No. 24-109

In the Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,

v.

PHILLIP CALLAIS, ET AL.,
Appellees.

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

REPLY BRIEF FOR APPELLANT

ELIZABETH B. MURRILL
Attorney General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov

J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
ZACHARY FAIRCLOTH
Principal Deputy Solicitor General
MORGAN BRUNGARD
Deputy Solicitor General
CAITLIN A. HUETTEMANN
Assistant Solicitor General
AUTUMN HAMIT PATTERSON
Sp. Ass't Solicitor General

February 20, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 2

I. PLAINTIFFS FAILED TO PROVE ARTICLE III STANDING. 2

A. Basic Article III Principles Resolve This Case. 2

B. *Hays* Stereotyping Is Not the Answer. 4

II. UNDER THIS COURT'S CURRENT PRECEDENTS, DISTRICT 6 IS CONSTITUTIONAL. 6

A. Race Did Not Predominate. 6

1. Pressure from a federal district court and court of appeals matters. 6

2. The State's avowedly political explanation for enacting S.B. 8 matters. 10

3. Plaintiffs' failure to identify an alternative map accommodating *Robinson* and the State's incumbent-protection goal matters. 12

B. S.B. 8 Satisfies This Court's Strict-Scrutiny Framework. 14

1. Under this Court's logic, compliance with federal courts' view of what the VRA requires is a compelling interest. .. 14

2. The State had "good reasons" to believe that District 6 was necessary to comply with the VRA. 18

CONCLUSION 25

TABLE OF AUTHORITIES

Cases

Abbott v. Perez,
585 U.S. 579 (2018) 17
Alabama Leg. Black Caucus v. Alabama,
575 U.S. 254 (2015) 17
Alexander v. S.C. State Conf. of the NAACP,
602 U.S. 1 (2024) 1, 4, 6, 7, 8, 11, 12, 17
Allen v. Milligan,
599 U.S. 1 (2023) 10, 11
Allen v. Wright,
468 U.S. 737 (1984) 3, 4
Batson v. Kentucky,
476 U.S. 79 (1986) 6
Bethune-Hill v. Va. State Bd. of Elections,
580 U.S. 178 (2017) 14, 18, 23, 25
Bush v. Vera,
517 U.S. 952 (1996) 20, 21
Cooper v. Harris,
581 U.S. 285 (2017) 18
FDA v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 4, 6
Federal Maritime Comm'n v. S.C. State Ports Auth.,
535 U.S. 743 (2002) 10
Flowers v. Mississippi,
588 U.S. 284 (2019) 6
Koontz v. St. Johns Water Mgmt. Dist.,
570 U.S. 595 (2013) 8
LULAC v. Perry,
548 U.S. 399 (2006) 19, 20, 21, 23, 24

Merrill v. Milligan,
142 S. Ct. 879 (2022) 1, 13
Miller v. Johnson,
515 U.S. 900 (1995) 8, 9
Murthy v. Missouri,
603 U.S. 43 (2024) 2, 5
Nairne v. Landry,
No. 24-30115 (5th Cir.)... 15
National Rifle Ass'n of Am. v. Vullo,
602 U.S. 175 (2024) 8
Robinson v. Ardoin,
605 F. Supp. 3d 759 (M.D. La. 2022) 1, 16
Robinson v. Ardoin,
86 F.4th 574 (5th Cir. 2023).............. 1, 9, 10, 16, 17
Salinas v. Texas,
570 U.S. 178 (2013) 8
Shaw v. Hunt,
517 U.S. 899 (1996) 8, 9, 19
Students for Fair Admissions v. President & Fellows of Harvard College,
600 U.S. 181 (2023) 2, 5
United States v. Hays,
515 U.S. 737 (1995) 4

INTRODUCTION

The Middle District of Louisiana and the Fifth Circuit told Louisiana that Section 2 of the Voting Rights Act (VRA) likely requires the State to adopt a second majority-Black congressional district. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023). So Louisiana tried "to thread the impossible needle created by [this Court's] voting-rights precedents," *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 65 (2024) (Thomas, J., concurring in part), by adopting a second majority-Black district. To no avail. Plaintiffs claim that it is legally "impossible to draw a second majority-Black district," Resp.Br.28, while the *Robinson* Intervenors insist that "such a district [can] be lawfully drawn," Robinson.Br.21.

This hamster wheel will not stop spinning unless the Court reverses. For whether the State adopts a one- or two-majority-Black district map in response to the judgment below (if it stands), Louisiana will be back here in October Term 2025 defending its new map against a new challenge filed by one of the private parties in this case. To what end? In a jurisprudence already maligned for its "notoriously unclear and confusing" features, *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays), a decision forcing Louisiana into yet another round of litigation would underscore that there is something seriously wrong with this Court's voting cases.

So the Court should reverse. The cleanest way to do so is on standing grounds. Despite pressing an Equal Protection Clause claim, Plaintiffs have now

forfeited any argument that "they have personally been subjected to racial classifications." Resp.Br.54. Instead, their *sole* standing theory—based on pure speculation—is that those non-Black Plaintiffs who reside in District 6 will be harmed when Black District 6 Representative Cleo Fields "play[s] into racial stereotypes to prioritize" Black voters over them. *Id.* at 55. Respectfully, that theory should be dead on arrival in this Court, which recently and resoundingly rejected "[s]uch stereotyping" as "contrary ... to the 'core purpose' of the Equal Protection Clause." *Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181, 221 (2023) (*SFFA*). The Court need say no more to dispose of this case.

If the Court reaches the merits, however, then it should hold that District 6 fits within the breathing room the Court has long promised States. If the Court does not hold as much, then, respectfully, the Court owes States an explanation whether that breathing room actually exists—and how Louisiana is supposed to extricate itself from this impossible situation.

ARGUMENT

I. PLAINTIFFS FAILED TO PROVE ARTICLE III STANDING.

A. Basic Article III Principles Resolve This Case.

Plaintiffs' muted discussion of Article III jurisdiction (Resp.Br.53–55) underscores that the Court should "begin—and end—with standing." *Murthy v. Missouri*, 603 U.S. 43, 56 (2024).

Plaintiffs have now forfeited any argument that "they have personally been subjected to racial classifications." Resp.Br.54. This, notwithstanding that the ordinary Equal Protection Clause plaintiff must be one "who was 'personally subject to the challenged discrimination' and was 'personally [] denied equal treatment.'" Op.Br.24 (quoting *Allen v. Wright*, 468 U.S. 737, 755 (1984)).

Plaintiffs also do not dispute the State's point (Op.Br.25–26) that the affirmative-action, third-party standing, and (lower court) Establishment Clause cases all reinforce Plaintiffs' lack of standing. Plaintiffs claim that "the State rightly recognizes this case is completely 'unlike' those, so this Court need not consider them." Resp.Br.54 n.14. But Plaintiffs misread the State's brief. *First*, the State said (Op.Br.25–26) that the affirmative-action cases are "unlike" this case to illustrate that Plaintiffs cannot rely on those cases for standing. Plaintiffs' silence concedes this point. *Second*, the State said (*id.* at 26–27) that Plaintiffs' attempt to sue over "District 6's treatment of Black voters" would (a) circumvent the limitations of the third-party standing doctrine and (b) be no different than invoking so-called "offended-observer standing" in the Establishment Clause context, which has no basis in law. Again, Plaintiffs' silence concedes this point.

Instead, Plaintiffs rewrite the State's brief. They characterize the State as "claim[ing] non-Black voters cannot be injured by racial gerrymandering." Resp.Br.54 n.14. That is not correct. The State explained that a Plaintiff "might be able to mount evidence showing that he was, in fact, 'personally [] denied equal treatment.'" Op.Br.28 (quoting *Allen*, 468

U.S. at 755). But the fatal defect here is that "Plaintiffs offered no such evidence." *Id.* Plaintiffs also characterize the State as "fear[ing]" a rule that "bestows 'virtually every voter in the State' with standing." Resp.Br.55. That is not correct, either. The State's point about standing for every voter arises from an inherent "inconsistency" in the *Hays* assumption regarding racial classifications, Op.Br.29—but that problem is beside the point here given Plaintiffs' forfeiture of any argument that they were personally subjected to racial classifications.

Basic Article III principles resolve this case. Plaintiffs do not claim to "have personally been subjected to racial classifications." Resp.Br.54. So, the gravamen of their challenge is the allegedly unequal treatment of *other* voters. That betrays their Article III problem. For they have no "'personal stake'" in such alleged unequal treatment. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024). And if there were any doubt about whether this type of case even belongs in federal court, *see Alexander*, 602 U.S. at 39–41 (Thomas, J., concurring in part), holding the Article III (standing) line at least partially addresses that concern.

B. *Hays* Stereotyping Is Not the Answer.

Plaintiffs nonetheless insist that they are properly in federal court because four Plaintiffs "live in the challenged district"—*i.e.*, District 6. Resp.Br.54 (citing *United States v. Hays*, 515 U.S. 737 (1995)). But they almost entirely refuse to defend that *Hays*-based reasoning on its own merits. *See* Op.Br.27–32.

They do not dispute, for example, that the *Hays* assumption "that any voter who resides in a racially gerrymandered district necessarily was assigned based on his race" is incorrect on Plaintiffs' theory of their case. *Id.* at 27–29. They also do not dispute that the other *Hays* assumption—that the representative of a racially gerrymandered district will favor the race of the majority—"is pure conjecture, supported by no facts or authorities." *Id.* at 29–30.

In fact, Plaintiffs' only defense of *Hays* is one sentence: "[T]he [District 6] representative will be pressured by the Legislature's 'obvious' racial classification and preference and play into racial stereotypes to prioritize the 'perceived' will of one racial group over another." Resp.Br.55. As the absence of record citations suggests, Plaintiffs are nowhere close to satisfying their burden to "point to factual evidence" establishing standing. *Murthy*, 603 U.S. at 58.

More fundamentally, Plaintiffs do not acknowledge how odious that speculation is. *Cf.* Op.Br.30. It says that Black District 6 Representative Cleo Fields "is 'more likely' to favor the Black voters in his District than those of other races." *Id.* at 31. Or, as Plaintiffs put it without apparent irony, Representative Fields "will play into racial stereotypes" by favoring Black voters. Resp.Br.55. That is the *only* theory of standing Plaintiffs are willing to advance today.

That cannot be the basis for allowing this case to proceed. Such "stereotyping," this Court recently reiterated, is "contrary ... to the core purpose of the Equal Protection Clause." *SFFA*, 600 U.S. at 221. And such "assumptions," if entertained, would render "meaning-

less" "[t]he core guarantee of equal protection." *Flowers v. Mississippi*, 588 U.S. 284, 299 (2019) (citation omitted).

Plaintiffs may "have sincere legal, moral, ideological, and policy objections" to District 6. *All. for Hippocratic Med.*, 602 U.S. at 396. But "those kinds of objections" are insufficient. *Id.* The way to remedy any alleged constitutional violation is through a plaintiff with actual Article III standing—not one who rests solely on speculation employing the very stereotypes our Constitution abhors. That ends this case.

II. UNDER THIS COURT'S CURRENT PRECEDENTS, DISTRICT 6 IS CONSTITUTIONAL.

If the Court reaches the merits, it should reverse.

A. Race Did Not Predominate.

Plaintiffs' merits case turns on their failure to "show that race was the 'predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" *Alexander*, 602 U.S. at 7.

1. Pressure from a federal district court and court of appeals matters.

a. The Court's predominance analysis should begin where the State began (Op.Br.34–35) and where Plaintiffs devoted only one paragraph (Resp.Br.34): the role of the federal judiciary. Plaintiffs do not suggest that Louisiana would ever enact S.B. 8 in a *Robinson*-free world. (It would not.) A core threshold question in the racial-predominance inquiry is thus whether—given that the Legislature *did* enact S.B. 8—"race was 'the predominant factor motivating

the legislature's decision.'" *Alexander*, 602 U.S. at 7 (emphasis added).

To answer that question, the Court must confront *why* the Legislature did so. Here, too, Plaintiffs do not dispute that the Legislature's inaction would have resulted in a two majority-Black district map forcing either Speaker Johnson or Representative Letlow out of Congress. *See* Op.Br.49 (highlighting Plaintiffs' silence on this point). So, again, the question remains whether—given that the Legislature took action through S.B. 8—"race was 'the predominant factor motivating *the legislature's* decision.'" *Alexander*, 602 U.S. at 7 (emphasis added).

The honest answer is no. Just listen to Representative Beaullieu who, quoting Senator Stine, presented S.B. 8 "with a heavy heart"—"we have to. It's that clear. A federal judge has ordered us to draw an additional minority seat in the State of Louisiana." Op.Br.11 (quoting J.S.App.52a); *see* J.S.App.53a (Senator Seabaugh: "[R]eally, the only reason we were there was ... Judge Dick saying that she – if we didn't draw the second minority district, she was going to."). These are the words of legislators who thought they had no choice but to carry out the *Robinson* courts' race-based dictates to avoid a court-drawn map that would jeopardize Louisiana's high-profile Republican incumbents.

Plaintiffs now complain that the State "cites nothing" allowing the State to "shift[] blame onto federal courts." Resp.Br.34. But this Court has never seen two Article III courts pressure a State into adopting a map it never would have adopted in the first instance. Nor

has this Court ever conducted a racial-predominance analysis on those facts.

Pressure and coercion matter elsewhere in constitutional law. *See, e.g.*, *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 191 (2024) (recognizing "a claim that the government violated the First Amendment through coercion of a third party"); *Koontz v. St. Johns Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013) ("government [] pressure" and "[e]xtortionate demands ... frustrate the Fifth Amendment right to just compensation" and run headlong into the unconstitutional conditions doctrine); *Salinas v. Texas*, 570 U.S. 178, 184 (2013) (plurality op.) ("a witness' failure to invoke the privilege [against self-incrimination] must be excused where governmental coercion makes his forfeiture of the privilege involuntary"). They should equally matter here in assessing whether S.B. 8—and any underlying racial motivation—fairly may be characterized as "'*the legislature's* decision.'" *Alexander*, 602 U.S. at 7 (emphasis added).

b. Because Plaintiffs do not seriously contest this point, their *amici* try to backfill with other arguments. For example, Alabama claims that this Court's decisions in *Shaw v. Hunt*, 517 U.S. 899 (1996), and *Miller v. Johnson*, 515 U.S. 900 (1995), shield the federal judiciary from scrutiny in the racial-predominance analysis. Alabama.Br.8–9. Not so.

In both cases, the Court found racial predominance even though the States intentionally created additional majority-minority districts in response to Section 5 objection letters from the U.S. Department of Justice—a Department whose Section 5 "maximization policy" this Court repeatedly rejected. *See Shaw*,

517 U.S. at 913 (citing *Miller*, 515 U.S. at 924–27). Judicial decisions from the Middle District and the Fifth Circuit intentionally crafted to pressure Louisiana into "consider[ing] a new map now," *Robinson*, 86 F.4th 601, are worlds away from Department of Justice objection letters. Indeed, *Miller* later stressed this point by distinguishing judicial pronouncements. It said that "blind judicial deference to *legislative or executive pronouncements* of necessity has no place in equal protection analysis." *Miller*, 515 U.S. at 922 (citation omitted and emphasis added). That is because "the judiciary" is "'supreme'" in "enforcing the constitutional limits on race-based official action." *Id.* And that is the State's point: When the federal judiciary, wielding federal law, forces a State's hand in race-based districting, that radically affects the racial-predominance inquiry.

For its part, the Project on Fair Representation downplays this litigation as a product of "fears about one trial court's feelings." Project on Fair Representation.Br.14. It also assures Louisiana that, because the Fifth Circuit decided *Robinson* in the preliminary-injunction posture, "the Fifth Circuit necessarily intimated no view as to the ultimate merits." *Id.* at 15 (cleaned up).

This depiction has no basis in reality. As Plaintiffs' silence suggests, Louisiana would have lost either Speaker Johnson or Representative Letlow under a *Robinson* illustrative map. That is reality—not a fear about the Middle District's "feelings." Moreover, that the Fifth Circuit went out of its way to affirm the Middle District's merits holding *and then* express doubt that "the Legislature would not take advantage of this

opportunity to consider a new map now that we have affirmed the district court's conclusion," *Robinson*, 86 F.4th at 601, puts to rest any suggestion that the Fifth Circuit "intimated no view" on the merits.

In short, the *Robinson* courts' pressure on Louisiana to draw a second majority-Black district is clear and indisputable—and so, at least on these unique facts, it would be extraordinarily unfair for "the federal judiciary [to] wash its hands of the matter now and point at the Legislature" for racial predominance. Op.Br.35; *cf. Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 763–64 (2002) ("To conclude that this choice does not coerce a State ... would be to blind ourselves to reality.").

2. The State's avowedly political explanation for enacting S.B. 8 matters.

That pressure coupled, in turn, with the State's political reasons for enacting S.B. 8 reinforces that race did not predominate in the Legislature's decision. Plaintiffs do not dispute that S.B. 8, rather than S.B. 4, won the day because it protected Louisiana's high-profile incumbents. That is why even the majority below agreed that these "political calculations" are "*clear from the record and undisputed*." J.S.App.40a (emphasis added).

In response, Plaintiffs emphasize (Resp.Br.25–26) this Court's general statement that "[r]ace predominates in the drawing of district lines ... when race-neutral considerations come into play only after the race-based decision had been made." *Allen v. Milligan*, 599 U.S. 1, 31 (2023) (plurality op.) (cleaned up). Here, Plaintiffs say, the State protected its incumbents only

after deciding to draw a second majority-Black district—and *voilà*, racial predominance. That reasoning does not work.

First, it does not account for a situation where, as here, "the race-based decision" effectively has been made by Article III courts. *See supra* Section II.A(1). Plaintiffs' position, if accepted, would mean that race will *always* predominate in a case like this because race-neutral considerations will always come into play following the Article III courts' decisions. *Cf. Allen*, 599 U.S. at 33 (plurality op.) (rejecting position that would hold "racial predominance plagues *every single illustrative map*"). In fact, even though Louisiana had an avowedly political reason for responding with S.B. 8, that race-neutral reason for the State's action *in the first place* would never win out in the racial-predominance analysis. That makes little sense in assessing whether "race was '*the* predominant factor motivating the legislature's decision.'" *Alexander*, 602 U.S. at 7 (emphasis added).

Second, it does not explain how the Court could justify finding no racial predominance in *Allen* while finding racial predominance here. The *Allen* plurality did not dispute that the maps in that case "were designed to hit express racial targets—namely, two 50%-plus majority-black districts." 599 U.S. at 32 (cleaned up). And yet, the plurality found that race did not predominate, emphasizing that "'the use of an express racial target'" is "just one factor among others" for consideration. *Id.* If race did not predominate in *Allen*, then race especially did not predominate here where (a) the State was responding to Article III judicial decisions (b) for avowedly political reasons.

3. Plaintiffs' failure to identify an alternative map accommodating *Robinson* and the State's incumbent-protection goal matters.

A final data point is Plaintiffs' failure to propose an alternative map that would (a) create a second majority-Black district and (b) protect Speaker Johnson and Representative Letlow. *See* Op.Br.39–40; *see Alexander*, 602 U.S. at 35.

Because they fail the alternative-map requirement, Plaintiffs instead attack this requirement itself as "rigged." Resp.Br.32. They claim that the alternative-map requirement, properly applied, should not "enshrine[]" the *Robinson* courts' "two-majority-Black district quota" and then force Plaintiffs to produce a map that satisfies both *Robinson* and the incumbency-protection goal. *Id.*; *see* Alabama.Br.8 ("An express racial target (like two majority-black districts) is *proof* of a gerrymandering claim, not a *defense* against one.").

Plaintiffs are just fighting *Alexander*. The whole point of the predominance analysis—and the alternative-map requirement—is "[t]o untangle race from other permissible considerations" and determine whether "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." *Alexander*, 602 U.S. at 7, 10 (citation omitted). To that end, there is nothing "rigged" about requiring Plaintiffs to supply a map "with greater racial balance" that (a) complies with *Robinson* (which Plaintiffs say is constitutionally impermissible) and (b) achieves Louisiana's incumbent-protection goal (which is constitutionally permissible). *Id.* at 10. If they could do so,

then they would have sufficiently untangled race from political considerations and thereby demonstrated that race predominated. But they did not (and cannot) do so.

Alabama, for its part, is just relitigating *Allen*. For, as explained above, the *Allen* plurality itself rejected the idea that an express racial target automatically establishes racial predominance. To be clear, it is no secret that Louisiana stood with Alabama in *Allen*. *See Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays). Louisiana thus "sympathize[s]" with Alabama. Alabama.Br.5. But both States are now required to make sense of *Allen*, *Alexander*, and related precedents—and unless the Court reverses here, it is difficult to see how any State will ever have the clarity it needs to redistrict with confidence that the federal courts will not intrude on its sovereign prerogative.

On that note, in a now-withdrawn brief, the United States urged the Court to "bypass" the racial-predominance analysis and simply "vacate the decision below based on the court's failure to apply the correct [strict-scrutiny] framework." U.S.Br.19. Respectfully, the States need more. If the Court believes the facts in this case trigger strict scrutiny, then the States need to know *why* so that they may recalibrate their redistricting approaches accordingly, especially as VRA litigations and injunctions proliferate. *See* Alabama.Br.28–35.

B. S.B. 8 Satisfies This Court's Strict-Scrutiny Framework.

Even if Plaintiffs had carried their burden on racial predominance, they would still lose on strict scrutiny.

1. Under this Court's logic, compliance with federal courts' view of what the VRA requires is a compelling interest.

a. Plaintiffs do not dispute that this Court has long "assume[d], without deciding, that [a] State's interest in complying with the [VRA] [is] compelling." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 193 (2017) (citing cases). Nor do they dispute that the majority below likewise "assume[d], without deciding, that compliance with Section 2 was a compelling interest for the State." J.S.App.53a.

Plaintiffs also never confront the State's basic point that, "[i]f (as this Court has assumed) compliance with the VRA is a compelling interest, then compliance with court orders telling a State how to comply with the VRA is a compelling interest, too." Op.Br.42–43. For good reason: It is extraordinarily difficult to imagine a decision from this Court saying that States have no compelling interest in complying with what, in two federal courts' view, the VRA requires.

b. Plaintiffs offer three responses, none availing. *First*, Plaintiffs proclaim that "VRA compliance is not a compelling interest." Resp.Br.36 (capitalization altered); *see id.* at 38 ("It's time to retire the assumption ...."). That argument is forfeited. As the State explained, "Plaintiffs have not preserved any argument that the Court's assumption is invalid." Op.Br.43 (cit-

ing Mot. to Dismiss 24; Dist.Ct.Doc.190 at 14 (both accepting the assumption)); *see* Dist.Ct.Doc.192 at 8 (State's post-trial brief: "Plaintiffs have never actually argued otherwise"). Plaintiffs do not say a word about that forfeiture problem.

Plaintiffs' new argument also is misplaced. They make much of the State's attack on Section 2's unconstitutionality in a pending VRA case, where the same Middle District judge has permanently enjoined elections under Louisiana's state House and Senate maps. *See Nairne v. Landry*, No. 24-30115 (5th Cir.) (oral argument heard Jan. 7, 2025). (Yes, you read that correctly.) Because the State believes Section 2 is unconstitutional, Plaintiffs reason, the State cannot have a compelling interest in complying with it. *See* Resp.Br.36–38. But that ignores today's reality. The Middle District rejected the State's constitutional challenge in *Nairne*; so, Section 2 remains good law for now, and the State remains duty-bound to comply with it. Moreover, to the extent Plaintiffs now seek to transform this case into a constitutional attack on Section 2, Plaintiffs did not raise that issue below—and, in all events, the issue of Section 2's unconstitutionality (as applied to Louisiana) may soon appear in a *Nairne* cert petition.

Second, Plaintiffs argue that, even if Section 2 compliance "could qualify as a compelling interest," that was not "the State's actual purpose" in drawing District 6. Resp.Br.39 (capitalization altered). They claim that the State "has never articulated a reasoned VRA defense." *Id.* And one of their *amici* proclaims that "*[n]one* of the legislative statements relied on by the

State refers to VRA compliance." Project on Fair Representation.Br.18 (citing Op.Br.10–12).

This line of argument is divorced from reality. There is no dispute that myriad legislators contemporaneously described their support for S.B. 8 in terms of their compliance with what they understood to be the *Robinson* courts' "instructions" and "order." Op.Br.10–12. They had no reason to specify that they were to trying to comply with the VRA because the *Robinson* court decisions *themselves* articulated what (in those courts' view) was "necessary to comply with the [VRA]." *Robinson*, 605 F. Supp. 3d at 839; *Robinson*, 86 F.4th at 583. Pretending that Louisiana's compliance with judicial decisions outlining VRA compliance for Louisiana is not, in fact, "a reasoned VRA defense" is perplexing. Resp.Br.39.

Third, and relatedly, Plaintiffs reframe Louisiana's alleged "actual purpose" in drawing District 6 as "appeasement of an unfair court." *Id.* And from there, Plaintiffs move the goal posts even further: They claim that this alleged compelling interest "is not amenable to judicial review," *id.*; rests entirely on "predictions about individual judges," *id.* at 41; and "forces courts into the awkward position of judging a legislature's views of the judiciary," *id.*

This is misdirection. There is nothing awkward, predictive, or unreviewable about three facts: (1) the *Robinson* district court's determination that "[t]he appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional majority-Black congressional district," *Robinson*, 605 F. Supp. 3d at 766; (2) the Fifth Circuit's agreement that the State likely violated "Section 2 of the [VRA]"

for failing to create a second majority-Black district, *Robinson*, 86 F.4th at 599; and (3) Senator Womack's (S.B. 8's sponsor) explanation that "[w]e were ordered to – to draw a new Black district, and that's what I've done," J.S.App.47a–48a. Either the Court holds that S.B. 8 is thus supported by a compelling interest, or holds that it is not. But there is nothing "awkward" about answering that question.

To the extent Plaintiffs complain that protecting Speaker Johnson and Representative Letlow likewise factored into the Legislature's calculus, the "traditional districting objective[]" of "protecting incumbents," *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 259 (2015), does not somehow render the Legislature's compliance with the *Robinson* decisions *not* a compelling interest. Indeed, the idea that federal courts should refuse to accept legislators' own contemporaneous explanations that they are complying with federal courts' VRA decisions would *itself* be a recipe for disaster. So much for the longstanding "presumption that the legislature acted in good faith," *Alexander*, 602 U.S. at 6, and the admonition that courts "'must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus,'" *Abbott v. Perez*, 585 U.S. 579, 603 (2018).

Similarly, to the extent Plaintiffs and their *amici* point to Louisiana's *Robinson* defenses and complain that Louisiana does not *really* think the VRA requires a second majority-Black district (and thus, Louisiana cannot have a compelling interest), that, too, is misdirection. For one, the State ultimately *lost* on those arguments in the Fifth Circuit. For another, because

S.B. 8's proponents explained that they were complying with the *Robinson* decisions, the only question is whether that explanation qualifies as a compelling interest under this Court's "long[standing] assum[ption] that complying with the VRA is a compelling interest." *Cooper v. Harris*, 581 U.S. 285, 301 (2017). And for yet another, Plaintiffs do not acknowledge Louisiana's response to this complaint. "There is no basis in this Court's precedents to hold that a State (i) must repent for its past defenses in VRA litigation and (ii) pinky swear that it now believes its VRA defenses were wrong." Op.Br.43. Nor do Plaintiffs answer Louisiana's point that, "under Plaintiffs' position, it is difficult to see how any State—especially one that has defended against VRA litigation—could ever constitutionally remedy a court-identified VRA violation." *Id.*

* * *

In recent cases, this Court's "compelling interest" analysis has spanned little more than a sentence because the Court has "long assumed that complying with the VRA is a compelling interest." *Cooper*, 581 U.S. at 301; *Bethune-Hill*, 580 U.S. at 801. Unless the Court is inclined to revisit that assumption (despite Plaintiffs' forfeiture), Plaintiffs have identified no reason to take a different path here.

2. The State had "good reasons" to believe that District 6 was necessary to comply with the VRA.

a. The preceding analyses likewise confirm that the State had "'*good reasons* to believe' it must use race in order to satisfy the [VRA]." *Bethune-Hill*, 580 U.S. at 194. On this front, Louisiana's point is simple:

Just as it is extraordinarily difficult to imagine a decision from this Court saying that States have no compelling interest in complying with federal courts' VRA decisions, it is extraordinarily difficult to imagine a decision from this Court saying that Middle District and Fifth Circuit decisions saying Louisiana likely stands in violation of the VRA unless it adopts a second majority-Black district is not, in fact, a good reason for Louisiana to do so.

To be clear, Louisiana could not just "draw[] a majority-minority district 'anywhere.'" *LULAC v. Perry*, 548 U.S. 399, 505 (2006) (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part). Rather, Louisiana's map must "substantially address[] the § 2 violation" identified by the *Robinson* decisions. *Id.* at 431 (maj. op.) (quoting *Shaw*, 517 U.S. at 918). Plaintiffs repeatedly accept that standard. *See* Resp.Br.2, 18, 22, 35.

District 6 falls within those limits. Through their silence, Plaintiffs now appear to concede that they previously "misrepresent[ed] the facts in stating that District 6 'bear[s] zero resemblance' to the proposed maps in *Robinson*." Op.Br.50. Rightly so. As the State illustrated, well more than 70% of both the total voting age population and the Black voting age population in S.B. 8's District 6 and S.B. 4's District 5 are identical. *See id.* (citing Op.Br.15–17). This case is thus worlds away from *Shaw*, where "[t]he remedial district" had only "a 20% overlap with the district the plaintiffs sought." *LULAC*, 548 U.S. at 431. It is also worlds away from *LULAC*, where "the majority of Latinos who were in the old District 23 [were] still in the new

District 23," which allegedly unlawfully diluted their votes. *Id.*

Plaintiffs also do not question that the Legislature did "not deviate substantially" from S.B. 4 and the *Robinson* illustrative maps "for predominantly racial reasons." Op.Br.52 (quoting *Bush v. Vera*, 517 U.S. 952, 994 (1996) (O'Connor, J., concurring)). Again, rightly so, for S.B. 8 was "the only map" Senator Womack saw that would protect Louisiana's high-profile incumbents. *Robinson*.J.S.App.394a–95a. That incumbency-protection rationale confirms that District 6 falls within the limits identified in *LULAC* and *Bush*. *Contra* Resp.Br.48–49.

Under a straightforward application of this Court's precedents, therefore, Louisiana meets the "good reasons" standard, particularly in light of the *Robinson* decisions. And the critical error below—unaddressed by Plaintiffs—is that the majority's "good reasons" analysis "disregarded the *Robinson* proceedings when, in reality, only those proceedings can explain how District 6 came to be." Op.Br.46. That "is like Hamlet without the prince." *Id.*

b. Plaintiffs and their *amici* offer no serious responses. *First*, Plaintiffs' principal complaint (Resp.Br.42–44) is that District 6 is not identical to the second majority-Black district considered in *Robinson* (and represented by S.B. 4's District 5).[1] This argument is insincere and misplaced.

---

[1] Plaintiffs go as far as to say that the *Robinson* district court "essentially rejected" District 6 and deemed it "impermissible." Resp.Br.43, 50. Of course, that court did not have District 6 before it. Moreover, to the extent the court described a district from

It is insincere because Plaintiffs are talking out of both sides of their mouth. While this argument suggests District 6 would be constitutional if it were identical to S.B. 4's District 5, Plaintiffs elsewhere proclaim that it is legally "impossible to draw a second majority-Black district." Resp.Br.28; *id.* at 33 ("no constitutional, VRA-compliant maps can also include a second majority-Black district"). So, there can be no doubt that their theory of the case means Louisiana could never satisfy strict scrutiny while attempting to comply with the *Robinson* decisions.

Plaintiffs' argument also is misplaced because, as they elsewhere concede, this Court's precedents do not limit Louisiana to the precise illustrative maps the *Robinson* Intervenors proposed. *See supra* p. 19 (collecting citations). Indeed, States are not required "to defeat rival compact districts designed by plaintiffs' experts in endless beauty contests." *Bush*, 517 U.S. at 977 (plurality op.). Yet that is what Plaintiffs would have Louisiana do.

That is wrong as a doctrinal matter, but it also gets Plaintiffs nowhere. For example, Plaintiffs complain (Resp.Br.6) that District 6 includes high Black voting age populations from East Baton Rouge Parish. So did S.B. 4's District 5. Op.Br.13. Plaintiffs complain (Resp.Br.7) that District 6 includes the northern tip of Lafayette Parish. So did S.B. 4's District 5. Op.Br.13.

---

the old *Hays* litigation, the court appears to have merely acknowledged that *the court* could not require such a remedial district under Section 2—which says nothing about whether *the State* could lawfully adopt such a district. *See LULAC*, 548 U.S. at 506 (Roberts, C.J.) ("[T]he States retain 'flexibility' in complying with voting rights obligations that 'federal courts enforcing § 2 lack.'").

Plaintiffs complain (Resp.Br.7) that District 6 "splits Alexandria from Rapides Parish to carve in high BVAP areas." So did S.B. 4's District 5. Op.Br.13. Finally, Plaintiffs suggest (Resp.Br.6–7) that a split in Avoyelles Parish was racially motivated, even though that late-developing split was a product of Senator Cloud's desire "to have her constituents be represented by congresswoman Letlow." *Robinson*.J.S.App.106a; *accord* J.S.App.92a (Stewart, J., dissenting).[2]

All told, this improper beauty contest would end in comparing S.B. 4 District 5's two remaining splits (in Ouachita Parish and Tangipahoa Parish, Op.Br.13) against S.B. 8 District 6's two remaining splits (in De Soto Parish and Caddo Parish, *id.* at 15). This is not a contest Plaintiffs win, even if it were proper.

Second, Plaintiffs claim (Resp.Br.44–46) that the *Robinson* decisions are not a sufficiently strong basis in evidence since the Middle District engaged in "preliminary factfinding," the Fifth Circuit "reviewed only for clear error," and the State supposedly did not mount a real VRA defense. (On that last point, *Robinson*'s mammoth docket and the State's numerous emergency applications speak for themselves.) Plain-

---

[2] Plaintiffs also depict the State as "falsely" arguing that Caddo Parish was "key to *Robinson*'s preliminary injunction." Resp.Br.43 n.10. That misrepresents the State's brief, which said that, because Caddo is key *to District 6*, it is notable that the Middle District considered Caddo. Op.Br.52. And Plaintiffs concede that the Middle District indeed considered Caddo "within a lengthy exposition of decades of Black voter discrimination throughout the entire 'state' under Senate Factor 1." Resp.Br.43 n.10.

tiffs' *amici* similarly suggest that the State was required to litigate *Robinson* through a trial court loss (and merits appeals and emergency applications?) before Louisiana could cite *Robinson* in the strict-scrutiny analysis. Project on Fair Representation.Br.17.

This Court has already rejected this line of argument: A State is not "require[d] ... to show that its action was 'actually ... necessary' to avoid a statutory violation, so that, but for its use of race, the State would have lost in court." *Bethune-Hill*, 580 U.S. at 194; Op.Br.45. Recall also Plaintiffs' silence on the fact that the State would have actually lost at final judgment in *Robinson*. And even if that were not so, Middle District and Fifth Circuit decisions saying a second majority-Black district is likely required surely fall within *Bethune-Hill*'s breathing room.

Third, Plaintiffs try to find a legal standard that works for them. Although they acknowledge *LULAC*'s "substantially addresses" standard, *see supra* p. 19, they elsewhere say (Resp.Br.49–50, 52) a new *Gingles* analysis is required. It is not, both because *LULAC* and its progeny have never required as much and because the *Robinson* courts conducted that analysis in the first instance to tell Louisiana a second majority-Black district is likely required. Op.Br.46–48.

Plaintiffs also try to add on to *LULAC*'s "substantially addresses" requirement by insisting that *LULAC* also requires District 6 to be "reasonably compact." Resp.Br.50. This argument is principally unavailing because, for the same reasons District 6 would survive any beauty contest, District 6 also is sufficiently "compact." But more fundamentally, Plaintiffs

read *LULAC* incorrectly. Although not a model of clarity, the cited passage in *LULAC* emphasizes that a "noncompact district cannot ... remedy a violation *elsewhere* in the State." 548 U.S. at 430 (emphasis added). It also suggests that this general principle "can[] be distinguished based on the relative location of the remedial district as compared to the district of the alleged violation"—a distinction unavailable in *Shaw* and *LULAC* because the remedial districts did not "substantially address[]" even a majority of the affected voters. *Id.* at 431; *cf. id.* at 505 (Roberts, C.J.) (disagreeing that *LULAC* was "a case of the State drawing a majority-minority district 'anywhere'"). As explained above, that distinction *is* available here, and there is no basis for denying Louisiana "some latitude"—particularly to protect its high-profile incumbents—"in deciding where to place" District 6. *Id.* at 505 (Roberts, C.J.).

Finally, Plaintiffs complain that reversal would mean that "*Robinson* controls a three-judge panel considering a new Fourteenth Amendment claim about a new statute." Resp.Br.51. That argument is overstated, because, as Plaintiffs admit (*supra* p. 19), the "strong basis in evidence" question is whether a State substantially addressed the "likely" VRA violation—sometimes that answer will be yes, sometimes no. But, either way, a VRA decision does not automatically "control" any subsequent Equal Protection Clause lawsuit.

Moreover, Plaintiffs identify no alternative that would not render *Robinson* irrelevant: Requiring a new *Gingles* analysis and so on would mean that the *Robinson* decisions give Louisiana no help in a strict-

scrutiny framework that purports to ask "only" whether "the legislature has '*good reasons* to believe' it must use race in order to satisfy the [VRA]." *Bethune-Hill*, 580 U.S. at 193 (citation omitted). That cannot be right—and that is why, if Louisiana does not prevail, it is difficult to see how any breathing room truly exists.

CONCLUSION

The Court should reverse.

Respectfully submitted,

J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
ZACHARY FAIRCLOTH
Principal Deputy
Solicitor General
MORGAN BRUNGARD
Deputy Solicitor General
CAITLIN A. HUETTEMANN
Assistant Solicitor General
AUTUMN HAMIT PATTERSON
Sp. Ass't Solicitor General

ELIZABETH B. MURRILL
Attorney General
LOUISIANA DEPARTMENT OF
JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov