No. 24-_____

IN THE
Supreme Court of the United States

EDWARD GALMON, SR., *et al.*,

Appellants,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

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

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the district court erred by denying *Galmon* Movants intervention of right on the basis of purportedly adequate representation by other proposed intervenors who were not existing parties when *Galmon* Movants moved to intervene.

2. Whether the district court erred by denying *Galmon* Movants intervention of right on the basis of purportedly adequate representation by intervenors who have different interests in the location of the Black-opportunity congressional districts at issue.

PARTIES TO THE PROCEEDINGS AND RELATED PROCEEDINGS

Appellants Edward Galmon, Sr., Ciara Hart, Norris Henderson, Tramelle Howard, and Ross Williams were proposed intervenors below.

Appellees Phillip Callais, Lloyd Price, Bruce Odell, Elisabeth Orsoff, Albert Caissie, Daniel Weir, Joyce LaCour, Candy Carroll Peavy, Tanya Whitney, Mike Johnson, Grover Joseph Rees, and Rolfe McCollister were plaintiffs below.

Appellee Nancy Landry, in her official capacity as Louisiana Secretary of State, was defendant below.

Appellee the State of Louisiana was intervenor-defendant below.

Appellees Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Devante Lewis, Martha Davis, Ambrose Sims, and Power Coalition for Equity and Justice were also intervenor-defendants below.

The relevant orders are:

Callais v. Landry, No. 3:24-cv-00122 (W.D. La. Feb. 26, 2024 (denying motion to intervene);

Callais v. Landry, No. 3:24-cv-00122 (W.D. La. Mar. 15, 2024) (denying motion for reconsideration);

Callais v. Landry, No. 3:24-cv-00122 (W.D. La. Apr. 30, 2024 (injunction and reasons for judgment).

Related appeals are also currently pending in the Fifth Circuit Court of Appeals, *Callais v. Landry*, No. 24-30177, and in this Court, *Landry v. Callais*, No. 23A1142, and *Robinson v. Callais*, No. ___. Related appeals also include the emergency stays ordered in

Landry v. Callais, No. 23A1002, and *Robinson v. Callais*, No. 23A994.

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INTRODUCTION

Federal Rule of Civil Procedure 24 divests trial courts of any authority to deny intervention to timely movants who claim an interest that may be impaired by the action, "unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). The district court correctly found that Edward Galmon, Sr., Cierra Hart, Norris Henderson, Tramelle Howard, and Ross Williams ("*Galmon* Movants") filed a timely motion to intervene, and that the interests they claimed in Louisiana's congressional districting map could be impaired by the adjudication of Plaintiffs' racial gerrymandering challenge to that map. All that remained was an inquiry into whether the two existing parties—Plaintiffs and Defendant Nancy Landry, in her official capacity as Louisiana's Secretary of State—adequately represent *Galmon* Movants' interests. As the district court ultimately found, neither does so. *Galmon* Movants are Black voters who seek to preserve both congressional districts created by Senate Bill 8 ("S.B. 8"), Louisiana's current districting map, in which Black voters have an opportunity to elect candidates of their choice. Plaintiffs' lawsuit seeks to eliminate at least one of those opportunity districts, and the Secretary, who for the past two years vigorously opposed *Galmon* Movants' efforts to compel a second Black-opportunity district, declined to take any position on the merits of Plaintiffs' action. Thus, a straightforward application of Rule 24 would have recognized *Galmon* Movants' right to intervene.

But the district court veered way off course: Instead of restricting its analysis to whether *Galmon* Movants' interests will be adequately represented by Plaintiffs and the Secretary—that is, by the "existing

parties," Fed. R. Civ. P. 24(a)(2)—the court reviewed, with no justification and virtually no explanation, whether *Galmon* Movants' interests would be adequately represented by an entirely different group of prospective intervenors (the "*Robinson* Intervenors") who filed their own motion to intervene after *Galmon* Movants had filed theirs. This was clear error in direct contravention of the Federal Rules' plain text. Indeed, the text is so clear that, to *Galmon* Movants' knowledge, no other federal court has ever made this mistake.[1] There is simply nothing in Rule 24 that requires movants to show that their interests may be inadequately represented by other later-moving proposed parties.

Moreover, even if, counterfactually, Rule 24 did somehow require *Galmon* Movants to show that their interests may not be adequately represented by other proposed intervenors, they have satisfied that burden with respect to the *Robinson* Intervenors. Plaintiffs' action implicates two interests: *First*, the gerrymandering challenge directly threatens *Galmon* Movants' interest in preserving the Voting Rights Act victory that four of them achieved in related litigation. The court below was wrong to suggest that *Robinson* Intervenors somehow represented *Galmon* Movants in that action as "lead" plaintiffs. *Second*, Plaintiffs' action threatens *Galmon* Movants' interests in the location of Louisiana's Black-opportunity districts. Three *Galmon* Movants (Mr. Galmon, Mr. Henderson, and Dr. Williams) live and vote in parishes where no *Robinson* Intervenor resides, and so their exclusion leaves

[1] Nor have Plaintiffs been able to identify any such precedent after several invitations.

the interests of Black voters from those regions vulnerable and unrepresented. Thus, even under the district court's improper comparison of interests between proposed intervenors, at least some *Galmon* Movants remain entitled to intervention.

The Court should reverse the denial of intervention, vacate district court proceedings that have occurred without *Galmon* Movants' participation, and remand so that *Galmon* Movants may defend their interests in all phases of this litigation.[2]

OPINIONS BELOW

The district court's order denying intervention is available at 2024 WL 1237058. The district court's order denying reconsideration is available at 2024 WL 1237057. The district court's injunction and judgment is available at 2024 WL 1903930.

JURISDICTION

The district court, empaneled under 28 U.S.C. § 2284(a), issued its orders on February 26, 2024; March 15, 2024; and April 30, 2024. This Court has jurisdiction under 28 U.S.C. § 1253. While the court of appeals initially had appellate jurisdiction over the intervention orders, jurisdiction transferred to this Court when Intervenor-Defendants below noticed their direct appeal of the district court's injunction. *See Hays v. State of La.*, 18 F.3d 1319, 1321 (5th Cir. 1994) (dismissing intervention appeal for lack of jurisdiction when underlying injunction was appealed to Supreme Court); *St. Cyr v. Hays*, 513 U.S. 1054 (1994)

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[2] If this Court proceeds to hear the pending appeal of the injunction before remanding, it should permit *Galmon* Movants to participate in that appeal as Respondents.

(affirming judgment in *Hays*); *cf. Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance[.]").

LEGAL PROVISION INVOLVED

Rule 24 of the Federal Rules of Civil Procedure provides:

> (a) *Intervention of Right*. On timely motion, the court must permit anyone to intervene who:
>
> …
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2).

STATEMENT OF THE CASE

A. Proceedings 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 because it unjustifiably diluted the votes of Black Louisianians. *See* Compl., *Galmon v. Ardoin*, No. 3:22-cv-00214-BAJ-RLB (M.D. La. Mar. 30, 2022), ECF No. 1. Another group of plaintiffs—*Robinson* Intervenors in this litigation—had filed a similar complaint only minutes earlier, 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*, ECF Nos. 5, 16; Mots. to Intervene, *Robinson*, 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, in turn, opposed the plaintiffs' efforts at every step. *See, e.g.*, Defs.' Mem. in Opp'n to Pls.' Mot. for Prelim. Inj., *Robinson*, 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*, 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 determination of its legal obligations 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.[3]

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[3] Courts must take proposed intervenors' factual allegations as true. *See Mendenhall v. M/V Toyota Maru No. 11*, 551 F.2d 55, 56 n.2 (5th Cir. 1977) (citing *Wright & Miller*, 7C Fed. Prac. & Proc. Civ. § 1914 (3d ed.)). Regardless, the fact that S.B. 8 was enacted in direct response to plaintiffs' success in the Middle District is not subject to reasonable dispute. *See Robinson*, 86 F.4th at 601 (remanding to provide the Legislature "an opportunity to consider a new map now that we have affirmed the district court's conclusion that the Plaintiffs have a likelihood of success on the merits"); *Callais v. Landry*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. Jan. 31, 2024), ECF No. 1 at 8–10 (complaint introducing Middle District litigation as predicate for new map); App.197a–203a (Governor's remarks opening Louisiana's "First Special Session on

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).

B. Proceedings in the Western District of Louisiana.

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 Callais*, ECF No. 1. *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* App.154a–173a. *Robinson* Intervenors moved to intervene as defendants one day later, *see Callais*, ECF No. 18, and the State of Louisiana moved to intervene as a defendant

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Court Ordered Redistricting" and urging Legislature to "heed the instructions of the Court" and adopt new map); La. Senate, Senate Comm. on Senate & Governmental Affairs, 51st Extraordinary Sess., Day 2, at 32:05–33:14 (Jan. 16, 2024), https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2024/01/011624SG2 (S.B. 8 sponsor explaining that the map "respond[s] appropriately to the ongoing federal Voting Rights Act case in the Middle District of Louisiana" and reminding committee members that "we are here now because of the federal court's order that we have a first opportunity to act [and the] court's order that we must have two majority-Black voting age population districts").

on February 20, *see Callais*, 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* App.1a–10a.

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* App.4a–8a. 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-SDDSDJ, with which the suit filed by the *Galmon* plaintiffs was consolidated." App.8a. The court allowed "movants [to] seek reconsideration of this ruling if they can establish adversity or collusion by the State." App.7a–8a.

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*, ECF No. 17. 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 id.*, 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. *Id.*, ECF No. 82 at 1.

On March 1, *Galmon* Movants moved the district court to reconsider its order denying intervention. *See* App.174a–76a. *Galmon* Movants highlighted the State's conspicuously restrained defense of S.B. 8 as evidence that the State would not adequately represent their interests; they explained that *Robinson* Intervenors would not adequately represent their interests in the remedial phase; and they pointed out that *Robinson* Intervenors' later-in-time motion to intervene could not oust *Galmon* Movants' own right to intervene. *See* App.177a–91a. 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, similarly pointing out the State's "half-hearted" and "meager" defense of S.B. 8 as evidence that it would not adequately represent their interests. *See Callais*, ECF No. 103-1 at 3, 8.

On March 15, the district court granted in part *Robinson* Intervenors' 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." App.11a–14a. *Galmon* Movants noticed their appeal to the Fifth Circuit on March 20. *See* App.192a–93a. *Galmon* Movants sought expedited consideration of the appeal so that the matter could be resolved before trial, but the Fifth Circuit denied the request. *Callais v. Landry*, No. 24-30177 (5th Cir. 2024), ECF Nos. 16, 40-2.

The district court held a preliminary injunction hearing consolidated with trial on the merits on April 8–10. *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. 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. App.78a. 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.).

Meanwhile, the parties are completing briefing in the Fifth Circuit on *Galmon* Movants' appeal of the denial of their intervention. On May 4, the district court *sua sponte* reconsidered that denial in part and permitted Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard (but not Dr. Williams) to participate "in

the remedial phase of this trial only." App.152a.[4] Because Fifth Circuit precedent makes clear that jurisdiction over the intervention appeal transferred to this Court when appeals of the district court's injunction were noticed, *see Hays v. State of La.*, 18 F.3d at 1321, *Galmon* Movants also noticed their appeal here. App.194a. Out of an abundance of caution, *Galmon* Movants intend to move the Fifth Circuit to hold in abeyance—rather than dismiss—the appeal there pending this Court's determination of jurisdiction.

REASONS FOR NOTING PROBABLE JURISDICTION

The denial of intervention warrants summary reversal. The district court exhibited a fundamental "misunderstanding of applicable law" by treating *Robinson* Intervenors as existing parties for purposes of Rule 24 before they had even moved to intervene. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 200, n.* (2022). Further compounding this error, the district court's explanation of why *Robinson* Intervenors adequately represented *Galmon* Movants' interests consisted of one cursory sentence that botched the relevant facts.

I. When Galmon Movants moved to intervene, Robinson Intervenors were not "existing parties."

The only existing parties to the underlying action on February 6, 2024, when *Galmon* Movants moved to

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[4] The district court gave no reason for Dr. Williams's continued exclusion, and there is nothing in the record to suggest that the court viewed Dr. Williams's remedial-phase interests as weaker than his fellow movants'.

intervene as defendants and thereby claimed an interest in this litigation, were Plaintiffs and the Secretary of State. Plaintiffs obviously do not represent the interests of proposed intervenor-defendants who seek to defeat their claims. And while the district court initially presumed that the Secretary, in conjunction with the State of Louisiana, might adequately represent the interests of private parties seeking to defend S.B. 8, it appropriately recognized that was not the case after the Secretary and the State filed their substantively inadequate responses to Plaintiffs' motion for preliminary injunction. *See Callais*, ECF No. 82. Because the district court correctly determined that *Galmon* Movants satisfy the remaining elements for intervention of right, *see* App.4a, 8a, the conclusion of inadequate representation by Plaintiffs and the Secretary should have conclusively resolved the matter in favor of granting intervention.

Instead, the district court determined that *Galmon* Movants had failed to establish inadequate representation by some other group—the *Robinson* Intervenors. But not only were *Robinson* Intervenors not existing parties when *Galmon* Movants moved to intervene; they were not even proposed intervenors. *See* App.154–73a (*Galmon* Movants' February 6 motion to intervene); *Callais*, ECF No. 18 (*Robinson* Intervenors' February 7 motion to intervene). There is no plausible reading of Rule 24's use of the term "existing parties"—let alone a reading consistent with the requisite liberal construction that district courts must apply in favor of proposed intervenors, *see Brumfield v. Dodd*, 749 F.3d 339, 341 (5th Cir. 2014) (citing 6 Moore's Federal Practice § 24.03[1][a], at 24–22 (3d ed. 2008))—that could require movants to show in their motion to intervene that their interests are not

adequately represented by other potential parties who have yet to even seek, let alone be granted, intervention.

Rather than interpret Rule 24 according to its plain language, consistent with ordinary practice across the country, and in a manner that promotes orderliness and predictability, the district court invented a preposterous test whereby a proposed party's motion to intervene must explain why the movant is not adequately represented by *nonparties* who have *not yet* filed for intervention. That has never been the law.

A. Rule 24's plain language requires reversal.

In its rush to determine that *Galmon* Movants' "interests and objectives will be adequately represented by the *Robinson* [Intervenors]," App.8a, the district court never considered which parties were "existing" for purposes of *Galmon* Movants' motion. But that element is clear, and it is binding. *See Bostock v. Clayton County*, 590 U.S. 644, 674 (2020) (holding that "when the meaning of the statute's terms is plain, our job is at an end").

When *Galmon* Movants moved to intervene, and again when they moved for reconsideration of the denial of their motion to intervene, the liability-phase party status of *Robinson* Intervenors was entirely speculative and hypothetical, which is grammatically incompatible with Rule 24's use of the present participle "existing." Similarly, Rule 24 requires a court to grant intervention to a qualified proposed party who "claims" an interest in the matter. Fed. R. Civ. P. 24(a)(2). This present-tense verb is consistent with a reading that the analysis turns on party-status *when*

the claim is made—that is, when the intervenors' motion is filed. If no "existing parties" represent an interest in litigation at the time that a proposed intervenor formally "claims" that interest by docketing its motion, then, according to Rule 24(a), the court "must permit" intervention where other prerequisites are satisfied. *Id.* These common terms are not ambiguous.

B. All relevant judicial precedent favors reversal.

Undersigned counsel is not aware of any federal court that has denied intervention to a proposed party on the basis that the proposed party's interests would be adequately represented by a later-in-time movant for intervention. In the rare instances where this departure from Rule 24's text is even contemplated, courts have expressly rejected the invitation. In *Friends of the Boundary Waters Wilderness v. U.S. Army Corps of Eng'rs*, No. 19-cv-2493 (PJS/LIB), 2020 WL 6262376 (D. Minn. Apr. 9, 2020), for example, the district court recognized that "Plaintiffs fail 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." *Id.* at *12. "Instead, the Courts have held that a proposed intervenor is required to demonstrate its interest is not adequately protected by existing parties." *Id.* (underline in original); *see also id.* (emphasizing again, "[b]esides Plaintiffs, . . . the only existing parties to the present action are Defendants," and not other proposed intervenors (underline in original)); *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 par-

ties 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).

Accordingly, the district court's concern that *Galmon* Movants and *Robinson* Intervenors share interests was entirely irrelevant to the Rule 24 inquiry. Because those interests were not represented by the existing parties—Plaintiffs or the named Defendant—intervention of right should have been granted equally to *Galmon* Movants and *Robinson* Intervenors. Indeed, courts routinely permit multiple groups of voters to intervene in redistricting actions, particularly where, as here, both groups include "litigants in parallel [federal] court suits." *Berry v. Ashcroft*, No. 4:22-CV-00465-JAR, 2022 WL 1540287, at *1–3 (E.D. Mo. May 16, 2022) (granting intervention to two groups of voters who were simultaneously litigating a related action); *see also, e.g.*, Order, *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA (Wis. Oct. 14, 2021) (granting intervention to multiple groups of concerned voters in redistricting action under Wisconsin analog to Rule 24).[5] If the district court desired to minimize redundancy, it could have simply ordered *Galmon* Movants and *Robinson* Intervenors to "confer with each other to consolidate their briefings so as to avoid duplicative arguments" where their interests

[5] Available at https://acefiling.wicourts.gov/document/uploaded/2021AP001450/443131.

overlap. App.8a (ordering the Secretary and the State to do precisely this).

Alternatively, the district court could have considered—and thus granted—*Galmon* Movants' intervention motion before rejecting *Robinson* Intervenors' motion. Where two groups have sought intervention, "[i]t is only logical to consider each motion to intervene individually and in the order which it was filed." *Garfield County v. Biden*, No. 4:22-cv-00059-DN-PK, 2023 WL 2561539, at *4 (D. Utah Mar. 17, 2023) (granting first-filed motion to intervene); *see also Mo. Coal. for Env't Found. v. Wheeler*, No. 2:19-cv-4215-NKL, 2020 WL 2331201, at *9 (W.D. Mo. May 11, 2020) (resolving motions to intervene from two proposed parties with shared interests by granting first-filed motion). This approach is consistent with courts' practice of denying intervention where the interests of a movant are adequately represented by another intervenor that was already granted intervention *before the denied movant filed its motion to intervene*—thus rendering the first intervenor an "existing party" at the time the denied movant sought intervention. *See, e.g.*, *Garfield County*, 2023 WL 2561539, at *4; *Earthworks v. U.S. Dep't of Interior*, No. 09-01972 (HHK), 2010 WL 3063139, at *1 (D.D.C. Aug. 3, 2010); *Coal. to Defend Affirmative Action, Integration & Immigr. Rts. & Fight for Equal. by any Means Necessary v. Granholm*, 240 F.R.D. 368, 376 (E.D. Mich. 2006).

Given its belief that *Galmon* Movants and *Robinson* Intervenors share interests, the district court had two options: grant intervention to both proposed parties, or grant intervention to *Galmon* Movants alone. The choice it made, however—denying intervention to *Galmon* Movants, the first proposed intervenors who

were not adequately represented by any named party—was reversible error.

II. Robinson Intervenors do not adequately represent Galmon Movants' interests.

After assuming without any analysis that *Robinson* Intervenors were existing parties for purposes of Rule 24, the district court concluded without any explanation that *Robinson* Intervenors adequately represent *Galmon* Movants' interests. *See* App.8a (ipse dixit); App.12a (same). This, too, was reversible error. *Cf. N. Cypress Med. Ctr. Operating Co., Ltd. v. Aetna Life Ins. Co.*, 898 F.3d 461, 478 (5th Cir. 2018) (reversing district court for failure to explain its reasoning for denying leave to amend in light of presumption in favor of allowing pleading amendments). *Galmon* Movants' motion to intervene identified their interests in (1) "secur[ing] the fruits of the victory that [four of them] achieved over the Secretary's opposition in the Middle District [Voting Rights Act] action," and (2) "vindicat[ing] their own electoral opportunities." App.170a. *Robinson* Intervenors do not adequately represent either interest.

A. *Robinson* Intervenors do not represent *Galmon* Movants in Section 2 litigation.

The district court correctly credited *Galmon* Movants' and *Robinson* Intervenors' interests in defending the second Black-opportunity district they obtained through their successful Section 2 litigation in the Middle District of Louisiana, *see* App.4a, 8a, but it erred in appearing to conclude that *Robinson* Intervenors represented *Galmon* Movants in that litigation. In its order denying intervention, the district court provided only a single sentence purporting to explain why *Robinson* Intervenors adequately represent

Galmon Movants' interests. The *Robinson* Intervenors, the court said, "constitute the plaintiffs in the lead case of *Robinson v. Ardoin*, No. 3:22-cv-02111-SDD-SDJ [sic], with which the suit filed by the *Galmon* plaintiffs was consolidated." App.8a.[6] This conclusion appears simultaneously wrong and irrelevant.

First, the reference to "lead case" by the court below appears to have been based entirely on the sequence of the case captions in the consolidated Middle District action. The Middle District court never designated either plaintiff group as the "lead plaintiff," and the court permitted equal participation by both plaintiff groups in all phases of litigation. The two plaintiff groups were comprised of different voters, engaged different experts who conducted different analyses, submitted different illustrative maps, and represented their distinct interests in court throughout the two years of litigation. *Cf. Hall v. Hall*, 584 U.S. 59, 70 (2018) (affirming traditional understanding that consolidation "is a mere matter of convenience in administration" and "does not merge the suits," which "remain as independent as before" (citation omitted)); *id.* at 76 ("[M]erger is never so complete in consolidation as to deprive any party of any substantial rights which he may have possessed had the actions proceeded separately." (Citing 3 J. Moore & J. Friedman, Moore's Federal Practice § 42.01, pp. 3050–51 (1938))). Thus, *Robinson* Intervenors were not "lead" litigants in any material sense.

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[6] The district court did not provide any further explanation in its order denying *Galmon* Movants' motion to reconsider the order denying intervention. *See* App.12a.

Second, the fact that *Robinson* Intervenors filed their own Section 2 claim before *Galmon* plaintiffs filed *their* Section 2 action in the Middle District cannot substitute for the fact that *Robinson* Intervenors were not parties to *this action* when *Galmon* Movants filed their motion to intervene. Rule 24 asks which parties were first-existing in the action at issue, not in some other litigation.

And *third*, the fact that *Robinson* Intervenors litigated a related case that was consolidated with the case brought by Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard clearly cannot make the *Robinson* Intervenors adequate representors of Dr. Williams's interests, as Dr. Williams was not a party to that prior litigation.

B. *Robinson* Intervenors do not represent *Galmon* Movants' electoral interests.

The district court altogether ignored *Galmon* Movants' assertion of electoral interests. *See* App.8a, 12a. The unrepresented nature of those interests should be beyond dispute: each *Galmon* Movant's ability to elect congressional candidates of their choice turns on whether their home parishes are drawn into Black-opportunity districts, and most *Galmon* Movants do not reside in the same parish as any *Robinson* Intervenor:

***Galmon* Movants**	
Name	**Parish**
Galmon	St. Helena
Hart	EBR
Henderson	Orleans
Howard	EBR
Williams	Natchitoches

***Robinson* Intervenors**	
Name	**Parish**
Robinson	EBR[7]
Cage	EBR
Nairne	Assumption
Soule	Tangipahoa
Lowe	EBR
Lewis	EBR
Davis	EBR
Sims	W. Feliciana

Still today, no party to any phase of this litigation maintains an interest in drawing St. Helena Parish, Orleans Parish, or Natchitoches Parish—home to Mr. Galmon, Mr. Henderson, and Dr. Williams, respectively—into unpacked Black-opportunity districts. Because the district court's liability-phase ruling jeopardized the electoral power that S.B. 8 provided to Black voters in Orleans and Natchitoches Parishes, *see* App.26a, 45a (district court recognizing the significance of these parishes), it is especially critical that Mr. Henderson and Dr. Williams be permitted to participate in that phase to pursue their unique interests in this present configuration.[8]

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[7] East Baton Rouge.

[8] Where only a subset of joint movants are entitled to intervene, courts grant intervention to the qualifying

And while the district court *sua sponte* reconsidered its denial of remedial-phase intervention to four *Galmon* Movants after they initiated this appeal, App.152a, Dr. Williams still remains excluded from that phase without any explanation. Like the other *Galmon* Movants, Dr. Williams maintains acute interests in the ultimate placement of any Black-opportunity district. If S.B. 8 remains enjoined, he would be the only litigant with an interest in ensuring that any new configuration maintains the electoral opportunities that S.B. 8 provides to Black voters in Natchitoches Parish.

CONCLUSION

For the foregoing reasons, the Court should note probable jurisdiction and reverse the decision below.

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subset rather than deny intervention altogether. *See, e.g.*, *Safari Club Int'l v. Zinke*, No. 15-CV-01026 (RCL), 2017 WL 8222114, at *7 (D.D.C. May 2, 2017); *ACLU of Michigan v. Trinity Health Corp.*, No. 15-cv-12611, 2016 WL 922950, at *4–5 (E.D. Mich. Mar. 10, 2016).

Respectfully submitted,

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