No. 21A814

In the Supreme Court of the United States

KYLE ARDOIN,
IN HIS CAPACITY AS THE
LOUISIANA SECRETARY OF STATE, ET AL.,
Applicants,

v.

PRESS ROBINSON, ET AL.,
Respondents.

REPLY BRIEF IN SUPPORT OF EMERGENCY APPLICATION FOR ADMINISTRATIVE STAY, STAY PENDING APPEAL, AND PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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The thicket currently engulfing Louisiana and crying out for this Court's action is reducible to a simple point. When Louisiana tried to include two majority-Black districts after the 1990 Decennial Census, the federal courts told the State it *couldn't* without violating the Fourteenth Amendment's Equal Protection Clause.[1] Now—with no meaningful change in the State's demographics since 1990—a federal court says Louisiana *must* include two majority-Black, or it will violate Section 2 of the Voting Rights Act. As said best by the Western District of Louisiana, the State "share[s] the frustration of the Australian who went bonkers trying to throw away his old boomerang." *Hays v. Louisiana*, 936 F. Supp. 360, 365 (W.D. La. 1996).

Standing alone, the district court's decision to lodge Louisiana between a constitutional rock and a statutory hard place warrants an administrative stay and certiorari before judgment. The pendency of this Court's decision in *Merrill v. Caster*, a case presenting *the same legal question at issue in this case*,[2] renders (at best) imprudent the lower courts' refusals to yield and await this Court's Section 2 directive. And the wreck that the district court has continued to impose upon both the State's legislative and executive branches (which includes threatening a State legislative leader with contempt after the State asked for an extension of time, *see*

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[1] *See Hays v. Louisiana*, 839 F. Supp. 1188, 1191 (W.D. La. 1993), *vacated*, 512 U.S. 1230 (1994), *order on remand*, 862 F. Supp 119 (W.D. La. 1994).

[2] *See Merrill v. Caster*, No. 21-1087 (U.S.) (2022) (amending question presented as follows: "Whether the State of Alabama's 2021 redistricting plan for its seven seats in the United States House of Representatives violated section 2 of the Voting Rights Act, 52 U.S.C. § 10301").

App. 456) elides all doubt that stopping this case now is essential.

In the absence of a stay, the district court is barreling forward toward enforcing a mass equal protection violation, denying the State an orderly trial on the merits or even an orderly trial on the remedial phase of the preliminary injunctions. So even if the Fifth Circuit expedites its ultimate decision, it still will not arrive fast enough to prevent irreparable harm to the State. Nor will Applicants be able to secure relief from this Court *after* the Fifth Circuit issues its order—by then, it is likely that at least a month, and probably more, will have slipped away with *qualifying* less than a month away. Unless this Court acts now, it is unlikely that the State will be able to manage the 2022 election cycle without "significant cost, confusion, or hardship." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring).

This Court will hear a case addressing the precise *legal* issues raised by the Applicants, and it will do so on the second day of the next term. *Merrill* has teed up the question of how to distinguish between racial "predominance" and racial "awareness" for purposes of navigating between the Equal Protection Clause and Section 2 of the Voting Rights Act. *See* Appl. for Stay or Injunctive Relief Pending Appeal (21A376) at 28, *Merrill v. Caster*, No. 21-1087 (U.S.) (Jan. 28, 2022). It blinks reality to assume that *Merrill* will not affect the legal standards governing this case—which Justice Kavanaugh *and* Chief Justice Roberts agree are subject to "considerable disagreement and uncertainty." *Merrill*, 142 S. Ct. at 883 (Roberts, C.J., dissenting). Staying this case and/or consolidating it with *Merrill* is the only path forward that makes sense. *Cf. Merrill v. Caster*, No. 21-1087 (U.S.)

(consolidating case with No. 21-1086 for briefing and oral argument); *see also* Brief for the States of Louisiana, et al., as *Amici Curiae* at 1, *Merrill v. Milligan*, No. 21-1086 (U.S.) (May 2, 2022) (noting concerns with confusion in this Court's jurisprudence interpreting Section 2 and that a district court's misinterpretation of this Court's precedents only adds to the confusion).

Lest anyone doubt the stakes, the remedy to be ordered by the district court is irreducibly and plainly "segregat[ion]" of "the races for purposes of voting." *Shaw v. Reno*, 509 U.S. 630, 642 (1993). Unless race ascends to the sole "non-negotiable" district-drawing variable, *see Cooper v. Harris*, 137 S. Ct. 1455, 1470, 1480 (2017), neither the State nor *Plaintiffs' experts* can draw Louisiana's congressional maps with two majority-Black districts.

Because "[t]he law regards man as man," it must "take[] no account of his surroundings or of his color." *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). And despite the admirable goals of the Voting Rights Act, racial gerrymandering of the ilk required by the district court remains antithetical to the United States Constitution.

Nothing either set of Plaintiffs offers, or could offer, can change these conclusions. Both focus almost entirely on the district court's factual findings while glossing over the legal errors pervading its analysis. Both try to contrive daylight between this case and *Merrill* where none exists. And even if some daylight did exist between the claims brought in *Merrill* and here, none whatsoever exists with this case and *Castor, which was consolidated with Merrill.*

The *Purcell* doctrine here is being weaponized. But it's not simply an arithmetic exercise that gauges how temporally close to an election a federal court may interfere with a state's voting infrastructure. Instead, *Purcell* cautions federal courts to not tamper with a state's election apparatus in any way that will hinder the "enormous advance preparations" that "state and local officials" must undertake to make sure that elections run smoothly. *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). In the best of times, elections "pose significant logistical challenges." *Id.* For that reason, *Purcell* exists as a shield for election workers, not a sword for courts to wield when they want to rush an otherwise immensely challenging redistricting process.

I. CERTIORARI BEFORE JUDGMENT IS WARRANTED BECAUSE REVERSAL OF THE PRELIMINARY INJUNCTION IS LIKELY.

Despite the numerous fact-bound mistakes the district court committed (and the Fifth Circuit has thus far sanctioned), the errors justifying an emergency stay are all legal and fundamental. When the district court insisted that the Louisiana legislature draw two majority-Black districts it was necessarily requiring the State to prioritize race (or else it would take on the task of prioritizing race itself). The court flouted decades of this Court's jurisprudence holding that "[c]lassifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw*, 509 U.S. at 643 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). So too, did it legally misconstrue this Court's *Gingles* precondition 3 pronouncement that "in the absence of significant white bloc voting it cannot be said that the ability of minority voters to

elect their chosen representatives is inferior to that of white voters." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993) (quoting *Gingles*, 478 U.S. at 49 n.15). And, for good measure, it ran afoul of this Court's legal pronouncement that "uncritical majority-minority district maximization" does not satisfy *Gingles* precondition 1. *Wis. Leg. v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1249 (2022) (per curiam).

Try as Plaintiffs might to construe this stay request as a plea for fact-bound error correction, the *legal* errors permeating the lower courts' opinions are stark, acute, and entitled to no deference.[3] As such, there is no good reason to waste judicial resources allowing this case to proceed before the Fifth Circuit, which might (or might not) resolve these issues several weeks (or more) from now. If the legal errors at the heart of this case remain intact, they will transgress (at an absolute minimum) *Bethune-Hill*, *Shaw*, *North Carolina v. Covington*, *Cooper v. Harris*, and *Bartlett v. Strickland*, and they will reverberate throughout Louisiana's 2022 election cycle and beyond—all flowing from an injunction where the likelihood of success is concededly not "entirely watertight." *See* App. 199. A stay of the district court's preliminary

[3] *See Thornburg v. Gingles*, 478 U.S. 30, 79 (1986) (nothing "inhibits" the Court from "correct[ing] errors of law," and legal errors that "infect a so-called mixed finding of law and fact" and even factfindings "predicated on a misunderstanding of the governing rule of law" are reversible without deference to the district court. (internal quotation marks omitted)); *see also, e.g.*, *Abbott v. Perez*, 138 S. Ct. 2305, 2326 (2018) ("While a district court's finding of fact on the question of discriminatory intent is reviewed for clear error, . . . whether the court applied the correct burden of proof is a question subject to plenary review." (citations omitted)); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (considering whether "the District Court misapplied controlling law"); *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262 (2015) ("[E]ach of these determinations reflects an error about relevant law[, a]nd each error likely affected the District Court's conclusions.").

injunction, a grant of certiorari before judgment, and (ultimately) a reversal of the district court's ill-conceived order are all warranted.

A. Because Black-preferred candidates can prevail without Section 2 relief here, Plaintiffs cannot satisfy the third *Gingles* precondition.

This Court spoke with clarity when it held that *Gingles* step 3 requires evidence of "*legally* significant racially polarized voting." *Gingles*, 478 U.S. at 55 (emphasis added). Legally sufficient racially polarized voting occurs when "less than 50% of white voters cast a ballot for the black candidate." It is not the same as when "black voters and white voters would have elected different candidates if they had voted separately." App. 328. The former is a correct statement of the law, as emphasized in *Gingles*,[4] as well as *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009),[5] *Covington v. North Carolina*, 316 F.R.D. 117, 168 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017),[6] and *Voinovich*, 507 U.S. at 158.[7] The latter is the erroneous definition offered by Plaintiffs' experts, accepted by the district court, and then blessed thus far

[4] *See Gingles*, 478 U.S. at 56 (citations omitted) (plaintiffs must show that the "amount of white bloc voting . . . can generally 'minimize or cancel' black voters' ability to elect representatives of their choice" to satisfy *Gingles* precondition 1).

[5] *See* 556 U.S. at 24 ("In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters

[6] *See* 316 F.R.D. at 168, aff'd, 137 S. Ct. 2211 (2017) (*Gingles* precondition 3 not satisfied unless "majority bloc voting exist[s] at such a level that the candidate of choice of African-American voters would usually be defeated without a VRA remedy").

[7] *See Voinovich*, 507 U.S. at 158 ("'[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters.'" (quoting *Gingles*, 478 U.S. at 49, n. 15)).

by the Fifth Circuit.

The way in which the Fifth Circuit strained to salvage the district court's finding on this point bears emphasis. In the Circuit Court's view, it sufficed that the issue of white "'crossover voting,'" which defeats a claim of white bloc voting, "'was inherently included in' the plaintiffs' experts' analysis." App. 186 (emphasis omitted). But the question whether white crossover voting reaches "*legal*[] significan[ce]," *Gingles*, 478 U.S. at 31 (emphasis added), remains the fundamental *legal* question for purposes of *Gingles* precondition 3, and the *district court's* failure to analyze this question according to the correct *legal* standard cannot be rendered harmless because Plaintiffs' *witnesses* addressed it "inherently," App. 126.

Because Section 2 only prohibits vote dilution "on account of race or color," 52 U.S.C. § 10301 (a), if something *other* than "race or color" "best explains" electoral outcomes then Section 2 provides no remedy. More specifically, where, as here, "partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens," *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993),[8] a Section 2 plaintiff cannot carry his burden of satisfying *Gingles* precondition 3. By ignoring this point, both the district court and the Fifth Circuit committed legal error.

Despite spilling heaps of ink emphasizing the district court's (erroneous)

[8] *See also Baird v. Consol. City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992) (Easterbrook, J.) ("The Voting Rights Act does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party's candidates.").

factual findings, neither set of Plaintiffs has anything meaningful to say about the district court's *legally* flawed amalgamation of racially polarized and politically polarized voting. The district court made no attempt to disentangle the two. The Fifth Circuit did not mention this question at all. This series of legal errors justifies the relief sought by Applicants.

B. Section 2 does not give the district court license to order a racial gerrymander.

If the Fourteenth Amendment's Equal Protection Clause stands for anything, it is that "[c]lassifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw*, 509 U.S. at 643 (quoting *Hirabayashi*, 320 U.S. at 100). If "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," *Miller v. Johnson*, 515 U.S. 900, 916 (1995), then a racial gerrymander exists. No direct evidence was offered as to intent. Indeed, the Legislature endeavored to carefully navigate traditional redistricting principles, as applied in numerous decisions by this Court, and do so against a significant legal backdrop specific to Louisiana. And if *ten-thousand* simulated Louisiana congressional maps using race-neutral criteria results in *no* majority-Black districts,[9] then, quite obviously, drawing Louisiana congressional maps with *two* majority-Black districts requires "racial predominance," and not just

[9] That the district court thought that the Applicants' simulation expert was a "novice" cannot change the plain fact that cutting out race as a consideration results in no majority-Black districts, and two majority-Black districts only emerge when map drawers are instructed that they must draw two majority-Black districts.

racial "awareness." *Id*.

Reaching this conclusion does not require "a comprehensive review of the expert testimony." Galmon Opp. 18. It turns on one indisputable fact. Plaintiffs' experts were expressly instructed to only draw maps with two majority-Black districts, App. 300-301, even though removing race as a consideration would not have resulted in any map with even one majority-Black district. In other words, race was, for Plaintiffs, the "non-negotiable" district-drawing variable, *see Cooper*, 137 S. Ct. at 1470. Notwithstanding the record-based haze that both sets of Plaintiffs try to kick up, the upshot is unmistakable—prioritizing race, as a matter of basic English, means that "race was the predominant factor." *Miller*, 515 U.S. at 916. That, in turn, translates into a constitutionally anathema racial gerrymander.

This case is indistinguishable from *Covington*. Indeed, the *Galmon* Plaintiffs set this out quite nicely:

- According to the *Galmon* Plaintiffs, in *Covington*, "race-neutral districting criteria were subordinated to race-based goals." Galmon Opp. at 18 (quoting *Covington*, 316 F.R.D. at 137-40). By instructing their experts to draw *only* two-majority-Black-district maps, even though ten-thousand race-neutral simulations would not produce even one majority-Black district, Plaintiffs did the same here.

- According to the *Galmon* Plaintiffs, in *Covington*, "the challenged maps 'split a high number of precincts,' were less compact than the benchmark maps on most compactness measures, and contained 'bizarre' and 'oddly shaped' districts." Galmon Opp. at 19 (quoting *Covington*, 316 F.R.D. at 316 F.R.D. at 137-38, 143-46). As discussed below, *see infra* at 12-14, Plaintiffs' illustrative maps split numerous communities, cities, and precincts, and cannot be considered compact in any sense of the word.

- According to the *Galmon* Plaintiffs, in *Covington*, "the map-drawer was 'instructed [] to draw enough VRA districts to provide

North Carolina's African American citizens with a substantially proportional and equal opportunity to elect their preferred candidates of choice.'" Galmon Opp. at 19 (quoting *Covington*, 316 F.R.D. at 132). How this is any different than what Plaintiffs instructed their experts to do remains a mystery known only to them.

- According to the *Galmon* Plaintiffs, in *Covington*, "the overriding priority of the redistricting plan was to draw a predetermined race-based number of districts, each defined by race." Galmon Opp. at 19 (quoting *Covington*, 316 F.R.D. at 135). At the risk of redundancy, Plaintiffs' expert testified that he "was specifically asked to draw two" majority-Black districts "by the plaintiffs." App. 300-01.

- And according to the *Galmon* Plaintiffs, in *Covington*, "the legislature 'erred in drawing each of the challenged districts by failing to evaluate whether there was a strong basis in evidence for the third *Gingles* factor in any potential VRA district.'" Galmon Opp. at 19-20 (quoting *Covington*, 316 F.R.D. at 167). As noted above, *see supra* at 7-8, the district court committed this precise error, and the Fifth Circuit contorted its own precedents to try and salvage it.

It matters not that "the plaintiffs' illustrative maps are *consistent* with neutral districting criteria." Galmon Opp. at 21 (emphasis added). What matters is that Plaintiffs' illustrative maps *prioritized* race over neutral districting criteria when they were required to draw their districts "without a focus on race," *Cooper*, 137 S. Ct. at 1471. That Plaintiffs' experts spruced up their maps with traditional redistricting criteria *after* they ensured a third of Louisiana's congressional districts were majority-Black cannot mutate their racial gerrymander into something less invidious. Their illustrative maps remain "by [their] very nature odious." *Wis. Leg.*, 142 S. Ct. at 1248 (quoting *Shaw*, 509 U. S. at 643). As noted below, the remedial map they now ask the district court to adopt repeats the same constitutional transgression.

While the *Galmon* Plaintiffs opted for a specious opposition, the *Robinson* Plaintiffs chose an irrational one. In their view, it matters not that their illustrative maps rankly violate the Fourteenth Amendment because "private citizens, are not governed by the Equal Protection Clause." Robinson Opp. at 32.[10] But their illustrative maps served *one purpose*—demonstrating what *the State* can do *consistent* with its constitutional responsibility to refrain from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. It makes no sense whatsoever to use constitutionally *violative* maps as an "illustrative" example of what the State of Louisiana, a sovereign indisputably subject to the United States Constitution, should adopt. Relieving them of this constraint renders their evidence *irrelevant* to this entire endeavor. That the *Robinson* Plaintiffs would offer this argument reveals their awareness that their experts prioritized race and, accordingly, their illustrative maps constitute constitutionally odious racial gerrymanders.

Louisiana cannot have two majority-Black congressional districts unless race is elevated as the only essential districting factor with all other districting considerations merely an afterthought. This commonsensical point does not require the deep dive into all the expert testimony that Plaintiffs suggest. It arises from the

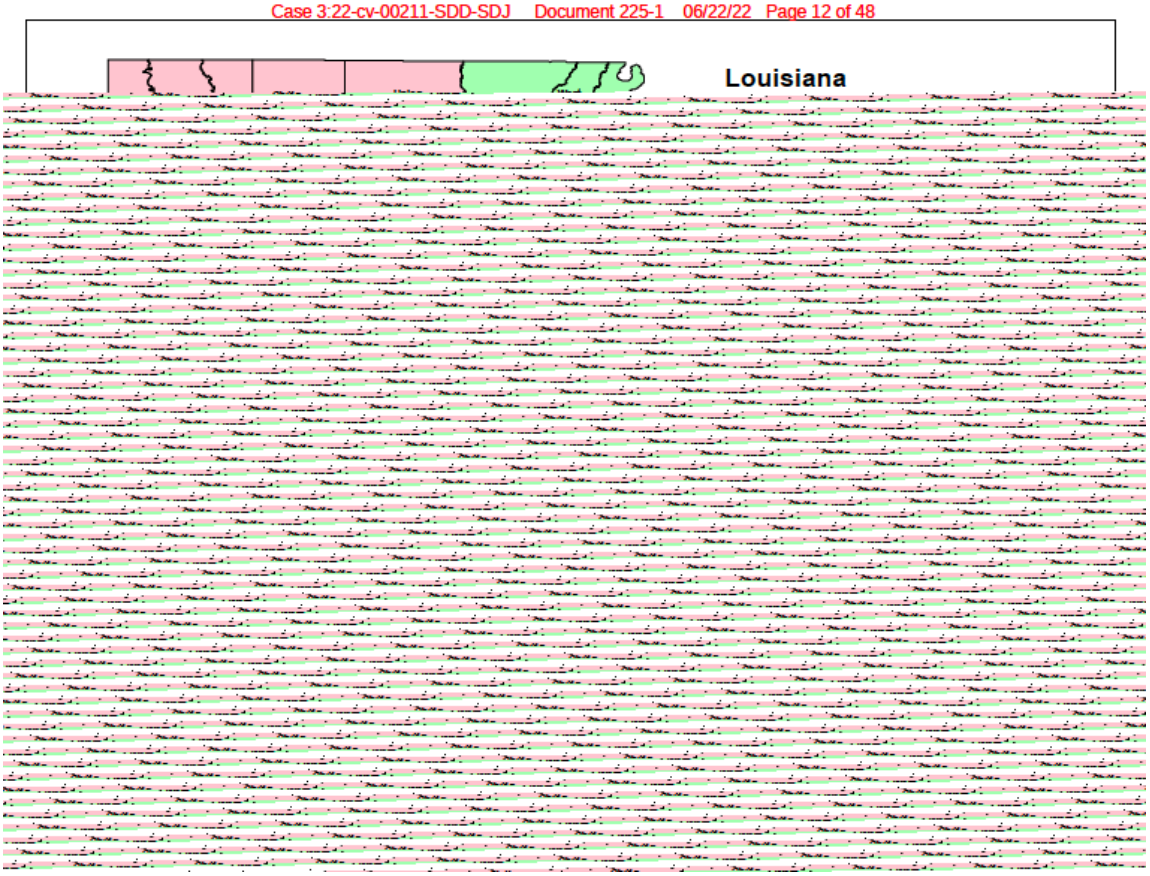
[10] Plaintiffs' assertion that "the district court has not ordered any remedial map at all, much less a 'racial gerrymander,'" *Robinson* Opp. at 32, is flatly incorrect. Before they filed their opposition, Plaintiffs filed their court-ordered remedial map with the district court. *Robinson, et al. v. Ardoin, et al.,* No. 3:22-cv-211 (M.D. La.) (ECF No. 225) (hereinafter, *Robinson*).

observation that if a map drawer is "instructed [] to draw enough VRA districts to provide [Louisiana's] African American citizens with a" second majority-Black district, *Covington*, 316 F.R.D. at 132, then race is the "non-negotiable" district-drawing variable, *see Cooper*, 137 S. Ct. at 1470.[11] For these reasons, the relief requested by Applicants is plainly warranted.

C. The district court's *Gingles* precondition 1 legal errors justify a stay and certiorari before judgment.

Finally, legal errors permeate the lower courts' analyses regarding *Gingles* precondition 1, which requires Plaintiffs to show that Louisiana's Black population is "sufficiently large" and "geographically compact." *Gingles*, 478 U.S. at 50-51; *see also Cooper,* 137 S. Ct. at 1470 (quoting *Gingles*, 478 U.S. at 50). Racial gerrymanders, as a matter of law, cannot satisfy this requirement, which means Plaintiffs have failed to satisfy this precondition for all the reasons discussed above. *See supra* at 10-11. And now that Plaintiffs have submitted proposed remedial maps to the district court, the way in which they suggest "reach[ing] out to grab small and apparently isolated minority communities," *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006) (LULAC), at the expense of all other traditional districting criteria, has become even more obvious, as shown in the following picture:

[11] This point is also accentuated by Plaintiffs' decision to use the most expansive definition of "Black" for calculating the Black Voting Age Population, which is yet another independent legal error warranting this Court's intervention.



Each of the areas circled in red dice apart parishes, cities, and communities of interest that traditional districting criteria would otherwise leave intact.[12] The only reason why these abnormally drawn boundary lines exist are to pick up just enough Black population to ensure that CD5 remains majority Black. And plaintiffs never even bother to explain what Monroe's Black population has in common with Baton Rouge's or Lafayette's other than race. This failure compels the conclusion that Plaintiffs have

[12] It bears noting that the municipalities and parishes split by Plaintiffs' remedial map are both legally and self-evidently communities of interest that should remain intact. These areas have, among other things, their own elected leadership, police, and schools. That Plaintiffs do not hesitate to carve them apart, at bottom *re-segregating them* for the sole purpose of creating a second majority-Black district, speaks volumes.

not, and cannot, satisfy *Gingles* precondition 1.

II. THE EQUITIES TILT DRAMATICALLY IN FAVOR OF GRANTING A STAY.

Even setting aside every one of the errors discussed above, the stay requested by Applicants is warranted by *Purcell*. The *Purcell* error committed by the district court, affirmed by the Fifth Circuit, and perpetuated by both the *Robinson* and *Galmon* Plaintiffs here is concluding that *Purcell* is a reason to *expedite* redistricting, "'a most difficult subject for legislatures,'" one "requiring a delicate balancing of competing considerations." *Bethune-Hill*, 137 S. Ct. at 797 (quoting *Miller*, 515 U.S. at 915). That, however, flips one-hundred-eighty degrees the reason why the Court created—and has since repeatedly applied—the *Purcell* doctrine. *Purcell* is not a sword that a district court may unsheathe to, for instance, force a State to call an extraordinarily short Extraordinary Session and then suggest (during that session) that legislative officials suspend State legislative rules after tossing away months of state legislative work. App. 437-38. *Purcell* is supposed to *prevent* unnecessary breaches of federal/state comity and principles of federalism and avoid the kind of pandemonium the district court has, and continues to, thrust upon Louisiana.

The infliction of this chaos is real and ongoing. After filing their emergency application for a stay with this Court, the Applicants asked the district court to extend its remedial phase deadlines until after this Court acts on the application. The district court rejected this request in an excoriating order. It noted that "[t]he Attorney General submit[ted] that an 'extension,' which is in reality a request for stay, is required to allow 'full discovery' and argues that the Court's order was unclear on the parameters of discovery during the remedial phase." *Robinson* (ECF No. 223

at 2) (scare quotes in original). In its view, however, "[t]he cry for 'full discovery' and the invocation of due process is a red herring for a delay." *Id.* at 3 (scare quotes in original). In other words, the district court has resolved to plow ahead, no matter the difficulties it is foisting upon several branches of Louisiana's government and without regard to the difficulties inherent in arriving at congressional districts in the midst of an election year where qualifying is less than three weeks away from the court's rushed remedy trial.

Both sets of Plaintiffs largely ignore that *Purcell* involves far more than counting the days between a federal-court injunction and an election. "[S]tate and local election officials need substantial time to *plan* for elections," *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) (emphasis added), and that planning needs to occur *now*. Moving any of Louisiana's election deadlines necessarily compresses others, adding immense stress to the State's election apparatus during a time at which it must accomplish innumerable other tasks. *See* Application at 30-39.

Because *Purcell* involves balancing of harms, it does not suffice to simply count days and compare the delta between an injunction and an election with the delta in other cases. For that reason, the Court's decision not to apply *Purcell* in *Wisconsin Legislature v. Wisconsin Elections Commission* has no bearing whatsoever on whether the Court should apply *Purcell* here. Wisconsin's state-court redistricting processes have no conceivable relation to legislative-based processes that Louisiana prefers, and neither set of Plaintiffs make any attempt to compare the election preparations between the two States.

That the Fifth Circuit set argument for July 8, 2022, does nothing to change how *Purcell* operates for purposes of this case. July 8, 2022, is also the court-extended deadline for candidates to file by nominating petition; candidate qualifying closes on July 22, 2022. There can be no doubt that more deadline disruption is to come. State law affords citizens just one week to object to the candidacy of any person running for election, which means they must do so by July 29, 2022. There is no conceivable way the Fifth Circuit can resolve this case in enough time to prevent the rapidly approaching cascade of electoral turmoil that will ensue if this Court declines to act.

In other words, allowing this case to proceed before the Fifth Circuit will result in nothing other than a colossal waste of state and judicial resources. After *Merrill*, the parties and the courts will almost certainly need to start this process from scratch to ensure *Merrill* is correctly applied. And between now and when the Court decides *Merrill*, Louisiana is suffering and will continue to suffer electoral havoc, while its citizens labor under the specter of a statewide Equal Protection violation.

It bears noting, also, that there is no daylight between the timing this Court found problematic in *Merrill* and the timing here. Justice Kavanaugh's concurrence looked to Alabama's election dates; in that case, the district court entered an injunction in late January 2022—four months before the next in-person voting date and two months before mail-in voting was set to commence. *See Singleton v. Merrill*, No. 2:21-cv-1291-AMM, 2022 U.S. Dist. LEXIS 17362, at *256-57 (N.D. Ala. Jan. 24, 2022). In this case, the district court issued an injunction in June—five months before in-person voting begins on November 8; two-and-a-half months before the federally

mandated date (September 24) for the State to issue ballots to overseas voters; and weeks before candidates may start qualifying by petition (which forced the district court to start extending statutory deadlines). Plaintiffs' suggestion that "Merrill is . . . readily distinguishable," then, is flat wrong. Robinson Opp. at 35.

CONCLUSION

For all these reasons, the Applicants request that the Court (1) immediately enter an administrative stay, (2) enter a stay pending appeal, and (3) construe this stay application as a petition for writ of certiorari before judgment, grant it, expedite it and consolidate it, or alternatively grant it and hold in abeyance pending the Court's decision in *Merrill*.

Respectfully submitted,

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