No. ___

IN THE

Supreme Court of the United States

PRESS ROBINSON, ET AL.,

Appellants,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

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

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

By January 2024, the Middle District of Louisiana and two separate panels of the Fifth Circuit had unanimously come to the same conclusion: Louisiana's 2022 congressional map likely violated §2 of the Voting Rights Act because it failed to include two districts in which Black voters had an opportunity to elect representatives of their choice. *See Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023). To avoid ceding its districting prerogative to the courts, Louisiana's Legislature enacted Senate Bill 8 ("SB8"), a new plan with two majority-Black districts. SB8 was selected over more compact plans that also satisfied §2 for the avowed political purpose of protecting favored incumbents and damaging a political rival of the Governor.

After an extraordinarily—and improperly—expedited trial, the divided three-judge district court dismissed Louisiana's political rationale for SB8, failed to holistically analyze the plan, and ignored record evidence to conclude that SB8 was an unconstitutional racial gerrymander. The majority never afforded the Legislature the presumption of good faith this Court requires, imposed on the challengers the heavy burden of overcoming that presumption, scrutinized how the specific contours of SB8's Congressional District 6 ("CD6") reflected the Legislature's non-racial objectives, nor required the challengers to identify an alternative map that accomplished Louisiana's political objectives while also resolving the §2 litigation and retaining legislative control of the redistricting process.

The questions presented are:

1. Did the District Court err in concluding that race predominated in the design of CD6 based on the Legislature's stated intent to comply with the rulings of the *Robinson* courts without presuming the good faith of the legislature, attempting to disentangle the Legislature's racial and political considerations, or requiring an alternative map that satisfied both §2 and the Legislature's political objectives, as required by *Alexander v. S.C. State Conf. of NAACP*, 144 S. Ct. 1221, 1233–1234 (2024)?

2. Did the District Court err when it disregarded the rulings of the courts in *Robinson* that the *Gingles* preconditions could be (and had been) satisfied and instead required that the State's enacted map satisfy the first *Gingles* precondition to survive strict scrutiny?

3. Did the District Court err in failing to accord the Louisiana Legislature sufficient breathing room to account for political considerations that resulted in a less compact district than necessary to satisfy §2?

4. Did the District Court err in relying on extra-record evidence and ignoring the evidence in the record on SB8's respect for communities of interest in concluding that SB8 failed to satisfy strict scrutiny?

5. Did the District Court abuse its discretion by unnecessarily expediting the proceedings and limiting the evidence presented in this complex, fact-intensive case?

PARTIES TO THE PROCEEDING

Appellants are Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soulé, Alice Washington, Clee Earnest Lowe, Martha Davis, Ambrose Sims, Davante Lewis, NAACP Louisiana State Conference, and Power Coalition for Equity and Justice. Appellants were Intervenor-Defendants below.

Appellees are Phillip Callais, Bruce Odell, Elizabeth Ersoff, Albert Caissie, Daniel Weir, Joyce Lacour, Candy Carroll Peavy, Tanya Whitney, Mike Johnson, Grover Joseph Rees, Rolfe McCollister, and Lloyd Price. Appellees were Plaintiffs below.

The Defendant below was Nancy Landry in her official capacity as Louisiana Secretary of State.

Additional Intervenor-Defendants below were the State of Louisiana (together with Secretary Landry, "State Defendants"); and Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard ("*Galmon* Intervenors").

RULE 29.6 DISCLOSURE STATEMENT

The Louisiana State Conference of the NAACP is a non-profit membership organization. There are no parents, subsidiaries and/or affiliates of the Louisiana State Conference of the NAACP that have issued shares or debt securities to the public.

Power Coalition for Equality and Justice is a non-profit coalition of community organizations. There are no parents, subsidiaries and/or affiliates of the Power Coalition for Equality and Justice that have issued shares or debt securities to the public.

LIST OF RELATED PROCEEDINGS

United States District Court (W.D. La.):
Callais v. Landry, No. 3:24-cv-122 (2024)

United States Court of Appeals (5th Cir.):
Callais v. Landry, No. 24-30177 (2024)

United States Supreme Court:
Robinson v. Callais, No. 23A994 (2024)
Landry v. Callais, No. 23A1002 (2024)
Landry v. Callais, No ____ (2024)
Galmon v. Callais, No. ____ (2024)

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INTRODUCTION

After repeated losses in its defense of its 2022 congressional redistricting plan ("HB1") against a challenge under §2 of the VRA, Louisiana chose to create an additional district that would provide Black Louisianians the opportunity to elect candidates of their choice. "Redistricting is 'primarily the duty and responsibility of the State.'" *Perry v. Perez*, 132 S. Ct. 934, 940 (2012). Rather than continue to litigate the §2 arguments it has lost on multiple occasions and in multiple courts, Louisiana took up that duty to draw a plan that "reflects the State's policy judgments on where to place new districts and how to shift existing ones." *Id.* at 941. The Legislature and Governor devised a map, SB8, predominantly motivated by a desire to protect certain incumbents and achieve other policy objectives while also resolving the pending §2 litigation and thereby avoiding a court-imposed map that was unlikely to accomplish those objectives. Several other plans with two Black-opportunity districts that were more compact than SB8 were considered, but the Legislature chose SB8 because it achieved Louisiana's political goals while the other plans did not.

A majority of the three-judge district court held this effort to prioritize non-racial policy considerations in the context of drawing a §2 compliant map amounted to a racial gerrymander. In so doing, the panel majority failed to accord any presumption of good faith to the Legislature's stated political preferences or to the State's judgment that further litigation in defense of HB1 risked ceding its redistricting prerogatives to the federal courts.

Because it started from the premise that any political explanations were necessarily secondary to the desire to resolve *Robinson* and comply with §2, the majority made no effort to disentangle the effect of the State's political preferences on the specific district lines reflected in SB8. The court's approach deprived the Legislature of the flexibility needed to remedy an identified VRA violation in accordance with its own policy priorities and leaves Louisiana "trapped between the competing hazards of liability under the Voting Rights Act and the Equal Protection Clause." *Bethune-Hill v. Va. St. Bd. of Elec.*, 580 U.S. 178, 196 (2017) (cleaned up).

If left uncorrected, the panel's decision will further inject the federal courts into the redistricting process and deprive states of the necessary flexibility to take account of other legislative priorities when they act to remedy identified violations of §2. The Court should note probable jurisdiction and reverse.

OPINIONS BELOW

The decision and order of the three-judge court of the Western District of Louisiana is reported at 2024 WL 1903930 (W.D. La. Apr. 30, 2024), and reproduced at App.128a. Additional orders being appealed include the following orders from *Callais v. Landry*, No. 3:24-cv-122 (W.D. La. 2024): Scheduling Order Consolidating the Preliminary Injunction Hearing With Trial on Merits, App.8a, ECF No. 63 (Feb. 21, 2024); Order on Motion. to Intervene as Defendants and Transfer, App.13a, ECF No. 79 (Feb. 26, 2024); Order Denying Motion to Continue Trial with Opposition and Motion to Deconsolidate

the Preliminary Injunction Hearing, App.34a, ECF No. 173 (Apr. 8, 2024); and Order Denying Admission. of Record. of *Robinson* Proceedings, App.51a–58a, ECF No. 175 (Apr. 9, 2024).

JURISDICTION

This appeal is from the three-judge District Court's injunction prohibiting Louisiana from conducting any elections using SB8. The District Court had jurisdiction under 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4), and the panel was constituted under 28 U.S.C. § 2284. Appellants filed their notice of appeal on May 1, 2024. This Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This appeal involves the Equal Protection Clause of the Fourteenth Amendment, the Fifteenth Amendment, and §2 of the Voting Rights Act, 52 U.S.C. § 10301, which are reproduced at App.706a, 708a, and 709a, respectively.

STATEMENT OF THE CASE

A. Louisiana's Post-2020 Census Redistricting Maintains the Status Quo Ante.

Following the 2020 census, Louisiana redrew its six congressional districts. The census revealed that Louisiana's White population, as it has since the 1990s, had declined in both relative and absolute terms, while its Black population had grown. On

March 30, 2022, the Louisiana Legislature adopted a redistricting plan ("HB1") that, like its predecessor, had only one district in which Black voters had an opportunity to elect their preferred candidates. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 768 (M.D. La. 2022) ("*Robinson I*").

B. Appellants Successfully Challenge HB1.

Two groups of plaintiffs, including Appellants, filed challenges to HB1 under §2 of the VRA in the Middle District of Louisiana and sought a preliminary injunction barring its use in the 2022 elections. *See id.* The State of Louisiana and the leaders of both chambers of the Legislature intervened as defendants, and the Legislative Black Caucus intervened as a plaintiff. *Id.* The *Robinson* court held a five-day evidentiary hearing and, in June 2022, granted the Appellants' motion for a preliminary injunction. *Id.* at 766. In a 152-page opinion based on an extensive evidentiary record, including the testimony and written reports of fourteen expert witnesses, testimony of seven fact witnesses, and 244 exhibits, the court found that the plaintiffs had established the preconditions for §2 liability under *Thornburg v. Gingles*, 478 U.S. 30 (1986), and that, under the totality of circumstances, Black Louisianians had less opportunity than members of the White majority to participate in the political process and elect candidates of their choice. *Robinson I*, 605 F. Supp. 3d at 844–852; *see also Gingles*, 478 U.S. at 43.

The *Robinson* court found that the Black population of Louisiana was sufficiently large and compact to form a voting majority in two

congressional districts drawn consistent with traditional redistricting principles. *Robinson I,* 605 F. Supp. 3d at 820–831. The court rejected the defendants' contentions that race predominated in the creation of the plaintiffs' illustrative maps, finding that they split fewer parishes and municipalities, were more compact than HB1, and joined together communities of interest that HB1 divided. *Id*. at 831–839. The court further concluded that Black voters in Louisiana vote as a cohesive bloc but that, outside of Louisiana's sole majority-Black district, their preferred candidates are regularly defeated by White racial bloc voting. *Id*. at 839–844. Finally, addressing the totality of the circumstances, the court found that historical and continuing discrimination against Black Louisianians, among other factors, demonstrated that HB1 diluted their votes on account of race in violation of §2. *Id*. at 844–851. The court accordingly concluded that the plaintiffs were likely to prevail on their §2 claim at trial. *Id*. at 766. The court enjoined implementation of HB1 and commenced remedial proceedings.

A unanimous Fifth Circuit motions panel denied the defendants' request for a stay pending appeal. *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) ("*Robinson II*"). The panel agreed with the district court that the plaintiffs' illustrative maps were consistent with traditional redistricting principles and that race did not predominate in their creation. *Id*. at 223.

This Court granted certiorari before judgment, stayed the district court's injunction, and directed that the case be held in abeyance pending its decision in then-pending *Allen v. Milligan*, 599 U.S.

1 (2022), a VRA case from Alabama which the State described as "materially identical" to *Robinson*. *See Ardoin v. Robinson*, 142 S. Ct. 2892, 2892 (2022); Emergency Appl. for Administrative Stay, Stay Pending Appeal, and Pet. for Writ of Cert. Before J., *Ardoin v. Robinson*, 142 S. Ct. 2892, 2022 WL 2441061 at *30 (June 17, 2022). With the injunction stayed, the 2022 elections in Louisiana were held under HB1.

Following its decision in *Allen v. Milligan*, the Court, over defendants' objection, lifted the stay and remanded the case to the Fifth Circuit "for review in the ordinary course and in advance of the 2024 congressional elections." *Ardoin v. Robinson*, 143 S. Ct. 2654, 2654 (2023).

On remand, the Fifth Circuit upheld the district court's ruling that HB1 likely violated §2. *Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023) ("*Robinson III*"). Like the district court, the unanimous panel rejected the defendants' argument that, because the plaintiffs' proposed illustrative maps were "designed with the goal of at least 50 percent BVAP," race had necessarily predominated in their creation. *Id.* at 593 (citing *Milligan*, 599 U.S. at 30–33).

Although the Fifth Circuit concluded that "[t]he district court's preliminary injunction … was valid when it was issued," *id.* at 599, the court vacated the preliminary injunction on the ground that preliminary relief was no longer necessary in light of the time remaining before the next election. *Id.* at 600. The court remanded the case with instructions that, if the Legislature did not enact a remedial map by January 2024, "then the district court is to

conduct a trial," and thereafter, if necessary, "to adopt a different districting plan for the 2024 election." *Id*. at 601–602.

C. The Legislature Adopts a Map to Resolve the *Robinson* Litigation while Prioritizing Political Considerations.

In January 2024, the Governor called the Legislature into special session to "legislate relative to the redistricting of the Congressional districts of Louisiana." App.294a. In addressing the Legislature at the start of the session, the Governor, who had participated in the State's defense of the *Robinson* litigation as Attorney General, called on legislators to enact a map and avoid a court-imposed remedy. App.60a, 84a, 126a, 560a–561a. Louisiana's newly elected Attorney General, Elizabeth Murrill, who also participated in the *Robinson* litigation in her prior role as the State's Solicitor General, testified that, based on the rulings of the Fifth Circuit and the district court, the State had exhausted its avenues for defending HB1 in the courts and continued litigation would result in a court-ordered map. App.352a, 360a, 361a, 363a.

The Legislature understood the courts' rulings to mean that if the State proceeded to a trial on HB1, the courts were likely to impose a map that would resemble the maps proposed by the plaintiffs in *Robinson*, which included a compact second majority-Black district connecting Baton Rouge with the Delta. *See* App.40a, 48a, 81a, 90a, 93a. Rather than accede to a court-drawn map that the Legislature would have little control over and incur the expense of continued litigation, the State opted

to forgo a trial and instead to remedy the §2 violation the courts had identified on the Legislature's own terms.

At least six congressional maps were filed in the 2024 special session. Five included two majority-Black districts, including SB8—the Governor's preferred map—and Senate Bill 4 ("SB4") —a map similar to the illustrative plans proffered by the plaintiffs in *Robinson*. App.585a–607a, 608a–630a, 631a–659a, 660a–686a, 687a–696a. Under SB8, in addition to historically majority-Black Congressional District 2 ("CD2"), Congressional District 6 ("CD6"), currently represented by Congressman Garret Graves, has a majority-Black voting-age population ("BVAP"). App.309a. SB4 would have created an additional majority-Black district in Congressional District 5 ("CD5"), currently represented by Congresswoman Julia Letlow. *See* App.672a; *see also* App.101a–102a. Like SB4 and the *Robinson* illustrative maps, SB8's second majority-Black district included parts of the cities of Baton Rouge, Alexandria, and Lafayette as well as all of St. Landry, Pointe Coupee, and West Baton Rouge Parishes. But instead of connecting that common district core with parishes along the Mississippi Delta to the north, as SB4 had done, SB8 proceeded up the Red River, taking in Natchitoches, much of DeSoto, and part of Caddo Parish in Shreveport. App.314a.

Senator Glen Womack, SB8's sponsor, stated that SB8 was the "only map [he] reviewed" that would *both* comply with the rulings of the *Robinson* Court *and* "accomplish[] the political goals" he sought to achieve. App.394a. Legislators understood

that SB8 was Governor Landry's preferred map because it would likely result in the unseating of Representative Graves, one of his political rivals, and protect favored incumbents House Speaker Johnson, Majority Leader Scalise, and Representative Letlow. App.46a, 61a, 422a–423a. Senator Womack and other supporters of SB8 also highlighted the interests tied together along the Red River and I-49 corridor in CD6, whose residents share economic and agricultural interests, educational and healthcare institutions, and infrastructure. App.421a,[1] 452a–457a (exchange between Representative Larvadain and Senator Womack)[2].

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[1] "The corridor that you see on the map … if you'll notice the map runs up Red River, which is barge traffic, commerce. It also has I-49, which … goes from Lafayette to Shreveport, which is also a corridor for our state that is very important to our commerce. We have a college. We have education along that corridor. We have a presence with ag[riculture] with our row crop, as well as our cattle industry all up along Red River in those parishes. A lot of people from that area, the Natchitoches Parish, as well as Alexandria, use Alexandria…for their healthcare, their hospitals, and so forth in that area." App.421a.

[2] "REPRESENTATIVE LARVADAIN: I know in the community of interest, you've got Rapides and Natchitoches, and I think that you've got the Creole Nation, you've got Northwestern State University. A lot of my students in my district attend those, so that's a community of interest. . . .

"When you look at Natchitoches, there's a community of interest with Natchitoches and Caddo. You've got lumber companies in that Natchitoches area. . . . RoyOMartin has a big plant at Natchitoches, and a lot of folks in my area work there.

As enacted, SB8 reflected only one amendment, which added a single parish split, bringing the total to sixteen (one more than the map enacted in 2022). App.105a, 699a–705a. That amendment, supported by Senator Heather Cloud, was adopted for the express non-racial purpose of moving part of her district into Congresswoman Letlow's district. App.105a. None of the other proposed plans, including SB4, passed out of committee. App.141a.

The Legislature passed SB8, and on January 22, 2024, the Governor signed it into law. App.141a.

D. *Callais* Lawsuit Seeks to Unravel VRA Remedy Enacted by the Legislature.

Appellees filed this lawsuit against the Secretary of State on January 31, 2024, challenging SB8 as an unconstitutional racial gerrymander. Pursuant to 28

RoyOMartin is from Alexandria, and a lot of folks work in DeSoto where you have a lot of timber. . . .

"You look at St. Landry. St. Landry has— Opelousas has a nice size, medium sized hospital. So those folks in Pointe Coupee, they will go to St. Landry to get the medical care and so forth in Opelousas area. . . .

"And you look at West Baton Rouge, East Baton Rouge Parish. . . .

"And it goes all the way to the great City of Shreveport?

"SENATOR WOMACK: Right. Where our LSU hospital is.

"REPRESENTATIVE LARVADAIN: The hospital is vital because in Alexandria, we had Huey P Long [Medical Center]. You're familiar with that, and Jindal shut it down, my Huey P. Long. So my folks in Rapides have to go to LSU." App.452a–457a

U.S.C. § 2284, a three-judge court was constituted to hear the case. App.145a.

Appellees moved for a preliminary injunction on February 7, 2024. App.145a. The same day, Appellants moved to intervene, citing their strong interest in defending the *Robinson* courts' rulings and the harm they would suffer if plaintiffs were successful in their stated intention of striking down SB8 and replacing it with a congressional map without two Black-opportunity districts. App.13a. The State and the *Galmon* Intervenors also moved to intervene.

Before it even decided the intervention motions, the District Court granted Appellees' request to advance the trial on the merits and consolidate it with the preliminary injunction hearing. The Secretary of State, the only other party at the time, did not oppose that request and ultimately put on no defense of SB8 at all. Then, turning to Appellant's intervention motion, the District Court initially granted permissive intervention, but only at the remedial phase of the case. App.19a. On reconsideration, the District Court found that Appellants demonstrated that their interests were not adequately represented with respect to two merits issues—whether race was the predominant factor in the creation of SB8 and, if so, whether SB8 passed strict scrutiny—and granted intervention at the liability phase. App.23a–24a.[3]

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[3] Because the District Court found that Appellants had satisfied all four of the requirements for intervention under Rule 24(a), they are intervenors as of right notwithstanding the District Court's erroneous characterization of them as permissive intervenors in its injunction order. App.145a.

Just over three weeks later, on April 8–10, 2024, after denying Appellants' motion for continuance or to deconsolidate the preliminary-injunction hearing and trial, the District Court held a consolidated preliminary-injunction hearing and trial. App.34a, 146a. Multiple legislators testified that the Legislature was motivated by a desire to protect incumbents and to comply with court rulings in *Robinson*; community members attested that SB8 protected communities of interest; and expert witnesses rebutted Appellee's argument that only race could explain SB8's configuration. *See generally* App.36a, 128a.

On April 30, 2024, the divided District Court panel granted Appellees' motion for a preliminary injunction. App.129a. The majority held that, because the Legislature enacted SB8 with the goal of resolving the *Robinson* litigation and complying with the VRA, all other considerations were necessarily secondary, and race was therefore the predominant factor in SB8's creation. App.171a, 175a. The Court did not—and conceded that it could not on the record before it—conclude that it would be impossible to create a second Black-opportunity congressional district without race predominating, App.189a, leaving entirely uncontroverted the *Robinson* court's conclusion, upheld by the Fifth Circuit, that such a district could be drawn. *Robinson III*, 86 F.4th at 583.

The panel majority acknowledged the "undisputed" evidence "that political considerations—the protection of incumbents—played a role in how District 6 was drawn," App.164a, and that "this case presents evidence of

'mixed motives' in creating District 6—motives based on race and political considerations," App.168a, 172a, 173a. The court also acknowledged that in such a "mixed motive" case, circumstantial evidence such as neglect of traditional districting principles could tend to show "a 'political motivation as well as a racial one.'" App.168a (quoting *Cooper v. Harris*, 581 U.S. 285, 308 (2017)).

The majority nevertheless found that race predominated in the creation of SB8. In so ruling, they emphasized the appearance of the newly created majority-Black district. App.168a–170a. However, the majority never analyzed whether the Legislature's political preferences might also have contributed to the district's shape.

While acknowledging that the Legislature drew SB8 to protect favored incumbents, it concluded that "increas[ing] the BVAP of District 6 to over 50 percent was not required" to achieve this objective. App.175a. In reaching that conclusion, the majority disregarded the Legislature's stated purpose of drawing a map that would comply with the *Robinson* rulings, ignored the conclusions of the district court and Fifth Circuit in *Robinson* that the Legislature could have drawn a compact majority-Black district without race predominating, and failed to account for the Legislature's choice not to do so. Neither the Appellees nor the District Court identified any alternative map showing that the State could have *both* created a second Black-opportunity district *and* accomplished the Legislature's political priorities in a more compact plan. *See generally* App.128a.

The panel majority further held that the Legislature's use of race in crafting SB8 was not

narrowly tailored to remedy a likely §2 violation. The District Court acknowledged that this Court has "repeatedly assumed without deciding" that VRA compliance is a compelling interest, App.175a, and that a legislature has flexibility in remedying a §2 violation. App.175a–176a. The court reasoned, however, that the State's compelling interest in §2 compliance "does not support the creation of a district that does not comply with the [*Gingles*] factors . . . or traditional districting principles." App.177a.

The Court then concluded that "the State . . . has not met its burden of showing that District 6 satisfies the first *Gingles* factor." App.182a. Relying upon a range of extra-record materials and its own views of the salient Louisiana communities, the majority concluded that CD6 "violates the traditional north-south ethno-religious division of the State," App.185a (quoting *Hays v. Louisiana*, 839 F. Supp. 1188, 1201 (W.D. La. 1993)); *see also* App.185 n.12, App.186a–187a, and "divides some established communities of interest from one another while collecting parts of disparate communities of interest into one voting district," App.187a. In reaching that conclusion, the Court cited no record evidence and entirely ignored the copious legislative and trial testimony that CD6 tied together communities with shared interests along the Red River and the I-49 corridor. App.420a–423a (statement by Sen. Womack), 66a–69a (testimony of Mayor Glover), 69a–77a (testimony of Ms. Shelton), 225a (testimony of Rev. Harris), 117a–119a (testimony of Commissioner Lewis).

Judge Stewart dissented. He concluded that "[t]he totality of the record demonstrates that the Louisiana Legislature weighed various political concerns—including protecting . . . political incumbents—alongside race, with no factor predominating over the other." App.192a (Stewart, J., dissenting). He noted evidence that the contours of District 6 were driven by non-racial factors such as "protecting incumbents, eliminating the Governor's political opponents, connected ethno-religious networks, the linkage of the District's communities via the I-49 corridor and Red River Basin, veritable cultural similarities, and shared educational and health resources amongst residents of District 6, among others," App.223a–226a (footnotes omitted).

Judge Stewart further concluded that, even if race had predominated, SB8 would satisfy strict scrutiny, reasoning that the *Robinson* decisions "provided powerful evidence and analysis supporting the State's strong basis in evidence claim that the VRA requires two majority-Black districts." App.257a. Judge Stewart concluded that "the panel majority's requirements for permissible electoral map trades in the substantial 'breathing room' afforded state legislatures in reapportionment for a tightly wrapped straight-jacket." App.192a.

REASONS FOR NOTING PROBABLE JURISDICTION

In striking down SB8, the court below never attempted to disentangle the effect of the Legislature's political objectives on the specific lines in the challenged plan, *Alexander v. S.C. St. Conf. of*

the NAACP, 144 S. Ct. 1221, 1233 (2024), and failed to accord Louisiana the leeway to which it is entitled in choosing a VRA remedial map. *Bethune-Hill*, 580 U.S. at 194–196. *First*, the panel majority erroneously concluded that because *one* of the Legislature's objectives was to comply with court orders in *Robinson*, all other considerations were necessarily secondary in SB8. *See Bush v. Vera*, 517 U.S. 952, 958–959 (1996). *Second*, the panel disregarded the Legislature's undisputed political goals and its explanation that the specific contours of SB8's districts were needed to accomplish them. *See Alexander*, 144 S. Ct. at 1235. *Third*, the panel erroneously applied the first *Gingles* precondition to assess narrow tailoring and failed to credit the "good reasons" for the Legislature's belief that *Gingles* could be satisfied based on the *Robinson* litigation. *Cooper v. Harris*, 581 U.S. 285, 292–293 (2017). *Fourth*, the panel failed to afford the Legislature "breathing room" to choose its own method of complying with the VRA. *Bethune-Hill*, 581 U.S. at 194–196; *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009). *Fifth*, the panel's conclusion that SB8 failed strict scrutiny rested on clearly erroneous factual findings. *Finally*, the panel abused its discretion in making a series of procedural decisions that unduly accelerated the proceedings and deprived Appellants of the ability to develop the record and fully present their case.

This Court should note probable jurisdiction and reverse.

I. The Panel Failed to Credit the Legislature's Non-Racial Political Goals for Drawing SB8 and Did Not Disentangle the Roles of Race and Politics.

The panel never attempted to disentangle race and politics in SB8, nor did it accord a presumption of good faith to the Legislature's choice to pursue its political goals. *Alexander*, 144 S. Ct. at 1235–1236. Instead, it viewed the Legislature's choice to draw a majority-Black district to comply with the *Robinson* court orders and §2 in isolation and concluded that race predominated. App.171a–175a. It dismissed the Legislature's political objectives as incidental, despite the evidence that those objectives alone drove the Legislature's choice of SB8 over more compact options offered in *Robinson*. It therefore made no effort to analyze how political considerations affected SB8's specific contours. Reversal is warranted.

As the District Court recognized, Louisiana redrew its congressional map in direct response to rulings in the *Robinson* litigation "to avoid a trial on the merits." App.171a. If that had been the State's only motive in redrawing its districts, it could have adopted one of the *Robinson* illustrative plans or a similar districting configuration, such as SB4. However, the Legislature chose "a different map than the plaintiffs in the [*Robinson*] litigation have proposed." App.394a. Instead of adopting a map connecting Baton Rouge to the Delta Parishes as the *Robinson* illustrative plans and SB4 had done (and as the Fifth Circuit had approved), the Legislature chose the less compact SB8, which connected Baton Rouge to Shreveport. App.660a–686a, 687a–696a.

The legislative and trial record in this case show that SB8 was developed specifically to accomplish the legislative majority's political goals of protecting favored incumbents, quashing the electoral prospects of a political rival of the Governor, and protecting the Legislature's sovereign prerogative to draw the districts by resolving the *Robinson* litigation and avoiding a court-imposed plan. *See e.g.,* App.60a–61a, 109a, 395a–396a. The District Court agreed these facts were undisputed. App.164a.

In *Robinson*, the district court found, and the Fifth Circuit agreed, that the illustrative congressional plans offered to satisfy *Gingles* were reasonably configured, contained two majority-Black districts, and were created without race predominating. *Robinson I*, 605 F. Supp. 3d at 820–839. The court below conceded that the record before it provided no basis to question those findings. App.189a.[4] In other words, according to the only courts that addressed the issue, complying with §2 in Louisiana's congressional map did not necessitate racially predominant mapmaking or non-compact districts.

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[4] Indeed, it would have been improper for the panel to second guess a sister district court's *Gingles* findings: The question before the panel was whether the *Robinson* decisions in the Middle District of Louisiana and Fifth Circuit decisions provided the State with "good reasons" to believe it faced §2 liability, not whether those courts' rulings were correct. *See Cooper*, 581 U.S. at 292 (racial gerrymandering claims ask courts to assess whether state had "'good reasons' to think that it would transgress the Act if it did not draw race-based district lines").

Because the Legislature could have adopted a plan with two reasonably compact majority-Black districts in which race did not predominate, proving racial predominance in this case required Appellants to prove that race, rather than the Legislature's political goals, predominated in the selection of SB8, with its less compact districts. *Cf. Vera*, 517 U.S. at 969 (finding racial predominance where state rejected more compact alternative for avowedly racial reasons). Only if that choice were shown to be driven predominantly by racial considerations could the panel "rul[e] out the competing explanation that political considerations dominated" in the configuration of SB8. *Alexander*, 144 S. Ct. at 1235.

But the panel never even addressed that question. Although the panel majority acknowledged "that political considerations—the protection of incumbents—played a role in how District 6 was drawn," App.164a, it essentially ignored the impact of those political considerations on the Legislature's choice of SB8 or the specific boundaries of CD6.

First, the majority failed to afford the Legislature the required "good faith" presumption to the Legislature's political objectives. Instead, it dismissed them as "not credible"—not because they were not credibly served by the configuration of CD6, but because the court found it not credible that the Legislature would have pursued those political goals in the specific manner reflected in SB8 if it were not also attempting to comply with §2. App.173a–174a. But it is precisely because the Legislature was pursuing both of these goals that

the court was required to afford the Legislature a presumption of good faith and to engage in a "sensitive" inquiry to disentangle them. *Alexander,* 144 S. Ct. at 1254. That is, the observation that the Legislature was attempting to accommodate both racial and political considerations should have been the beginning of the racial predominance inquiry, not, as the majority treated it, the end and not a reason to presume bad faith on the part of the Legislature.

Second, the panel majority failed to hold Appellees to their burden of disentangling the Legislature's political concerns from racial considerations. Rather than grapple with the record evidence of the Legislature's political motivations, the District Court asserted that "the State first made the decision to create a majority-Black district and, only then, did political considerations factor into the State's creation of District 6," App.174a, and concluded on that basis that race predominated. App.173a–174a. But this temporal logic makes no effort to disentangle the competing racial and political motivations behind the specific contours of SB8. Under this view, and contrary to this Court's precedents, race would predominate any time a map drawer intentionally sets out to remedy a VRA violation, regardless of how the districts are configured or why a specific configuration is adopted. By failing to account for the specific districting choices the Legislature made in SB8, the District Court entirely failed to rule out that they were animated predominantly by political considerations. That failure contravenes this Court's instruction in *Alexander*. *See Alexander*, 144 S. Ct.

at 1235; *see also Easley v. Cromartie*, 532 U.S. 234, 253–254 (2001) ("*Cromartie II*"). As the Court has made clear, evidence that race was considered among other factors—which is all the panel majority pointed to here—"says little or nothing about whether race played a predominant role comparatively speaking." *Id.* at 253.

The panel relied heavily on the "bizarre shape" of CD6, while inexplicably ignoring the Legislature's stated political explanation for its choice to draw that shape—namely, to preserve CD5 as a strong district for favored incumbent Representative Letlow. Rather than examine the extensive record evidence that explains *why* the Legislature preferred that shape, the panel instead noted the superficial resemblance of CD6 to a district struck down nearly three decades earlier in *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996). *See* App. 142a–143a. But the mere visual similarity of these districts, drawn 30 years apart and in different demographic circumstances, does not answer whether it was drawn for racial or partisan purposes. The panel failed to analyze the reason the lines at issue were drawn the way they were, and, in so doing, ignored the Legislature's stated political explanation for that shape. *Cf. Alexander*, 144 S. Ct. at 1235 (state's politics defense "raises special challenges for [racial gerrymandering] plaintiffs") (cleaned up). Simply pointing out a resemblance to *Hays*, without more, does nothing to disentangle race and politics and cannot substitute for the fact-intensive examination of racial predominance this Court requires.

Moreover, upon examination, *Hays* proves readily distinguishable on precisely this question. In *Hays*, the court concluded that race predominated because the cartographer admitted that he "concentrated virtually exclusively on racial demographics and *considered essentially no other factor* except the ubiquitous constitutional 'one person-one vote' requirement." 936 F. Supp. at 368 (emphasis added). Here, in contrast, *Robinson* established that CD6's irregular shape was not necessary to create an additional majority-Black district, 605 F. Supp. at 827, which means it must be explained at least in part by other factors. And the legislative record shows that the most plausible explanation is the Legislature's expressed incumbent-protection motivation. But even if politics and race were equally plausible accounts, under *Alexander*, the challengers still did not satisfy their burden. *Alexander*, 144 S. Ct. at 1235–1236 ("If either politics or race could explain a district's contours, the plaintiff has not cleared its bar."); *see also Cromartie II*, 532 U.S. at 257.

Third, the court failed to require Appellees to present an alternative map or any other evidence that Louisiana could have satisfied the *Robinson* rulings *and also* achieved the Legislature's political goals of protecting favored incumbents and drawing Representative Graves rather than Representative Letlow into the new Black-opportunity district. *See Alexander*, 144 S. Ct. at 1235–1236; *Cromartie II*, 532 U.S. at 258. Conversely, the legislative record established that no other plan the Legislature considered accomplished both objectives. App.394a, 422a, 458a. But instead of holding Appellees to their

proof, the panel invented a new alternative map rule. It suggested that the Legislature could have protected favored incumbents and hurt disfavored ones *without* creating a new Black-opportunity district at all. App.175a. But the Legislature was not creating a new map in a vacuum; it was creating it in response to multiple federal court decisions demanding a second opportunity district for Black voters. An alternative map that did not achieve the Legislature's avowed purpose of resolving the *Robinson* litigation and preserving its redistricting prerogatives *while also* achieving its incumbent-protection goals cannot satisfy the alternative map rule as articulated by this Court in *Alexander* and other cases. *Alexander*, 144 S. Ct. at 1235–1236; *Cromartie II*, 532 U.S. at 257–258.

Moreover, the panel's version of the alternative map rule would have upended the Fifth Circuit's approach in remanding the *Robinson* case, which accorded due deference to the Louisiana Legislature's political prerogatives and would have infringed the Legislature's exercise of those prerogatives in crafting SB8. Only by creating a plan with two Black opportunity districts could the State retain control of the redistricting process and construct a plan that best served its partisan and political interests.

The panel majority's flagrant disregard of the Legislature's political goals, its failure to even attempt to disentangle race and politics, and its assertion of racial predominance without requiring an appropriate alternative map all constitute legal errors warranting reversal. This Court should note probable jurisdiction and reverse.

II. The District Court Erred in Its Application of Strict Scrutiny to SB8.

Even assuming that the Appellees had demonstrated racial predominance, the District Court also erred in concluding that SB8 was not narrowly tailored to achieve the compelling governmental interest of complying with §2 of the VRA. Strict scrutiny "does not require the State 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 (cleaned up). Rather, "the narrow tailoring requirement insists only that the legislature have a 'strong basis in evidence' in support of the (race-based) choice that it has made." *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015) ("*ALBC*") (cleaned up). "[T]he requisite strong basis in evidence exists when the legislature has good reasons to believe it must use race in order to satisfy the Voting Rights Act, even if a court does not find that the actions were necessary for statutory compliance." *Bethune-Hill*, 580 U.S. at 194 (cleaned up).

A. The *Robinson* Litigation Gave the Legislature a Strong Basis in Evidence to Create a Second Black-Opportunity District.

"If a State has good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that §2 requires drawing a majority-minority district." *Cooper*, 581 U.S. at 302. The *Robinson* litigation provided the State with a

strong basis in evidence to conclude that the *Gingles* preconditions could be met here: the *Robinson* district court and the Fifth Circuit had already found that the preconditions *were* met and that Appellants were therefore likely to prevail on the merits at trial. *Robinson I*, 605 F. Supp. 3d at 820–831, 839–844; *Robinson II*, 37 F.4th at 218, 224–227; *Robinson III*, 86 F.4th at 592, 597–599.

In fact, rarely does a state ever have a stronger basis in evidence than Louisiana had here to conclude that §2 required race-conscious remedial districting. In *Robinson*, based on a robust evidentiary record, consisting of testimony of fourteen expert witnesses, seven fact witnesses, and 244 exhibits, the district court concluded that the Plaintiffs were "substantially likely to prevail on the merits of their claims brought under §2 of the Voting Rights Act." *Robinson I*, 605 F. Supp. 3d at 766. As discussed above, the district court in *Robinson* found the *Gingles* preconditions satisfied, rejected the State's arguments that adopting a map with a second majority-Black district would invariably amount to racial gerrymandering, and concluded that, under the totality of the circumstances, Black Louisianians were denied an equal opportunity to their elect candidates of choice to Congress.

Two separate panels of the Fifth Circuit upheld the *Robinson* district court's rejection of the State's racial gerrymandering arguments and its finding that Appellants had satisfied *Gingles*: first, when the Fifth Circuit denied a stay pending appeal, *see Robinson II*, 37 F.4th at 208–232, and second, in its merits decision. *See Robinson III*, 86 F.4th at 583. On the merits, the Fifth Circuit held that "race was

properly considered by the Plaintiff experts when drawing their several illustrative maps … alongside and subordinate to the other race-neutral traditional redistricting criteria *Gingles* requires." *Id*. at 595. The Fifth Circuit reached that decision after careful consideration of this Court's decision in *Milligan*, which rejected similar arguments asserted by Alabama. *Robinson III*, 86 F.4th at 592–595; *Milligan*, 599 U.S. at 30–34.

Those findings provided the State with "'good reasons to believe' it must use race in order to satisfy the [VRA]." *Bethune-Hill*, 580 U.S. at 194; *see Abbott v. Perez*, 585 U.S. 579, 616 (2018) (evidence from litigation record could provide "good reasons" to use race in remedial map). Indeed, this Court has upheld a state's use of race to draw districts based on far less. In *Bethune-Hill*, for example, the Court held that the plan sponsor's discussions with incumbents from majority-minority districts and consideration of district demographics and turnout rates provided a strong basis in evidence for the legislature's use of a specific racial target to comply with §5.

The Legislature was well aware of the *Robinson* litigation and what it meant. In calling the Special Session, Governor Landry stated, "We are here today because the Federal Courts have ordered us to perform our job." App.560a. He summarized the history of the years-long litigation and the robust defense of HB1 he had mounted as attorney general, and told the Legislature, "We have exhausted all legal remedies." App.561a. In a presentation to a joint meeting of the House and Senate committees responsible for redistricting, Attorney General Murrill told legislators that the courts had

effectively decided against HB1, and that, even though she believed HB1 was lawful, continuing to litigate would likely result in the State having a court-drawn map. App.353a, 360a, 363a.

Indeed, the District Court found that the Legislature adopted SB8 to "create a second majority-Black district that they predicted would be ordered in the *Robinson* litigation after a trial on the merits." App.173a–174a. And *Robinson* established the possibility that a reasonably configured plan with a second Black-opportunity district could be drawn consistent with the Equal Protection Clause. App.442a–443a. Thus, the Legislature had good reasons to believe that to resolve the *Robinson* litigation without imposition of a court-ordered map and to comply with the VRA, it would need to consider and enact a remedial map with two districts where Black voters have the opportunity to elect their preferred candidates.

B. The Majority's Narrow Tailoring Analysis Improperly Imposed a Freestanding Compactness Requirement on Louisiana's Remedial Map.

The panel erroneously determined that SB8 was not narrowly tailored to comply with the VRA because it concluded that the "State simply has not met its burden of showing that District 6 satisfies the first *Gingles* factor." App.182a. But this Court has never held that strict scrutiny requires a plan adopted by a legislature to remedy an identified §2 violation to itself satisfy the *Gingles* preconditions or survive a beauty contest against a rival plan. *See Vera*, 517 U.S. at 978 (a state need not "get things

just right" and "deference is due to [the legislature's] reasonable fears of, and to their reasonable efforts to avoid, §2 liability"); *see also League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 506 (2006) ("*LULAC*") (Roberts, C.J., dissenting) (§2 does not "impos[e] a freestanding compactness obligation on the States"). On the contrary, "§2 does not forbid the creation of a noncompact majority-minority district," *id*. at 430, so long as any departure from traditional redistricting principles is not predominantly motivated by race.

As the panel was aware, the *Robinson* district court and the Fifth Circuit had already reviewed the preliminary injunction evidence and found all three *Gingles* preconditions satisfied, and specifically found that a reasonably configured additional majority-Black district could be drawn consistent with traditional redistricting principles. App.136a–137a. Those findings provided the State with "'good reasons to believe' it must use race in order to satisfy the [VRA]." *Bethune-Hill*, 580 U.S. at 194; *see Abbott*, 585 U.S. at 616 (evidence from litigation record could provide "good reasons" to draw noncompact VRA remedial map). Under these circumstances, the State was not required to prove again the necessity of complying with the VRA or to satisfy the *Gingles* preconditions a second time before it could adopt a remedial plan that, for entirely political reasons, departed from traditional redistricting principles in ways the *Robinson* illustrative plans had not. *Cf. Singleton v. Allen*, No. 2:21-cv-1291-AMM, 2023 WL 5691156, at *45 (N.D. Ala. Sept. 5, 2023), stay denied sub. nom. *Allen v. Milligan*, 144 S. Ct. 476 (2023) ("[W]e reject the

assertion that the Plaintiffs must reprove Section Two liability under *Gingles*" to challenge the state's remedial plan).

To be sure, where a state relies predominantly on race to create a majority-minority district of its own accord, without court findings or other analysis showing such a district was required by the VRA, this Court has assessed the enacted districts under the *Gingles* framework to determine whether the state had good reasons to believe its use of race necessary to meet the demands of the VRA. *See*, *e.g.*, *Cooper*, 581 U.S. at 292; *Vera*, 517 U.S. at 976–977. But in those cases, the state asserted compliance with §2 as a defense to a racial gerrymandering claim *in the absence of a prior court decision finding a likely VRA violation*. *E.g.*, *Cooper*, 581 U.S. at 301 (state asserted "good reasons to believe it needed to draw [District 1] as a majority-minority district to avoid Section 2 liability"); *Vera*, 517 U.S. at 977 ("Appellants contend that creation of each of the three majority-minority districts at issue was justified by Texas' compelling state interest in complying with this [§2] results test.").

In each of these cases, the state did little to no analysis of the need for a majority-minority district prior to enacting its map. Unlike here, the states' asserted fears of §2 liability were therefore not based on any previous court evaluation of the *Gingles* preconditions, nor on any other evidence that would provide the required "good reasons" to use race in redistricting. The courts therefore looked to the *Gingles* preconditions to determine in the first instance whether the state had a strong basis in evidence to create a majority-minority district. *See,*

e.g., Cooper, 581 U.S. at 302–303 (2017) (analyzing *Gingles* II where the Legislature had no pre-enactment strong basis in evidence for concluding the VRA required race-based redistricting); *Vera*, 517 U.S. at 977–979 (same with respect to *Gingles* I). In no case has this Court demanded that a map adopted by a state in a remedial posture must satisfy *Gingles* I where, as here, the state already has a strong basis in evidence from a prior court decision, affirmed on appeal, which already found that *Gingles* I could readily be satisfied. *Cf. Abbott*, 585 U.S. at 616 (prior finding that Texas's plan violated §2 provided good reason for the state to draw non-compact remedial district).

The District Court reached its decision that SB8 did not satisfy strict scrutiny under the legally erroneous view that a §2 remedial map must—in all circumstances—satisfy *Gingles* I by adhering to traditional redistricting principles, even where that requires abandonment of the legislature's *non-racial* policy preferences. This Court should note probable jurisdiction and reverse.

III. The District Court's Opinion Improperly Denied the State Leeway to Comply with the Voting Rights Act in Accordance with Its Policy and Political Preferences.

"Electoral districting is a most difficult subject for legislatures, requiring a delicate balancing of competing considerations." *Bethune-Hill*, 580 U.S. at 187 (citing *Miller v. Johnson*, 515 U.S. 900, 915 (1995)). As this Court has explained, "[d]istricting inevitably has sharp political impact and inevitably political decisions must be made by those charged

with the task." *White v. Weiser*, 412 U.S. 783, 795–796 (1973). "[G]iven the complex interplay of forces that enter a legislature's redistricting calculus, … federal courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Alexander*, 144 S. Ct. at 1233–1234 (2024) (cleaned up).

This sensitivity to the complexity of redistricting decisions is especially important where a state is attempting—with requisite "good reasons"—to comply with the VRA. "States retain broad discretion in drawing districts to comply with the mandate of §2." *Shaw v. Hunt*, 517 U.S. 899, 917 n.9 (1996); *see also Bartlett*, 556 U.S. at 23 (2009) ("§2 allows States to choose their own method of complying with the Voting Rights Act"). This discretion allows lawmakers to balance its legal obligations and political priorities without needing to optimize every traditional redistricting principle. For example, in the preclearance context, this Court has held that "[t]he law cannot insist that a state legislature, when redistricting, determine *precisely* what percent minority population § 5 demands." *ALBC*, 575 U.S. at 278 (emphasis in original). Likewise, a map drawn to satisfy §2 need not win endless "beauty contest[s]" against rival maps to accord with the Equal Protection Clause. *Milligan*, 599 U.S. at 21 (quoting *Vera*, 517 U.S. at 977). By the same token, "§2 does not forbid the creation of a noncompact majority-minority district," *LULAC*, 548 U.S. at 430, and this Court has accordingly rejected as "impossibly stringent" a requirement that a district drawn to comply with the VRA have the "least possible amount of irregularity in shape."

Vera, 517 U.S. at 977; *see also LULAC*, 548 U.S. at 494 (Roberts, C.J., dissenting) (§2 does not prohibit a legislatively enacted plan that "loses on style points" compared to more compact alternatives).

This is especially so when a state is redrawing a map to serve its independent, non-racial purposes as well as to comply with the VRA, as the Louisiana Legislature did here at the Fifth Circuit's express invitation when it declined to order the *Robinson* case to proceed directly to trial. *Robinson III*, 86 F.4th at 601. The State acted well within the permissible scope of its breathing room when it enacted SB8. When it convened in January 2024, the Legislature considered several congressional plans that complied with the guidance of the *Robinson* courts and the requirements of §2 by including two districts that provided Black voters with the opportunity to elect a candidate of their choice. Among these plans was SB4, which closely mirrored the illustrative plans in the *Robinson* litigation that the district court and Fifth Circuit found reasonably configured. *See* App.677a. As the evidence showed, the Legislature chose SB8 from among those plans for the predominant political purpose of protecting favored incumbents over a disfavored one—not for racial reasons. App.392a–395a, 420a–423a, 433a–434a, 440a–443a, 538a–541a, 38a–39a, 43a, 46a, 60a–61a, 83a–84a, 87a–89a, 109a, 116a–117a. SB8 was chosen over SB4—despite being less compact than either SB4 or HB1—because, as SB8's sponsor put it, SB8 was the only plan that would both resolve the *Robinson* litigation and achieve the Legislature's political goals. App.394a, 422a, 443a, 540a.

The panel majority penalized the Louisiana Legislature for exercising its breathing room to accomplish these political objectives while also complying with §2 and avoiding liability in *Robinson*. The court repeatedly intoned this Court's observation that §2 "never require[s] adoption of districts that violate traditional redistricting principles." *See* App.164a, 178a, 189a (citing *Milligan*, 599 U.S. at 29–30). But "[w]hile §2 does not require a noncompact majority-minority district, neither does it forbid it, provided that the rationale for creating it is proper in the first instance." *Vera*, 517 U.S. at 999 (1996) (Kennedy, J., concurring); *see also LULAC*, 548 U.S. at 430 ("Section 2 does not forbid the creation of a noncompact majority-minority district.").

Here, the *Robinson* decisions gave the State a "proper rationale" for creating a majority-minority district in the first instance, finding that a reasonably compact district could provide the electoral opportunities the VRA protects. For political purposes, the Legislature chose to meet its obligation with SB8, and it was entitled to create a non-compact majority-minority district over more compact alternatives if that served its political interests. But as explained above, and contrary to this Court's guidance, the District Court demanded that the Legislature's remedial district itself satisfy the *Gingles* "reasonable compactness" standard, erroneously holding that the Equal Protection Clause prohibits a less compact district when it is adopted to remedy a §2 violation. In so doing, it deprived the Legislature of the leeway to account for political considerations—or any other non-racial

consideration that might "yield[] similar oddities in a district's boundaries," *Alexander*, 144 S. Ct. at 1235 (cleaned up). That error requires reversal.

IV. The District Court Erred in Concluding that SB8 Fails to Maintain Communities of Interest.

The District Court's *Gingles* analysis was flawed in another, independent respect because it rested on improperly considered extra-record evidence and clearly erroneous factual findings. In concluding that SB8 fails strict scrutiny, the majority ignored legislators' policy choices concerning the interests and communities they chose to join in SB8, and instead substituted its own judgment that the Acadiana region should be kept together, and that dividing it constituted a violation of the traditional redistricting principle of protecting communities of interest. App.184a–186a.[5] In support of this finding, the panel majority failed to cite a single piece of admitted evidence defining Acadiana or to weigh its relevance against the communities of interest identified by the Legislature. App.184a–188a. And it ignored the copious trial testimony concerning the interests and communities joined in SB8. *Id*. Instead, without notice to the parties, the majority relied on an uncited (and possibly apocryphal) quote from former Governor and Senator Huey Long in the 1930s, App.186a–187a, which no party had introduced let alone laid an appropriate foundation for, as well as other extra-record books, articles,

[5] In contrast, the panel devoted only a single paragraph to each of the two other principles it considered. App.188a–189a.

websites, and the factual findings in *Hays*. App.184a–187a. These materials were neither admissible nor the proper subject of judicial notice, and the panel majority abused its discretion in considering them. *United States v. Beaulieu*, 369 F. Supp. 3d 655, 672 (E.D. La. 2019) ("it is not appropriate to take judicial notice of contested facts."); *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 830 (5th Cir. 1998) ("a court cannot take judicial notice of the factual findings of another court"); *see also* Fed. R. Evid. 201(e) (requiring notice to the parties before judicial notice of adjudicative facts). The panel's reliance on this improperly considered evidence and its wholesale disregard, without explanation, of the robust record evidence of a strong communities of interest rationale for SB8, *see* App.420a–423a, 66a–68a, 72a–77a, 117a–119a, 225a, renders its community of interest findings clearly erroneous, vitiating the panel's conclusion that SB8 violates traditional redistricting principles and therefore fails strict scrutiny.

V. The Court Below Abused Its Discretion by Unduly Expediting these Proceedings.

Finally, the District Court abused its discretion when it unduly expedited the proceedings. Most significantly, the court improperly consolidated the trial on the merits with a hearing on Appellees' motion for a preliminary injunction before the State or Appellants—the only parties with a genuine interest in defending SB8—had even entered the case. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (cautioning that it is "generally inappropriate for a federal court at the preliminary-

injunction stage to give a final judgment on the merits."); *see also, e.g.*, *Pughsley v. 3750 Lake Shore Drive Co-op. Bldg.*, 463 F.2d 1055, 1057 (7th Cir. 1972) ("[T]he parties should be given a clear opportunity to object.").

This consolidation of the preliminary injunction and trial aggravated and was aggravated by other procedural errors the District Court committed, including: 1) initially denying Appellants request to intervene in the trial and only reconsidering on the eve of trial, App.13a–24a; 2) denying Appellants' motion to deconsolidate the trial despite Appellees mounting no opposition to that request, App.34a; 3) allowing virtually no time for discovery, App.8a–9a; 4) denying Appellants' request to limit evidence on issues already decided in *Robinson* and then denying Appellants' request to admit the *Robinson* record into evidence at trial, although both the Governor and the Attorney General were familiar with the record in *Robinson* when they urged the Legislature to enact SB8, App.51a–58a; and 5) severely constraining the time for Appellants to present their case at trial, App.28a, 31a. Together, these errors deprived Appellants of the ability to fully prepare and present their defense of SB8.

CONCLUSION

This Court should note probable jurisdiction and reverse the judgment below. Because the record below does not support a judgment for Appellees under the correct legal standards, the Court should summarily reverse and remand with instructions to enter judgment for Appellants and the State Defendants.

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Respectfully submitted,

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