NO. 23A281

IN THE SUPREME COURT OF THE UNITED STATES

IN RE JEFF LANDRY, IN HIS OFFICIAL CAPACITY AS THE LOUISIANA ATTORNEY GENERAL, ET AL.

BRIEF OF LOUISIANA LEGISLATIVE BLACK CAUCUS AND *AMICI CURIAE* ELECTED LEADERS OF COLOR IN SUPPORT OF EMERGENCY APPLICATION FOR STAY OF WRIT OF MANDAMUS

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RULE 29.6 DISCLOSURE

The Louisiana Legislative Black Caucus is a non-profit membership organization. There is no parent corporation or publicly held company owning 10% or more of the corporation's stock.

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STATEMENT OF INTEREST

Amici are a collection of state and local elected leaders of color in Louisiana, including the Louisiana Legislative Black Caucus.[1] Having run for and successfully obtained office in the state, *amici* have deep knowledge of the political landscape, including and especially how racially polarized voting is in Louisiana. *Amici* have seen, and experienced, the ways in which polarized voting becomes acute when a candidate of color is on the ballot. Our experiences are affirmed in the underlying district court decision holding that Louisiana's current congressional map likely violates Section 2 of the Voting Rights Act. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022), *cert. granted before judgment*, 142 S. Ct. 2892 (2022), and *cert. dismissed as improvidently granted*, 143 S. Ct. 2654 (2023).

We also know the power and importance of representation. Many *amici* have a direct connection to current or former members of Congress of color. For *amici*, being able to see themselves in other elected leaders, especially at the federal level, made the promise of a political career appear possible and attainable. The election of

[1] Subject to the explanation below about the Louisiana Legislative Black Caucus, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*'s counsel made a monetary contribution to the preparation or submission of this brief. The Louisiana Legislative Black Caucus is a Plaintiff-Intervenor in the proceedings below, but is not listed as a party to these proceedings (*see* Robinson Br. at iii), and has not filed an emergency application with this Court. However, the Louisiana Legislative Black Caucus adopts the contents of this *amici curiae* brief as its response in support of the emergency application. A list of all parties joining this brief is available at Appendix A.

leaders of color—and the realistic possibility of others—means building a bench of future leaders in these offices and on the campaign trail.

We submit this brief in support of the emergency request for relief in this case, because of a simple maxim: justice delayed is justice denied. The State of Louisiana has been through one election cycle with a presumptively unlawful map. We cannot stand by and allow another election to pass with the voices of Black voters undercounted and diminished. The writ of mandamus issued last week by the Court of Appeals for the Fifth Circuit creates unjustified risk of delay of a remedy. Accordingly, we support the request that this Court intervene and allow the district court to proceed toward implementation of a remedial map that complies with federal law.

SUMMARY OF ARGUMENT

Amici write separately to emphasize a pair of crucial points as this Court considers emergency relief. *First*, the Louisiana Legislature has had ample opportunity to implement a compliant Congressional map since the district court entered its preliminary injunction in June 2022, and certainly since remand by this Court in June of this year. But instead of getting to work, the State now complains about being rushed before the district court. Their concerns should ring hollow, and certainly were not enough to justify the Fifth Circuit's unusual grant of a mandamus under the circumstances. *Second*, the mandamus creates the specter of *Purcell v. Gonzalez*, 549 U.S. 1 (2006), considerations creeping into this case yet again should

delays persist. The State should not be rewarded with maintaining the status quo for failing to meet its obligations under the Voting Rights Act.

ARGUMENT

I. MANDAMUS IS NOT APPROPRIATE UNDER THE CIRCUMSTANCES BECAUSE THE LOUISIANA LEGISLATURE HAS HAD AMPLE OPPORTUNITY TO REMEDY THE VOTING RIGHTS ACTION VIOLATION

Crucially, the State is unable to show that "the writ is appropriate under the circumstances." *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 381 (2004). *Amici* agree with the Fifth Circuit in one important respect: "the elected body must usually be afforded an adequate opportunity to enact revised districts before the federal court steps in to assume that authority." App. 488–89. But we do not agree about whether this opportunity has been afforded. It clearly has been.

To start, the Legislature was told in March 2022 by a co-equal branch of state government—the Governor—that the redistricting plan violated Section 2. App. 68. Instead of amending or revising, the Legislature decided to override the veto. App. 17. After the district court issued its preliminary injunction in June 2022, the Legislature could have implemented revisions to the legislative map, even while pursuing its appeal and preserving its rights.[2] Additional opportunities to implement necessary revisions arose this year. The Legislature was in session this year from

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[2] In other contexts, state legislatures have passed "trigger laws" that go into effect once court proceedings are finalized, underlying constitutional law changes, or other conditions are met. *See, e.g.*, Texas State Law Library, "Trigger Laws," https://guides.sll.texas.gov/abortion-laws/trigger-laws (""Trigger laws' are laws that are passed by a legislative body but only go into effect once a certain thing happens. That specific event will 'trigger' it into becoming enforceable law.").

April 10 to June 8, passing 466 Acts.[3] And even after waiting for this Court's decision in *Allen v. Milligan*, 599 U.S. 1 (2023), on June 8, and the subsequent remand of this litigation on June 26, the Legislature has had more than three months to convene. App. 112.

Even outside of regular sessions, the Legislature has opportunities to act. Repeatedly, it has made an affirmative decision to do nothing. Since 2016, the Louisiana Legislature has convened at least 12 extraordinary sessions. *See* Louisiana State Legislature, Sessions, https://legis.la.gov/Legis/SessionInfo/SessionInfo.aspx. Among other things, a majority vote from both chambers is all that is required to call such a session. La. Const. Art. III, § 2(B) ("The legislature may be convened at other times by the governor and shall be convened by the presiding officers of both houses upon written petition of a majority of the elected members of each house."). In fact, the Legislature convened in June 2022, immediately after issuance of the preliminary injunction, but failed to enact a new map. There were no serious attempts to do so, as the map that made it the farthest along would have divided the Senate President's district between two congressional seats and the session lasted only four days.[4]

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[3] Louisiana State Legislature, Bills to Acts for the 2023 Regular Legislative Session, https://legis.la.gov/Legis/ActNumbers.aspx?sid=23RS.

[4] Paul Braun, *Louisiana lawmakers end court-ordered redistricting session without passing new congressional map*, 89.3 WRKF Baton Rouge (June 18, 2022), https://www.wwno.org/2022-06-18/louisiana-lawmakers-end-court-ordered-redistricting-session-without-passing-new-congressional-map.

In its mandamus order, the Fifth Circuit critiqued the district court in its issuance of a scheduling order by noting: "No mention was made about the state legislature's entitlement to attempt to conform the districts to the court's preliminary injunction determinations." App. 491. The district court was not required to do so. The Legislature has made clear over the past two years it remains disinterested in compliance with the Voting Rights Act. Affording yet another delay is both unwarranted and unnecessary given the Legislature's refusal to attempt to comply. The Louisiana Legislature has had ample time and opportunity to remedy the violation but has neglected to do so. This failure is especially glaring given that Alabama reconvened a special legislative session within weeks of this Court's decision in *Milligan*.[5] The Fifth Circuit's issuance of a mandamus risks rewarding dilatory behavior. *See, e.g., Arthur Young & Co. v. U. S. Dist. Ct.*, 549 F.2d 686, 691 (9th Cir. 1977).

II. FURTHER DELAYS IN THIS LITIGATION RISK *PURCELL* PRINCIPLE CONSIDERATIONS DURING THE 2024 ELECTION CYCLE

The mandamus order poses a serious risk of undue delay that could result in further denial of the rights of Black voters in Louisiana during the 2024 election cycle. These voters have gone through one Congressional election cycle without two

[5] The Alabama legislature ultimately passed a non-compliant new map, requiring a court-ordered special master to propose new district boundaries. *Singleton v. Allen*, No. 2:21-CV-1291-AMM, 2023 WL 5691156, at *73 (N.D. Ala. Sept. 5, 2023) ("We will therefore undertake our duty to cure violative districts through an orderly process in advance of elections by directing the Special Master and his team to draw remedial maps.") (internal quotations omitted).

opportunity districts in the state, and another cycle should not pass without implementation.

More than a month ago, and before the district court, the State acknowledged the tight timeline demanded by their request to cancel the hearing on a remedial map and move to a trial on the merits of the underlying Section 2 violation. *See* Defts. Mem. in Support of Emergency Mot. to Cancel Hearing, Dkt. No. 260-1 at 5 ("[T]he 2024 General Election is roughly fourteen months away. This is *just* enough time to hold a trial on the merits and to allow the appellate process to run its course in advance of those elections.") (emphasis in original). That recognition came in conjunction with a complaint that they did not have enough time to prepare for a remedial hearing set more than a month away, even though the parties had been on the eve of such a hearing before this Court stayed proceedings in June 2022. *See also* App. 579 (Aug. 29, 2023 Ruling) ("The only remaining issue is the selection of a congressional district map—a limited inquiry—which has been the subject of disclosure and discovery in the run up to the June 29, 2022 remedy hearing that was stayed on the eve of trial."). And even though the district court denied their emergency request within four days of filing the motion, Defendants waited nearly three more weeks in the face of the "emergency" to seek a writ of mandamus from the Fifth Circuit.

The State's delaying tactics are easily anticipated and predictable. If successful in moving away from a remedial hearing and to a trial on the merits, the State will undoubtedly ask for more time to prepare. *See, e.g.*, Dkt. No. 260-1 at 4 ("Defendants

have *never* been given the opportunity to make their case in defense of the enacted maps fully.") (emphasis in original); *id.* at 8 ("The Defendants were prevented from fulsomely defending their case by virtue of the expedited preliminary-injunction proceedings . . . ."). Given Defendants' concerns about five weeks not being enough time to prepare yet again for a three-day remedial hearing with a relatively narrow scope, their willingness and/or ability to try the case on the merits before the end of the calendar year appear dubious.

Assuming that timeline, *Purcell* considerations become a concern for the 2024 election cycle. For example, after a trial on the merits, the State will undoubtedly appeal the ruling (assuming it loses) as well as demand that the Louisiana Legislature be given yet another opportunity to draft a new Congressional map. There is no guarantee that such a remedial map will comport with the requirements of Section 2 and create a second opportunity district for Black voters. *See also Singleton*, No. 2:21-CV-1291-AMM, 2023 WL 5691156, at *3 ("[W]e are deeply troubled that the State enacted a map that the State readily admits does not provide the remedy we said federal law requires."). In fact, if history is prologue, that type of recalcitrance is virtually guaranteed.[6] A hearing will be required on the compliance

[6] *See e.g.*, Josh Archote, *Nearly all strides in equal voting access in Louisiana have come from federal intervention*, Lafayette Daily Advertiser (Aug. 23, 2022), https://www.theadvertiser.com/in-depth/news/politics/elections/2022/08/23/louisiana-long-struggle-equal-voting-rights-continues/10119294002/ (summarizing how the state systematically restricted the voter registration of Black Louisianans following the passage of the Fifteenth Amendment through discriminatory practices such as the implementation of "interpretation tests" and vague "additional qualifications" for Black voters until the passage of the federal Voting Rights Act, upon which federal intervention was then further required to halt racial gerrymandering in Louisiana's congressional, state, and local legislative maps).

of the map, and quite easily the timeline of events moves deep into the spring and early summer of 2024.

At that point, we can anticipate arguments relating to the *Purcell* principle that "federal district courts ordinarily should not enjoin state election laws in the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring in the order); *see also Democratic Nat'l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 30 (2020) (Kavanaugh, J., concurring) (collecting cases). While Louisiana does have a late election calendar, the Congressional election cycle has established deadlines beginning in June 2024. *See* La. Sec. of State, 2024 Election Calendar, https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2024.pdf. Moreover, the *Purcell* principle is not an exacting inquiry—there is no specific timeline or deadline for its invocation—but has been utilized to guard against confusion for voters and in the administration of elections. In this regard, the State will seek to have it both ways. *Now*, it argues that the district court is moving too quickly to craft a remedy. *Later*, it will argue (as it has already) that there is not enough time to implement the remedy it delayed to avoid voter confusion. *See, e.g.*, App. 46 (Defendants' Emergency Application for Administrative Stay, June 2022) ("This is precisely why *Purcell* requires a stay of the lower court's orders."). That is gamesmanship, not justice.

CONCLUSION

For all of the foregoing reasons and for the reasons provided by the Applicants, *amici* request that this Court grant the emergency application for a stay of the writ of mandamus issued by the Fifth Circuit.

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