No. 24-110

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

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Do private party intervenor-defendants have standing to appeal an order enjoining state officials from enforcing a generally applicable state law?
2. Did the district court properly find that race predominated when the Louisiana Legislature openly admitted it was using a quota of two Black-controlled districts to draw SB8, a 250-mile-long district that duplicated a previously invalidated racial gerrymander, splitting municipalities, parishes, and communities, linking parts of four urban areas, and tracing the boundaries of Black and white-majority precincts?
3. Did the district court properly find that SB8 failed to satisfy strict scrutiny based on alleged attempts to comply with the Voting Rights Act where the Legislature never conducted a VRA analysis on SB8, where the Attorney General told the Legislature that the Attorney General was defending the prior map and didn't believe the VRA required a second Black district, and where the Attorney General admitted in court that SB8 was part of a litigating strategy?

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 and Intervenor-Defendants below are 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").

Defendant below is Nancy Landry, in her official capacity as the Louisiana Secretary of State. The State of Louisiana, represented by Louisiana Attorney General Elizabeth B. Murrill, was an intervenor-defendant below. And amici in the liability phase and intervenor-defendants in the remedial phase below are Edward Galmon, Sr., Ciara Hart, Norris Henderson, Tramelle Howard, and Ross Williams (the "Galmons").

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INTRODUCTION

This Court should grant dismissal or summary affirmance. This is a standard *Shaw v. Reno*, 509 U.S. 630 (1993), case. The Legislature, and the Attorney General at trial, admitted a racial quota of two Black-majority seats was Louisiana's prime and uncompromisable criterion. Factual and expert evidence clearly established Louisiana's meticulous manipulation of Black voting age population ("BVAP") data. The State deliberately retraced the lines of an infamous 1990s district that it well knew federal courts had invalidated as a blatant racial gerrymander, locking in 82% of the same Black population from that old district. Dkt. 185, 308:5-9. The district court easily identified Louisiana's repeat racial gerrymander and found it unjustified even with "breathing room" for legitimate VRA compliance efforts.

The Robinson Intervenors ("Robinsons") complain this unfairly erased what they attempt to sell as a win in their mooted Voting Rights Act ("VRA") case—*Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. 2024)—but in reality, it was their own forum shopping that triggered the final crushing "ping pong" volley.[1] Chasing the El Dorado of a second Black-majority district, the Robinsons had artfully pleaded their claim only under the VRA instead of under the Equal Protection Clause. In the resulting single-judge Middle District of Louisiana court, they found remarkable early success as the State mounted

[1] The Robinsons' and attempted Galmon Intervenors' forum shopping tactics are more fully discussed in Appellees' Motion to Dismiss or Summarily Affirm the Galmons' appeal, filed this same day.

a weak factual defense. As the Robinsons planned, that judge had no jurisdiction to—and did not—take up Equal Protection concerns.

When the State passed a two-Black-majority-district map unlike anything presented in the Robinsons' case (and therefore excluding from the second Black-majority district many of their voter-plaintiffs), the Robinsons eagerly accepted, mooting *Robinson* before trial. Ruling, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed April 25, 2024). But when Appellees sued and received the three-judge district court below, the Robinsons emptied their playbook, first urging their single-judge court to violate 28 U.S.C. § 2284 and seize jurisdiction from the three-judge district court, and then moving in limine to keep the three-judge court from hearing any VRA evidence or argument in applying strict scrutiny. Ruling, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed April 16, 2024) (order denying motion to apply first-filed rule); Dkt.18-1, at 24-27; Dkt.144; Dkt.144-1.[2] The Robinsons avoided the VRA so thoroughly that they failed to fill their trial time, calling not a single expert, and proffering not a single exhibit, to prove Louisiana had a reasonable belief that the VRA required SB8's sinuous second Black-majority district, "SB8-6." Yet the Robinsons now decry the unavoidable result of this

[2] 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).

tactic: the district court's conclusion that they failed to prove SB8-6 was required by the VRA.

In a final twist, the State's representations in its May 2024 emergency stay application gifted the Robinsons (for the 2024 cycle) the two-Black-majority-district racial gerrymander they had considered lost. But now that this Court has more than four days to consider the facts and law, it should dismiss or affirm. The three-judge district court—where combined claims and defenses under the Equal Protection Clause and VRA truly belong—can then order a remedy on a complete record that finally and fully considers both legal principles. The facts will likely show any proposed remedy with a second Black-majority district is not required under the VRA. It will fend off any fresh Robinson-attempted racial gerrymander and disappoint only the Intervenors by rejecting their invalid VRA claims. There this matter will end.

STATEMENT OF THE CASE

After the 2020 census, the Louisiana Legislature enacted HB1, a congressional redistricting law dividing the State into its six congressional districts. Dkt.165-1. HB1 followed the traditional boundaries of Louisiana congressional districts. Like Louisiana's 2011 congressional map, and all others since a second majority-Black district was struck down as an unconstitutional gerrymander in *Hays v Louisiana*, 936 F. Supp. 360 (W.D. La. 1996), HB1 had one majority-Black district in southeastern Louisiana. Dkt.165-5; Dkt.185, at 57-60, 92; Dkt.198, at 6.

Just before HB1 passed, several groups filed complaints in the Middle District of Louisiana,

alleging HB1 violated Section 2 of the Voting Rights Act ("VRA"). *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766, 768 (M.D. La. 2022), *vacated*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson I*"). By early January 2024, that case was on track for trial.

I. Louisiana Enacts SB8.

Claiming concern that the State would ultimately lose at trial, Governor Jeff Landry called a special legislative redistricting session on January 15, 2024, to repeal HB1 and impose a new map with two majority-Black districts. Dkt.165-9; Dkt.165-10; State Brief 1-2.

a. Attorney General Murrill's Statements to the Legislature

On January 15, 2024, just before redistricting plans were introduced, Louisiana Attorney General Elizabeth Murrill testified before the House and Governmental Affairs Committee. As the State's counsel, she advised the Legislature on the *Robinson* litigation. Dkt.182-31, at 7.

In *Robinson*, a VRA case before a single district judge, Louisiana had suffered a "hasty and tentative" decision after a May 2022 expedited preliminary injunction hearing. *In re Landry*, 83 F.4th 300, 306 (5th Cir. 2023). As *Robinson* resumed after a stay pending this Court's decision in the Alabama redistricting case, *Allen v. Milligan*, 599 U.S. 1 (2023), the Fifth Circuit observed, "[t]hat the state lacked a full opportunity to mount a defense on the merits is likely accurate." *Id*. at 305. It recognized "the need for further development of factual and legal aspects," particularly because the "the state put all its eggs in one basket, litigating essentially that only with race-predominant considerations could the plaintiffs

justify" the second Black-controlled districts they were proposing. *Id*. at 306 & n.6 (citation omitted). The Fifth Circuit's merits panel emphasized that *Milligan* "largely rejected" this "initial approach," and that the State had failed to provide evidence or meaningfully refute or challenge the plaintiffs' evidence. *Robinson v. Ardoin*, 86 F.4th 574, 592 (5th Cir. 2023) ("*Robinson III*"). An earlier panel of the Fifth Circuit also pointed out that the district court had erred in its compactness analysis at prong 1 of *Thornburg v. Gingles*, 478 U.S. 30 (1986). *Robinson v. Ardoin*, 37 F.4th 208, 222 (5th Cir. 2022) ("*Robinson II*"). Though the merits panel ultimately did not reject the district court's conclusions, it vacated the preliminary injunction for equitable reasons, emphasizing it was only applying clear error review to a situation where the State had not focused on the evidence. *Robinson III*, 86 F.4th at 592, 601-02. The merits panel, along with other Fifth Circuit panels, encouraged the State that its failure to address the VRA issues during the preliminary injunction stage did not bind the State in subsequent proceedings and at trial. *See id*. at 592; *Robinson II*, 37 F.4th at 217; *In re Landry*, 83 F.4th at 306 n.6. And at no point did the Fifth Circuit order or approve a second Black-majority district.

Fresh from this Fifth Circuit guidance, Murrill *never* told legislators the State believed the VRA required two majority-Black districts. Dkt.184, at 83. In fact, she professed the opposite, claiming HB1 remained defensible and not unlawful. Dkt.181-1, at 11, 13-15, 17-18. The *Robinson* litigation, she said, had not led to a fair or reliable result. *Id*. at 17-18. She never claimed the Legislature was under any order from the Middle District of Louisiana. Instead, she

testified there had yet to be a trial on the merits; there was still an opportunity to try the case; and any preliminary order from the Middle District had been vacated. *Id*. at 13-14, 18-19. Nonetheless, Murrill urged the Legislature to draw a map with two majority-Black districts—not to comply with the VRA, but to avoid trial before the single-judge district court. *Id*. at 14, 19.

After her summary of the law and explanation of the purpose of the special session to draw a map with two majority-Black districts, Representative Farnum asked her: "Isn't [race] the only reason we're here right now . . . isn't that the predominant reason?" *Id*. at 15. The Attorney General admitted, "we're here because of . . . the court's telling us we have to be here. I mean, I – I think that's part of it. You know, the – I mean, I'm defending the map." *Id*.

b. Legislators' Statements

The same day Senator Glen Womack introduced SB8, a bill that repealed HB1 and answered the Attorney General's call to intentionally create two majority-Black districts. Dkt.165-5, at 2, 7; Dkt.165-10; Dkt.165-15, at 1, 3. Unlike the traditional districts in HB1 and other recently enacted maps in Louisiana, SB8 created a second majority-Black district that stretched 250 miles in a jagged slash mark from the State's high Black population in southeastern Baton Rouge north to Shreveport, where the next highest Black population resided, carefully splitting and dissecting four major metropolitan areas to carve in pockets of Black voters along the way. Dkt.182-10; Dkt.182-11; Dkt.182-12; Dkt. 182-13; Dkt.185, at 56-58; Dkt.198, at 13, 39. This district resembles the unconstitutional slash districts seen by this Court three decades ago in the seminal case *Shaw*

v. Reno, 509 U.S. 630 (1993), and in Louisiana's own prior failed attempt to create two majority-Black districts in *United States v. Hays*, 515 U.S. 737 (1995). Dkt.182-17; Dkt.182-18; Dkt.185, at 57-60; Dkt.198, at 2-5, 14.[3]

During the special session, Senator Womack conceded in multiple public legislative hearings that the two majority-Black districts in SB8 could not be compromised. Dkt.181-3, at 4-5; Dkt.181-4, at 4, 32. He repeatedly admitted:

> Given the state's current demographics, there is not enough high Black population in the southeast portion of Louisiana to create two majority Black districts, and to also comply with the US Constitution one person, one vote requirement. *That is the reason why* District 2 is drawn around the Orleans Parish and why District 6 includes the Black population of East Baton Rouge Parish and travels up I-49 corridor to include Black population in Shreveport.

Dkt.181-3, at 4 (emphasis added); *see also* Dkt.181-4, at 4. SB8 sponsor Representative Beaullieu repeated Senator Womack's statement on the House floor. Dkt.181-6, at 4.

Others echoed these racial motivations. SB8 supporter Representative Carlson admitted, "the overarching argument that I've heard from nearly everyone over the last four days has been race first."

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[3] Since *Hays*, Louisiana's BVAP percentage has remained relatively stagnant, Black voters have become more dispersed and more integrated, and Louisiana has lost a congressional seat. Dkt.185, at 60, 91-92; Dkt.198, at 58.

Dkt.181-4, at 26. He acknowledged integration made drawing a second majority-Black district difficult. *Id.* at 26-27; *see also id.* at 21 (Lyons); Dkt.181-3, at 8 (Pressly); Dkt.181-7, at 4 (Morris). Senator Carter pointed out that "no sort of performance analysis had been conducted to determine whether or not District Two continues to consistently perform as an African American district." Dkt.181-3, at 6. He nonetheless supported SB8 precisely because it created a second district. *Id.* He read a statement from Congressman Troy Carter reiterating the necessity of the two-district quota at all costs. *Id.*

Legislators advocated for proportional representation for Black voters at the cost of other criteria—Dkt.181-1, at 13, Dkt.181-4, at 27 (Marcelle); Dkt.181-4, at 24 (Newell); Dkt.181-1, at 16 (Boyd), Dkt.181-3, at 7 (Duplessis)—even though SB8 resulted in super-proportionate representation for Black voters (Dkt.165-6; Dkt.165-15) and Attorney General Murrill warned against purely "proportionate dividing" (Dkt.181-1, at 13).

Legislators supporting SB8 disavowed that politics was the predominant force behind the plan. Dkt.181-4, at 23-24 (Beaullieu); *id.* at 24 (Newell); *id.* at 26-27 (Carlson). Instead, the Legislature first set out to draw a second Black-majority seat, and then, after the unavoidable resulting loss of an expected Republican seat, the Legislature considered which incumbents to protect. Dkt.184, at 72, 79. The Legislature decided to protect Speaker of the House Mike Johnson, Majority Leader Steve Scalise, and Representative Julia Letlow in Districts 4, 1, and 5, respectively. Dkt.181-3, at 3. The Legislature did not espouse any political goals for SB8-6.

The final version of SB8 barely reached that promised 50% BVAP threshold for Districts 2 and 6. Dkt.165-15. Both the House and Senate passed SB8 by majority votes, and the Governor signed it into law on January 22, 2024. Dkt.165-10.

II. Louisiana Voters Challenge the Constitutionality of SB8.

A group of Louisiana voters, the Appellees, challenged SB8 by filing this lawsuit against the Louisiana Secretary of State on January 31, 2024. Dkt.1. Appellees requested and received a three-judge district court pursuant to 28 U.S.C. § 2284. Dkt.198, at 16. Appellees moved for preliminary injunction, Dkt.17, and moved unopposed for expedited briefing, Dkt.43. The Secretary represented she needed a map by May 15, 2024. Dkt.82, at 2.

On February 21, 2024, the district court granted the parties' request, consolidated the preliminary injunction hearing with a trial on the merits for the liability phase, and scheduled trial for April 8, 2024. Dkt.63, at 1. The court bifurcated trial: first to determine SB8's constitutionality ("liability phase"), and second, to determine any remedy ("remedial phase"). No party or proposed intervenor challenged this order.

The State, represented by Attorney General Elizabeth Murrill, intervened as a defendant on February 26, 2024. Dkt.79; Dkt.156, at 2. Two groups of Black Louisiana voters, civil rights organizations, and plaintiffs in *Robinson* moved to intervene as defendants. Dkt.79, at 1; Dkt.156, at 2-3. The district court allowed the Robinson Intervenors to intervene permissively in the remedial phase on February 26, 2024, and permissively in the liability phase on March

15, 2024. Dkt.79; Dkt.114; Dkt.198, at 16. When granting Robinsons permissive intervention in the liability phase, the court found the "existing representation of their interests *may be* inadequate for the initial phase of the case" on specific issues. Dkt.114, at 2 (emphasis added). The Court did not state the representation was inadequate, as necessary to require intervention of right under Fed. R. Civ. P. 24(a). Dkt.198, at 16. As permissive intervenors, the court "limit[ed] their role in the initial phase to presenting evidence and argument as to: (1) whether race was the predominant factor in the creation of SB 8; and (2) if so, whether SB 8 can pass strict scrutiny review." Dkt.114, at 2. Robinsons acknowledged their limited role and never contested their status as permissive intervenors in the district court. *See, e.g.*, Dkt.161-1, at 4 (noting the Court "permitted them to participate to a limited extent in the liability phase" (citation omitted)); Dkt.189-1, at 27 (noting they only intervened as to certain "issues" (citation omitted)). The district court allowed the other group, the Galmons, to intervene permissively in the remedial phase on May 3, 2024. Dkt.205.

On Saturday evening, April 6, 2024, Robinsons moved for the first time to continue Monday morning's trial, or in the alternative to deconsolidate the preliminary injunction hearing from the merits. Dkt.161. Appellees opposed. Dkt.163. Robinsons had previously represented they would comply with the current schedule without delay when seeking intervention. Dkt.112-1, at 9. The district court granted their intervention based on those representations. Dkt.114.

The court denied the motion on the record the first day of trial because (1) it was untimely when

presented on the eve of trial; (2) "the intervenors' role in this case [was] limited to the subject matters permitted by the Court in order to supplement the State's defense," the State had the primary duty to defend "the State's map," the State had determined that an expedited briefing schedule was necessary to ensure a fair election in 2024, and the public interest favored expedition; and (3) the Robinsons were not disadvantaged because they had extensive Louisiana redistricting litigation experience. Dkt.184, at 7-8.

III. The Three-Judge Court Holds the First Trial.

The liability phase of trial spanned April 8, 2024, to April 10, 2024. Dkt.198, at 17. The parties introduced 13 witnesses and 110 exhibits, including the entire legislative record. Dkt.198, at 11, 17. Each side had eight hours to present their case. Dkt.130.

Appellees presented overwhelming evidence of racial predominance in addition to the legislative excerpts. Multiple legislators testified to SB8's race-based purpose; experts provided corroborating circumstantial evidence. Appellees presented alternative maps, including HB1 itself and Appellees' own proposal, and other evidence showing the Legislature could have protected incumbents without violating traditional redistricting principles or racial gerrymandering. Dkt.182-14; Dkt.182-16; Dkt.184, 108-11, 140; Dkt.185, at 24-25, 27-28, 54-55; Dkt.198, at 44-45.

Defendants failed to use all their allotted time. The Secretary of State presented no evidence. Dkt.186, at 91. The State only presented video excerpts from the public legislative session entered as joint exhibits by the parties. Dkt.186, at 85-91. Using

hours of ceded time, Robinsons presented some evidence but didn't admit record material from *Robinson v. Ardoin* due to their serious violation of court rules. Dkt.186, at 85-91**;** Dkt.185, at 103-18.

At closing, the State admitted its only goal was to stay one step ahead of the federal court's predicted course in drawing maps—not to comply with the VRA. Dkt.186, at 123-24. The State admitted it did not think it needed to repeal the HB1 map or adopt a second majority-Black district to comply with the VRA. Dkt.184, 26-27; Dkt.186, at 121-22. The State conceded it conducted no VRA analysis of SB8 prior to enactment. Dkt.184, 25-26; Dkt.186, at 123-24. It neither hired nor consulted experts. Dkt.184, 25-26; Dkt.186, at 124. Instead, the State merely referenced *Robinson*'s preliminary findings, despite (i) admitting those preliminary decisions never evaluated the lawfulness of SB8 or of any map resembling SB8; (ii) recognizing the *Robinson* case "did not squarely hold that the failure to draw a second majority black district would violate the VRA"; and (iii) never admitting into this case any evidence from *Robinson*. Dkt.184, 22-23; Dkt.186, at 85-91, 123-24.

At no point did any party present a VRA claim or evidence that the VRA required a second majority-Black district. The Robinsons even moved in limine to *exclude* any evidence or argument on the VRA or Gingles factors. Dkt.144; Dkt.144-1. Thus, the district court did "not decide on the record before [it] 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," and reserved the issue for additional record development in the remedial phase of the trial. Dkt.198, at 58-59.

IV. The Three-Judge Court Enjoins SB8 as Unconstitutional Before Proceeding to the Remedial Phase of the Trial.

On April 30, 2024, in a 60-page opinion analyzing the law and comprehensive record, the district court concluded SB8 was an unconstitutional racial gerrymander and prohibited the State "from using SB8's map of congressional districts for any election." Dkt.198, at 59. But the court recognized its task was not complete and trial was not over; "the remedial stage of this trial" had only begun. Dkt.198, at 60.

On May 7, 2024, the district court issued a scheduling order for the remedial phase of the trial. Dkt.219. The court determined it would only order an interim map on June 4, 2024, if the Legislature failed to exercise "its 'sovereign interest' [to enact] a legally compliant map" by then. Dkt.219, at 2-3. It noted the Legislature was in session until June 3, 2024, and had ample time to do so. Dkt.219, at 3.

The district court allowed briefing to proceed concurrently and permitted "[e]ach party, intervenor and amici" to submit one proposed map with unlimited evidentiary support and respond to maps of other parties. Dkt.219, at 3. Parties could raise any VRA concerns for the first time. Dkt.219.

On May 15, 2024, this Court stayed the district court proceedings pending appeal. On July 30, the Robinsons filed their jurisdictional statement.

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 Should Dismiss Because Robinson Intervenors Lack Standing to Appeal.

This Court should dismiss this appeal because Robinson Intervenors, as private parties seeking to defend "the State's map, duly enacted into law by the Legislature and signed by the Governor through the democratic process," Dkt.184, at 8, lack standing. *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019); *Hollingsworth v. Perry*, 570 U.S. 693, 705-07 (2013).

Article III standing "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (citation omitted). An "intervenor cannot step into the shoes of the original party . . . unless the intervenor independently fulfills the requirements of Article III." *Wittman v. Personhuballah*, 578 U.S. 539, 543-44 (2016) (quotation omitted). Before the Court proceeds to the merits, it must ensure Robinson Intervenors have met their burden to show they have suffered an injury in fact, fairly traceable to the appealed order, and redressable by this Court. *Id*. at 543. They 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).

Robinson Intervenors' Jurisdictional Statement nowhere attempts to satisfy Article III's standing requirements. That is because they cannot show a direct stake in the outcome.

Hollingsworth is dispositive. There, private individuals challenged California's Proposition 8 and sued state and local officials responsible for enforcement who, in turn, "refused to defend the law." *Hollingsworth*, 570 U.S. at 702. The district court allowed private, official proponents of Proposition 8 to intervene of right as defendants. *Id.*; 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).[4] Following trial, the district court declared Proposition 8 unconstitutional and enjoined its enforcement. *Hollingsworth*, 570 U.S. at 705. Intervenors appealed. *Id.* But this Court dismissed the intervenors' appeal because they lacked standing. *Id.* at 715. The Court reasoned, the district

[4] Accordingly, even if Robinsons intervened as of right as they suggest in a passing footnote, Robinson Jurisdictional Statement 11 n.3 (which they did not, Dkt.198, at 16; Dkt.184, at 8; Dkt.114, at 2 (finding only "existing representation of their interests *may be* inadequate for the initial phase of the case" (emphasis added))), intervention of right still does not establish Article III standing. *Hollingsworth*, 570 U.S. at 715 (determining intervenors of right lacked standing); *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 (omitting discussion of form of intervention when evaluating standing).

court's order only "enjoined the state officials named as defendants from enforcing" Proposition 8 and did "not order[]" intervenors "to do or refrain from doing anything." *Id*. at 705. Thus, intervenors "had no direct stake in the outcome of their appeal." *Id*. at 705-06 (quotation omitted). The Court likewise rejected intervenors' effort to claim standing on behalf of California, because intervenors had no authority to represent the State in court and had "participated in this litigation solely as private parties." *Id*. at 710. Their commitment to upholding the state law and zealous advocacy did not establish standing. *Id.* at 707.

What was true for the initiative sponsors in *Hollingsworth* and the Virginia House of Delegates in *Bethune-Hill* is even more true for Robinson Intervenors. 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). Their only "interest" is a preference for a generally applicable Louisiana law (SB8). As, the district court concluded

> the intervenors' role in this case is limited to the subject matters permitted by the Court in order to supplement the State's defense. But the map of the plaintiffs' challenge is not the Robinson intervenors' map. It's the State's map, duly enacted into law by the Legislature and signed by the Governor through the democratic process. It's primarily the State's duty to defend the map.

Dkt.184, at 7-8. Robinsons' heavy reliance on the *State's* interest in SB8 throughout their Jurisdictional Statement proves the point. *See, e.g.*, Robinson Jurisdictional Statement 1-2. Finally, 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 Robinsons to do anything. This Court lacks jurisdiction and should dismiss.

II. The District Court Properly Determined Race Predominated.

If the Court reaches the merits, it should affirm. "Racial considerations predominate when '[r]ace was the criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Alexander*, 144 S. Ct. at 1234 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) ("*Shaw II*")) (footnote omitted). States can't escape strict scrutiny by relying on a court case or purported goodwill. "Racial gerrymandering, even for remedial purposes" is still subject to strict scrutiny. *Shaw I*, 509 U.S. at 657. Challengers can show racial predominance through direct or circumstantial evidence, or as here, both. *Id.* presented "overwhelming" evidence of the sort "practically stipulated" as proving racial predominance in prior cases. *Miller v. Johnson*, 515 U.S. 900, 910 (1995) (quotation omitted).

a. Direct Evidence in the Record Proves Racial Predominance.

First, direct evidence abounds in Attorney General Murrill's statements to the Legislature (Dkt.181-1, at 11, 13-15, 17-19; Dkt.198, at 13) and in the confessions of her office during trial (Dkt.184, at 19-27; Dkt.186, at 121-25). *Alexander*, 144 S. Ct. at

1234 ("Direct evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines."). This evidence was not "smoked out over the course of litigation"; it was blatantly admitted. *Id*. "[D]irect evidence of this sort amounts to a confession of error," and the Court need not look further. *Id*.

The State's claim that SB8 was motivated by VRA litigation in the Middle District of Louisiana that would purportedly lead to a two-Black-majority seat mandate, at least pre-appeal, also provides conclusive direct evidence. *Id*. (finding this type of direct evidence "not uncommon because States often admit to considering race for the purpose of satisfying our precedent interpreting the Voting Rights Act of 1965"). Thus, race predominated.

Direct evidence also saturates the legislative record. Dkt.198, at 11-13, 17-20, 41-45. Legislative session transcripts and trial testimony demonstrate the Legislature established an unlawful racial target, the Legislature would not compromise it, and the Legislature subordinated traditional criteria to reach it.

The Legislature's purposeful racial quota of two Black seats demonstrates racial predominance. *Cooper*, 581 U.S. at, 299-301; *Bush v. Vera*, 517 U.S. 952, 962, 976 (1996) (plurality). Key legislators "repeatedly told their colleagues that [two districts] had to be majority-minority." *Cooper*, 581 U.S. at 299. They repeatedly cited and used a "50%-plus racial target." *Id*. at 300; Dkt.181-3, at 4 (Womack); Dkt.181-4, at 4 (same); Dkt.181-6, at 4 (Beaullieu). Legislators relentlessly applied this target as their overriding, nonnegotiable criterion. *See, e.g.*, Dkt.184, at 47-50, 68-69, 79-80; Dkt.181-4, at 26, 32. Sen. Womack and

others repeatedly declared the State "must" reach a certain BVAP in two districts and "had to draw two districts" with a majority BVAP. Dkt.181-3, at 4; Dkt.181-4, at 4, 5, 21; Dkt.181-6, at 4. These statements prove racial predominance. *Cooper*, 581 U.S. at 300; *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017); *Shaw II*, 517 U.S. at 906-07.

Finally, while a violation of traditional redistricting criteria is unnecessary to show racial predominance, *Bethune-Hill*, 580 U.S. at 190, ample direct evidence establishes just that. Dkt.181-3, at 4, 8; Dkt.181-7, at 3-5; Dkt.184, at 72-74. The Legislature believed it "needed to have two majority-minority districts, and any other redistricting guidelines were secondary to that." Dkt.184, at 68; *id.* at 69 ("Certainly the racial component in making sure that we had two performing African American districts was the fundamental tenet that we were looking at. Everything else was secondary to that discussion."). It believed it had to "draw a second majority-minority district prior to any other consideration." *Id.* at 80.

The State intentionally established unlawful "racial quotas" as the overriding, uncompromisable criterion. *Bush*, 517 U.S. at 976 (quotation omitted); *see also Alexander*, 144 S. Ct. at 1234; *Bethune-Hill*, 580 U.S. at 187; *Cooper*, 581 U.S. at 299-301; *Shaw II*, 517 U.S. at 907. Any "race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill*, 580 U.S. at 189 (quoting *Shaw II*, 517 U.S. at 907).

b. Direct Evidence Lies in the State's Jurisdictional Statement.

The State also concedes the point on appeal, recognizing "virtually every legislator (*and* the Governor *and* the Attorney General) proceed from that court-imposed baseline: Two majority-Black districts are mandated by the VRA." State Jurisdictional Statement 18-19. That uncompromisable racial quota proves predominance. *Alexander*, 144 S. Ct. at 1234.

c. Circumstantial Evidence Also Proves Racial Predominance.

Appellees supplemented this direct evidence with extensive circumstantial evidence from credible experts. Dkt.198, at 22-31. The district court engaged in a sensitive inquiry of the record, expert testimony, and demographic maps and determined that "District 6 slashes across the state of Louisiana and includes portions of four disparate metropolitan areas but only encompasses the parts of those cities that are inhabited by majority-Black voting populations, while excluding neighboring non-minority voting populations." Dkt.198, at 36 (quotation omitted). It further determined based on the same that "outside of the New Orleans and East Baton Rouge areas, the state's Black population is highly dispersed across the state," Dkt.198, at 39, and "the unusual shape of [District 6] reflects an effort to incorporate as much of the dispersed Black population as was necessary to create a majority-Black district," Dkt.198, at 41. The record confirms the district court's findings.[5] SB8

[5] Dkt.165-17; Dkt.182-10; Dkt.182-11; Dkt.182-12; Dkt.182-13; Dkt.182-20; Dkt.182-21; Dkt.184, at 93-96; Dkt.185, at 24, 32-33, 35-43.

sacrificed traditional redistricting criteria, including compactness, preservation of core districts, communities of interest, and political subdivisions, to reach this racial quota for District 6.[6] Like the offending districts in *Miller* and *Hays*, District 6 narrowly winds 250 miles from the northwest to southeast corners of the State and across culturally and economically divergent areas to selectively pick up pockets of Black voters and leave four major metropolitan areas bifurcated in its wake. *Miller*, 515 U.S. at 908-09 (noting a district "centered around four discrete, widely spaced urban centers that ha[d] absolutely nothing to do with each other, and stretch[ed] the district hundreds of miles across rural counties and narrow swamp corridors" was a geographic "monstrosity"); *Hays*, 936 F. Supp. at 370. District 6's 250-mile-long winding shape connecting the State's dispersed Black voters to increase its BVAP by 30% makes it "exceedingly obvious" that this "was a deliberate attempt to bring black populations into the district." *Miller*, 515 U.S. at 917 (quotation omitted); *see also Alexander*, 144 S. Ct. at 1234.

In sum, Appellees put on "persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." *Miller*, 515 U.S. at 912-13; *see also Shaw II*, 517 U.S. at 910-16; *Bush*, 517 U.S. 952.

d. Politics Did Not Predominate.

The Legislature's alleged political considerations are irrelevant on this record. In a

[6] Dkt.182-12; Dkt.182-13; Dkt.182-15; Dkt.182-22; Dkt.182-23; Dkt.182-24; Dkt.184, at 94-107; Dkt.185, at 35-37, 45-51, 54-55, 57, 63-68, 73-74.

major reversal of its trial posture, the State now concedes the obvious: politics came *only after* the race-based decision to create another Black-majority district, forcing Louisiana to lose one of its five Republican seats:

> The Legislature did not eliminate a Republican-performing district merely for political purposes; it did so because the courts forced the Legislature to create a second majority-Black district. It was *only then*, in carrying out that directive, that the Legislature heavily weighted its political goals to draw the S.B. 8 map.

State Brief 23. Nor would one expect the Republican Legislature to draw District 6 to forfeit a Republican seat. The district court did not clearly err in finding it "not credible that Louisiana's majority-Republican Legislature would choose to draw a map that eliminated a Republican-performing district for predominantly political purposes."

Finally, even though the State now concedes the racial decision preceded (and was not entangled with) any political decision, Appellees submitted an "alternative map showing that a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance." *Alexander*, 144 S. Ct. at 1235. Specifically, expert testimony and simulations, Appellees' illustrative map, and HB1 itself show the Legislature could have protected four Republican incumbents, including Speaker Johnson, Majority Leader Scalise, and Congresswoman Letlow, while avoiding racial gerrymandering and adhering to traditional redistricting criteria. Dkt.182-16; Dkt.184, at 108-11,

140; Dkt.185, at 24-28; Dkt.198, at 44-45. All show a mapmaker could achieve the Legislature's "legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles." *Easley v. Cromartie*, 532 U.S. 234, 258 (2001). The only reason the Legislature departed from HB1 was race. As the district court reasoned: "[T]he record reflects that the State could have achieved its political goals in ways other than by carving up and sorting by race the citizens of Baton Rouge, Lafayette, Alexandria, and Shreveport. Put another way, the Legislature's decision to increase the BVAP of District 6 to over 50 percent was not required to protect incumbents . . . ." Dkt.198, at 45. The district court did not clearly err in weighing this evidence and concluding race predominated.

The Robinsons fault Appellees for not submitting a map showing "Louisiana could have satisfied the *Robinson* rulings *and also* achieved the Legislature's political goals." Robinson Jurisdictional Statement 22. This map "test" is outlandishly wrong.

First, it wrongly assumes that there was a "*Robinson* ruling" to "satisfy," and that mandating two Black-majority districts is a given fact that can't count as racial motivation. That is plainly wrong as a matter of law. A desire to beat the *Robinson* district court to the punch by imposing the expected remedy in advance is precisely what *proves* racial predominance. Indeed, alleged VRA compliance efforts are how states *usually* trigger a finding of racial predominance under the *Shaw* line. *Shaw II*, 517 U.S. at 911-12; *Miller*, 515 U.S. at 906-08, 917, 921; *Abrams v. Johnson*, 521 U.S. 74, 80 (1997). Louisiana's 1990s claim that DOJ required a nearly identical copy of SB8-6 is exactly what triggered a

finding of racial gerrymandering. *Hays*, 936 F. Supp. at 369. At any rate, the State's independent legislative action renders it responsible, regardless of whether its motive was remedial, strategic, or nefarious. *Miller*, 515 U.S. at 912. Thus, the baseline for testing for race is not *Robinson*, it is HB1, the non-gerrymandered map that *Robinson* (and then the State) sought to displace via SB8.

Given this law, if there had been any factual dispute here about legislative motivation (and there isn't), the correct "test" map would be to determine if it was necessary to create SB8-6 to meet the Legislature's goals of protecting Republican incumbents. That's because alternative maps prove racial predominance precisely by showing the Legislature could have achieved its political objectives without intentionally segregating voters to inch BVAP above the 50% benchmark. *Cooper*, 581 U.S. at 318. Appellees' proposed illustrative map and HB1 did just that. HB1, which was repealed by SB8's gerrymander, protected all five incumbents.

Second, alternative maps are only necessary where there is a factual dispute about whether politics or race drove a given decision. But as just noted, there is no dispute here: the facts show, and the State admits, that the two-district racial quota was set first, and only later did politics determine which one of the five Republicans' seats would be sacrificed to create the second Black-majority district. *Cooper*, 581 U.S. at 318; *id.* at 319 ("An alternative map is merely an evidentiary tool to show that such a substantive violation has occurred; neither its presence nor its absence can itself resolve a racial gerrymandering claim."). *Alexander*, likewise, merely said when direct evidence is slim, an alternative map bolsters a case of

racial predominance. *Alexander*, 144 S. Ct. at 1235, 1249-50. Here, the State's admission ends the matter.

III. The District Court Properly Determined SB8 Could Not Survive Strict Scrutiny Based on *Shaw* and Its Progeny.

Since Appellees satisfied their burden, the "burden shifts to the State to prove that the map can overcome the daunting requirements of strict scrutiny." *Alexander*, 144 S. Ct. at 1236.

a. The State Provided No Compelling Interest on This Record.

The State must first show its "decision to sort voters on the basis of race furthers a compelling government interest." *Id.* (quoting *Cooper*, 581 U.S. at 292). The Court has assumed without deciding that the VRA suffices. *Bethune-Hill*, 580 U.S. at 193. But even with some breathing room for error, the State must still believe the racial gerrymander is "necessary under a proper interpretation of the VRA." *Wis. Legislature*, 595 U.S. at 404 (quoting *Cooper*, 581 U.S. at 306).

Here, the State fails that threshold inquiry: it repeatedly conceded that it did not actually rely on the VRA or believe the VRA required it to draw a second majority-Black district. Dkt.184, at 24-27; Dkt.186, at 121-24. Instead, Louisiana's real "interest" was strategic: disposing of the *Robinson* litigation so that it could draw its own racial gerrymander, achieved through the enactment of SB8. Ruling, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La., filed April 25, 2024). This sort of litigation strategy provides no compelling interest to justify "odious" racial sorting. *Shaw I*, 509 U.S. at 657 (quoting

Hirabayashi v. United States, 320 U.S. 81, 100 (1943)) (citing *Loving v. Virginia*, 388 U.S. 1, 11 (1967)).

Indeed, this tactic is not new, and this Court has long exercised vigilance when States defend strict scrutiny based *on third-party litigation threats regarding the VRA*, rather than asserting their own interest under the VRA itself. Thus, when Georgia claimed to satisfy strict scrutiny because it had acceded to repeated, aggressive DOJ preclearance demands, this Court instantly recognized that "the State's true interest in designing the Eleventh District was creating a third majority-black district to satisfy the Justice Department's preclearance demands." *Miller*, 515 U.S. at 921. That alone, however, did not suffice: "We do not accept the contention that the State has a compelling interest in complying with whatever preclearance mandates the Justice Department issues." *Id.* at 922. So too here: Louisiana has no compelling interest in appeasing litigants or front-running allegedly hostile district courts).

b. The State's Race-Based Decision Was Not Narrowly Tailored.

Even if the State proves it truly intended to comply with the VRA, rather than jumping ahead of a worrisome district court, its task has just begun. The Court must "then determine whether the State's use of race is 'narrowly tailored'—*i.e.*, 'necessary'—to achieve that interest. This standard is extraordinarily onerous because the Fourteenth Amendment was designed to eradicate race-based state action." *Alexander*, 144 S. Ct. at 1236 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 206 (2023)).

i. The District Court Applied the Correct Legal Standard.

The State must present a "strong basis in evidence" that the VRA "*required*" or "*demanded*" such racial sorting. *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 404 (2022) (per curiam) (quotation omitted). Mere belief that "the VRA *might* support race-based districting—not that the statute required it" is insufficient. *Id.* at 403 (citation omitted).

But even a strong basis to believe a VRA violation necessitates two majority-Black districts does not *alone* satisfy narrow tailoring. *Shaw II*, 517 U.S. at 915. That is because a VRA violation somewhere (assuming even that there was a fully litigated decision so holding, which did not happen here) does not permit the State to draw a majority-Black district just anywhere. *LULAC v. Perry*, 548 U.S. 399, 431 (2006); *Bush*, 517 U.S. at 979; *Shaw II*, 517 U.S. at 916-17 (rejecting that "once a legislature has a strong basis in evidence for concluding that a § 2 violation exists in the State, it may draw a majority-minority district anywhere, even if the district is in no way coincident with the compact *Gingles* district" (citation omitted)).

Rather, an intentionally created majority-Black district must remedy the alleged wrong in a particular area. *Shaw II*, 517 U.S. at 916-17. This requires at a minimum a "strong showing of a pre-enactment analysis with justifiable conclusions." *Abbott v. Perez*, 585 U.S. 579, 621 (2018); *Wis. Legislature*, 595 U.S. at 404 (noting that a State "must have a 'strong basis in evidence' to conclude that remedial action was *necessary*, '*before* it embarks on

an affirmative-action program'" (quoting *Shaw II*, 517 U.S. at 910)).

Specifically, *before* enactment, the State must "carefully evaluate" whether the *Gingles* preconditions are met based on "evidence at the district level." *Wis. Legislature*, 595 U.S. at 404-05. The State may not "improperly rel[y] on generalizations" but must instead answer the "local" question—*i.e.* "whether the preconditions would be satisfied as to each district." *Id.* at 404 (quotation omitted). A remedial district that does not contain a "geographically compact" population cannot satisfy *Gingles* 1 or strict scrutiny. *Shaw II*, 517 U.S. at 916; *LULAC*, 548 U.S. at 430-31.

The State cannot outsource this inquiry by relying on third party analyses, whether non-final judicial factfinding at an expedited hearing or a well-supported letter after months of analysis by experts at the U.S. Department of Justice Civil Rights Division, Voting Section. *Shaw II*, 517 U.S. at 911-12, 918; *Miller*, 515 U.S. at 921-24; *Hays*, 936 F. Supp. at 369-71.

Finally, traditional redistricting principles matter here too. A state legislature must always satisfy traditional redistricting principles to comply with the VRA. *Milligan*, 599 U.S. at 30; *LULAC*, 548 U.S. at 431; *Bush*, 517 U.S. at 979. Thus, some earlier law's purported VRA noncompliance cannot justify a new, non-compact district. *Shaw II*, 517 U.S. at 915-17; *Bush*, 517 U.S. at 979. The "leeway" afforded States only allows for "reasonable compliance measures" once the State meets each of these requirements. *Wis. Legislature*, 595 U.S. at 404; *Cooper*, 581 U.S. at 293. It never permits them to forego analysis altogether. In keeping with these

requirements, the district court gave the State ample breathing room and properly concluded the State could not satisfy strict scrutiny based on the record.

ii. The Record Shows the State Failed to Show Its Decision Was Narrowly Tailored.

The State failed to satisfy its onerous burden to show that race-based sorting was necessary to remedy a VRA violation. It conceded at trial it conducted no pre-enactment analysis of whether the VRA required its race-based steps or whether SB8 remedied any VRA violation. Dkt.184, at 24-26; Dkt.186, at 122-25. On strict scrutiny, this alone dooms the State. *Abbott*, 585 U.S. at 621.

The State's complete reliance on the allegedly ominous presence of the *Robinson* district court fails for four reasons.

First, the State and Robinsons admitted no evidence from *Robinson* in the district court to show a strong basis in evidence—assuming such facts exist in a case considering maps nothing like SB8. The State relied on Attorney General video statements referencing the litigation *writ large*. The Robinsons called no *Robinson* VRA witnesses and bitterly fought to exclude any VRA evidence or argument. Dkt.144.

Second, Louisiana and the Robinsons disavowed reliance on any *Robinson* expert reports. Dkt.186, at 124 ("[I]t was also not necessary for the legislators to parse the nuances of the expert reports themselves."); *cf. Shaw II*, 517 U.S. at 910. Instead, like the Robinsons, Louisiana argued that preliminary "rulings" which "did not squarely hold that the failure to draw a second majority black

district would violate the VRA" could alone "supply the strong basis in evidence." Dkt.186, at 123-25.

But third, reliance on preliminary opinions from *Robinson* to provide a strong basis in evidence is misguided. This Court has repeatedly insisted that States cannot simply cite pressure from threatened or ongoing litigation (from DOJ or otherwise) to establish a VRA defense. *Shaw II*, 517 U.S. at 911-14, 918; *Miller*, 515 U.S. at 921-24; *Hays*, 936 F. Supp. at 369-71 (Louisiana failed to show a strong basis in evidence that the VRA required a district nearly identical to SB8-6, despite DOJ's repeated refusal to preclear maps without two Black-majority districts out of seven).

Fourth, the *Robinson* opinions involved dissimilar voters and areas, and the State never frontally attacked the plaintiffs' VRA showings, leaving key arguments unaddressed. The Middle District of Louisiana's findings were based entirely on those plaintiffs' illustrative plans, none of which created majority-Black districts in northwest Louisiana. They instead "connect[ed] the Baton Rouge area to the Delta Parishes along the Louisiana-Mississippi border." *Robinson I*, 605 F. Supp. 3d at 785 (quotation and footnote omitted). The Middle District repeatedly emphasized the State's failure to contest, challenge, or even present evidence in response to plaintiffs' evidence. *Id.* at 823. It decided based on this limited record plaintiffs would "likely" prevail; it did *not decide what the VRA actually required*. *Id.* at 766.

The Fifth Circuit, reviewing for clear error, cautioned that plaintiffs had yet to prove their case: "The Plaintiffs have prevailed at this preliminary stage given the record as the parties have developed it

and the arguments presented (and not presented). But they have *much* to prove when the merits are ultimately decided." *Robinson II*, 37 F.4th at 215 (emphasis added). It also emphasized the State "put all their eggs" in one basket, a strategic misstep. *Id*. at 217. The Fifth Circuit reiterated its wariness after concluding the district court had erred in its compactness analysis. *Id*. at 222.

The Fifth Circuit merits panel again focused solely on the illustrative maps—each of which "connect[ed] the Baton Rouge area and St. Landry Parish with the Delta Parishes far to the north along the Mississippi River"—without analyzing other parts of the State. *Robinson III*, 86 F.4th at 590. The court stressed the limited nature of its clear error review and the lack of a trial on the merits. *Id*. at 592. The Fifth Circuit emphasized the State failed to provide evidence or meaningfully refute or challenge plaintiffs' evidence and the Supreme Court's decision in *Allen v. Milligan* "largely rejected" the "State's initial approach." *Id*. The Fifth Circuit encouraged the State that its failure to address the VRA issues during the preliminary injunction stage did not bind the State in subsequent proceedings and at trial. *Id*. The Fifth Circuit never ordered the State to create two majority-Black districts, and it vacated any order that may have been imposed by the Middle District. *Id*. at 602. There was no court order or mandate to enact SB8 or repeal HB1 in January 2024.

These opinions, "which did not squarely hold that the failure to draw a second majority black district would violate the VRA," did not give the State unfettered license or "breathing room" to enact this unconstitutional scheme, Dkt.186, at 123, when that scheme fell squarely outside the scope, reasoning,

maps, and case or controversy in *Robinson*. Even an established duty to draw another VRA district in a particular area does not allow the State to draw a different majority-minority district elsewhere. *Shaw II*, 517 U.S. at 916-17. The State's reliance is nothing more than a "pure error of law" that cannot satisfy strict scrutiny. *Cooper*, 581 U.S. at 306 (citation omitted).

iii. The Court Should Reject the Robinsons' Request to Create New Law.

The Robinsons argue the "strong basis in evidence" inquiry should not require *Gingles* analysis for SB8—despite the clear holdings of *Wisconsin Legislature v. Wisconsin Elections Commission*, *Cooper v. Harris*, *Bush v. Vera*, and *Shaw II*—because the facts (which also mirror the facts in these cases) warrant a departure. Robinson Jurisdictional Statement 27-30. But this Court has always required the State to analyze whether the alleged remedial district would actually remedy a VRA violation; otherwise, the VRA would completely swallow the Equal Protection Clause. *Shaw II*, 517 U.S. at 916-17.

Furthermore, the State never analyzed SB8-6 or any district resembling it in the *Robinson* litigation or otherwise. Accordingly, any pre-enactment analysis in the *Robinson* litigation cannot support narrow tailoring. *Wis. Legislature*, 595 U.S. at 404-05; *Cooper*, 581 U.S. at 301-04, 306; *LULAC*, 548 U.S. at 430-31; *Shaw II*, 517 U.S. at 916. No one asked the State to "satisfy the *Gingles* preconditions a second time." Robinson Jurisdictional Statement 28. But the State must satisfy them for SB8 at least once.

iv. The District Court Properly Considered Traditional Criteria Under *Gingles* Prong 1.

Finally, the Robinsons claim the district court's analysis of communities of interest was clearly erroneous. They do not contest the court's other redistricting criteria findings for *Gingles* prong 1, even though others such as lack of compactness are dispositive. *LULAC*, 548 U.S. at 430-31 ("A State cannot remedy a § 2 violation through the creation of a noncompact district." (citing *Shaw II*, 517 U.S. at 916)).

But regardless, the record instructs that the district court's communities of interest analysis was not clearly erroneous. For example, Senator Womack conceded SB8 did not consider communities of interest. Dkt.181-3, at 4-5. Other legislators voiced the same. Dkt.181-6, at 4-5; Dkt.181-7, at 4-5; Dkt.184, at 72-74. And Appellees' expert Michael Hefner, a demographer who has 34 years of redistricting experience in Louisiana and has resided in the State his entire life, testified at length about the absence of unitary communities of interest in SB8 and division of traditional communities of interest due to SB8's uncharted path. Dkt.182-8; Dkt.185 at 9-10, 47-51, 57-59, 61-66. Robinsons' alleged I-49 community is a *post-hoc* rationalization, analogous to North Carolina's invalidated I-85 corridor district in *Shaw*. 509 U.S. at 635-36.

IV. The District Court Did Not Unduly Expedite Proceedings.

The State of Louisiana only appeals the injunction order. State Jurisdictional Statement 4-5.

Since Robinsons lack standing on their own, they cannot raise other procedural orders on appeal. *See Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 440 (2017). Even if Robinsons had standing, these claims would fail; the district court did not abuse its discretion.

First, the court did not unduly expedite proceedings. The district court recognized expedition was necessary in light of the parties' interests in expedition, the Secretary's May 15 deadline, and the public interest. Dkt.43; Dkt.62; Dkt.82, at 2; Dkt.184, at 7-8. When Robinsons moved for intervention, they represented they would not delay trial. Dkt.112-1, at 9. They only objected several weeks after they intervened on the eve of trial without any showing of cause. As permissive intervenors, they have no freestanding right to a certain procedural timeline. Given their extensive experience in Louisiana redistricting litigation and their supplemental role in this litigation, they suffered no prejudice. The case was the State's to defend, the State did not oppose this timeline, and in fact, the State argued before this Court that greater expedition from the district court would have been necessary to ensure a map for the 2024 election. *See generally* State and Secretary of State Stay Application. Even the Robinsons bemoaned the lack of time to impose a remedial map given the May 15 deadline in their application for a stay. Robinson Stay Application 6-7. The district court did not abuse its discretion by seeking to accommodate this deadline.

Robinsons raise several other "procedural errors." Robinson Jurisdictional Statement 36. But these are belied by the record. For example, they complain of the lack of discovery; but they took

depositions and did not obtain additional discovery because they had a limited role as permissive intervenors, the State (who oversaw the defense) did not ask for discovery, and Robinsons never presented evidence of necessary discovery or its potential impact on the case outcome. This was not a factually difficult case; the abundance of direct evidence was readily available to the court in the public legislative record and experts were made available for depositions. They also criticize the Court for disallowing evidence from *Robinson v. Ardoin*, but the inadmissibility of this evidence was *due to Robinsons own violation of courtroom policies*: the very fact witness they planned to use to admit the record was present while the court and parties discussed how to establish a foundation for this evidence. Dkt.185, at 103-18. This error falls squarely on them. Finally, they stress the lack of time to put on their case. But they did not even use all the time they had; they were not prejudiced by this order.

CONCLUSION

For the foregoing reasons Appellees respectfully ask the Court to dismiss or summarily affirm and remand for remedial proceedings to continue.

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