Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

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

RESPONSE TO MOTION FOR LEAVE TO INTERVENE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Rules

INTRODUCTION

This Court just weeks ago declined jurisdiction over the Galmon Movants' latest attempt to reverse the three-judge district court's spring 2024 decision to allow permissive intervention to their fellow plaintiffs—the Robinson Intervenors—but not to the Galmons. The Robinsons' intervention was permissive because the Louisiana Secretary of State and the State of Louisiana (the State Defendants) together mounted a vigorous defense to Louisiana's new redistricting map, SB8, and its two Black-majority districts. Even now, there is little daylight between the State Defendants and the Robinsons. The Galmons—who continue even now to litigate their denial of intervention in the Fifth Circuit—identify no new arguments, no unique evidence, and no unique perspective they would add to the existing array of Defendants—just additional briefing and complications at an oral argument that will already likely be split several ways. By allowing the Galmons into the case as duplicative parties on the liability questions for the first time at the eleventh hour, the Court would essentially undo its order denying jurisdiction over their attempted intervention appeal. Enough is enough. The Galmons' motion should be denied.

BACKGROUND

After the 2020 census, the State of Louisiana enacted a congressional redistricting map, HB1, which largely resembled the State's redistricting maps from prior cycles. The Robinson Intervenors-Appellants ("Robinsons") and Galmon Movants ("Galmons" or "Movants") quickly challenged the law under Section 2 of the Voting Rights Act ("VRA") in a consolidated case before a single judge. *Robinson v.*

Ardoin, No. 3:22-cv-02111-SDD-SDJ (M.D. La.); Dkt.10, at 1-3; Dkt.18-1, at 7.[1] By intentionally foregoing any vote dilution claim under the Equal Protection Clause, the Robinsons and Galmons avoided a three-judge court under current doctrine. The case was mooted by the State's passage of a new map, SB8, which repealed HB1; it was subsequently dismissed. *Robinson*, No. 3:22-cv-00211-SDD-SDJ (filed Apr. 25, 2024) (Dkt.371).

In May 2022, shortly after *Robinson* was filed but nearly two years before it was dismissed as moot, the single-judge court held an expedited preliminary injunction hearing. The Robinsons and Galmons put on their VRA case and presented proposed remedial maps of two majority-Black districts in the eastern part of the State: the first was the traditional majority-Black district surrounding New Orleans and the second was a new "L"-shaped majority-Black district in the Delta parishes along the Mississippi river. None of the proposals remotely resembled SB8, which replaced the "L"-shaped second Black district with "SB8-6," narrowly bisecting the Northwest region of the State.

In the years following the State's loss at the early hearing, reviewing courts acknowledged that the expedited proceedings had afforded the State little opportunity to mount a fulsome defense. The U.S. Court of Appeals for the Fifth Circuit recognized the "hasty and tentative nature of the district court's decision." *In re Landry*, 83 F.4th 300, 306 (5th Cir. 2023) (citing *Robinson v. Ardoin*, 37 F.4th 208, 232 (5th Cir. 2022) ("*Robinson II*")). The Fifth Circuit also observed, "[t]hat the state

[1] Appellees reference documents on the district court docket as "Dkt." followed by the docket number, "at," and page number(s). *See* Sup. Ct. R. 12.7, 18.11.

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 "the state put all its eggs in one basket, litigating essentially that only with race-predominant considerations could the plaintiffs justify" the second Black-majority districts they proposed. *Id*. at 306 & n.6 (citing *Robinson II*, 37 F.4th at 217, 232 ("[N]either the plaintiffs' arguments nor the district court's analysis is entirely watertight[.]")). The Fifth Circuit's merits panel emphasized that *Allen v. Milligan*, 599 U.S. 1 (2023), issued after the preliminary injunction hearing, "largely rejected" the State's "initial approach," and that the State had failed to provide evidence or meaningfully refute or challenge 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 that the district court had erred in its compactness analysis at prong 1 of *Thornburg v. Gingles*, 478 U.S. 30 (1986). *Robinson II*, 37 F.4th at 222. 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. At no point did the Fifth Circuit order a second majority-Black district.

With only the preliminary injunction hearing completed, *Robinson* was on track for trial. But the State strategically decided to forgo further litigation. On January 15, 2024, the Louisiana Legislature convened for an extraordinary special session to enact a new map. Dkt.165-9; Dkt.165-10.[2] Within the week, the Legislature repealed HB1 and signed SB8 into law. Dkt.165-10. SB8 resembled none of the proposed remedial maps in *Robinson*. For that reason, SB8's bizarre second majority-Black district, SB8-6, only included *one* of the Galmons, Mr. Howard, but he had already resided in a majority-Black district under HB1. Dkt.33-1, at 9 (Appellees' chart of Intervenor HB1 and SB8 districts based on residences); Dkt.75, at 8 (Galmons not disputing residential and voting information). SB8 excluded half of the Galmons in the *Robinson* litigation from majority-Black districts. Dkt.33-1, at 9; Dkt.75, at 8. But nonetheless, the Galmons and Robinsons uniformly touted SB8 as their own win. *See, e.g.*, *Robinson*, No. 3:22-cv-00211-SDD-SDJ (filed Feb. 6, 2024) (Dkt.346); *Robinson*, No. 3:22-cv-00211-SDD-SDJ (filed Feb. 6, 2024) (Dkt.347).

On January 31, 2024, Plaintiffs-Appellees, a group of Louisiana voters who were not a part of the *Robinson* litigation, challenged the constitutionality of SB8 and sought declaratory and injunctive relief against the Louisiana Secretary of State. Dkt.1. Appellees claimed SB8 impermissibly segregated them into congressional districts based on race in violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution. Dkt.1. Appellees requested and received a three-judge district court pursuant to 28 U.S.C. § 2284. Dkt.198, at 16. Appellees then filed a motion for

[2] Appellees reference documents on the district court docket as "Dkt." followed by the docket number, "at," and page number(s). *See* Sup. Ct. R. 12.7, 18.11.

preliminary injunction. Dkt.17. The district court consolidated the preliminary injunction hearing with a trial on the merits for the liability phase and scheduled it to begin April 8, 2024. Dkt.63, at 1. The district court bifurcated the trial into two phases: first to determine if SB8 was unconstitutional ("liability phase"), and second to determine the proper remedy if SB8 was unconstitutional ("remedial phase").

The State of Louisiana, the Robinsons, and Galmons moved to intervene as defendants alongside the Secretary of State to defend SB8's constitutionality. Dkt.79; Dkt.156. The Galmons recruited a new Movant, Dr. Williams, to their group because he, unlike most of the original plaintiffs, lived in SB8-6, and unlike any of them, lived in the Northwest part of the State. Dkt.10, at 5; Dkt.33-1, at 9; Dkt.75, at 8. No proposed intervenors advanced any counterclaims or crossclaims. Plaintiffs-Appellees filed a consolidated Response to Motions to Intervene (Dkt.33), opposing Robinsons' and Galmons' intervention.

Meanwhile in the Middle District of Louisiana, even though both the Galmons and Robinsons conceded that the subject of their lawsuit, HB1, had been repealed, they begged their single-district court to "retain jurisdiction" over any challenge to SB8—that is, to seize jurisdiction from the three-judge court, despite the mootness of their case and the mandate of 28 U.S.C. § 2284. *See, e.g.*, *Robinson*, No. 3:22-cv-00211-SDD-SDJ (filed Feb. 6, 2024) (Dkt.346). The Galmons asked their single-district court to declare itself the "first filed court." *See* Dkt.10, at 10 n.5 (informing the three-judge district court below of this motion, but not presenting the issue to the three-judge court). The single-judge court ultimately denied this motion and dismissed the case

as moot. Ruling, *Robinson*, No. 3:22-cv-00211-SDD-SDJ (filed Apr. 16, 2024) (Dkt.370) (denying motion to apply first filed rule); *Robinson*, No. 3:22-cv-00211-SDD-SDJ (filed Apr. 25, 2024) (Dkt.371) (granting State's motion to dismiss).[3]

The three-judge district court issued a unanimous order on February 26, 2024, granting the State intervention of right, allowing the Robinsons to intervene in any remedial phase of the trial, and denying the Galmons intervention. Dkt.79. The Court found that the State was entitled to intervene because by law, the State "must defend SB8 as a constitutionally drawn Congressional redistricting map." *Id*. at 5. The court found the Robinsons and Galmons failed to establish the necessary "adversity of interest, collusion, or nonfeasance on the part of the State" to show their interests were not adequately represented. *Id*. at 6. The district court similarly concluded the Robinsons and Galmons did not have a special interest in presenting a defense in this case as private parties:

> SB8 is not the Congressional districting map of the proposed *Robinson* and *Galmon* intervenors. It is the Congressional districting map of the State of Louisiana – passed by both then signed into law by the Governor. The *Robinson* and *Galmon* movants have neither a greater nor lesser interest in ensuring that this map does not run afoul of the 14th Amendment to the United States Constitution than any other citizen of the State of Louisiana.

Id. The district court did, however, grant Robinsons permissive intervention in any remedial phase because the remedial phase would provide them the opportunity to push for "two Black-majority Congressional districts as they allege is required by the

[3] The *Robinson* court had not weighed SB8-6 and had not ruled on Equal Protection claims, and as explained below, the Robinsons had no intention of putting on any VRA evidence in the three-judge district court.

Voting Rights Act." *Id*. The district court denied the Galmons intervention upon finding "[t]heir interests and objectives [would] be adequately represented by the Robinson movants." *Id*. at 7. Both the Galmons and Robinsons filed motions to reconsider. Dkt.114, at 1.

The next day, the Secretary of State and State filed briefs in opposition to Appellees' Motion for Preliminary Injunction. Dkt.82; Dkt.86. With the district court's leave, the Galmons and Robinsons also filed lengthy and substantive amicus briefs and exhibits, opposing Appellees' Motion for Preliminary Injunction. Dkts.91-94. Appellees addressed all four sets of briefs in their Reply in Support of Motion for Preliminary Injunction. Dkt.101. The Galmons' exhibits included no evidence from Dr. Williams, their single client who lived in SB8-6's new northwestern appendage. Dkts.93-1-93-15.

On March 15, 2024, the district court unanimously denied the Galmons' motion to reconsider and granted the Robinsons' motion to reconsider in part, allowing Robinsons to permissively intervene in the liability phase of the case. Dkt.114; Dkt.198, at 16. The Galmons subsequently filed a notice of appeal in the Fifth Circuit of the February 26 and March 15 intervention orders. Dkt.125. They sought expedited appeal, which the Fifth Circuit denied. Dkt.133.

Meanwhile, the district court held the consolidated preliminary injunction hearing with a trial on the merits for the liability phase. Dkt.198, at 17. The Galmons filed a post-trial amicus brief. Dkt.197. The district court issued an injunction on

April 30, 2024, stating: "The State of Louisiana is prohibited from using SB8's map of congressional districts for any election." Dkt.198, at 59.

At no point did any party present a VRA claim or evidence that the VRA required a second majority-Black district. In fact, the Robinsons tried to freeze the three-judge Western District court out of making any VRA analysis, moving *in limine* to exclude any such facts. Dkt.144-1. They vociferously objected to any evidence or argument on whether the facts supported SB8-6 as a VRA remedy. *Id*. Thus, the district court reserved the issue for additional record development in the remedial phase of the trial. Dkt.198, at 58-59 ("[T]his Court does not decide on the record before us 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."). At no point in their own amicus briefing did the Galmons pursue a different strategy or line of argument. Dkts.93, 197.

The court also scheduled a status conference to discuss the "remedial stage of this trial." *Id*. at 59-60. Prior to the status conference, the district court *sua sponte* reconsidered its February 26, 2024, order denying Galmons intervention; it granted them permissive intervention under Fed. R. Civ. P. 24(b) "as limited to the remedial phase of this trial." Dkt.205. The Galmons thereafter participated in the remedial status conference as a party.

For the remedial phase, the district court issued an order, allowing "[e]ach party, intervenor and amici"—comprised of the State, Secretary of State, Robinsons, Galmons, Amici in Support of Defendants, and Appellees—to separately submit their

own proposed map with unlimited evidentiary support and submit one response to the maps of other parties. Dkt.219, at 3. The order did not limit the parties to briefing on the Fourteenth Amendment claim; it encouraged parties to raise VRA issues. Dkt.219.

While the parties prepared for the rapidly-approaching remedial phase of trial, this Court stayed the district court proceedings pending appeal. Justice Jackson noted in dissent that any irreparable harm to Robinson Intervenors after the liability phase is "highly contingent. The District Court has not yet selected a remedial map, and, were it not for this Court's intervention, it may have selected a map that complies with both § 2 and the Equal Protection Clause." *Robinson v. Callais*, 144 S. Ct. 1171, 1172 n.1 (2024) (mem.) (Jackson, J., dissenting).

On May 30, 2024, the Galmons also filed a notice of appeal to the U.S. Supreme Court of the district court's order denying them intervention on February 26, 2024 (Dkt.79); order denying their motion to reconsider denying intervention on March 15, 2024 (Dkt.114); and injunction order (Dkt.198), which was issued when Galmons were mere amici. Dkt.235. But all the while, briefing of the Galmons' appeal of these same intervention orders continued (and has since concluded) in the Fifth Circuit. That case is currently pending. *Callais v. Landry*, No. 24-30177 (5th Cir.). The Galmons filed their Jurisdictional Statement with this Court. On October 15, 2024, this Court summarily dismissed the Galmons' appeal of the intervention orders for lack of jurisdiction. On November 4, 2024, the Court set the State and Robinsons' appeal for oral argument. On November 20, 2024, less than a month before

Appellants' merits briefs are due, Galmons filed a new Motion to Intervene in this Court.

ARGUMENT

This Court should deny intervention at this late stage for several reasons. First, the Court has already decided that Movants cannot appeal the denial of their original motion to intervene; granting intervention now would undo that order. Second, the appeal of the intervention order is currently pending in the U.S. Court of Appeals for the Fifth Circuit; the Court should allow the statutorily mandated course of the appeal to proceed. Third, neither the Federal Rules of Civil Procedure nor this Court's equity powers entitle Movants to intervene. Movants have no protectable interest in the constitutionality of a generally applicable congressional redistricting plan, which the State enacted and enforces. All Movants' purported interests are mere preferences and are vindicable at the remedial phase where Movants are already admitted. Even if Movants have an interest, it is adequately protected by the State and permissive Robinson Intervenors, who were also private voters and plaintiffs in the *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. 2024), litigation. The Court should therefore deny this new Motion to Intervene.

I. Intervention Now Obviates the Court's October 15 Order.

Movants seek to circumvent the Court's order dismissing their direct appeal of the district court's orders denying intervention for lack of jurisdiction. Not only that, but Movants seek to bypass both the question of jurisdiction (decided in the negative by this Court) and the merits of their appeal by asking this Court to immediately

admit them as intervenors of right. Their new Motion to Intervene is really a motion for reconsideration of this Court's October 15 order, with a lower barrier to entry because it forgoes the necessary briefing on the merits, which would have followed if the Court noted probable jurisdiction of their appeal. The result is summary reversal of the district court's orders. Intervention now, under Movants' proposed lower standard and backdoor approach, is unwarranted.

II. Intervention Now Circumvents the Appellate Process.

Not only does intervention effectively retract the Court's earlier order, but it also bypasses the course of appellate review proscribed by statute. Congress has eliminated this Court's appellate jurisdiction to directly review intervention orders and has given U.S. Courts of Appeals authority to review first. 28 U.S.C. § 1291.[4] If a Court of Appeals denies the party the right to intervene, the party may petition for certiorari to this Court to review that ruling. 28 U.S.C. § 1254(1); *see, e.g.*, *Cameron v. EMW Women's Surgical Ctr.*, P.S.C., 595 U.S. 267, 272-74 (2022). This case has been fully briefed and submitted to the U.S. Court of Appeals for the Fifth Circuit. Allowing intervention now would circumvent the statutory requirements for appeal of the district court's orders. Thus, not only do the equities disfavor such extraordinary action at this stage of the proceedings, but the law does too.

[4] As discussed at length in Plaintiffs-Appellees' Motion to Dismiss of Affirm Galmon Movants' Jurisdictional Statement, 28 U.S.C. § 1253 does not provide an avenue for direct review of intervention orders in the Supreme Court. Motion to Dismiss or Affirm, No. 24-111 (filed Sept. 3, 2024); *see also MTM, Inc. v. Baxley*, 420 U.S. 799, 804 (1975) (per curiam); *Gonzalez v. Auto. Emps. Credit Union*, 419 U.S. 90, 101 (1974); *Goldstein v. Cox*, 396 U.S. 471, 477-78 (1970); *Stainback v. Mo Hock Ke Lok Po,* 336 U.S. 368, 375 (1949); *Phillips v. United States*, 312 U.S. 246, 248-51 (1941).

III. Movants Are Not Entitled to Intervene.

Even absent those unique reasons to deny the Motion to Intervene in this case, the Court should deny intervention. There are "unique problems caused by intervention at the appellate stage." *Amalgamated Transit Union Int'l, AFL-CIO v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (per curiam). For that reason, courts may look to whether this is an "exceptional case involving imperative reasons justifying intervention." *Id.* at 1552. This Court often looks to the Federal Rules of Civil Procedure "and the general equity powers of the Court" for guidance on motions to intervene. *United States v. Louisiana*, 354 U.S. 515, 516 (1957) (per curiam); *see also Cameron*, 595 U.S. at 276-77; *Int'l Union v. Scofield*, 382 U.S. 205, 216 n.10 (1965).[5] These demonstrate the necessity of denying the Motion to Intervene here.

A. Movants have no legally protectable interest.

First, the Galmons have no valid "interest" in defending the constitutionality of a generally applicable redistricting scheme created by and enforceable by the State of Louisiana. Fed. R. Civ. P. 24(a)(2); *cf. Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). To intervene of right under Rule 24(a), proposed intervenors must show, at a minimum, they have "a significantly protectable interest." *Donaldson v. United States*, 400 U.S. 517, 542 (1971). The interest must be of "sufficient magnitude" for the Court to require intervention. *Id.* The intervenor must have "a stake in the matter

[5] As a result, this Court often denies Motions to Intervene. *See, e.g.*, *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 583 U.S. 942 (2017); *Am. Broad. Cos., Inc. v. Aereo, Inc.*, 571 U.S. 1235 (2014); *Nat'l Fed. of Indep. Bus. v. Sebelius*, 566 U.S. 935 (2012); *Salazar v. Buono*, 558 U.S. 810 (2009); *Metro. Life Ins. Co. v. Glenn*, 553 U.S. 1003 (2008); *Carson City v. Webb*, 540 U.S. 1141 (2004); *Med. Bd. of Cal. v. Hason*, 537 U.S. 1231 (2003).

that goes beyond a generalized preference that the case come out a certain way." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015). Intervention "solely for ideological, economic, or precedential reasons" merely shows the intervenor "*prefers* one outcome to the other." *Id*. (citing *Pub. Serv. Co. of N.H. v. Patch,* 136 F.3d 197, 205 (1st Cir. 1998) ("It is settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.")); *Kleissler v. U.S. Forest Serv.,* 157 F.3d 964, 972 (3d Cir. 1998) ("[I]ntervenors should have an interest that is specific to them, is capable of definition, and will be directly affected in a substantially concrete fashion by the relief sought."); *Sec. Ins. Co. v. Schipporeit, Inc.,* 69 F.3d 1377, 1380-81 (7th Cir. 1995); David L. Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 Harv. L. Rev. 721, 729 (1968)).

Galmon movants erroneously claim they have two alleged interests: (1) "defending the victory that they achieved in closely related litigation," and (2) defending the redistricting law of general applicability "because S.B. 8 directly secures Dr. Williams's, Mr. Henderson's, and Mr. Howard's right to an undiluted vote." **Motion at 2**. But neither amount to an interest, much less a "significantly protectable interest." *Donaldson*, 400 U.S. at 542. Rather, these are mere political preferences which cannot require intervention of right.

The first preference rests on fiction. The "victory" Movants describe is a moot, dismissed lawsuit with vacated preliminary findings. *Robinson*, No. 3:22-cv-00211-

SDD-SDJ (filed Apr. 25, 2024) (Dkt.371). Prior to dismissal, Movants never secured any final, vindicable remedy (much less SB8's map or any other map). The present lawsuit is not a remedial trial for that separate, moot VRA challenge to HB1 in a different, and single-judge, court. It is a Fourteenth Amendment challenge to SB8—which is "not the Congressional districting map of the proposed . . . Galmon intervenors" but "the Congressional districting map of the State of Louisiana"—in front of a three-judge court. Dkt.79, at 6. The Legislature enacted a map that does not actually include many of the Galmons because it does not resemble any of their proposed maps in the *Robinson* litigation. Movants "have neither a greater nor lesser interest in ensuring that this map does not run afoul of the 14th Amendment to the United States Constitution than any other citizen of the State of Louisiana." ***Id.***; *cf*. *Hollingsworth*, 570 U.S. at 706-07.[6]

The second preference also is not "significantly protectable" and of "sufficient magnitude." *Donaldson*, 400 U.S. at 542. Individuals do not have a legally protectable interest in a congressional redistricting statute of general applicability. These voters have not secured any right to be placed in a majority-Black district—much less a particularized right greater than any of the other 4.6 million residents of the State. *Texas*, 805 F.3d at 658. Their supposed "interest" amounts to a mere "generalized

[6] Unlike the lower court cases cited by Movants, this case does not involve a judgment entered on behalf of a party or ballot measure or rule advanced by a public interest group, but an independent statute enacted by the State of Louisiana. **Motion at 10** (citing *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995); *McQuilken v. A & R Dev. Corp*., 510 F. Supp. 797 (E.D. Pa. 1981)). Any preliminary injunction has been vacated and declared moot.

preference that the case come out a certain way." *Id.*[7] In fact, under this theory it's hard to see how the interests of these three Movants in the two majority-Black districts do not diverge from the remainder of the Galmon Movants in other districts. And under this theory, any voter in the State would be entitled to intervene to defend SB8 simply because SB8 places them in a district they prefer, without putting on any evidence that the VRA requires the State to maintain SB8. Again, Movants' "undiluted vote" challenge to HB1 under the VRA is moot, they did not secure any purported Section 2 remedy, and they have not shown that they have any right to this specific, independently enacted map by the Legislature. Accordingly, the Court should deny their motion to intervene.

B. Movants' purported interests are adequately represented.

Even if the Galmons have a legally protectable "interest," it is "adequately represent[ed]" by other parties. Fed. R. Civ. P. 24. Thus, the Court should deny their Motion to Intervene. The Galmon Movants never identify any material differences between their interests and Robinson Intervenors' interests for the liability stage, nor do they explain what they would do differently from the Robinson Intervenors at this stage. They never explain how they will be inadequately represented by the State or their former co-plaintiffs, both of whom have vigorously defended SB8 on appeal.

[7] Unlike the lower court cases cited by Movants, this case does not involve a judicially imposed consent decree or remedy, but an independent statute enacted by the State of Louisiana. **Motion at 10** (citing *LULAC, Dist. 19 v. City of Boerne*, 659 F.3d 421 (5th Cir. 2011); *Johnson v. Mortham*, 915 F. Supp. 1529 (N.D. Fla. 1995)). *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831 (5th Cir. 1993)). And in *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc), the intervenors independently established standing to intervene, *id.* at 844-45—standing that is obviously lacking here. Motion to Dismiss or Affirm at 18-20, No. 24-111 (filed Sept. 3, 2024); *Hollingsworth*, 570 U.S. at 705.

In fact, Movants admit that their interests in *Robinson* were the exact same as Robinson Intervenors' interests—noting that they filed "a similar complaint the same day" against the same defendant, their "actions were consolidated," and "the two sets of plaintiffs presented their cases in equal measure." **Motion at 2-3**.

To allege inadequate representation, Movants instead rely on a faulty interpretation of what it means to be an "existing party" for purposes of Rule 24. But this theory has no basis for the present Motion because, even if it was viable for the motion to intervene in the district court (it was not, *see* Motion to Dismiss or Affirm at 30-32, No. 24-111 (filed Sept. 3, 2024)), the Movants have just filed a brand-new Motion to Intervene in this Court, and the Robinsons and State are plainly existing parties at this stage of the litigation. Thus, the Court should deny the Motion to Intervene.

C. Inequities weigh against intervention.

Granting intervention at this late stage would also be inequitable for all other parties. This Court entered its November 4, 2024, Order, setting the briefing schedule and oral argument allotment for the parties. Even the Robinson Intervenors, who have not opposed Galmon Movants' intervention up to this point, oppose full intervention now because it would hamper the existing parties' ability to put on their case. **Motion at 1 n.1**. And the Galmons have made very clear that they seek full intervention, including oral argument time. ***Id.* at 14-15** ("*Galmon* Movants are prepared to comply with the operative briefing schedule and to negotiate shared oral argument time with the other petitioners."). The parties should not be forced to re-

allocate their oral argument time at this stage of the litigation to accommodate proposed intervenors who are adequately represented and who do not have a legally protectible interest.

D. The cases Movants cite are inapposite.

Movants only cite three cases where this Court has granted a motion to intervene on appeal. None support their case. First, they cite *BNSF Ry. Co. v. EEOC*, 140 S. Ct. 109 (2019) (mem.). There, the EEOC prosecuted the claim against BNSF Railway Company on behalf of the proposed intervenor-employee in the lower courts. *See* RUSSELL HOLT'S MOTION FOR LEAVE TO INTERVENE AS A RESPONDENT AND TO FILE A BRIEF IN OPPOSITION at 1, *BNSF Ry. Co. v. EEOC*, 140 S. Ct. 109 (filed Aug. 22, 2019). The EEOC obtained a judgment in the employee's favor, but in the Supreme Court, the EEOC represented by the Solicitor General refused to defend the judgment on behalf of the proposed intervenor-employee. *Id.* Thus, for the first time in the case, there was no one to defend the employee's interest. *Id.* The Solicitor General had no objection to the employee's intervention. *Id.* And this Court granted intervention. *BNSF Ry. Co.*, 140 S. Ct. 109. That case does not resemble this one: Movants' claim is not at stake, and Movants are adequately represented by both the State and Robinsons.

Second, Movants cite *Hunt v. Cromartie*, 525 U.S. 946 (1998) (mem.). In *Hunt*, the district court allowed proposed intervenors to intervene as to all issues only after it issued a judgment and after the notice of appeal to the Supreme Court was filed. After the district court permitted intervention as to all issues, the Supreme Court

entered an order allowing intervention on appeal. That also is not this case. The district court has denied Galmon Movants' motion to intervene in the liability stage, and this Court has already declined to exercise jurisdiction over an appeal of that order. This order should go through the normal channels of appellate review.

Finally, they cite *Cameron v. EMW Women's Surgical Center, P.S.C.*, 595 U.S. 267 (2022). There, this Court allowed the Kentucky attorney general to intervene to defend the constitutionality of a Kentucky law after the secretary for Health and Family Services, who had been defending the law, refused to continue defending the law on appeal. *Id*. at 271-73, 277-79, 282. Here, unlike there, the Movants are private parties with no authority, statutory or otherwise, to defend a state law of general applicability, and the law is not without defenders. The State and Robinsons have presented robust defenses of SB8 thus far and show no signs of acquiescence now.

Movants do not identify any points they would make that have not or will not be advanced by another party. And even if they have a unique vantage point, they can present it by filing an amicus brief.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion to Intervene.

Respectfully submitted,

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