No. __-_____

In the Supreme Court of the United States

IN RE JEFF LANDRY, *IN HIS OFFICIAL CAPACITY AS THE LOUISIANA ATTORNEY GENERAL,* ET AL.

EMERGENCY APPLICATION FOR STAY OF WRIT OF MANDAMUS

Megan C. Keenan
Sarah Brannon
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th St., NW
Washington, DC 20005

Dayton Campbell-Harris
Sophia Lin Lakin
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Fl.
New York, NY 10004

Stuart Naifeh
Counsel of Record
Leah Aden
Kathryn Sadasivan
Victoria Wenger
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
snaifeh@naacpldf.org

R. Jared Evans
I. Sara Rohani
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
700 14th Street NW, Ste. 600
Washington, DC 20005

Counsel for Plaintiffs-Applicants
Additional counsel listed on inside cover

Nora Ahmed
Stephanie Willis
ACLU FOUNDATION OF
LOUISIANA
1340 Poydras St, Ste. 2160
New Orleans, LA 70112

T. Alora Thomas-Lundborg
Election Law Clinic
HARVARD LAW SCHOOL
6 Everett Street, Ste. 4105
Cambridge, MA 02138

Tracie Washington
LOUISIANA JUSTICE
INSTITUTE
Suite 132
3157 Gentilly Blvd.
New Orleans LA, 70122

Robert A. Atkins
Yahonnes Cleary
Jonathan H. Hurwitz
Amitav Chakraborty
Adam P. Savitt
Arielle B. McTootle
Robert Klein
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

John Adcock
ADCOCK LAW LLC
3110 Canal Street
New Orleans, LA 70119

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Plaintiffs-Applicants are Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, the National Association for the Advancement of Colored People Louisiana State Conference, and Power Coalition for Equity and Justice.

Defendants-Respondents are R. Kyle Ardoin, in his official capacity as Secretary of State for Louisiana, and the State of Louisiana, by and through Attorney General Jeff Landry.

The proceedings below were *In re Landry*, No. 23-30642 (5th Cir. Sept. 28, 2023). On September 28, 2023, a Fifth Circuit motions panel, in a split decision, granted in part the State's petition for writ of mandamus and vacated the October 3, 2023 remedial hearing set by the district court remedial hearing set by the district court in No. 3:22-cv-211-SDD (M.D. La.) to effectuate its June 6, 2022 preliminary injunction ruling.

RULE 29.6 DISCLOSURE STATEMENT

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

Power Coalition for Equity and Justice is a non-profit coalition of community organizations that, among other things, works to engage voters in Louisiana. There are no parents, subsidiaries and/or affiliates of the Power Coalition for Equity and Justice that have issued shares or debt securities to the public.

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TO THE HONORABLE SAMUEL ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Yesterday, a divided motions panel of the Fifth Circuit took the extraordinary and unprecedented step of issuing a writ of mandamus cancelling a remedial hearing that had been scheduled two and a half months before and granting relief that no party has asked for: an opportunity for the legislature to develop its own remedy for the likely vote dilution found by the district court. In so doing, the panel indulged a mandamus petition from two of the three defendants in the underlying litigation (but notably not the intervenor leaders of the Louisiana Legislature) seeking relief that the State had sought repeatedly through ordinary channels and that had repeatedly been denied.

This Court has cautioned that mandamus is a "drastic and extraordinary remed[y] . . . reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259–60 (1947). It is not a tool for appellate courts to manage district court dockets. Nor should it serve as a substitute for appeal. Yet, the Fifth Circuit's grant of mandamus here does just that. The motions panel usurped the appellate process and asserted unprecedented control of the district court's ordinary docket management decisions, including whether and when to set a case for trial and whether and when to hold a hearing regarding a remedy for what the district court had already preliminarily enjoined as a likely violation of Section 2 of the Voting Rights Act.

The panel's rationale—that the district court had failed to provide the Legislature an adequate opportunity in the first instance to develop its own

remedial plan—is unsupported by the record. And the panel provides relief that none of the defendants—and especially not the Legislative Intervenors—has identified as relief they want or would avail themselves of if it were offered. The writ of mandamus injects unjustified and unnecessary delay into remedial proceedings, improperly micromanages the district court's docket, and interferes with the jurisdiction of a merits panel of the Fifth Circuit that is scheduled to hear argument on the State's appeal of the preliminary injunction in just one week.

This Court should stay the writ of mandamus and the accompanying mandate. If the Court declines to grant the stay, it may wish to construe this application as a petition for writ of certiorari, grant the petition, and summarily reverse. Plaintiffs are likely to succeed in showing that mandamus was improper here. None of the three settled requirements for issuance of such an extraordinary writ are satisfied.

First, the State did not establish a clear and indisputable right to relief.[1] On the contrary, the relief the State sought—to vacate the remedial hearing scheduled by the district court for October 3–5, 2023—was for the Fifth Circuit to override the district court's management of its own docket. Courts have consistently adhered to the principle that management of the district court's docket is a matter left to the discretion of that court, and have accordingly denied mandamus petitions seeking such relief. And for good reason in this instance, as the district court had already

[1] Plaintiffs use "the State" to refer to Louisiana Attorney General Jeff Landry and Louisiana Secretary of State Kyle Ardoin.

considered the issue on the merits, saw the need to schedule a hearing on remedies, and scheduled that hearing with ordinary calendaring considerations and judicial economy in mind. Under the mandamus standard, the court of appeals had no business overriding the district court's decision about where to put that hearing on its calendar.

Worse, the relief the Fifth Circuit panel granted—an opportunity for the Legislature to draw a remedial map—was not even a remedy the State sought, let alone established a clear and indisputable right to obtain. While the panel's principal rationale for issuing the writ was that the Louisiana Legislature should be afforded an opportunity to enact a new map in compliance with the district court's injunction, the Legislature has already had multiple opportunities to enact a new map and has not done so. Nor has the Legislature expressed any desire or intent (nor, since this Court vacated its stay of the preliminary injunction, made any request of the district court or Fifth Circuit) to draw a new map.

Second, the State did not demonstrate that they had no adequate means other than mandamus to obtain relief. On the contrary, the state has repeatedly sought identical relief through ordinary channels: In June 2022, it sought a stay of the injunction from the Fifth Circuit; it then sought and received a stay from this Court; after that stay was lifted, it asked this Court to retain and hear the case on the merits or in the alternative to vacate the preliminary injunction and remand; on remand to the Fifth Circuit, it again requested vacatur of the preliminary injunction; and in the district court, it has filed repeated requests to cancel or

reschedule the remedial hearing. Their arguments to stay the remedial hearing have already been briefed before the Fifth Circuit—time,[2] and time,[3] and time[4] again—and are indeed scheduled to be *heard at oral argument* before the Fifth Circuit's merits panel one week from today, on October 6, 2023. Any objections the State may have to additional rulings by the district court following a remedial hearing can likewise be presented on appeal in the ordinary course. Using the drastic and extraordinary measure to end-run the normal judicial process is an affront to the rule of law and to the prerogative of the merits panel that is scheduled to consider the State's request for relief on appeal in the ordinary course of litigation.

Third, the State did not show that mandamus is appropriate under the circumstances. No doubt this case is of enormous importance to Louisiana voters; it is particularly important to Plaintiffs and other Black Louisiana voters whose votes the district court has held have likely been (and in the absence of a remedial map, will likely continue to be) unlawfully diluted. But the relevant standard is not whether the case in which a mandamus is sought is important. It is, rather, whether the importance of the issue presented extends "beyond the immediate case." *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 352 (5th Cir. 2017). The unusual procedural circumstances here—in particular, this Court's temporary stay of the preliminary injunction before a previously scheduled June 2022 remedial

[2] App. 113; App. 149.

[3] *Robinson* v. *Ardoin*, No. 22-30333, Doc. 155-1 at 84.

[4] *Robinson* v. *Ardoin*, No. 22-30333, Doc. 248 at 29–31.

hearing, the subsequent dismissal of certiorari as improvidently granted, and this Court's vacatur of that stay to allow the case to proceed "in the ordinary course and in advance of the 2024 congressional elections"—are unlikely to recur, and the issues the State raises principally pertain to how the district court should manage its docket. App. 112.

Moreover, the writ issued by the panel risks injecting chaos into the 2024 election cycle by leaving in place a preliminary injunction barring use of the map the legislature adopted in 2022, while casting doubt on whether or when a lawful remedial map can be promptly developed and implemented.

This Court should stay the writ of mandamus and the accompanying mandate.

OPINIONS BELOW

Plaintiffs seek an administrative stay and a stay of the Fifth Circuit's writ of mandamus to the Middle District of Louisiana, entered September 28, 2023, and the accompanying mandate that issued on September 28, 2023. The Fifth Circuit's order granting the petition for writ of mandamus is attached at App. 488. The district court's denial of the motion to cancel the remedial hearing is attached at App. 578.

JURISDICTION

The motions panel granted the State's petition for writ of mandamus and issued the mandate on September 28, 2023. App. 488. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1254. *See Schlagenhauf* v. *Holder*, 379 U.S. 104, 109 (1964) (finding "jurisdiction to review the judgment of the Court of

Appeals" on a petition for writ of mandamus under 28 U.S.C. § 1254(1)); *see also* Fed. R. App. P. 41(d) ("A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court."). That jurisdiction extends when a federal court of appeals has overstepped its authority or clearly misapplied the law, *see Travelers Indem. Co.* v. *Bailey*, 557 U.S. 137, 154 (2009) (reversing and remanding lower court judgment where the "willingness of the Court of Appeals to entertain this sort of collateral attack cannot be squared with res judicata and the practical necessity served by that rule"), including when considering whether "the circuit court of appeals erred in directing that mandamus issue," *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 24 (1943); *see also Hetzel* v. *Prince William Cnty., Va.*, 523 U.S. 208, 209 (1998) (reversing the court of appeal's grant of mandamus where such a grant had irreparably harmed the appellant through denying the appellant her constitutional rights); *Will* v. *United States*, 389 U.S. 90, 98 (1967) (reversing lower court mandamus order where "writ [was used] to review an interlocutory procedural order").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Section 10301 is reproduced in the Appendix beginning at App. 580.

STATEMENT OF THE CASE

I. Plaintiffs obtain a preliminary injunction, and the district court orders the State to draw a remedial map.

On March 30, 2022, Plaintiffs commenced the underlying action against the Louisiana Secretary of State, and shortly thereafter the State of Louisiana, through the Attorney General, and the leaders of the Louisiana Legislature, Patrick Page Cortez (President of the Louisiana State Senate) and Clay Schexnayder (Speaker of the Louisiana House of Representatives), sought and were granted intervention. On April 15, 2022, Plaintiffs moved to enjoin the congressional redistricting map enacted by the Louisiana legislature in 2022 (H.B. 1). Plaintiffs alleged that the enacted map violated § 2 of the Voting Rights Act ("VRA"). Over a five-day preliminary injunction hearing that began on May 9, 2022, the district court reviewed 244 exhibits and heard testimony from 22 witnesses, including 15 expert witnesses and seven fact witnesses. The State called a total of nine witnesses and extensively cross-examined the Plaintiffs' witnesses.

On June 6, 2022, the Court issued a 152-page ruling, concluding that Plaintiffs were substantially likely to prevail on their Section 2 claim, and granting the motion for a preliminary injunction. The district court preliminarily enjoined the Secretary of State from "conducting any congressional elections under the map enacted by the Louisiana Legislature in H.B. 1." *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022).

The district court went on to hold that "[t]he appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional

majority-Black congressional district." *Id.* While recognizing the need for the expeditious adoption of a VRA-compliant map in light of the upcoming 2022 elections, the district court nevertheless provided the Legislature with the first opportunity to adopt a remedial map by June 20, 2022. The court stated further that if the Legislature failed to pass a remedial map by that date, it would take necessary steps to enact a lawful remedial plan. *Id.* at 766–67.

II. The State repeatedly and unsuccessfully seeks to circumvent the district court's order.

The State and Legislative Intervenors immediately appealed to the Fifth Circuit and concurrently sought a stay of the preliminary injunction and remedial hearing process. On June 12, 2022, a unanimous motions panel denied the stay request, largely deferring to the district court's factual findings and concluding that the State and Legislative Intervenors had not "met their burden of making a 'strong showing' of likely success on the merits." *See* App. 394. The State then filed an application for a stay pending appeal from the Supreme Court, as well as a petition for writ of certiorari before judgment, arguing that "this case presents the same question" as that of the then-pending case of *Allen* v. *Milligan* (known then as *Merrill* v. *Milligan*). *See* App. 14. Meanwhile, the Legislature failed to enact a compliant remedial map and the district court set a June 29, 2022 start date for a remedial hearing. *Robinson* v. *Ardoin*, 3:22-cv-00211-SDD-SDJ, Doc. 206 at 2.

Just before the remedial hearing was scheduled to commence however, this Court granted the State's request for certiorari before judgment, stayed the

preliminary injunction, and directed that the case be "held in abeyance" pending the Court's ruling in *Milligan*. App. 104.

After this Court issued its ruling in *Milligan*, the State submitted a letter asking the Court to set the case for briefing and argument. App. 105. Plaintiffs submitted a letter asking the Court to dismiss the petition as improvidently granted. App. 107.

On June 26, 2023, this Court dismissed the writ of certiorari as improvidently granted, vacated the stay it had previously entered, and noted that the vacatur of the stay "will allow the matter to proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." App. 112. This Court's decision left in place the preliminary injunction.

After the dismissal of the petition, the Fifth Circuit set a deadline for the reply brief of the State and Legislative Intervenors and further ordered supplemental briefing on *Milligan*'s effect on the case. The court of appeals also asked the parties for their views on whether the court should remand the case to the district court to reconsider the preliminary injunction in light of *Milligan*. App. 427. The Plaintiffs argued that the court of appeals should retain the case and consider the appeal on the merits after the completion of supplemental briefing. App 429. The State and Legislative Intervenors asked the court to vacate the preliminary injunction and remand the case for trial. The Fifth Circuit did not take up that suggestion, and instead, on August 22, 2023 calendared the case for

argument. App. 440. As a result, the preliminary injunction remained in place, and while the merits of the injunction remain on appeal, the district court retained jurisdiction to move forward with the remedial phase of the preliminary injunction.

In their Fifth Circuit reply brief on the merits of the appeal, filed July 19, 2023, the State and Legislative Intervenors argued, among other things, that the "extremely expedited" proceedings had prevented the State from creating the "fulsome record required to adjudicate claims arising under Section 2 of the Voting Rights Act." *Robinson* v. *Ardoin*, No. 22-30333, Doc. 248 at 29–31.

In light of the Supreme Court's vacatur of its order holding the case in abeyance and the Fifth Circuit's declining to act on the State and Legislative Intervenors' suggestion to vacate the preliminary injunction, the district court has resumed the proceedings it began in June 2022. The hearing on the remedial map was set to begin October 3, 2023. App. 577.

On August 25, 2023, the State and Legislative Intervenors moved in the district court to cancel the scheduled remedial hearing and to enter a scheduling order for trial. *See Robinson* v. *Ardoin*, 3:22-cv-00211-SDD-SDJ, Doc. 260. The motion to cancel did not request that the district court provide the Legislature with an opportunity to enact a new map compliant with the preliminary injunction, nor did it assert that the Legislature had taken any steps or intended to take any steps to adopt a compliant map. On August 29, 2023, the district court denied the motion. App. 578. The court noted that the case had already been "extensively litigated," including through evidence and testimony presented at the five-day preliminary

injunction hearing and in hundreds of pages of pre-and post-hearing briefing, all culminating in the district court's preliminary injunction ruling. App. 578. The district court further noted that "[t]he preparation necessary for the remedial hearing was essentially complete," in that plaintiffs had proposed a remedial map (and defendants elected not to propose such a map); witnesses and exhibits for the remedial hearing were disclosed; expert reports were exchanged; and defendants deposed plaintiffs' experts." App. 579. Accordingly, the court found, "based on the remaining issue before it, there is adequate time to update the discovery needed" for a remedial hearing on October 3–5. App. 579.

The Attorney General and the Secretary of State—but not the Legislative Intervenors—then sought by mandamus petition to make an end run around the district court's broad authority to manage its own caseload and around the Fifth Circuit panel set to consider the merits of their preliminary injunction appeal and their mootness argument.

III. The Legislature had (and forwent) many opportunities to draw a remedial map.

The State argues that mandamus is appropriate because the district court gave the Legislature only five legislative days to draw a remedial map. This is inaccurate. From the date when this Court decided the applicable Section 2 standard in *Milligan* to the date when the remedial hearing was set to occur, the Legislature has over 100 days to draw a new remedial map and did not do so.

The district court preliminarily enjoined the State from conducting any congressional elections under the enacted map on June 6, 2022, the same day the

Legislature adjourned after three months of its regular session. *See generally Robinson*, 605 F. Supp. 3d 759. During that session, a map containing two Black-majority districts was filed as Senate Bill 306.[5] The bill, however, was never debated in Committee or on the floor of either chamber.

In its June 2022 decision ordering the Legislature to enact a remedial map, the district court emphasized that "[t]he Legislature would not be starting from scratch; bills were introduced during the redistricting process that could provide a starting point, as could the illustrative maps in this case, or the maps submitted by the amici." *Id.* at 856. Indeed, multiple VRA-compliant maps had already been introduced in the Legislature's Redistricting Session (the 2022 "First Extraordinary Session") and into the preliminary injunction hearing record.

After the district court's order, the Governor called a five-day special session to run from June 15 to June 20, 2022. The Legislature convened, and seven bills were filed, including multiple maps that included a second Black-majority district. As during the prior sessions, however, legislators failed to advance a map out of committee that would comply with the VRA and district court's order. The Legislature chose to adjourn early, on Saturday, June 18, with no map that created a new Black-majority district.

A year later, following the vacatur of this Court's stay, the Legislature had another opportunity to act. This Court issued its decision in *Milligan* on June 8,

[5] *See* La. State Legislature, SB306, https://www.legis.la.gov/legis/BillInfo.aspx?i=242388 (last visited Sept. 29, 2023).

2023, and it vacated the stay in *Robinson* on June 26, 2023. The district court reset the remedial hearing that had been scheduled for October 3-5, 2023. That schedule allowed the Legislature 96 days from the lifting of the stay to call itself into session to draw a remedial map.[6] That window of time far exceeds what is necessary to convene a special session to advance a single piece of legislation, well surpassing the duration of regular sessions when hundreds of bills are contemplated.[7]

In that time, the district court held multiple scheduling conferences and entertained proposed schedules submitted by plaintiffs and the State. *See e.g.*, *Robinson* v. *Ardoin*, No. 3:22-cv-00211-SDD-SDJ, Docs. 246, 255, 256, 271, 272, 273, 274. At no time did the Legislative Intervenors or the State suggest that the Legislature should have or would like a second opportunity to develop a remedial map. It never raised that possibility at a scheduling conference, and none of its proposed schedules included a period for that to take place. *Robinson* v. *Ardoin*, No. 3:22-cv-00211-SDD-SDJ, Docs. 246, 255, 271, 272, 273.

Additionally, despite having ample time following this Court's vacatur of the stay, the Legislature made no effort to call itself into session or to take up a

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[6] The district court has imposed no limitation on the evidence that the State can present in the remedial hearing and has allowed discovery to continue up to the eleventh hour in advance of the hearing, including allowing the State to present five entirely new experts to supplement the evidence presented at the preliminary injunction hearing.

[7] For example, the 2023 regular session lasted 59 days, commencing on Monday, April 10, 2023 and adjourning on Thursday, June 8, 2023 and the 2024 regular session is scheduled to last for no more than 84 days, commencing on March 11, 2024 to June 3, 2024. By way of another example: in 1994, the Louisiana Legislature passed a map in fewer than eight days in a special session. And in 2023, the Alabama Legislature passed a remedial map in a special session that lasted one week. *Milligan* v. *Allen*, No. 2:21-cv-01530-AMM, Doc. 289 at 2–3.

remedial map—which it did not need the district court's permission to do. Indeed, the Legislature has *never* signaled any desire for an opportunity to develop its own remedial plan or any intent to pass a map that adds a second-Black majority district. And the Legislative Intervenors—the leadership of the Louisiana Legislature—did not even join the petition for writ of mandamus.

IV. The Writ of Mandamus

After trying and failing to gain traction before either the district court or merits panel in its quest to forestall a remedial map, the State sought to circumvent the district court's broad authority to manage its own docket and around the Fifth Circuit panel set to consider the merits of the preliminary injunction and the State's mootness argument. App. 443. The petition for writ of mandamus sought vacatur of the remedial hearing and an order to the district court to set the case for trial. The petition did not ask for an opportunity for the Legislature to develop a remedial plan.

The motions panel expressly rejected the State's main contention that the 2022 injunction expired or became moot. App. 493 n.4. Nevertheless, the majority found that the State had satisfied the high bar required for a grant of "one of the most potent weapons in the judicial arsenal." App. 491 (citation omitted). In purporting to analyze the three conditions which a petitioner for mandamus must show, the majority cited almost no law. Instead, it asserted, in a conclusory fashion, that mandamus was appropriate because the district court's supposed legal error in scheduling a remedial hearing would produce a "patently erroneous result." App. 497.

First, the majority found the State's many prior failed efforts—before this Court, before the Fifth Circuit and before the district court, to suspend, delay, vacate, or cancel remedial proceedings—had not provided it an adequate opportunity to raise what the panel identified as the district court's errors. App. 493. The court argued that this matter was "wholly different from the merits appeal," App. 492, and that mandamus was the only opportunity to adjudicate whether a remedial hearing should go forward without expressly affording the Legislature a second opportunity to draw a map—an opportunity that, as noted, the State's mandamus petition did not even request. In addition, the court found that the likely appeals to the Supreme Court of both the preliminary injunction and the remedial order weighed in favor of avoiding "two-track" litigation and electoral confusion that could accompany separate proceedings. App. 492–93.

Second, the majority found that the state had a clear and indisputable right to relief based on two theories: 1) that the state lacked sufficient time to prepare a defense and 2) that the Legislature should have had a second opportunity to enact a legal map after remand from the Supreme Court. Because the majority believed Plaintiffs had planned their case for over a year, it thought it inadequate that the state had only four weeks to prepare for the preliminary injunction hearing last year. App. 493–494. The court also described the district court's injunction as "hasty" and tentative, accepting the State's argument that it had lacked the ability to mount a full defense in a more robust proceeding. App. 494. The court drew comparisons to Alabama to conclude that the Legislature should have been

expressly provided with a new window in which to enact a remedial plan after remand. App. 494–496. Because the 2024 elections are still more than a year away, the majority found that the district court abused its discretion by initiating a remedial proceeding on an expedited schedule when a more thorough process and a renewed opportunity for the Legislature to draw a plan were possible. App. 496.

On the third condition, the court found the abnormal nature of redistricting litigation to support granting mandamus. App. 497. While it would typically be inappropriate for the court to intervene in a district court's scheduling of a remedial proceeding for a preliminary injunction, it found mandamus to be appropriate because of the State's "intolerable disadvantage legally and tactically" should the hearing proceed as scheduled.

In dissent, Judge Higginson noted the unprecedented nature of the majority's grant of mandamus in this case. App. 501. In his view, the majority's grant "invites parties to slice and dice in the hopes of eleventh-hour success in front of a mandamus panel when an earlier-in-time merits panel has so far declined to act on the same issues." App. 504 n.2. Judge Higginson also criticized the majority's misapplication of the mandamus standard. After recounting the state's repeated failures to obtain a stay, Judge Higginson emphasized that appellate relief was clearly available because "petitioner is already an appellant pressing the same issues and seeking the same relief, challenging the same injunction." App. 504. Further, any remedial plan would be subject to appeal. App. 504. Judge Higginson also denounced the intrusion into the docket management responsibilities of the

district court, which "could, with approximately eleven weeks of notice to parties, reschedule the hearing that had originally been scheduled for well over a year earlier." App. 505.

And today, counsel for the Galmon plaintiffs filed on behalf of all plaintiffs an emergency motion for stay of mandamus with the Court of Appeals, which the Court of Appeals summarily denied.

REASONS FOR GRANTING THE APPLICATION

The decision to grant a stay is governed by four familiar factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;" (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken* v. *Holder*, 556 U.S. 418, 434 (2009) (citations and quotations omitted). Each factor counsels in favor of granting the stay Plaintiffs request.[8]

I. Plaintiffs are likely to succeed in establishing that issuing the writ of mandamus was improper.

Mandamus relief is "a drastic one, to be invoked only in extraordinary situations." *Kerr* v. *U.S. Dist. Ct. for N. Dist. Of Cal.*, 426 U.S. 394, 402 (1976) (citations omitted); *see also Will*, 389 U.S. at 107 (Since mandamus is an "extraordinary remed[y]," it is "reserved for really extraordinary causes." (quoting *Ex parte Fahey*, 332 U.S. at 260 (1947)); *In re Chicago, R.I. & P. Ry. Co.*, 255 U.S. 273, 276 (1921) (Mandamus is an "extraordinary remedy."). A petitioner seeking a writ of mandamus must show (1) that he has "no other adequate means to attain the relief he desires'; (2) that his "right to issuance of the writ is clear and indisputable"; and (3) that "the writ is appropriate under the

[8] Alternatively, the factual record and legal arguments in this application support construing this application as a petition for a writ of certiorari, granting the writ, and reversing the court of appeals' grant of mandamus relief. *See infra*, Section III.

circumstances." *Cheney* v. *U.S. Dist. Court*, 542 U.S. 367, 380–81 (2004) (internal quotation marks and citations omitted).

If the State failed to satisfy even one of these requirements, that would dispositively determine that the motions panel erred in issuing this extraordinary relief. *See Will*, 389 U.S. at 107; *Roche*, v.319 U.S. at 24; *see also In re Depuy Orthopaedics*, 870 F.3d at 353. Because the State satisfied none of these requisite prongs, Plaintiffs are likely to succeed on the merits.

The motions panel relied, in substantial part, on its view that the Legislature did not receive "a fulsome opportunity to defend itself on the merits of plaintiffs' section 2 claim" by passing a congressional plan that did not dilute the votes of Black Louisianians. App. 493. Not so. The Legislature had ample opportunity—both before this Court's stay in 2022 and after its vacatur in 2023—to pass a lawful map, and has not done so. In the time since vacatur of this Court's stay, the State has not even contended that it needs another such opportunity. *See supra* at 11-14.

In any event, the issue of whether the State had a sufficient opportunity to defend its enacted map has been briefed, repeatedly, including in briefing that has been unfolding for more than a year in a case that is set to be heard by a merits panel one week from today. This Court should reject the motions panel's attempt to jump the line to decide an issue that had already been briefed by a merits panel, which has been receiving briefing on this very issue for over a year. Such circumstances are antithetical to the extraordinary, limited role of the writ of mandamus in our judicial system.

A. The State failed to demonstrate that it has "no other adequate means" to obtain the relief it seeks.

Parties seeking a writ of mandamus are also obligated to show that they have no other adequate means to obtain relief. That's "a high bar: The appeals process provides an adequate remedy in almost all cases, even where defendants face the prospect of an expensive trial." *In re Depuy Orthopaedics*, 870 F.3d at 352; *see also Bankers Life & Cas. Co.* v. *Holland,* 346 U.S. 379, 383 (1953) (Mandamus shall not be issued "even though hardship may result from delay and perhaps unnecessary trial."). The State cannot clear this high bar.

The precedent is clear: "[I]f the complaining party has an adequate remedy by appeal or otherwise[.] . . . the writ will ordinarily be denied." *In re Chicago,* 255 U.S. at 275–76 (citations omitted). Mandamus "will not be used as a substitute for the regular appeals process." *Cheney*, 542 U.S. at 380–81; *see In re Chicago*, 255 U.S. at 279–80 (noting that mandamus is not appropriate because the petitioner "will have its remedy by appeal").

As Judge Higginson explained in dissent, the State already has had *multiple* opportunities in the regular course of this litigation to obtain the same relief they now seek through the extraordinary writ of mandamus. App. 504. In the most immediate sense, the State is already pressing these same arguments in an appeal that is set to be argued before the Fifth Circuit one week from today. "There could be no more conclusive proof of the availability of appellate relief than this circumstance, where the petitioner is already an appellant pressing the same issues and seeking the same relief, challenging the *same injunction in pursuance of which*

this hearing was scheduled." App. 504. And setting aside the already-scheduled appeal regarding these same issues, the State could seek the same relief again on appeal following the remedial hearing: "The State can also, of course, appeal any remedial plan that the hearing produces." App. 504.[9] By issuing the writ of mandamus at this juncture, the motions panel transformed the writ of mandamus from an extraordinary measure that is not a substitute for appeal into a *third* bite at the apple.

The simple truth is the State had an alternative path to obtain this relief in multiple fora. It tried, and it lost. Now, the State must await the outcome of its appeal. The fact that the district court, and then the Fifth Circuit, and then this Court did not indulge the State's request to vacate the remedial hearing does not support the conclusion that waiting for the ordinary appellate process to play out is inadequate.

The motions panel asserted that the fully briefed merits appeal of the preliminary injunction, where the State will raise these arguments once again, is inadequate "because this application is wholly different from the merits of the appeal." App. 492. That is just wrong. The State expressly raised its argument about the inadequate time to create and administer a new map in its initial brief on appeal on June 21, 2022, *Robinson* v. *Ardoin*, No. 22-30333, Doc. 155-1 at 8, and again in its reply brief on July 19, 2023, Doc. 248 at 29–31, and reiterated that it

[9] The State could additionally have sought an appeal from the district court's denial of its August 2023 motion to cancel the scheduled remedial hearing and to enter a scheduling order for trial, but it opted not to appeal the order.

stands by those arguments in its supplemental brief submitted on August 7, 2023, Doc.260 at 3 n.1.

B. The State has not established a "clear and indisputable right" to encroach upon the district court's management of its own docket.

The State also failed to demonstrate a clear and indisputable right to mandamus relief. That "require[s] more than showing that the court misinterpreted the law, misapplied it to the facts, or otherwise engaged in an abuse of discretion." *In re Depuy Orthopaedics*, 870 F.3d at 350–51 (citation omitted). Where a matter is committed to a district court's discretion, review is "only for clear abuses of discretion that produce patently erroneous results." *Id.* at 351.

The State has not come close to establishing a clear and indisputable right. As Judge Higginson explained in dissent, the State's request—that the Fifth Circuit motions panel vacates a remedial hearing that has been on the calendar for month at the eleventh hour— raises, at bottom, a question about how the district court manages its own docket. App. 504. Few matters are as firmly committed to a district court's discretion as the management of its own docket. It is black letter law that there is "power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *See Landis* v. *N. Am. Co.*, 299 U.S. 248, 254 (1936). A district court's exercise of that power requires an "exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.* at 254–55; *Topalian* v. *Ehrman*, 954 F.2d 1125, 1139 (5th Cir. 1992) ("District courts generally are afforded

great discretion regarding trial procedure applications (including control of the docket and parties).").

Consistent with this principle, therefore, this Court and other reviewing courts have regularly denied mandamus petitions seeking to alter a district court's judgment on how to manage its own docket. *See, e.g.*, *June Med. Servs., L.L.C.* v. *Phillips*, 2022 WL 4360593, at *2 (5th Cir. Sept. 28, 2022) (denying mandamus petition concerning the district court's denial of a motion to "vacate forthwith or within two days" an injunction, and the denial of a motion that the district court reconsider its denial by the following day); *In re Depuy Orthopaedics*, 870 F.3d at 353 (denying a writ of mandamus to prohibit a district court from moving forward with a bellwether trial in an MDL case); *In re Itron, Inc.*, 31 F. App'x 664, 665 (Fed. Cir. 2002) (denying a mandamus petition where a district court "ordered a short stay and stated that the trial will be set" later in the year, holding that "[b]oth decisions are well within the discretion of the district court to manage its own docket and promote judicial efficiency").

Plaintiffs are substantially likely to succeed in showing that the Fifth Circuit erred in straying from this well-trodden path. The motions panel's flimsy reasoning cannot withstand the weight of this authority. This Court is unlikely to embrace the motions panel's contortion of the same arguments that were raised and rejected *twice* by courts in the course of ordinary litigation—including in the very Fifth Circuit order it cites as support—into a "clear and indisputable right" to relief.

The weakness of the motions panel's argument warrants some attention. Specifically, the motions panel divines the "clear and indisputable right" to relief from this Court's order that the litigation must proceed according to its "ordinary course and in advance of the 2024 congressional elections in Louisiana." App. 502. The motions panel extrapolated from there that, in order for litigation to proceed in the "ordinary course," App. 502, "a court *must* afford the legislative body that becomes liable for a Section 2 violation the first opportunity to accomplish the difficult and politically fraught task of redistricting." App. 495 (emphasis added).

The motions panel cited two pieces of authority as its main support for this proposition. First, the motions panel cites a case indicating it is "*appropriate, whenever practicable*, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan"—language that hardly creates an indisputable right to anything. App. 489 (quoting *Wise* v. *Lipscomb,* 437 U.S. 535, 540 (1978)) (emphasis added).

The motions panel's second source of authority for the State's "clear and indisputable right," however, is even more puzzling—it invokes an order from a panel of the Fifth Circuit that *denied* the State's motion for a stay, which contained the same arguments rehashed in the petition. *See* App. 493–94. To be specific: the State had already raised its arguments about how it was "prevented from fulsomely defending its case by virtue of the expedited preliminary-injunction proceedings," App. 465, before the district court and the Fifth Circuit—and on each previous

occasion, the court denied their motions for relief. In seeking an emergency stay from the district court, the State argued: "The Court's order is unlikely to withstand appellate scrutiny for the additional reason that it provides a remedial redistricting schedule that is unworkable. . . . The point of providing a legislature a meaningful opportunity to create a remedy is to allow the body to legislate; the Court's timeline precludes this work." App. 553–54. The district court still denied the stay. The State also pitched the same argument to the Fifth Circuit last year—when the case was moving at an even faster pace than it did post-*Milligan*—arguing: "[T]he court failed to account for the time it will take to craft a remedial plan. The order requires the Louisiana Legislature to enact redistricting legislation[,] but the deadline is virtually unattainable . . . The district court set the Legislature up to fail. That error alone contravenes the rule that a federal court must 'afford a reasonable opportunity for the legislature to meet [federal] requirements' in a remedial plan." App 176 (quoting *Wise*, 437 U.S. at 540). And again, the Fifth Circuit denied the stay.

Inexplicably, the motions panel goes so far as to cite the Fifth Circuit's *denial* of the State's stay motion as *support*, claiming that the court had noted "that the panel's conclusions were only tentative and the plaintiffs' case had clear weaknesses." App. 493. While asserting that "an order denying stay pending appeal cannot be a 'merits' ruling and is subject to reconsideration by this court, either *in the upcoming oral argument* or *on review of a final judgment*," App. 494 (emphasis added), the motions panel provides no reason why *it* had any authority to

reconsider, let alone contradict, the prior motions panel's order. Pointing to the Fifth Circuit's own prior contrary opinion "as evidence that the State has made the higher showing that it is entitled to mandamus" is, as the dissent put it, quite "odd[]." App. 504. The Fifth Circuit's own denial of the stay is a plain indicator that: "No patent error exists here. Quite the opposite." App. 504.

Finally, it bears mentioning that the motions panel's suggestion that the State had no opportunity to draw a remedial map ignores the facts. In granting the preliminary injunction, the district court ordered the State to draw a new map back in June 2022. The State moved for a stay at that time—citing, among other things, the lack of time to draw a new map, App. 553–54—but the district court denied that stay, App. 574–77. The State next moved the Fifth Circuit for an emergency stay pending appeal, again arguing that the State did not have adequate time to draw a new map, *Robinson* v. *Ardoin*, No. 22-30333, Doc. 27. Again, the Fifth Circuit denied the request. Doc. 89-1. In the 22 days prior to this Court granting the State's stay application pending its decision in *Milligan*, the Legislature had every opportunity to draw a new map. And again, after this Court vacated the stay in *Robinson*, the State had another 96 days before the start of the remedial hearing in which it could have called sessions to draw a remedial map. But in the time since this Court lifted the stay in *Robinson*, the legislature has simply made no effort to comply with the district court's order to draw a new map in advance of the remedial hearing.

C. Mandamus is not "appropriate under the circumstances."

Parties seeking a writ of mandamus must also independently establish that mandamus is "appropriate under the circumstances." *Cheney,* 542 at 381; *see also In re Depuy Orthopaedics*, 870 F.3d at 352. It is not enough—as all litigants surely believe, and as the State asserted in support of its petition—that the writ is important. To guide the inquiry, courts have looked to whether an issue's importance extends "beyond the immediate case." *In re Depuy Orthopaedics, Inc.*, 870 F.3d at 352. For example, this Court has recognized mandamus to "settle new and important problems." *Schlagenhauf* v. *Holder*, 379 U.S. 104, 111 (1964); *see also In re EEOC*, 709 F.2d 392, 394 (5th Cir. 1983) (mandamus should only be used for "'new and important problems' that might have otherwise evaded expeditious review") (quoting *Schlagenhauf*, 379 U.S. at 111). Granting of writs under the circumstances may also be appropriate where the issue is a frequently recurring one or where there are disagreements in the lower courts. *See, e.g.*, *In re JPMorgan Chase & Co.*, 916 F.3d 494, 499 (5th Cir. 2019) (finding mandamus to be appropriate where "[f]ederal district courts, in at least 210 decisions, have wrestled with the [issue]" and "have splintered over it").

The State cannot demonstrate such circumstances, and the court below erred in finding otherwise. The State is seeking to use an extraordinary writ to micromanage the district court's calendar and bypass the ordinary course of litigation of a preliminary injunction motion. This is not a proper use of mandamus. To make matters worse, the parties and district court were prepared to move forward with the remedial hearing twelve months ago. The State received and

availed itself (unsuccessfully) of numerous opportunities to challenge the preliminary injunction and remedial proceeding. And the twice-expedited proceedings are a result of the *State's* decision to urge this Court to hold the case in abeyance while the *Milligan* decision was pending, which created the need to move expeditiously post-stay in order to "allow the matter to proceed before the Court of Appeals for the Fifth Circuit for review . . . in advance of the 2024 congressional elections in Louisiana." *Ardoin* v. *Robinson*, 143 S. Ct. 2654 (2023). The State did not even attempt to show that this situation is likely to recur or that the issues presented extend beyond the immediate case.

Moreover, and as explained previously, the motions panel's fear of judicial interference in the choices of Louisiana's Legislature is unfounded. Under a tight timeline in 2022, the district court nevertheless recognized the Legislature's role in redistricting and requested that it take up the mantle to pass a VRA-compliant map, only to be met by the Legislature's failure to do so. The Legislature has similarly possessed the opportunity to pass a suitable map throughout this year—including in the months post-dating this Court's vacatur of the stay entered on behalf of the State, *see Ardoin* v. *Robinson*, 143 S. Ct. 2654 (2023)—and the State has not indicated that the Legislature is able or willing to do so. Under these circumstances, the district court properly took action when the Legislature did not in order to safeguard the fundamental voting rights of Louisiana's minority population, and the motions panel's issuance of the writ effectively overriding the district court was error. *See, e.g.*, *Hetzel* v. *Prince William Cnty., Va.*, 523 U.S. 208

(1998) (reversing an appeals court's grant of mandamus where the grant violated petitioners' constitutional rights).

II. Plaintiffs will suffer irreparable harm absent a stay, and the balance of equities and public interest favor such relief.

The balance of harms and public interest both strongly counsel in favor of a stay. "[I]rreparable harm likely would flow" to Plaintiffs and thousands of Black voters absent a stay. *Lucas* v. *Townsend*, 486 U.S. 1301, 1305 (1988) (Kennedy, J., in chambers). "Courts routinely deem restrictions on fundamental voting rights irreparable injury. And discriminatory voting procedures in particular are the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief." *League of Women Voters of N.C.* v. *North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (internal quotation marks omitted) (citing *Obama for Am.* v. *Husted*, 697 F.3d 423 (6th Cir. 2012); *Alt. Political Parties* v. *Hooks*, 121 F.3d 876 (3d Cir. 1997); and *Williams* v. *Salerno*, 792 F.2d 323 (2d Cir. 1986)). "Voting is the beating heart of democracy." *Democratic Exec. Comm. of Fla.* v. *Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019). "And once the election occurs, there can be no do-over and no redress" for voters whose rights were violated. *League of Women Voters of N.C.*, 769 F.3d at 247.

Plaintiffs already suffered irreparable harm when they voted under the unlawful enacted plan, and they will continue to suffer unless a stay of the mandamus is granted. *See, e.g.*, *Nken,* 556 U.S. at 426. Resolution of this matter has already been delayed for over a year. As a result, the November 2022 congressional election proceeded under a map that the district court found likely violated the

VRA. To account for the time needed for appellate review of the district court's decision in the remedial hearing, the district court ordered the remedial hearing in this matter to proceed now to ensure that it was "[c]ompleting the process which is well underway" so that it could respect and remain "faithful to the Supreme Court's admonition to proceed 'in the ordinary course and in advance of the 2024 congressional elections in Louisiana.'" App. 487.

The procedural history makes clear that the State has sought to delay this matter at every turn. While the State expressed interest in a full trial on the merits, it has never represented a position about the timing necessary to ensure that this matter can be resolved before the 2024 congressional elections. This Court has been clear that election changes should not be made at the last minute. *See Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006); *Merrill* v. *Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). Given Defendants' ongoing attempts to run out the clock and their studied ambiguity about the time needed to comply with *Purcell*'s direction, Plaintiffs face significant risk that, without immediately moving to the remedial proceedings, there will be no lawful map in place to protect their rights in the 2024 election, even if Plaintiffs ultimately prevail at trial.

The panel's reasoning seems destined to reward the State's efforts to slow-walk this case until it is too late. Under the panel's reasoning, the over three weeks that the district court afforded the State before holding its preliminary injunction hearing were insufficient, and the three weeks that the State had to prepare for the remedial hearing in 2022 were insufficient. Likewise, the panel appeared to view

the more than 100 days after this Court decided *Milligan* as insufficient time for the Legislature to draw a remedial map. At the same time, Defendants have repeatedly argued that a preliminary injunction issued more than five months before the 2022 congressional elections violated this Court's mandate in *Purcell*. *See e.g.*, App. 13–14.

In these circumstances, the panel's ruling creates a substantial risk that no appropriate remedial map will or can be adopted in time for the 2024 election. That result—in a case commenced in *March 2022*—is intolerable, and squarely contradicts this Court's direction, in its order vacating the stay, that the matter "proceed in the ordinary course and in advance of the 2024 elections in Louisiana." A stay is needed to prevent Plaintiffs from enduring the fast-approaching irreparable harm of being forced to vote under an unlawful map for the second consecutive federal election.

In contrast, there is very little risk of harm to the State if the remedial proceedings move forward. If the State prevails in the trial on the merits, the currently enacted map already exists—no further effort is needed. And the existence of a remedial map that the court has adopted beforehand will have no impact on the State's ability to proceed with the November 2024 federal election with a congressional map it has already selected.

The public interest also counsels in favor of a stay. Plaintiffs and all Louisianians possess a strong interest in lawful congressional elections. There is substantial risk that a remedial hearing held imminently may be the only

opportunity Louisianians have to cast their votes in 2024 pursuant to a lawful map. Plaintiffs—like all Louisianans—already endured one congressional election in this census cycle under an unlawful map. There is no reason to allow that injustice to repeat.

III. In the alternative, this Court may wish to construe this application as a petition for a writ of certiorari.

If the Court denies Applicants' request for a stay, it may wish to construe this application as a petition for a writ of certiorari, grant the writ, and reverse the court of appeals' grant of mandamus relief. This Court may construe this application itself as a petition for a writ of certiorari, *Trump* v. *Mazars USA, LLP*, 140 S. Ct. 660 (2019); *Nken* v. *Mukasey*, 555 U.S. 1042 (2008); accord *United States* v. *Texas*, 142 S. Ct. 14 (2021), and then summarily reverse, *see, e.g.*, *James* v. *City of Boise*, 577 U.S. 306, 307 (2016). And this Court should summarily reverse because issuance of the writ of mandamus was clearly improper. As described above, none of the settled requirements for issuance of such an extraordinary writ are satisfied in the current circumstance. Additionally, if the Court so chooses, Plaintiffs respectfully request that this matter be resolved without any additional briefing and the delay that would entail. As the district court properly recognized, time is of the essence. Applicants request that this Court summarily reverse and allow the remedial hearing to proceed as scheduled by the district court on October 3, 2023, or on the earliest possible date following stay or vacatur of the writ of mandamus.

CONCLUSION

Plaintiffs' emergency application for a stay should be granted.

Respectfully submitted,

/s/ Stuart Naifeh

Stuart Naifeh
Counsel of Record
Leah Aden
Kathryn Sadasivan
Victoria Wenger
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
40 Rector St., 5th Floor
New York, NY 10006
(212) 965-2200
snaifeh@naacpldf.org

R. Jared Evans
I. Sara Rohani
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
700 14th St. NW, Ste. 600
Washington, DC 20005

Robert A. Atkins
Yahonnes Cleary
Jonathan H. Hurwitz
Amitav Chakraborty
Adam P. Savitt
Arielle B. McTootle
Robert Klein
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

John Adcock
ADCOCK LAW LLC
3110 Canal Street
New Orleans, LA 70119

Megan C. Keenan
Sarah Brannon
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th St., NW
Washington, DC 20005

Dayton Campbell-Harris
Sophia Lin Lakin
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St., 18th Fl.
New York, NY 10004

Nora Ahmed
Stephanie Willis
ACLU FOUNDATION OF LOUISIANA
1340 Poydras St., Ste. 2160
New Orleans, LA 70112

T. Alora Thomas-Lundborg
Election Law Clinic
HARVARD LAW SCHOOL
6 Everett Street, Ste. 4105
Cambridge, MA 02138

Tracie Washington
LOUISIANA JUSTICE INSTITUTE
Suite 132
3157 Gentilly Blvd.
New Orleans LA, 70122