racial predominance.

Appellees' acknowledgment that politics animated the choice of SB8, combined with the concurrence of seven federal judges in *Robinson* that a second majority-Black district could be drawn without race predominating, dooms this appeal. At the very least, these facts required Appellees to "disentangle race from politics by proving that the former *drove* [CD6's] lines." *Alexander*, 144 S. Ct. at 1235 (citation omitted). Yet Appellees offered no evidence that a single line in SB8 was driven by racial considerations over political ones.

Appellees also failed to produce an alternative map that accomplished Louisiana's political goals with less reliance on race. *Alexander*, 144 S. Ct. at 1234–1236. Instead, they now contend that HB1, Louisiana's 2022 congressional map, satisfies the alternative-map requirement because it protected the same incumbents as SB8. Mot.22. But HB1 is the very map *Robinson* found likely to violate §2. 605 F. Supp. 3d at 851. Had the State kept HB1, the *Robinson* court likely would have imposed a map with no heed

to the Legislature's incumbent preferences. *See, e.g.*, *Abrams*, 521 U.S. at 84 (approving court-drawn plan that gave low priority to incumbency protection). Avoiding that outcome was precisely what the Legislature sought by selecting SB8. The State thus could not have achieved its political goals by keeping HB1.[2]

Because the record demonstrates "that politics pervaded the highly visible mapmaking process from start to finish," *Alexander*, 144 S. Ct. at 1244, this Court should note jurisdiction and reverse.

III. The Panel Erred in Its Application of Strict Scrutiny.

Even if Appellees had demonstrated racial predominance, SB8 easily survives strict scrutiny. *Robinson* provided "good reasons" for Louisiana to believe that a plan with a second Black-opportunity district was feasible and necessary to comply with the VRA, which is all narrow tailoring requires. *Bethune-Hill*, 580 U.S. at 194–195. While this "standard does not require the State to show that its action was actually necessary to avoid a statutory violation," *id.* at 194, where judicial findings of a likely §2 violation exist—such as those in a preliminary injunction affirmed as "valid when it was issued," *Robinson*, 86 F.4th at 599—they can provide good reason for a state's drawing of majority-minority districts, *see Abbott*, 585 U.S. at 616; *Vera*, 517 U.S. at 994–995

[2] Appellees also cite an illustrative map introduced at trial which, like HB1 had one Black-opportunity district. But there was no evidence of that map's origins, and the panel hardly mentioned it.

(O'Connor, J., concurring). With *Robinson* establishing the required good reasons, the Legislature drafted SB8 with political considerations at the forefront. App.395a. Appellees cite no evidence that the Legislature considered race more than necessary to honor §2. They concede that CD6 contains just over 50% BVAP, and the record shows SB8's sponsor believed this was the level needed to elect Black voters' candidates of choice. App.396a.

Appellees disparage the State's interest in complying with §2 as merely "[a] desire to beat the *Robinson* district court to the punch," Mot.23, even speculating, without evidence, that the State used the VRA litigation strategically as cover for "its own racial gerrymander," Mot.25. But they fail to offer any motive for the Legislature to pursue this goal other than VRA-compliance, nor evidence that its political goals were anything but genuine. Appellees' effort to cast doubt on the Legislature's record-substantiated motives contravenes the presumption of legislative good faith. *Alexander*, 144 S. Ct. at 1235–1236; *cf. Abbott*, 585 U.S. at 608–609 (rejecting argument that adopting remedial map to resolve §2 litigation evidences legislative bad faith). Moreover, "beating [the court] to the punch," and avoiding displacement of the Legislature's redistricting prerogative, is precisely what this Court (and the Fifth Circuit in its *Robinson* remand) has long held is the proper course. *E.g.*, *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) (redistricting "is a legislative task which the federal courts should make every effort not to preempt").

Appellees argue that multiple adverse rulings in the *Robinson* plaintiffs' VRA litigation failed to

render VRA-compliance a compelling state interest, likening those federal-court decisions to "third party litigation threats" and Justice Department preclearance objections. Mot.26, 28. But federal courts do not issue litigation threats; they decide the cases before them. And, unlike the Justice Department, it is "emphatically the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803). That is precisely what the *Robinson* courts did when they concluded that HB1 likely violated §2 and alternative plans with two majority-Black districts were not racial gerrymanders. Moreover, in the cases Appellees cite, this Court ruled that the Justice Department's policy of maximizing majority-minority districts misconstrued §5's requirements. *See*, *e.g.*, *Shaw v. Hunt*, 517 U.S. 899, 911–912 (1996); *Miller v. Johnson*, 515 U.S. 900, 921–924 (1995). There is no basis to suggest the *Robinson* district court similarly misapplied §2: The Fifth Circuit twice upheld its merits determinations, and this Court declined to intervene.

Nevertheless, according to Appellees, even if the *Robinson* courts correctly applied §2, it was improper for the State to rely on their rulings. To Appellees, this amounted to "outsourc[ing]" the inquiry into Louisiana's VRA obligations to the federal courts. Mot.28. They maintain that the State could not validly rely on the *Robinson* courts' determination that *Gingles* had been satisfied and that HB1 likely violated §2 because **1)** the Attorney General told legislators she disagreed with the *Robinson* courts' conclusions even as she advised them to accede to their rulings, Mot.4–6; **2)** legislators had not

independently reviewed or relied on the *Robinson* preliminary-injunction evidence, Mot.29–30; and **3)** the *Robinson* rulings arose in a preliminary-injunction posture, and the State made a "strategic misstep" by failing to raise unspecified legal defenses that it might have raised at trial, Mot.31. None of these observations undermine Louisiana's "good reasons" for engaging in remedial redistricting.

By Appellees' logic, states must exhaust time and resources litigating losing vote-dilution cases to final judgment before they have a strong enough basis to consider race for VRA-compliance; even then, Appellees would require states to defy a federal court order unless they subjectively agree with its legal analysis and independently verify its evidentiary foundation. That is not the law. First, even if the Attorney General believed HB1 remained lawful, Louisiana made a reasoned judgment that the courts disagreed, and there is no evidence that she believed SB8 was unlawful. *Cf. Abbott*, 585 U.S. at 609. Appellees identify no law that would require the State to concede liability in *Robinson* or legislators to subjectively agree with the courts' §2 rulings to have good reasons to adopt a race-conscious remedy. Second, the "good reasons" standard did not require the Legislature to conduct its own independent *Gingles* analysis or concur with the *Robinson* courts' assessment of the expert analysis and evidentiary record. *See id.* at 616 (where legislature adopted new districts to resolve VRA litigation, evidence from litigation record could provide "good reasons" to draw non-compact majority-minority district). Moreover, Appellees' assertion that the Legislature was unfamiliar with the expert analysis is false. During

the 2024 Special Session, at the request of the Senate and Governmental Affairs Committee, the *Robinson* plaintiffs' counsel gave a presentation to legislators on the experts' data and conclusions. Dkt.181-4, 61:18–74:22. Third, the State was not required to go to trial or await a "fully litigated decision" finding a §2 violation, Mot.27, before having "good reasons" to take remedial action.[3] *Cf. Lawyer v. Dep't of Just.*, 521 U.S. 567, 576 (1997) (court not required to find plan unconstitutional before approving settlement). Appellees' assertion that the State "never frontally attacked the plaintiffs' VRA showings[,]" Mot.30, is belied by the *Robinson* decisions and does not change the analysis: The Governor and Attorney General, who represented the State in *Robinson*, concluded—and advised the Legislature—that they had exhausted their legal options and further litigation would be fruitless.

Appellees contend that CD6 is not narrowly tailored because it could have been more compact. There is no dispute that SB8's CD6 is less compact than necessary for VRA-compliance or that the more-compact alternatives offered in *Robinson* wouldn't have accomplished the Legislature's political goals. J.S.27–30. The question for strict scrutiny, however, is not whether *the district* is narrowly tailored to remedy the VRA violation; it is whether the Legislature's *use of race* in drawing the district is narrowly tailored. *Vera*, 517 U.S. at 962–963. This is

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[3] What Appellees repeatedly dismiss as the "preliminary opinions from *Robinson*," Mot.30, were based on a significantly more extensive evidentiary record than the ruling by the panel below.

not a case where a legislature drew a less-than-compact district *because of race*. As Appellees recognize, Louisiana considered race only as necessary to create a second majority-Black district, *see* Mot.9 (recognizing that CD6 is just over 50% BVAP), which was required to satisfy the VRA as construed by the courts in *Robinson*. That is the essence of narrow tailoring. The Legislature then chose a less-compact majority-Black district for political reasons, precisely the kind of policy choice the Constitution gives states leeway to make. *See*, *e.g.*, *Vera*, 517 U.S. at 978.

Finally, assuming *Robinson* provided good reasons to draw a remedial VRA district in Baton Rouge and the Delta, Appellees contend that it was improper for the State to create a Black-opportunity district "just anywhere." Mot.27 (citing *LULAC,* 548 U.S. at 431). But SB8's CD6 is not "elsewhere in the state" from the illustrative districts in *Robinson, LULAC*, 548 U.S. at 430–432: Less than 23% of the population in CD6 comes from the three Northwest Louisiana parishes, Caddo, Natchitoches, and DeSoto, that are not in whole or in part in the Delta-based district. Dkt.183-10, Dkt.183-7 Because it was not possible to draw a Black-opportunity district that included both Northeast and Northwest Louisiana, the State had to make a choice. Under this Court's precedents, it was permitted to do so. *See, e.g.*, *LULAC*, 548 U.S. at 430.

IV. The Panel Abused Its Discretion by Expediting Proceedings.

Appellees miss the key problem with the district court's trial schedule. Even if the expedited schedule

were appropriate for preliminary relief, it was inappropriate in proceedings leading to a final judgment. Appellees' only argument in favor of consolidation of the preliminary injunction and trial is that the Secretary claimed that a new map had to be in place by May 15 to avoid disrupting the 2024 election. Mot.33–35. But consolidation was unnecessary to address that concern. A preliminary injunction, followed by trial on a reasonable timeline, would have sufficed.

Appellees' insistence that the case "was the State's to defend" or that Appellants were permissive intervenors not entitled to a process sufficient to fully present their case is no answer (nor is it accurate). Mot.34. The State had not yet intervened when the Appellees proposed consolidation, and the Secretary of State—who refused to defend SB8—did not oppose. Moreover, neither the State nor the Secretary put on any evidence at trial. Put another way, until twenty-four days before trial, no party that sought to present evidence to defend SB8 was able to object to consolidation or the truncated discovery process. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Pughsley v. 3750 Lake Shore Drive Co-op. Bldg.,* 463 F.2d 1055, 1057 (7th Cir. 1972) (Stevens, J.) ("A litigant . . . should seldom be required . . . to forego discovery" due to consolidation). Further, "extensive experience in Louisiana redistricting litigation[,]" Mot.34, is no substitute for an opportunity to develop a factual record and test witness testimony, especially on an issue as fact-dependent as racial gerrymandering. *See Alexander*, 144 S. Ct. at 1243; *Bethune-Hill*, 580 U.S. at 192.

CONCLUSION

This Court should deny Appellees' motion, note probable jurisdiction, and reverse.

September 16, 2024

Respectfully submitted,

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