NOS. 23A994, 23A1002

IN THE SUPREME COURT OF THE UNITED STATES

PRESS ROBINSON, ET AL.

Applicants,

v.

PHILLIP CALLAIS, ET AL.

Respondents.

NANCY LANDRY, SECRETARY OF STATE OF LOUISIANA, ET AL.

Applicants,

v.

PHILLIP CALLAIS, ET AL.

Respondents.

On Emergency Application for Stay Pending Appeal from the United States District Court, Western District of Louisiana

Brief for Edward Galmon, Sr., Cierra Hart, Norris Henderson, and Tramelle Howard ("*Galmon Amici*") as *Amici Curiae* in Support of Applicants

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INTEREST OF *AMICI* CURIAE[1]

Galmon Amici are four Black Louisiana voters whose successful Voting Rights Act litigation in related proceedings resulted in the enactment of the congressional districting map that the court below permanently enjoined. *Galmon Amici* file this brief to highlight the equitable factors favoring a stay of the lower court's injunction. Their own experiences, representative of hundreds of thousands of similarly situated Black Louisianians, demonstrate the several threats to the public interest if a stay is not issued. *Galmon Amici* have an interest in the integrity of the civil litigation system, such that rights vindicated in one court are not immediately revoked by another court in rushed proceedings without their participation. And they have an interest in their right to an undiluted vote—a right denied in the 2022 elections and now under assault once more.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

For over two years, *Galmon Amici* have been litigating to secure what Section 2 of the Voting Rights Act promises them: a second congressional district where Black Louisianians like themselves have an equal opportunity to elect their candidates of choice. Yet every time they have been on the cusp of achieving meaningful relief, they have been stymied.

[1] In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The National Redistricting Foundation made a monetary contribution to fund the preparation and submission of this brief.

Galmon Amici won a preliminary injunction on June 6, 2022, when the Middle District of Louisiana determined that they and other consolidated plaintiffs were substantially likely to prevail on the merits of their claims, s*ee Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022) ("*Robinson I*"), *preliminary injunction vacated*, 86 F.4th 574 (5th Cir. 2023), but they were denied relief for the 2022 elections when—in a posture mirroring this one—this Court stayed the preliminary injunction while it considered the appeal of another Section 2 case raising similar issues. *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) (mem.). This Court later vacated that stay and dismissed the writ of certiorari as improvidently granted after it resolved the related appeal. *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023) (mem). *Galmon Amici* subsequently litigated toward an October 3, 2023, remedial hearing to effectuate the injunction they had won, but the State Defendants sought a writ of mandamus from the Fifth Circuit, which responded by further postponing any remedy by requiring additional time for Louisiana's Legislature to consider enacting a new map, *In re Landry*, 83 F.4th 300, 303–04 (5th Cir. 2023), *stay denied sub nom.*, *Robinson v. Ardoin*, 144 S. Ct. 6 (2023) (mem.). The Legislature never requested such relief, but it utilized that time to enact Senate Bill 8 ("S.B. 8"), which cured the Section 2 violation. Then, on April 30, 2024, *another* district court (the court below) permanently enjoined that map after a rushed trial, from which *Galmon Amici*—despite their best efforts—were excluded entirely.

The district court's injunction was not rooted in a concern that Louisiana failed to comply with its Section 2 obligations—the principal defect plaguing Louisiana's congressional plan for the last several years. Rather, the court faulted Louisiana for intentionally creating the second Black-opportunity district that Section 2 requires. By enjoining S.B. 8 in this circumstance, the court below threatens to destroy the rights of Section 2 litigants like *Galmon Amici*, who can no longer count on a total victory and full remedy sticking for more than a few meaningless months because of gamesmanship, corner-cutting, and legal error.

Permitting the injunction to stand would be particularly inequitable in these circumstances given this Court's previous encounter with Louisiana redistricting proceedings. Just as this Court stayed the Section 2 injunction of Louisiana's districting plan that *Galmon* Amici secured in 2022 because similar legal issues were under consideration in another case, the present racial gerrymandering injunction raises issues parallel to those in *Alexander v. South Carolina State Conference of the NAACP*, No. 22-807 (U.S. argued Oct. 11, 2023), which is currently awaiting a merits decision from this Court. The same principles that warranted a stay in 2022 warrant a stay now.

BACKGROUND

I. *Galmon Amici* successfully litigated their Section 2 challenge to Louisiana's congressional districting plan.

After the U.S. Census Bureau delivered the 2020 census results, the Louisiana Legislature enacted a new congressional districting plan, over the Governor's veto, on March 30, 2022. *Robinson I*, 605 F. Supp. 3d at 767–68. That

same day, *Galmon Amici* filed a complaint in the Middle District of Louisiana alleging that Louisiana's new congressional map, H.B. 1, violated Section 2 of the Voting Rights Act because it failed to include a second district where Black Louisianians would have an opportunity to elect their candidates of choice. Complaint, *Galmon v. Ardoin*, No. 3:22-cv-00214-BAJ-RLB (M.D. La. Mar. 30, 2022), ECF No. 1. That action was joined with a parallel suit brought by other Black voters and civic organizations (*Robinson* Applicants), and on April 15, 2022, the plaintiffs in both cases separately moved to preliminarily enjoin the use of the enacted congressional map. After legislative leaders and the State of Louisiana intervened to defend the map, *Robinson I*, 605 F. Supp. 3d at 768, the Middle District held a five-day evidentiary hearing in May 2022, where the court considered 244 exhibits and heard testimony from 22 witnesses, including 15 expert and 7 fact witnesses.

On June 6, 2022, the Middle District issued a 152-page ruling and order finding that *Galmon Amici* were substantially likely to prevail on their Section 2 claim. *See id.* at 766. The Middle District made several careful and critical determinations in reaching its conclusion. First, it found that the plaintiffs had established all three *Gingles* preconditions. *Id.* at 831, 840–42. Next, after analyzing the Senate Factors, it concluded that the totality of the circumstances weighed in favor of the plaintiffs and found that they "are substantially likely to prevail on the merits of their vote dilution claim." *Id.* at 851. Additionally, the Middle District evaluated and thoroughly rejected defendants' contentions that any Louisiana congressional "map with two majority-Black districts" is a "racial gerrymander[] as

a matter of law," *id.* at 831–32, and that race predominated in plaintiffs' illustrative maps because their mapdrawers intentionally sought to draw two majority-Black districts, *id.* at 834–35; *see also id.* at 838 ("Race consciousness does not lead inevitably to impermissible race discrimination." (quoting *Shaw v. Reno*, 509 U.S. 630, 646 (1993))). The Middle District preliminarily enjoined H.B. 1 and "provide[d] the Legislature an opportunity to enact a new map that is compliant with Section 2 of the Voting Rights Act." *Id.* at 858.

Defendants immediately appealed to and sought a stay of the injunction in the Fifth Circuit, arguing primarily that "Plaintiffs' illustrative plans are racial gerrymanders which cannot satisfy the first (or any other) *Gingles* condition." Sec'y of State's Emergency Mot. for Stay Pending Appeal at 1, *Robinson v. Ardoin*, No. 22-30333 (5th Cir. June 10, 2022), ECF No. 45. On June 12, 2022, the Fifth Circuit denied a stay pending appeal, recognizing that defendants had not shown they were likely to succeed on the merits of their appeal. *Robinson v. Ardoin*, 37 F.4th 208, 218 (5th Cir. 2022). In so doing, the Fifth Circuit specifically rejected defendants' racial gerrymandering defense, holding that "racial gerrymandering is far from inevitable" in drawing a second majority-Black district in Louisiana and that the "doctrine presents no obstacle to orders like the one issued by the [Middle District]." *Id.* at 224. It further noted that in adopting a remedy to the likely Section 2 violation, the "Legislature will be free to consider" any number of maps from the legal and legislative record "or come up with new ones and [] weigh whatever factors it chooses alongside the requirements of *Gingles*," a "difficult" task but one from

which "the Legislature will benefit from a strong presumption that it acts in good faith." *Id.* at 223–24.

Defendants then applied for a stay from this Court. On the eve of the remedial hearing set for June 29, 2022, this Court treated that application as a petition for certiorari, granted the petition, and ordered the action "held in abeyance pending this Court's decision in [*Allen v. Milligan*, 599 U.S. 1 (2023)]," a Section 2 appeal out of Alabama. *Ardoin*, 142 S. Ct. at 2892. Thus, *Galmon Amici* and every other Louisiana elector voted in the 2022 congressional election under a map that lacked the second Black-opportunity district that *Galmon Amici* had demonstrated Section 2 likely requires. A year later, this Court reaffirmed the Section 2 precedent applied by the district courts in Alabama and Louisiana, *see Allen*, 599 U.S. at 42, and shortly thereafter—over the objections of defendants, who continued to press racial gerrymandering arguments, *see* Letter of La. Att'y Gen. & Sec'y of State, *Ardoin v. Robinson*, No. 21-1596 (U.S. June 8, 2023)—vacated the Louisiana stay and dismissed the writ of certiorari as improvidently granted, *Ardoin*, 143 S. Ct. at 2654.

After proceedings resumed in the district court and approached a remedial hearing for a second time, defendants won a writ of mandamus from the Fifth Circuit, vacating the remedial hearing again. *In re Landry*, 83 F.4th at 303. While the mandamus panel refrained from criticizing the district court's injunction on the merits and ignored each of the reasons that defendants offered for a writ of mandamus, the panel nonetheless determined that the Legislature was entitled to

additional time to attempt its own remedy of the Section 2 violation. *Id.* at 306–07. The panel emphasized that "section 2 must be vindicated," but it recognized that judicial remedies are disfavored because map-selection "necessarily involves the exercise of discretion by federal courts whose judgments will interfere with a primary constitutional structural device of self-government: making decennial districting choices about representation in legislative bodies." *Id.* at 307–08; *see also id.* at 308 (courts should "accomodat[e] to the greatest extent the legislatures' ability to confect their own remedial plans").[2]

A few months later, a separate Fifth Circuit panel affirmed the district court's analysis on the merits, finding that *Galmon Amici* were indeed likely to succeed on their Section 2 claim. Nonetheless, it vacated the preliminary injunction because at the time of its November 10, 2023 order, the next election was no longer sufficiently imminent to warrant interim relief. *Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023), *reh'g en banc denied* No. 22-30333 (5th Cir. Dec. 15, 2023). The Fifth Circuit provided the Legislature another "opportunity to consider a new map now that we have affirmed the district court's conclusion that the Plaintiffs have a likelihood of success on the merits," and expressed its intention that a lawful map would be in place for the 2024 elections. *Id.* at 601–02.

[2] In concurring in the denial of the application to stay this order, Justice Jackson noted that "as [the Court has] previously emphasized, this litigation should be resolved 'in advance of the 2024 congressional elections in Louisiana.'" *Robinson*, 144 S. Ct. at 6 (mem.) (Jackson, J., concurring) (quoting *Ardoin*, 143 S. Ct. at 2654).

Having failed to rebut their Section 2 obligations before the Middle District, Fifth Circuit stay panel, Fifth Circuit mandamus panel, Fifth Circuit merits panel, Fifth Circuit en banc, and this Court, Louisiana's political branches accepted their responsibility to craft a congressional districting plan with the requisite second Black-opportunity district and enacted S.B. 8. *See Robinson* App. to Emergency Appl. for Stay of Inj. 430–31, *Robinson v. Callais*, No. 23A994 (U.S. May 8, 2024) ("*Robinson* App.") (collecting statements from legislators that the special legislative session was called in response to decisions by the Middle District, Fifth Circuit, and this Court making clear that Section 2 required an additional Black-opportunity district, and that the Legislature had to act to preempt a judicial remedy that might not reflect the Legislature's policy preferences). Satisfied that S.B. 8 remedied *Galmon Amici*'s claims, the Middle District dismissed their complaint on April 25, 2024. Ruling Granting Defendants' Mot. to Dismiss at 13–14, *Robinson v. Landry*, No. 3:22-cv-211-SDD-SDJ (M.D. La. Apr. 25, 2024), ECF No. 371.[3]

II. The Western District of Louisiana enjoined the Legislature's remedial map.

Shortly after S.B. 8's enactment, twelve voters ("*Callais* Plaintiffs") challenged the new map in the Western District of Louisiana as a racial gerrymander. By agreement of *Callais* Plaintiffs and Defendant Secretary of State—who had spent the previous two years seeking to delay litigation in the

[3] Now that S.B. 8 is enjoined and thus no longer relieves their Section 2 injury, *Galmon Amici* moved for reconsideration of the court's dismissal on May 1, 2024. *See Robinson*, No. 22-cv-211-SDD-SDJ (M.D. La. May 1, 2024), ECF No. 372. That motion is awaiting decision.

Middle District—the proceedings advanced at lightning speed. *See* Unopposed Mot. for Case Mgmt. Conf. & Expedited Scheduling, *Callais v. Landry*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. Feb. 19, 2024), ECF No. 43 (requesting expedited schedule); Elec. Order Granting Mot. to Set Expedited Br. Schedule, *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS (Feb. 21, 2024), ECF No. 62 (granting expedited schedule). The complaint was filed on January 31 and served on February 8. *See Robinson* App. 1–33; Executed Summons, *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. Feb. 8, 2024), ECF No. 29. Exactly 60 days later, on April 8, the three-judge district court commenced a 2.5-day preliminary injunction hearing consolidated with trial on the merits. *Robinson* App. 164–66.

Galmon Amici's efforts to participate in this trial were thwarted at every turn. *See id.* at 167–75 (denying intervention to *Galmon Amici*); *id.* at 255–58 (denying *Galmon Amici*'s motion to reconsider denial of intervention); Order, *Callais v. Landry*, No. 24-30177 (5th Cir. Mar. 26, 2024), ECF No. 40-2 (denying *Galmon Amici*'s motion to expedite the appeal of their denial of intervention). Even though *Galmon Amici* moved to intervene before any other party entered an appearance, and even though the district court credited that *Galmon Amici* had significant interests that could be impaired by the action, the court determined that *Galmon Amici* did not satisfy the requirements for intervention because their

interests were adequately represented by later-moving intervenors.[4] *Robinson* App. 172–74.

As liability proceedings raced toward the trial date, discovery was significantly truncated despite the heavily fact-intensive nature of *Callais* Plaintiffs' racial gerrymandering claim. *See id.* at 271–72 (recounting minimal depositions and expert preparation). At trial, the *Robinson* Applicants—whose intervention was granted only 15 business days earlier on a motion to reconsider a previous denial of their motion to intervene, *id.* at 255–58—supplied the primary defense of S.B. 8. The Secretary of State and State of Louisiana both declined to take any depositions, submit any expert reports, or call any witnesses. The Secretary did not contribute *any* substantive defense of S.B. 8, and the State presented a decidedly weak defense, presenting, in total, approximately ten minutes of video excerpts from the legislative record before resting its case. *Robinson* App. 699–703; Minutes of Court:

[4] Recognizing the error of this exclusion much too late, the district court *sua sponte* reconsidered its denial of intervention on May 3, 2024—weeks after trial had concluded, and only after *Galmon Amici* had filed their opening brief on appeal of the intervention denial in the Fifth Circuit, *Galmon* Movants-Appellants' Opening Br., *Callais*, No. 24-30177 (5th Cir. Mar. 25, 2024), ECF No. 22, and their motion for reconsideration of the Middle District's dismissal order in light of the injunction of S.B. 8, *supra* n.3—limiting *Galmon Amici*'s participation to any forthcoming remedial proceedings. *See* Order on Recons. of Mot. to Intervene, *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. May. 3, 2024), ECF No. 205. *Galmon Amici* intend to transfer their pending appeal of their exclusion from the liability phase, currently pending before the Fifth Circuit, to this Court. *See Hays v. Louisiana*, 18 F.3d 1319, 1320–21 (5th Cir. 1994) (determining that jurisdiction to decide interlocutory appeal of denial of intervention transferred from court of appeals to Supreme Court once the Supreme Court accepted an appeal from a three-judge court's ruling on the merits).

Bench Trial – Day 3, *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. Apr. 10, 2024), ECF No. 178.

On April 30, 2024—12 weeks after the initial complaint was filed—the Western District determined that S.B. 8 is unconstitutional and permanently enjoined the State of Louisiana from using "S.B. 8's map of congressional districts for any election." *Robinson* App. 443. After the district court declined to stay its injunction, *see id.* at 553–54, the *Robinson* Applicants' request for stay from this Court quickly followed. The State of Louisiana and Secretary of State also jointly requested a stay from this Court earlier this morning, emphasizing that insufficient time remains to implement a congressional districting map other than S.B. 8—which the court below enjoined—or H.B. 1—the previously enacted map that *Galmon Amici* had established was likely to violate Section 2. State of Louisiana's Emergency Appl. for Stay Pending Appeal 5, 6 n.1, *Landry v. Callais*, No. 23A1002 (U.S. May 10, 2024) ("State's Stay Appl.").

ARGUMENT

A stay pending appeal is appropriate where the legal issues satisfy the Court's certiorari standards, where there is "a fair prospect" that the Court will reverse the judgment below, and where irreparable harm will likely result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In close cases, the Court "explore[s] the relative harms to applicant and respondent, as well as the interests of the public at large." *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers) (collecting cases). *Galmon Amici* share *Robinson*

Applicants' views of the merits and write separately to underscore the severe threat of irreparable harm that they and the public will suffer absent a stay.

I. A stay is appropriate because this Court is presently adjudicating similar issues.

Just like in 2022, when this Court stayed an injunction of Louisiana's congressional map pending its adjudication of similar legal issues, *Ardoin*, 142 S. Ct. at 2892, a stay is appropriate now. In *Alexander v. South Carolina State Conference of the NAACP*, this Court is actively considering questions mirroring those here, including whether a finding of racial gerrymandering is appropriate where the district court (according to appellants) failed to presume the legislature's good faith, failed to disentangle race from politics, and failed to consider whether the challenged congressional district inflicts a discriminatory effect. *Compare* Questions Presented, *Alexander*, No. 22-807 (U.S. argued Oct. 11, 2023), *with Robinson* App. 451 (Stewart, J., dissenting) (highlighting presumption of good faith, which was missing from majority's analysis); *id.* at 464 ("The legislative record in this case is inundated with both direct and circumstantial evidence that political considerations predominated in the drafting and passing of S.B. 8."); *id.* at 445 n.1 ("Notably, none of the plaintiffs in this case demonstrated that S.B. 8 had a discriminatory effect on them based on their race."). And whereas the three-judge *Alexander* panel postponed remedial proceedings pending resolution of the appeal, Order, *S.C. State Conf. of the NAACP v. Alexander*, No. 3:21-cv-03302-MGL-TJH-RMG (D.S.C. Feb. 4, 2023), ECF No. 501; *see also* Order, *S.C. State Conf. of the NAACP*, No. 3:21-cv-03302-MGL-TJH-RMG (D.S.C. Mar. 28, 2024), ECF No. 523 (postponing injunction

to commence after the 2024 election), here the district court is bulldozing ahead, *see* *Robinson* App. 553–54; *id.* at 1079–82.[5]

Having stayed an injunction that promised to afford Black Louisianians relief in one election cycle, it would be inconsistent with equitable principles and contrary to the public interest to decline in the very next election cycle to stay a subsequent injunction that robbed Black Louisianians of that same relief.

II. A stay is appropriate because the decision below threatens to completely stymie Section 2 relief.

The district court's approach is inconsistent with the well-established judicial recognition that legislative remedies to redistricting issues should be preferred, *see* *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978), because it would apply a negative presumption—that will often prove to be fatal—wherever a legislature seeks to remedy a Section 2 violation while pursuing lawful political interests other than traditional districting criteria. This reasoning would consign Section 2 plaintiffs to an impossible position. A strong Section 2 case makes it more likely that a legislature will adopt a new map, both because a remedial map is likely to be required and because the legislature would forfeit important prerogatives if it abdicated the remedial process to the judiciary. A legislative remedy, however, makes it more likely that the remedial map will reflect partisan- and incumbent-driven interests, which, according to the court below, makes it more likely that the

[5] Should this Court reverse in *Alexander* or otherwise clarify the standard for racial gerrymandering claims, then this Court should vacate the injunction below and remand for consideration in light of *Alexander*.

map will be enjoined. That is bad law, and it is extremely prejudicial to Louisiana voters who have already suffered one election under unlawful maps and who—despite doing everything by the book to remedy their Section 2 injury—are running out of time to avoid a repeat of that irreparable harm.

The court below never mentioned the presumption of good faith due to legislatures, let alone applied it in any meaningful way. That presumption is critical in this case, where the Legislature made clear time and again that its creation of a second Black-opportunity district was motivated not by any invidious intention to sort its citizens by race, but rather by an earnest desire to comply with legal obligations that had been thoroughly litigated and unambiguously confirmed. As the court below summarized,

> The record includes audio and video recordings, as well as transcripts, of statements made by key political figures such as the Governor of Louisiana, the Louisiana Attorney General, and Louisiana legislators, all of whom expressed that the primary purpose guiding SB8 was to create a second majority-Black district due to the *Robinson* litigation.

Robinson App. 425; *see also id.* at 426–27 (compiling representative record evidence). Far from crediting this extensive evidence of the Legislature's efforts to comply with federal law as indicia of good faith, however, the district court recast the statements as "direct evidence" of unconstitutional intent. *See id.* at 425. Putting aside the several ways this makes a hash of redistricting law, *see Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 196 (2017) (recognizing states may consider race in redistricting where they have "good reasons" for believing the VRA requires it), the district court's approach puts litigants like *Galmon Amici* in an impossible position.

For two years, *Galmon Amici* have gone from courthouse to courthouse, winning their injunction and then withstanding every appeal, demonstrating with reams of evidence and analysis their right to the second opportunity district that Section 2 guarantees to Black Louisianians. And for two years the State resisted, finally acquiescing only once it was clear that resistance could no longer be sustained in good faith. *See, e.g.*, *Robinson* App. 394 (citing Governor Landry's statement that the State had "exhausted all legal remedies" and had "labored with this issue for far too long"). Yet it was the very strength of *Galmon Amici*'s case, according to the district court's up-is-down logic, that doomed the remedial map. Had *Galmon Amici* not presented such comprehensive evidence of Section 2's requirements at the preliminary injunction hearing—resulting in a decision that was left undisturbed on the merits by no less than five courts to consider the issue, including this Court and the Fifth Circuit Court of Appeals—perhaps the State would have pursued the Middle District litigation through trial and further appeals. It was only because the inevitable conclusion of protracted litigation—the judicial adoption of a remedial map—was so apparent that the Legislature accepted the preliminary injunction findings and acted to ensure its own interests would be reflected in the new map. *See id*. at 430–31 (cataloging evidence of this motivation).

The Legislature's interests, like those offered in defense of the map at issue in *Alexander*, were fundamentally political. *See id*. at 419 (acknowledging "[i]t is clear from the record and undisputed that political considerations – the protection of incumbents – played a role in how [the challenged district] was drawn"); *see also*

id. at 759 (bill sponsor Senator Womack stating, "[I]t was strictly politics [that] drove this map."). A legislature's decision to avoid an apolitical judicial remedy by enacting a Section 2-compliant districting map that attempts to protect favored incumbents and national party leaders, *see id.* at 401–02 (recounting evidence), even at the expense of other traditional districting criteria, cannot operate to deprive Section 2 plaintiffs of the fruits of their victory.

If a State's creation of an additional Black-opportunity district may be permanently enjoined wherever a legislature accedes to a judicial edict requiring that district and pursues political interests while doing so, then every Section 2 victory could prove ephemeral. Under the district court's logic, if a legislature sincerely desires to remedy a Section 2 violation proved in court, evidence of that sincere motivation will subject any legislative remedy to strict scrutiny, and the legislative remedy will fail strict scrutiny if the political branches' remedial map features legitimate interests other than maximizing compactness and minimizing political boundary splits.

Because the only reason for a legislature to take the districting pen back from the judiciary after the finding of a Section 2 violation is precisely to advance interests other than the traditional criteria that a court will be obligated to prioritize, the decision below would set every Section 2 action on a doom loop. If a State wants to provide a good-faith remedy for a well-founded Section 2 violation, it will intentionally create an additional minority-opportunity district that reflects political leaders' own parochial interests—dooming the map. And if a State wants to

stymie any meaningful Section 2 relief, it needs only to intentionally create an additional minority-opportunity district that reflects political leaders' own parochial interests. Thus, by failing to credit legislative good faith, the court below incentivizes and rewards *bad faith*. Here, the presumption of good faith, and the substantial "breathing room" that legislatures in this situation must be afforded, *Bethune-Hill*, 580 U.S. at 196, should have fully inoculated S.B. 8 from *Callais* Plaintiffs' attack.

III. A stay is appropriate because the decision below was infected with procedural error.

The court below was in such a hurry to enter final judgment that it never meaningfully grappled with the distortions that it was creating. "[R]ushed, high-stakes, low-information decisions" like these inevitably make for bad law. *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay). Each of these perils is present here.

First, the hypersonic sprint from service of the complaint to a final merits decision after trial—less than 12 weeks in all—is, to *Galmon Amici*'s knowledge, unprecedented for a racial gerrymandering case. *Cf. In re Landry*, 83 F.4th at 305 (warning "the district court's unique rush to remedy" *16 months* after preliminary injunction threatened an "outcome [that] would embarrass the federal judiciary and thwart rational procedures," requiring writ of mandamus).

Second, the stakes are grave, as the voting rights of hundreds of thousands of Black Louisianians hang in the balance. The consequences of the district court's injunction are especially severe given representations to this Court by the State and

the Secretary warning that, if the injunction is not stayed, they will have no choice but to administer a *second consecutive election* under H.B. 1—the map that was repealed over four months ago—because the Secretary did nothing to update its computer system with enacted S.B. 8. State's Stay Appl. 5, 6 n.1. *Galmon Amici* had finally succeeded in replacing H.B. 1 after one prejudicial election, two years of litigation, and decisions from three courts (the Middle District, the Fifth Circuit motions panel, and the Fifth Circuit merits panel) confirming that H.B. 1 likely violates Section 2. It simply cannot be the case that, like Sisyphus, *Galmon Amici* can never truly achieve relief, no matter how close they seem to get.

Third, the district court's decision was decidedly low-information. It was made on an incomplete record, as full discovery was never completed, *see Robinson* App. 271–72 (schedule did not allow for any depositions of legislators in legislative intent case, or for full depositions of *Callais* Plaintiffs' experts), and the court excluded all evidence from the two-year Section 2 proceedings, Trial Tr. Vol II at 351:79–357:10, 357:25–362:11, 417:3–423:1, *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. Apr. 9, 2024). It also lacked full adversity, as the rushed schedule was proposed by Plaintiffs and the Secretary of State—who expressly took no position on the merits in the litigation—before intervention was granted to any party defending S.B. 8. *See* Unopposed Mot. for Case Mgmt. Conf. & Expedited Scheduling, *Callais*, No. 3:24-cv-00122-DCJ-CES-RRS, (W.D. La. Feb. 19, 2024), ECF No. 43. Finally, it excluded key stakeholders, as intervention was denied to *Galmon Amici* despite findings sufficient to establish intervention as of right. *See*

Robinson App. 167–75 (finding *Galmon Amici*'s motion to intervene was timely and identified significant interests that could be impaired by the litigation, but denying intervention because interests were adequately represented); *id*. at 255–58 (finding *Galmon Amici*'s interests were *not* adequately represented by parties existing at the time *Galmon Amici* moved to intervene, but denying reconsideration of denial of intervention); Fed. R. Civ. P. 24(a).

This Court should stay the injunction below while it reviews these and other significant errors in full.

CONCLUSION

Galmon Amici respectfully request that the Court stay the district court's injunction until this appeal is resolved.

Respectfully submitted,

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