No. 24-111

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

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Does the Supreme Court lack jurisdiction to decide on direct review under 28 U.S.C. § 1253 appeals of intervention orders that are not permanent or interlocutory injunctions?

2. Should the Supreme Court dismiss an appeal of orders that were not timely noticed under 28 U.S.C. § 2101?

3. Do private amici lack standing to appeal an injunction of a law of general applicability enforceable by the State?

4. Did the unanimous district court properly deny intervention to private parties who lacked any enforcement ties or particularized connection to a generalized statewide redistricting statute duly and independently enacted by the State Legislature when the only question before the district court was the constitutionality of said statute?

5. Did the district court properly deny intervention to private parties when other defendants adequately represented their alleged interests and had the same objective at the liability stage—to defend the constitutionality of the redistricting statute?

6. Did the district court have discretion to decide multiple pending intervention motions in one unanimous docket entry containing multiple orders as part of the district court's broad discretion to control its own docket in a rapidly evolving, expedited case?

PARTIES TO THE PROCEEDING

Appellees are Philip Callais, Lloyd Price, Bruce Odell, Elizabeth Ersoff, Albert Caissie, Daniel Weir, Joyce LaCour, Candy Carroll Peavy, Tanya Whitney, Mike Johnson, Grover Joseph Rees, and Rolfe McCollister. Appellees were plaintiffs in the district court.

Appellants, who were amici in the liability phase and are intervenor-defendants in the remedial phase below, are Edward Galmon, Sr., Ciara Hart, Norris Henderson, Tramelle Howard, and Ross Williams (the "Galmons").

Defendant below is Nancy Landry, in her official capacity as the Louisiana Secretary of State. Other intervenor-defendants are the State of Louisiana, represented by Louisiana Attorney General Elizabeth B. Murrill, as well as Alice Washington, Clee Earnest Lowe, Power Coalition for Equity and Justice, Ambrose Sims, Davante Lewis, Dorothy Nairne, Martha Davis, Edwin Rene Soule, Press Robinson, Edgar Cage, and the National Association for the Advancement of Colored People Louisiana State Conference (the "Robinsons").

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INTRODUCTION

Before even reaching the merits of the Galmons-Appellants' Jurisdictional Statement, this Court should dismiss the appeal for lack of jurisdiction. Appellants rely on 28 U.S.C. § 1253, which only permits a "party" to seek direct review for "order[s] granting or denying . . . an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." The appealed orders denying intervention to non-party amici miss the mark. The orders must proceed through the normal channels of appellate review in the U.S. Court of Appeals for the Fifth Circuit. In fact, Appellants have lodged such an appeal in the Fifth Circuit, the parties have finished briefing the case there, and the case is currently pending. *See Callais v. Landry*, No. 24-30177 (5th Cir.). And Appellants' notice of appeal to this Court, even if available under 28 U.S.C. § 1253, comes too late under 28 U.S.C. § 2101. Appellants cannot shirk Congress's explicit restrictions on this Court's jurisdiction.

Nor can Appellants appeal the injunction order in this Court. They were not parties at the time of the order, they are merely amici, and they lack standing to appeal it. *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019); *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013).

Even if the Court determined that it had jurisdiction and reached the merits of Appellants' arguments, it should summarily affirm the orders

denying intervention of right. Appellants have no protectible interest in the constitutionality of a generally applicable congressional redistricting plan for the State of Louisiana, which is left to the State to enforce. Even if Appellants had such an interest, this interest was adequately protected by the State and individual permissive 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. All interests Appellants assert are mere preferences and are vindicable at the remedial phase where Appellants are already parties to the proceeding.

Finally, the Galmons' aggressive forum-shopping—a practice they shared with the Robinson Intervenors—weighs against taking jurisdiction. Both sets of intervenors began their challenge to HB1—Louisiana's original congressional redistricting map, which was repealed by SB8, the racial gerrymander Appellees challenge here—as solely a Voting Rights Act ("VRA") claim before a single-judge district court in the Middle District of Louisiana. Dkt.10, at 1-3; Dkt.18-1, at 7.[1] By couching their claim only under VRA § 2 and not as vote dilution under the Equal Protection Clause, they avoided a three-judge district

[1] Given the extensive record and evidence supporting Appellees' position, 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. Appellees refer to the Jurisdictional Statements filed by parties in this Court by party name, "Jurisdictional Statement," and page number(s), and to the Stay Applications filed in this Court by party name, "Stay Application," and page number(s).

court under current doctrine. The Galmons and Robinsons then resisted the State's efforts in the Middle District to raise racial gerrymandering objections to their allegedly VRA-remedying maps.

Next, when the State sidestepped their VRA case to pass its own racial gerrymander in SB8, the Galmons and Robinsons cynically adopted the State's new map, touting it as their own win.[2] They did this even though the State's bizarre second majority-minority district, "SB8-6," excluded about half of their clients, and even though SB8-6 was virtually identical to a blatant racial gerrymander they knew federal courts had already invalidated. 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 but arguing that two existing clients benefited by moving from one Black-majority district to a second Black-majority district with slightly lower BVAP); Dkt.76, at 3 (Robinsons not disputing except for one movant).

Appellees brought this case to challenge the racial gerrymander. The Galmons and Robinsons immediately moved to eliminate Appellees' forum. First, they attempted to convince their single-district court to "retain jurisdiction" over any challenge to

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[2] Notice Regarding Plaintiffs' Position on New Enacted Congressional Map, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed Feb. 6, 2024), ECF 347 (hereinafter "Robinson Plaintiffs' Notice"); Galmon Plaintiffs' Notice Regarding the New Enacted Congressional Map, Robinson v. Ardoin, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed Feb. 6, 2024), ECF 356 (hereinafter "Galmon Plaintiffs' Notice").

SB8—that is, to seize jurisdiction from the three-judge court below, despite the fact that their own case had become moot, and despite the mandate of 28 U.S.C. § 2284. *See, e.g.,* Galmon Plaintiffs' Notice 1-2. The Galmons separately 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 after much ink had been spilled. Ruling, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed Apr. 16, 2024).

The Robinsons separately urged the three-judge court to allow them to intervene so that they could transfer Appellees' Equal Protection claim to their own single-judge court in the Middle District. Dkt.18-1, at 18-21. Again, they failed to cite the controlling statute that would have precluded this relief, 28 U.S.C. § 2284. Dkt.18-1. Indeed, they misrepresented to the three-judge court that their own judge was ready for trial that could resolve all of the issues, *id*. at 9, even though they had separately represented in the Middle District that they had no objection to SB8, ending the controversy and mooting their claims. *See* Robinson Plaintiffs' Notice. Worse, the Robinsons falsely represented to the district court below that failing to transfer back to the Middle District "would force the Court to consider legal issues and evidence that the *Robinson* court has already weighed." Dkt.18-1, at 21. In fact, 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.

When each of these gambits failed and no court agreed to violate 28 U.S.C. § 2284, the Intervenors shifted from forum-shopping to forum-blocking. The Robinsons—the only set of movants allowed to permissively intervene at the liability phrase of trial—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 asked the district court to treat a VRA defense on strict scrutiny as having been conclusively established merely by the *Robinson* court's vacated preliminary findings. They vociferously objected to any evidence or argument on whether the actual facts supported SB8-6 as a VRA remedy. *Id.* And they papered the record with numerous procedural objections and motions—including the Robinsons' last-second motion to continue trial—for the sole purpose of delay. *See, e.g.*, Dkt.144; Dkt.145; Dkt.155; Dkt.161.

In other words, the entire purpose of the Galmons' intervention was to cut off any racial gerrymandering or VRA factfinding and analysis, treating their mooted *Robinson* case as a "win" binding on all litigants, past, present and future. For the reasons Appellees discuss at length in their other Motions to Dismiss or Affirm filed this date, that legal position is invalid, would wreck Equal Protection and VRA jurisprudence, and is fundamentally unfair to Appellees and thousands of other voters who have been racially stereotyped and gerrymandered. The Galmons' intervention would ultimately be futile, and

this presents an independent reason not to assume jurisdiction of their attempted appeal.

OPINIONS BELOW

In addition to the orders cited by Appellants, the district court's May 3, 2024, order granting the Appellants' Motion to Intervene can be found at Dkt.205.

STATEMENT OF THE CASE

On January 15, 2024, the Louisiana Legislature convened for an extraordinary special session to repeal its congressional redistricting map, HB1, and enact a new map. Dkt.165-9; Dkt.165-10. Within the week, the Legislature signed SB8 into law. Dkt.165-10.

On January 31, 2024, Appellees, a group of Louisiana voters, filed this lawsuit, challenging the constitutionality of SB8 and seeking 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 preliminary injunction. Dkt.17.

On February 21, 2024, 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 and two sets of private Louisiana voters, civil rights organizations, and co-plaintiffs in *Robinson v. Ardoin*, No. 3:22-cv-02111-SDD-SDJ (M.D. La.)—the "Robinsons" and "Galmons"—moved to intervene as defendants alongside the Secretary of State to defend SB8's constitutionality. Dkt.79; Dkt.156. No proposed intervenors advanced any counterclaims or crossclaims. Appellees filed a consolidated Response to Motions to Intervene (Dkt.33), opposing Robinsons' and Galmons' intervention. Robinsons and Galmons filed replies.

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 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 by the State. 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

> Houses of the Louisiana Legislature and 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.

Dkt.79, at 6. 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 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. Dkt.91; Dkt.92; Dkt.93; Dkt.94. Appellees addressed all four sets of briefs in their Reply in Support of Motion for Preliminary Injunction. Dkt.101.

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, appealing 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. 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.").

The court also scheduled a status conference to discuss the "remedial stage of this trial." *Id*. at 59-60.

Prior to the status conference, on May 3, 2024, the district court, *sua sponte*, reconsidered its February 26, 2024, order denying Galmons intervention and 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 evidentiary briefing on the Fourteenth Amendment claim; it encouraged parties to raise Voting Rights Act issues. Dkt.219.

While the parties prepared for the remedial phase of trial, the Secretary of State, State, and Robinson Intervenors all filed notices of appeal and motions to stay. Dkt.200; Dkt.221; Robinson Stay Application; State and Secretary of State Stay Application. 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). She went on to state that the remedial process would have made any irreparable harm to private intervenors "clearer." *Id.*

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 July 30, 2024.

LEGAL STANDARD

This Court reviews the district court's factual findings for clear error and "may not set those findings aside unless, after examining the entire record, [it is] 'left with the definite and firm conviction that a mistake has been committed.'" *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1240 (2024) (quoting *Cooper v. Harris*, 581 U.S. 285, 309 (2017)). Legal questions are subject to de novo review. *Abbott v. Perez*, 585 U.S. 579, 607 (2018). Matters committed to the lower court's discretion are reviewed for abuse of discretion. *See, e.g.*, *North Carolina v. Covington*, 585 U.S. 969, 977 (2018) (per curiam).

ARGUMENT

I. The Court Lacks Jurisdiction to Hear This Appeal.

a. 28 U.S.C. § 1253 Does Not Govern This Appeal.

Appellants rely on 28 U.S.C. § 1253 as the source of this Court's jurisdiction over their appeal of the intervention orders. Galmon Jurisdictional Statement 3. This argument fails because the text of § 1253, canon of narrow construction, corresponding statutes (28 U.S.C. §§ 1291, 2284), Congress's policy underlying § 1253, and Supreme Court precedent overwhelmingly demonstrate its inapplicability. The Court should dismiss the appeal.

Congress has authority to create lower federal courts and regulate the Supreme Court's appellate jurisdiction. U.S. Const. art. III, § 2, cl. 2 ("In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Congress has exercised this authority by enacting 28 U.S.C. § 1291, which provides that jurisdiction over appeals of final orders in district courts lies in the courts of appeals. The only exception is when Congress explicitly provides for direct review to the Supreme Court, so the case falls under the Supreme Court's "mandatory docket." *Gonzalez v. Auto. Emps. Credit Union*, 419 U.S. 90, 101 (1974); 28 U.S.C. § 1291.

Few statutes allow for direct review to the Supreme Court. The limited ones that do "are to be strictly construed." *Off. of Senator Mark Dayton v. Hanson*, 550 U.S. 511, 515 (2007) (quoting *Perry Educ. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 43 (1983)) (citing *Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 42, n.1 (1970) (per curiam)); *see also Key v. Doyle*, 434 U.S. 59, 65 (1977) (discussing "the long-established principle that counsels a narrow construction of jurisdictional provisions authorizing appeals as of right to [the Supreme] Court, in the absence of clear congressional intent to enlarge the Court's mandatory jurisdiction" (citation omitted)); *Gonzalez*, 419 U.S. at 98.

28 U.S.C. § 1253 is one such statute, but it is narrow and only permits direct review in the following circumstances:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

28 U.S.C. § 1253.

The text of § 1253 unambiguously bars its application to intervention orders such as the ones before the Court. *See Carcieri v. Salazar*, 555 U.S. 379, 387 (2009) (noting the Court must "first determine whether the statutory text is plain and unambiguous" and "[i]f it is, . . . apply the statute

according to its terms" (citation omitted)). First, the statute only permits direct review for "order[s] granting or denying, after notice and hearing, an interlocutory or permanent injunction," which does not include orders denying intervention. 28 U.S.C. § 1253. Second, § 1253 only permits direct review for "any party." *Id.*; *cf. NAACP v. New York*, 413 U.S 345, 356 (1973) (discussing impact of "any party" language on § 1253 jurisdiction over intervention orders). Amici are not parties. Accordingly, since Appellants were not parties to the liability phase, they cannot appeal either the orders denying intervention in the liability phase or the injunction order. Thus, the Court does not have jurisdiction over these orders under § 1253 and should dismiss the case without further inquiry. *Carcieri*, 555 U.S. at 387.

And even if the text were ambiguous, the canon of narrow construction would counsel against a finding of jurisdiction here. *Abbott*, 585 U.S. at 602 ("[W]e reiterate that § 1253 must be strictly construed."); *Gonzalez*, 419 U.S. at 98 (reasoning that "a narrow construction" of § 1253 is necessary and "consonant with the overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interests of sound judicial administration" (footnote omitted)); *MTM, Inc. v. Baxley*, 420 U.S. 799, 804 (1975) (per curiam); *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). In sum, § 1253's plain text (confirmed by the strict construction mandate), allow appeals to the

Supreme Court ***only*** when a "party" appeals an "order[s] granting or denying . . . an interlocutory or permanent injunction"—not when amici appeal orders denying intervention of right.

This plain reading of § 1253 also makes sense in light of 28 U.S.C. § 2284, the statute governing three-judge district courts for constitutional challenges regarding congressional districts. Section 2284 allows a *single* judge to enter intervention orders and other orders unless the statute provides otherwise. 28 U.S.C. § 2284(b)(3). Section 2284 ***requires*** three judges to enter interlocutory or permanent injunctions on the merits. *Id.* ("A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits."). Likewise, § 1253 only requires direct review of interlocutory or permanent injunctions "in any civil action, suit or proceeding *required by any Act of Congress to be heard and determined by a district court of three judges*." 28 U.S.C. § 1253 (emphasis added). An injunctive order triggers both a three-judge order under § 2284 and direct review under § 1253. Conversely, an intervention order does not trigger a three-judge order under § 2284 or direct review under § 1253. Rather, a single judge can issue these orders, demonstrating § 1253's inapplicability, and triggering Congress's jurisdictional mandate under 28 U.S.C. § 1291 for the case to proceed before a lower court of appeals. *Cf. Gonzalez*, 419 U.S. at 100-01 & n.19 (reasoning where three-judge court issued

an order, but a single judge could have issued order, review of order was appropriate in the court of appeals under § 1291, not in the Supreme Court under § 1253); WRIGHT & MILLER, 17 FED. PRAC. & PROC. JURIS. § 4040 (3d ed.) ("The clearest postulate of § 1253 jurisdiction has been that appeal lies to the Supreme Court, despite action by a three-judge court, only if a three-judge court was in fact required by statute.").

Section 1253's "underlying congressional policy of ensuring this Court's swift review of ***three-judge***-court orders that grant injunctions" also supports this interpretation. *Gonzalez*, 419 U.S. at 98 (emphasis added); *see id.* at 97 ("Congress established the three-judge-court apparatus for one reason: to save state and federal statutes from improvident doom, on constitutional grounds, at the hands of a single federal district judge." (footnote and citation omitted)). Where Congress permits a single judge to issue an order (*e.g.* an intervention order, 28 U.S.C. § 2284(b)(3)), these concerns are not present. (That remains true regardless of whether a single-judge or three-judge court actually issues the order. *Gonzalez*, 419 U.S. at 100-01.) Rather, Congress's policy "of minimizing the mandatory docket of this Court in the interests of sound judicial administration" takes over. *Id.* at 98 (footnote omitted); *see also Goldstein*, 396 U.S. at 478; *Stainback*, 336 U.S. at 375; *Phillips*, 312 U.S. at 250. In other words, the availability of a single-judge district court bench compels the normal course of appellate review.

What the text, corresponding statutes, and congressional policy make clear, Supreme Court precedent confirms. For example, in *MTM, Inc. v. Baxley*, this Court concluded a "direct appeal will lie to this Court under § 1253 from the order of a three-judge federal court denying interlocutory or permanent injunctive relief *only where* such order rests upon resolution of the merits of the constitutional claim presented below." 420 U.S. at 804 (emphasis added)); *see also id.* at 809 (Douglas, J., dissenting) (confirming the law as interpreted allowed appeals of some orders to go to the court of appeals and some to go to the Supreme Court in the same case). All others fell outside § 1253. *Id.* at 804. Likewise, in *Gonzalez v. Automatic Employees Credit Union*, this Court held that § 1253 permits direct review for a limited class of three-judge orders granting or denying injunctions but not other three-judge orders, such as orders that "the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts" that could be decided by a single judge. 419 U.S. at 97-101 (citation omitted). These decisions followed precedent dating back to the first half of the twentieth century. *See, e.g.*, *Goldstein*, 396 U.S. at 479; *Phillips*, 312 U.S. at 254.

b. Appeal of Intervention Orders Is Untimely.

Even if the Court had jurisdiction under § 1253, the Court's review of the February 26 and March 15 intervention orders would still be untimely because Appellants did not file their notice of appeal until May

30, 2024. 28 U.S.C. § 2101(a). The April 30 injunction order does not restart the clock.

c. Amici Lack Standing to Appeal the Injunction Order.

Moreover, even if Appellants could attach their intervention orders to the injunction order to restart the clock to file their notice of appeal under § 2101(a) and trigger this Court's jurisdiction under § 1253, they still could not root their appeal in the injunction. That's because as amici in the liability phase of the trial and private parties with no redressable injury from the district court's injunction, they lack standing to appeal the injunction order. *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019); *Wittman v. Personhuballah*, 578 U.S. 539, 543-44 (2016); *Hollingsworth v. Perry*, 570 U.S. 693, 705-07 (2013); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997).

Appellants must show they possess a "direct stake in the outcome" of the case, *Arizonans for Official English*, 520 U.S. at 64 (quotation omitted), and seek relief for injuries affecting them in a "personal and individual way," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992).[3]

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[3] Intervention of right does not establish Article III standing, *Hollingsworth*, 570 U.S. at 715 (determining intervenors of right lacked standing); Order at 1-3, *Perry v. Schwarzenegger*, No. 3:09-CV-02292-WHO (N.D. Cal., filed June 30, 2009) (ECF No. 76) (granting intervention of right to private intervenors in *Hollingsworth*); *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439-40 (2017) (distinguishing between intervention of right and standing); *Va. House of Delegates*, 567 U.S. 658

Appellants nowhere attempt to satisfy Article III's standing requirements in their Jurisdictional Statement. They never even mention the word standing. But even if they tried, they could not show a direct stake in the outcome. *Hollingsworth*, 570 U.S. at 706-10, 715; *Va. House of Delegates*, 587 U.S. at 661-63.

What was true for the initiative sponsors in *Hollingsworth* and the Virginia House of Delegates in *Bethune-Hill v. Virginia House of Delegates* is even more true for Appellants, who were amici to the liability proceeding and are not subject to the injunction. They "have no role—special or otherwise—in the enforcement of [SB8]. They therefore have no 'personal stake' in defending its enforcement that is distinguishable from the general interest of every citizen of" Louisiana. *Hollingsworth*, 570 U.S. at 707 (quoting *Lujan*, 504 U.S. at 560-61) (citation omitted). Again, "SB8 is not the Congressional districting map of the proposed . . . *Galmon* intervenors. It is the Congressional districting map of the State of Louisiana . . . ." Dkt.79, at 6. "*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.* And the district court only enjoined the "State of Louisiana," prohibiting it "from using SB8's map of congressional districts for any election." Dkt.198, at 59. It did not direct amici to

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(omitting discussion of form of intervention when evaluating standing).

do anything. This Court lacks jurisdiction and must dismiss.

d. Appellants' Brief Analysis Does Not Overcome These Jurisdictional Flaws.

Even though Appellants were aware of the jurisdictional flaws with their appeal from briefing in the Fifth Circuit and communication between counsel, they chose not to meaningfully address this defect before this Court. They waived all arguments as to standing or timing to appeal, so the Court can dismiss the case without further inquiry. *See supra* Parts I.b.-I.c.

They confined their jurisdictional analysis to two sentences: "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." Galmon Jurisdictional Statement 3. But this "transferring jurisdiction" argument has no home in the text of § 1253. The Court's jurisdiction over the injunctive order does not give the Court jurisdiction over other orders. *See* 28 U.S.C. § 1253 (conferring jurisdiction over injunctions but not other orders). Instead, Appellants cite *Hays v. Louisiana*, 18 F.3d 1319, 1321 (5th Cir. 1994) and *St. Cyr v. Hays*, 513 U.S. 1054 (1994), for support. But the Galmons' unsubstantial reliance on these cases, in the face of the statutory text, misplaced. In *Hays v. Louisiana*, the Fifth Circuit departed from this Court's precedent as

previously discussed and the consensus in the lower courts. *See, e.g.*, *United States v. Louisiana*, 543 F.2d 1125, 1128 (5th Cir. 1976) ("The jurisdiction of this Court is properly invoked to appeal a three-judge court denial of a motion to intervene. . . . The Supreme Court was explicit in its [*MTM, Inc. v. Baxley*] directions so a direct appeal from the denial of intervention cannot be taken to the Supreme Court."); *N.Y. Pub. Int. Res. Grp., Inc. v. Regents of Univ. of State of N.Y.*, 516 F.2d 350, 351 n.1 (2d Cir. 1975) (per curiam); *Francis v. Chamber of Com. of U.S.*, 481 F.2d 192, 194 (4th Cir. 1973). And in *St. Cyr v. Hays*, no party filed a motion to dismiss the appeal, and the Court summarily affirmed in a memorandum order without further analysis. 513 U.S. 1054. The Court should abide by the text of § 1253 and dismiss.

II. If This Court Has Jurisdiction, It Should Affirm the District Court.

Federal Rule of Civil Procedure 24(a)(2) requires intervention of right when, on a timely motion, the movant "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." Appellants fail to satisfy these requirements for at least two reasons. First, they 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). Second, even if they had such an "interest," it was "adequately represent[ed]" by other parties. *Id.*

a. Appellants Have No Protectible Interest in Defending the Constitutionality of a Law of General Applicability.

First, to intervene of right, Appellants 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 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)). "On the other hand, an interest that

is concrete, personalized, and legally protectable is sufficient to support intervention." *Id.* at 658.

Appellants cursorily allege they have interests in "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 "vindicat[ing] their own electoral opportunities." Galmon Jurisdictional Statement 17 (citation omitted).

But neither amount to an interest, much less a "significantly protectable interest." *Donaldson*, 400 U.S. at 542. Rather these are mere preferences which cannot require intervention of right. The first preference rests on fiction. The "victory" Appellants describe is a moot, dismissed lawsuit with vacated preliminary findings. Ruling, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed Apr. 25, 2024). Prior to dismissal, Appellants never secured any final, vindicable remedy (much less the remedy of SB8's map or any other map). The present lawsuit is not a remedial trial for Appellants' separate, moot VRA lawsuit challenging HB1. Rather, the present action involves a separate Fourteenth Amendment lawsuit challenging a separate law—SB8—which is "not the Congressional districting map of the proposed . . . Galmon intervenors" but "the Congressional districting map of the State of Louisiana." Dkt.79, at 6. Appellants "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.

The second alleged interest in greater electoral opportunities 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 simply because the districts as drawn will give them greater electoral opportunities, or in the case of Appellants such as Mr. Galmon, who do *not* reside in a majority-Black districts under SB8, *lesser* electoral opportunities by Appellants' standard. Galmon Jurisdictional Statement 20. Under Appellants' reasoning, *any resident* in the State who cares about "electoral opportunities" in their own district would have an interest of "sufficient magnitude" to intervene in the lawsuit. But if Rule 24(a)'s requirement that a movant claim an "interest relating to the property or transaction" means anything, it cannot mean the requirement is satisfied simply because Appellants share that interest with all other citizens subject to the generally applicable law.

Nor does the VRA distinguish this generalized, alleged "electoral opportunities interest." Appellants have never asserted a VRA claim in this lawsuit, and separate litigation never suggested there was a violation or remedy in the northwest part of the State where SB8's second majority-Black district lies.

Appellants contend one of their newly recruited members, Dr. Williams, who resides in Natchitoches Parish, and another member, Mr. Henderson, who resides in Orleans Parish have especially "unique

interests" 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." Galmon Jurisdictional Statement 20 (citation and footnote omitted).

But the district court order in no way threatened Orleans Parish, which falls in District 2 (not District 6) and has been the bedrock of the historic single majority-Black district in Louisiana for decades. Dkt.198, at 3, 11, 29.

And, as stated above, neither Dr. Williams nor any other voter has demonstrated 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. At bottom, Dr. Williams's supposed "interest" amounts to a mere "generalized preference that the case come out a certain way." *Id.*

Finally, even if Appellants' "electoral opportunities" are "significantly protectable" interests, they are not at issue in the liability stage of the litigation. The liability phase adjudicated the constitutionality of SB8; the remedial phase will determine which map will be used in Louisiana. Up to this point, the district court has not determined which map will replace SB8, and Appellants have not lost any opportunity to vindicate their electoral opportunities. *Cf. Robinson*, 144 S. Ct. at 1172 n.1 (Jackson, J., dissenting). Appellants will have the full opportunity to vindicate any interests as intervenors in the remedial phase, raise any issues arising under the VRA, and present their own remedial map on

equal footing with other parties. Dkt.219, at 3. Appellants already have the remedy they request.[4]

b. Appellants' Purported Interests Were Adequately Represented.

Appellants focus their jurisdictional statement on the adequate representation inquiry. But even if Appellants could demonstrate the Court had jurisdiction and Appellants had an interest of sufficient magnitude, the door of adequate representation would still block their entrance to this lawsuit.

The other parties adequately represented their interests at the liability stage of the trial. The Court does not need to speculate on this point; it has the trial record to prove it. Appellants' position in their post-trial amicus brief was the same as the State's and Robinsons' positions. *Compare* Dkt.197, at 7 (Galmon Amicus Brief: "Because the Legislature had good reason to believe that a second majority-minority district was required, its enactment was lawful. Plaintiffs' requested injunction should be denied."), *with* Dkt.192 (State Post-Trial Brief), *and* Dkt.189 (Robinson Post-Trial Brief).

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[4] Appellants contend the district court did not permit Dr. Williams to intervene in its reconsideration order. Galmon Brief 21. But this is incorrect. The district court granted Appellants' (which included Dr. Williams') Motion to Intervene, Dkt.10, as limited to permissive intervention at the remedial phase, Dkt.205. Moreover, Appellants never raised this issue in the district court, and Appellants do not contest that reconsideration order on appeal, even though the reconsideration order preceded this appeal. Dkt.235 (May 30, 2024, notice of appeal omitting May 3, 2024, reconsideration order).

i. Robinsons Adequately Represented Appellants' Interests at the Liability Stage.

First, Appellants cannot show inadequate representation because their very co-plaintiffs in the *Robinson* litigation and other private Black voters in Louisiana were parties to the liability phase. Appellants do not dispute that their litigation goals for the liability phase were the same as Robinsons: uphold the constitutionality of SB8 and defeat Appellees' request for injunctive relief. The only differences Appellants even identify between them and the Robinsons are *their addresses*, Galmon Jurisdictional Statement 19-20, and their allegedly "distinct" interests in the now moot, non-final *Robinson* litigation, *id.* at 18. But again, these differences are irrelevant at the liability stage, much less sufficient to show inadequate representation.

ii. The State Adequately Represented Appellants' Interests During the Liability Phase.

Second, Appellants' interests were doubly represented because the State also shared these goals at the liability stage and sought (and continues to seek) to vociferously defend SB8's unconstitutional racial gerrymander and defeat Appellee's entitlement to injunctive relief.

A "public entity must normally be presumed to represent the interest of its citizens and to mount a good faith defense of its laws." *City of Houston v. Am.*

Traffic Sols., Inc., 668 F.3d 291, 294 (5th Cir. 2012) (citation omitted); *see also Maine v. Taylor*, 477 U.S. 131, 137 (1986) ("[A] State clearly has a legitimate interest in the continued enforceability of its own statutes . . . ." (citation omitted)).[5] "A court must be circumspect about allowing intervention of right by public-spirited citizens in suits by or against a public entity for simple reasons of expediency and judicial efficiency." *City of Houston*, 668 F.3d at 294 (citation omitted). The intervenor must show "its interest is in fact different from that of the [government entity] and that the interest will not be represented by [it]." *Texas*, 805 F.3d at 662 (quotation omitted).

A second presumption arises where the "would-be intervenor has the same ultimate objective as a party to the lawsuit"; it is overcome only by showing "adversity of interest, collusion, or nonfeasance on the part of the existing party." *Id.* at 661-62 (quotation omitted). Proposed intervenors must "produce something more than speculation as to the purported inadequacy." *Moosehead Sanitary Dist. v. S.G. Phillips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979). "In order to show adversity of interest, an intervenor must demonstrate that its interests diverge from the

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[5] The Supreme Court has not decided "whether a presumption of adequate representation" applies "when a private litigant seeks to defend a law alongside the government or in any other circumstance." *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 197 (2022). The presumption of adequate representation of a State in defending a state law of general applicability is well-established in the lower courts and should be adopted by this Court if it reaches the merits.

putative representative's interests in a manner germane to the case." *Texas*, 805 F.3d at 662. "Differences of opinion regarding an existing party's litigation strategy or tactics used in pursuit thereof, without more, do not rise to an adversity of interest." *Guenther v. BP Retirement Accumulation Plan*, 50 F.4th 536, 543 (5th Cir. 2022) (citation omitted); *see also id.* at 544 ("If disagreement with an existing party over trial strategy qualified as inadequate representation, the requirement of Rule 24 would have no meaning." (quoting *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 181 (2d Cir. 2001))); *SEC v. LBRY, Inc.*, 26 F.4th 96, 99-100 (1st Cir. 2022) ("A proposed intervenor's desire to present an additional argument or a variation on an argument does not establish inadequate representation." (citation and footnote omitted)). There is "no authority for the proposition that they are entitled to intervene because no other party is asserting their current position." *United States v. Franklin Par. Sch. Bd.*, 47 F.3d 755, 758 (5th Cir. 1995). Rather they must show their "allegedly divergent interests" will have "concrete effects on the litigation." *Texas*, 805 F.3d at 662 (citation omitted).

Despite Appellants' close scrutiny of the parties' advocacy and their own amici participation in the liability stage, they do not identify a single difference, much less a *germane* difference between their interests and the State's, that somehow prejudiced them during the liability stage. *Id.* In fact, they wholly fail to contest the State's adequate

representation. Accordingly, the Court should deny intervention of right.

c. Appellants' "Existing Party" Argument Is a Non-Starter.

Appellants do not establish the relevant requirements for intervention of right. They focus on the remedial rather than liability stage. They fail to identify a legally protectable right at the liability stage. And they fail to identify how their interests diverged from the State or Robinson Intervenors to demonstrate inadequate representation. Appellants instead devote precious pages of their Jurisdictional Statement to a novel theory that they were inadequately represented because Robinson Intervenors were not "existing parties" pursuant to Rule 24 at the time the three-judge court unanimously denied Appellants intervention. But Appellants' attempts to create something out of nothing to hide the other flaws in their appeal are unavailing.

Rule 24 tells district courts nothing about the order of deciding intervention motions; it does not create a first to file rule; and it does not define "existing parties." Rule 24 never precludes a district court from handling multiple intervention motions in a single docket entry, as the court did here.

Such docket management falls outside the statute and comfortably within the district court's discretion. "[T]his Court has long recognized that a district court possesses inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious

disposition of cases.'" *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962)) (citing *United States v. Hudson*, 7 Cranch 32, 34 (1812)); *see also, e.g.*, *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (discussing "the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants"). And "questions of the timing and sequence of motions in the district court, best lies at the district court's discretion." *Enlow v. Tishomingo County, Miss.*, 962 F.2d 501, 507 (5th Cir. 1992) (footnote omitted).

Given the speed of this litigation due to the impending 2024 congressional election, the number of intervention motions before the district court, the sheer number of lawyers seeking admission, and the dozens of other filings and pending motions before the district court, the district court plainly had the discretion and properly exercised its discretion to decide the intervention motions in a consolidated, timely manner. *Dietz*, 579 U.S. at 47 ("This Court has also held that district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases." (citation omitted)). Appellants' reliance on unpublished district court orders, a single circuit court concurring opinion from 1986, and even state court orders interpreting state rules of intervention for its theory only supports the point: this is an area of discretion left to individual district courts to control their own dockets.

Not only does Appellants' wooden, inflexible rule lack any basis in the text of Rule 24 and squeeze out the district court's discretion over its docket, but it also leads to absurd results. A district court could deny admission if, seconds before, it admitted another party in a separate docket entry. But it's not clear why Appellants' rule would forbid the district court's February 26 docket entry here, which issued multiple orders on multiple motions. The unanimous February 26 order actually granted Robinsons intervention *before* it denied Galmons intervention. Dkt.79. Thus, Robinsons were already admitted into the case and were "existing" parties by the time the Court addressed Galmons. The three-judge court acted within its discretion in evaluating the intervention motions in one docket entry. *Dietz*, 579 U.S. at 47.

CONCLUSION

For the foregoing reasons, the Court should dismiss the present appeal or summarily affirm the district court orders.

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