Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,
v.
PHILLIP CALLAIS, et al.,
Appellees.

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

MOTION OF *GALMON* MOVANTS TO INTERVENE

LALITHA D. MADDURI
JACOB D. SHELLY
DANIEL COHEN
QIZHOU GE
ELIAS LAW GROUP LLP
250 Massachusetts Ave, NW
Suite 400
Washington, D.C. 20001
(202) 968-4490

November 20, 2024

ABHA KHANNA
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Ave
Suite 2100
Seattle, Washington 98101
(202) 656-0177
AKhanna@elias.law

Counsel for Galmon *Movants*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Legislative Materials

INTRODUCTION

Edward Galmon, Sr., Cierra Hart, Norris Henderson, Tramelle Howard, and Ross Williams ("*Galmon* Movants") satisfied the prerequisites for intervention as of right in the district court, *see* Fed. R. Civ. P. 24(a), and so their participation as respondents in this appeal should have been automatic, *see* S. Ct. R. 18(2). But the district court denied intervention under a completely novel—and flagrantly erroneous—interpretation of Rule 24. Instead of analyzing whether *Galmon* Movants claimed interests that were adequately represented by *existing parties*, as Rule 24 requires, the district court assumed that *Galmon* Movants' interests would be represented by *later-moving*, *would-be intervenors*, and it denied intervention solely on that basis. This error, which has so far evaded appellate review despite *Galmon* Movants' diligent efforts to obtain timely correction, threatens to exclude *Galmon* Movants from this critical (and potentially dispositive) stage of the case. Because *Galmon* Movants maintain weighty interests in this appeal—at stake are *their* voting rights and the validity of a Section 2 remedy *they won*—the equitable solution is to grant intervention for the limited purposes of this appeal.[1]

---

[1] Plaintiffs-Appellees and State of Louisiana Appellants oppose this motion. *Robinson* Intervenors-Appellants do not oppose on the condition that the briefing schedule is not extended and *Galmon* Movants do not receive argument time; otherwise they oppose.

INTEREST OF PROPOSED INTERVENORS

Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard are Black Louisiana voters whose successful litigation in related proceedings resulted in the enactment of S.B. 8, the congressional districting map challenged below. They have an interest in defending the victory that they achieved in closely related litigation, such that the federal voting rights they vindicated in one court are not permanently revoked by another court without their participation. Further, because S.B. 8 directly secures Dr. Williams's, Mr. Henderson's, and Mr. Howard's right to an undiluted vote, those movants have an additional interest in defending the current configuration by reversing the injunction entered below.

BACKGROUND

I. *Galmon* Movants successfully litigated their Section 2 action in the Middle District of Louisiana.

Immediately after Louisiana enacted a new congressional districting plan on March 30, 2022, four of the five *Galmon* Movants—Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard—filed a complaint in the Middle District of Louisiana challenging the plan as a violation of the Voting Rights Act on the grounds that it unjustifiably diluted the votes of Black Louisianians. *See* Compl., *Galmon v. Ardoin*, No. 3:22-cv-00214-SDD-SDJ (M.D. La. Mar. 30, 2022), ECF No. 1. Another group of plaintiffs—*Robinson* Intervenors-Appellants in this litigation—filed a similar complaint the same day, and the two actions were consolidated. *See* Order of Consolidation, *Robinson v. Ardoin*, No.

3:22-cv-00211-SDD-SDJ (M.D. La. Apr. 14, 2022), ECF No. 34. Both sets of plaintiffs sued Louisiana's Secretary of State, and the State of Louisiana and Louisiana's legislative leaders intervened in both cases to defend the challenged map. *See* Mots. to Intervene, *Galmon*, No. 3:22-cv-00214 (M.D. La. Apr. 6 & 12, 2024), ECF Nos. 5, 16; Mots. to Intervene, *Robinson*, No. 3:22-cv-00211 (M.D. La. Apr. 6 & 14, 2024), ECF Nos. 10, 30.

For the entirety of the district court proceedings, the two sets of plaintiffs presented their cases in equal measure, offering independent expert and fact witness testimony, briefing arguments, and litigating appeals. The Secretary, the State, and the legislative leaders opposed the plaintiffs' efforts at every step. *See, e.g.*, Defs.' Mems. in Opp'n to Pls.' Mot. for Prelim. Inj., *Robinson*, No. 3:22-cv-00211 (M.D. La. Apr. 29, 2022), ECF Nos. 101 (Secretary's brief), 108 (State's brief), 109 (Legislators' brief). Of note here, the State retained as one of its experts Mr. Michael Hefner, who submitted a lengthy report opining on communities of interest and his perception that a second Black-opportunity congressional district in Louisiana would require racial gerrymandering. *See* Expert Report of Michael C. Hefner, *Robinson*, No. 3:22-cv-00211 (M.D. La. Apr. 29, 2022), ECF No. 108-3.

Ultimately, plaintiffs in those consolidated proceedings were successful: After the district court determined that both sets of plaintiffs were likely to prevail on the merits of their claims, and the Fifth Circuit affirmed that conclusion, *see Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023), Louisiana's

legislature accepted the courts' decisions and enacted S.B. 8, a new congressional districting plan that created two districts where Black voters will have an opportunity to elect their candidates of choice. S.B. 8 unpacked Louisiana's previous majority-Black district, which had joined New Orleans with Baton Rouge, and created a new, second Black-opportunity district that includes Natchitoches and other parishes between Baton Rouge and Shreveport. *See* S.B. 8, 2024 Leg., First Extraordinary Sess. (La. 2024).

II. *Galmon* Movants attempted to intervene in Western District of Louisiana proceedings to defend their Section 2 remedy against Plaintiffs' collateral attack.

On January 31, 2024, Plaintiffs below—12 "non-African American voters" drawn from across Louisiana—filed in the Western District of Louisiana a challenge to S.B. 8's constitutionality, naming as defendant the Secretary of State. *See* Compl., *Callais v. Landry*, No. 3:24-cv-00122-DCJ-KDM (W.D. La. Jan. 31, 2024), ECF No. 1 ("*Callais* Compl."). *Galmon* Movants (the four Middle District plaintiffs plus Dr. Williams, a Natchitoches resident) moved to intervene as defendants on February 6, before the Secretary had even been served. *See Callias*, No. 3:24-cv-00122 (W.D. La. Feb. 6, 2024), ECF No. 10. *Robinson* Intervenors moved to intervene as defendants one day later, *see Callais*, No. 3:24-cv-00122 (W.D. La. Feb. 7, 2024), ECF No. 18, and the State of Louisiana moved to intervene as a defendant on February 20, *see Callais*, No. 3:24-cv-00122 (W.D. La. Feb. 20, 2024),

ECF No. 53. On February 26, the district court denied intervention to *Galmon* Movants; granted intervention in part to *Robinson* Intervenors, allowing them to participate in any remedial phase, but not in the liability phase; and granted the State's motion in full. *See Robinson* App.13a–21a.

The court determined that *Galmon* Movants and *Robinson* Intervenors each satisfied three of the four requirements for intervention of right: their motions were timely; the movants identified sufficient interests in the action; and those interests could be impaired by the litigation. *See Robinson* App.16a–20a. But the court held that the Secretary, in coordination with the State, would adequately represent the interests of *Galmon* Movants and *Robinson* Intervenors in the liability phase, and that Robinson Intervenors would adequately represent *Galmon* Movants in any remedial phase. *Id.* The only basis that the district court provided for its conclusion that *Robinson* Intervenors could adequately represent *Galmon* Movants so as to deprive *Galmon* Movants of their right to intervene was its conclusion that "the *Robinson* movants constitute the plaintiffs in the lead case of *Robinson v. Ardoin*, No. 3:22-cv-02111-SDD-SDJ, with which the suit filed by the *Galmon* plaintiffs was consolidated." *Robinson* App.20a. The court allowed "movants [to] seek reconsideration of this ruling if they can establish adversity or collusion by the State." *Robinson* App.19a.

On March 1, *Galmon* Movants moved the district court to reconsider its order denying intervention. *See Callais*, No. 3:24-cv-00122 (W.D. La. Mar. 1, 2024),

ECF Nos. 96, 96-1. *Galmon* Movants highlighted the State's conspicuously restrained defense of S.B. 8; they explained that *Robinson* Intervenors will not adequately represent their interests; and they pointed out that *Robinson* Intervenors' later-in-time motion to intervene could not oust *Galmon* Movants' own right to intervene. *See id.*, ECF No. 96-1 at 3–9. To keep pace with the quick litigation schedule, *Galmon* Movants sought expedited briefing on their motion for reconsideration. *See Callais*, No. 3:24-cv-00122 (W.D. La. Mar. 7, 2024), ECF No. 100. Eight days after *Galmon* Movants filed their motion for reconsideration, *Robinson* Intervenors also moved for reconsideration of the order denying their intervention in the liability phase, along with a motion seeking expedited briefing. *See Callais*, No. 3:24-cv-00122 (W.D. La. Mar. 9, 2024), ECF No. 103. On March 15, the district court granted in part *Robinson*'s motion for reconsideration and permitted them to present liability-phase evidence and argument on the merits, but it denied *Galmon* Movants' motion because (without further explanation), "the Court's analysis that their interest is adequately represented by the *Robinson* movants has not changed." *Robinson* App.23a.

III. *Galmon* Movants remained sidelined as the Western District permanently enjoined the Section 2 remedy.

Plaintiffs moved for a preliminary injunction on February 7 and included with their motion various legislative materials, news articles, plaintiff declarations, and one expert report. *Callais*, No. 3:24-

cv-00122 (W.D. La. Feb. 7, 2024), ECF Nos. 17, 17-1 through -46. That report, which provided opinions about communities of interest and racial gerrymandering, was submitted by Mr. Hefner—the same expert the State had retained and cited for the same purpose in its efforts to defeat *Galmon* Movants' and *Robinson* Intervenors' claims in the Middle District litigation. *Id.*, ECF No. 17-3. In response to Plaintiffs' motion, the State failed to engage with the legislative record; ignored the legislature's explicitly political—rather than racial—motivations in drawing the challenged districts; and steadfastly refused to challenge Mr. Hefner's opinions or credibility. *See Callais*, No. 3:24-cv-00122 (W.D. La. Feb. 27, 2024), ECF No. 86. The Secretary, meanwhile, declined to defend S.B. 8 at all, stating that she took "no position" on the merits of Plaintiffs' claims. *Callais*, No. 3:24-cv-00122 (W.D. La. Feb. 27, 2024), ECF No. 82 at 1.

The district court held a preliminary injunction hearing consolidated with trial on the merits on April 8–10. *Callais*, No. 3:24-cv-00122 (W.D. La. Apr. 8–10, 2024), ECF Nos. 173, 175, 178. The Secretary of State presented no argument and questioned no witnesses. The State, in turn, presented approximately ten minutes of video excerpts from the legislative record and then rested its case. On April 30, the district court permanently enjoined S.B. 8, deeming it an impermissible racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment. *Robinson* App.190–191a. This Court subsequently stayed the injunction pending resolution of appeals brought by *Robinson* Intervenors

and the State. *See Robinson v. Callais*, 144 S. Ct. 1171 (2024) (mem.).

IV. *Galmon* Movants attempted in vain to achieve timely appellate review of the denial of intervention.

On March 20—just three business days after the district court denied reconsideration and nearly three weeks prior to trial—*Galmon* Movants noticed their appeal of the denial of intervention to the Fifth Circuit, *see Callais*, No. 3:24-cv-00122 (W.D. La. Mar. 20, 2024), ECF No. 125, and sought expedited resolution, which was denied, *see Callais v. Landry*, No. 24-30177 (5th Cir. Mar. 26, 2024), ECF No. 40-2. Shortly after the appeal was noticed, the district court sua sponte granted intervention to four *Galmon* Movants, but only for the remedial phase. *Callais*, No. 3:24-cv-00122 (W.D. La. May 3, 2024), ECF No. 205. After the district court permanently enjoined S.B. 8, *Galmon* Movants noticed a direct appeal of the denial of intervention to this Court, noting that the Fifth Circuit had previously denied jurisdiction over an intervention dispute in a materially identical circumstance once a direct appeal of an injunction was pending in this Court. Notice of Appeal, *Callais*, No. 3:24-cv-00122 (W.D. La. May 30, 2024), ECF No. 235; Jurisdictional Statement at 10–11, *Galmon v. Callais*, No. 24-111 (U.S. July 30, 2024). But this Court dismissed *Galmon* Movants' appeal for lack of jurisdiction. *Galmon*, No. 24-111 (U.S. Oct. 15, 2024). Meanwhile, *Galmon* Movants' Fifth Circuit appeal remains pending; it has not been scheduled for oral

argument and there is no indication it will be resolved in advance of merits briefing and argument here.

ARGUMENT

Galmon Movants should be permitted to intervene pursuant to this Court's "general equity powers." *United States v. Louisiana*, 354 U.S. 515, 516 (1957) (per curiam). This Court has permitted intervention to ensure representation of parties whose rights will be adjudicated in the case at bar. *See, e.g.*, *BNSF Ry. Co. v. EEOC*, 140 S. Ct. 109 (2019) (mem.) (granting employee leave to intervene in appeal of EEOC's suit against employer concerning discrimination against that very employee); *Hunt v. Cromartie*, 525 U.S. 946 (1998) (mem.) (granting intervention to individual voters in redistricting appeal). This case directly implicates *Galmon* Movants' rights, as well as basic notions of equity and judicial efficiency.

I. *Galmon* Movants should be permitted to intervene to protect their rights.

Galmon Movants maintain actionable interests in this appeal because it will directly inform the number of congressional districts in Louisiana in which Black voters have the opportunity to elect their candidates of choice—the very issue *Galmon* Movants litigated in the Middle District for two years. Indeed, Plaintiffs' complaint makes clear that the map they challenge would not exist but for *Galmon* Movants' successful efforts in that related action. *See Callais* Compl. 8–10 (introducing Middle District litigation as predicate for new map); *see also Robinson*, 86 F.4th at 583 (affirming district court's conclusion that *Galmon* Movants were likely to prevail on their Section 2

claim, which would require a second opportunity district for Black voters). As courts across the country have consistently recognized, proposed intervenors maintain significant protectable interests in defending the outcomes of proceedings in which they participated. *See, e.g.*, *Prete v. Bradbury*, 438 F.3d 949, 954–56 (9th Cir. 2006) (holding that supporters of successful ballot measure maintained sufficient interest in defending measure's legality); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397–98 (9th Cir. 1995) (concluding that involvement in administrative process constituted sufficient interest in action that could affect result reached by that process); *McQuilken v. A & R Dev. Corp.*, 510 F. Supp. 797, 803 (E.D. Pa. 1981) (granting intervention of right where lawsuit "could impair [intervenor]'s ability to protect their legal interest in obtaining full compliance with the judgment" achieved in prior litigation).

Mr. Henderson, Mr. Howard, and Dr. Williams have additional interests in defending S.B. 8 because that map directly affects their voting power. *See League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434–35 (5th Cir. 2011) ("Registered voters have a sufficiently substantial interest to intervene in an action challenging the voting district in which the voters are registered." (alterations adopted) (quoting *Johnson v. Mortham*, 915 F. Supp. 1529, 1536 (N.D. Fla. 1995))); *cf. League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 845 (5th Cir. 1993) (en banc) (recognizing judges had standing as voters to intervene in action challenging single-district system

for judicial elections); *City of Boerne*, 659 F.3d at 434–35 (reversing denial of intervention to voters in action seeking to modify consent decree reached in related Section 2 litigation). As Plaintiffs explained in the district court proceedings below, S.B. 8 unpacked Mr. Henderson's district, CD-2, to allow for the creation of a second Black-opportunity district, *see* Pls.' Mem. in Resp. to Mots. to Intervene at 8, *Callais*, No. 3:24-cv-00122 (W.D. La. Feb. 14, 2024), ECF No. 33-1, curing the unlawful vote dilution that he suffered under Louisiana's previous congressional districting plan, *see Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986) (recognizing "[d]ilution of racial minority group voting strength may be caused by . . . the concentration of blacks into districts where they constitute an excessive majority"); *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 817–18 (M.D. La. 2022) (finding all individual plaintiffs in Middle District litigation, including Mr. Henderson and Mr. Howard, had standing under Section 2 because they resided in a district alleged to have been "packed or cracked"), *vacated on other grounds*, 86 F.4th 574 (5th Cir. 2023). S.B. 8 reassigned Mr. Howard, in turn, from the previously packed CD-2 to CD-6, the new Black-opportunity district. Surely, he has an interest in preserving the opportunities newly afforded by that district, particularly after he filed a lawsuit to create it. And because Dr. Williams also resides in CD-6, he, too, maintains a strong interest in defending the new electoral opportunities that S.B. 8's configuration provides.

Thus, as the district court below recognized, *Galmon* Movants easily satisfy the "substantial

interest" element of intervention as of right. *See Robinson* App.16a–20a; *cf. Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) (considering Rule 24 principles when adjudicating motion to intervene on appeal).

II. Denying intervention for *Galmon* Movants would be inequitable.

If the district court had followed the simple commands of Rule 24(a), intervention on appeal would not be necessary because *Galmon* Movants would have been made parties to this action when it was in its infancy. Liability-phase intervention was denied only because *Galmon* Movants' interests were purportedly represented by *Robinson* Intervenors, but that was mistaken—*Robinson* Intervenors were not an "existing party" for purposes of Rule 24 when *Galmon* Movants moved to intervene. Indeed, it appears that no other federal court has *ever* denied intervention where a proposed intervenor's interests were purportedly represented by a later-moving intervenor. In the rare instances where this is even contemplated, courts have expressly rejected the invitation. In *Friends of the Boundary Waters Wilderness v. U.S. Army Corps of Engineers*, for example, the district court recognized that "Plaintiffs fail[ed] to highlight any case in which a Court denied a motion to intervene based on a proposed intervenor's interest arguably being adequately protected by another proposed intervenor." No. 19-cv-2493 (PJS/LIB), 2020 WL 6262376, at *12 (D. Minn. Apr. 9, 2020). "Instead, the Courts have held that a proposed intervenor is required to demonstrate its interest is

not adequately protected by existing parties." *Id.*; *see also id.* (emphasizing again, "[b]esides Plaintiffs, . . . the only existing parties to the present action are Defendants," and not other proposed intervenors); *see also Flynn v. Hubbard*, 782 F.2d 1084, 1090 (1st Cir. 1986) (Coffin, J., concurring) ("I think that the reasonable reading of 'existing' [in Rule 24] is that it modifies 'parties' to distinguish such from parties not formally in the litigation; that is, 'existing parties' refers to the actual parties named in a litigation, as opposed to the nonparties seeking to intervene."); *Dumont v. Lyon*, No. 17-cv-13080, 2018 WL 8807229, at *7 (E.D. Mich. Mar. 22, 2018) (holding that when the "motion to intervene was filed, the only comparator[s] for purposes of analyzing the adequacy of representation" were the named defendants, not other proposed intervenors). The district court's cursory decision below, which (wrongly and without explanation) concluded that *Robinson* Intervenors represent *Galmon* Movants interests, never even considered whether *Robinson* Intervenors were "existing parties" for purposes of Rule 24, and the court's refusal to offer even a sentence of explanation persisted after *Galmon* Movants' sought reconsideration. That stubborn departure from foundational judicial principles—ignoring the plain text of the federal rule, ignoring the unanimous corpus of intervention caselaw, ignoring litigants' explicit and repeated raising of this issue—should not be countenanced.

Intervention on appeal still could have been avoided if *Galmon* Movants' appeal had been resolved expeditiously in the Fifth Circuit or resolved by this

Court in advance of the merits consideration. But the Fifth Circuit declined to expedite the appeal, and this Court dismissed *Galmon* Movants' direct appeal for lack of jurisdiction. In short, *Galmon* Movants have done everything by the book, with extraordinary dispatch—they moved to intervene in the district court before the named defendant had even been served and before any other intervention motion had been filed, and they have exhausted every option to correct the district court's glaring error in advance of the appeal at bar. While this Court has determined it lacks authority to correct the error below, it can avoid perpetuating the injustice here by permitting *Galmon* Movants to participate in this consequential appeal as parties.

III. Granting intervention would serve the interests of judicial efficiency.

Granting intervention will substantially mitigate the potential for redundancies and wasted resources. If this Court grants intervention, all relevant parties will have a full opportunity—through briefs and argument—to be heard as this Court considers potentially dispositive clarifications of the law of racial gerrymandering and Section 2. The alternative is likely to be less orderly. If the Fifth Circuit decides—as it should and likely will—that the district court's denial of intervention was error, then *Galmon* Movants would become full parties entitled to full participation in all proceedings. By permitting intervention now, this Court can avoid the potential interruption of *Galmon* Movants obtaining party-rights after briefing has closed. *Galmon* Movants are

prepared to comply with the operative briefing schedule and to negotiate shared oral argument time with the other petitioners.

CONCLUSION

Galmon Movants respectfully request that the Court grant their motion to intervene.

Respectfully submitted,

/s/ *Abha Khanna*

Lalitha D. Madduri
Jacob D. Shelly
Daniel Cohen
Qizhou Ge
ELIAS LAW GROUP LLP
250 Massachusetts Ave, NW
Suite 400
Washington, D.C. 20001
(202) 968-4490

Abha Khanna
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
(206) 656-0177
AKhanna@elias.law

Counsel for Galmon Movants