Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

PRESS ROBINSON, *et al.*,

Appellants,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLEES

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INTRODUCTION

In January 2024, Louisiana passed SB8, the congressional districting map that the district court below found was an odious racial gerrymander against Appellees. Why, in the 2020s, would Louisiana racially balkanize new areas of a State where Black population is flatlining, integration is succeeding, and the record lacks evidence of voting harms to Black voters? From 2024 through today, Louisiana has blamed a federal judge. It claims its original map, HB1, was lawful, but that SB8 meant to "forestall" a remedial map it feared the "heavy-handed" court would draw after an upcoming Voting Rights Act ("VRA") trial. Louisiana's actual purpose was never to comply with VRA Section 2, which elsewhere, the State insists cannot constitutionally apply to today's Louisiana.

Louisiana admits that a racial quota of two majority-Black districts was SB8's uncompromisable "baseline" from which the rest of its considerations flowed, and to which they were subordinated. That triggers strict scrutiny. Louisiana then admits that SB8's core feature, an unprecedented second majority-Black district that winds from East Baton Rouge ("EBR") to Shreveport ("SB8-6"), has a "key" cluster of Black voters in Shreveport—the same cluster Louisiana knew its allegedly heavy-handed federal court, *Robinson*, had already found could not be joined in any remedial district. That matters, because *Robinson*'s "mere existence" formed the entire basis of Appellants' strict scrutiny showing at trial. These points are enough to affirm the three-judge district court's "faithful application of the precedents." *Allen v. Milligan*, 599 U.S. 1, 42 (2023). But the details only get worse for Appellants.

SB8-6 is a sinuous and jagged second majority-Black district based on racial stereotypes, racially "balkanizing" a 250-mile swath of Louisiana, from the far Northwest near Texas, down to EBR near the Mississippi River's mouth. *Shaw v. Reno*, 509 U.S. 630, 657 (1993) ("*Shaw I*"). Louisiana's uncompromisable two-majority-Black-seat quota out of six seats resulted in super-proportional majority-Black districts. It also forced the Legislature to sacrifice its professed goal of protecting incumbents—including one of five Republicans narrowly holding the U.S. House majority.

And Appellants fail strict scrutiny. Supplanting the *Robinson* court as remedial map-drawer is understandable, but absent a strong basis in evidence that the VRA actually required a majority-Black seat in the area of SB8-6, it is neither a compelling justification for violating the Fourteenth Amendment nor narrowly tailored to remedy any VRA violation.

Appellants insisted *Robinson*'s "mere existence" fully satisfied their strong basis in evidence. But Appellants failed to prove SB8-6 substantially addressed any *Thornburg v. Gingles*, 478 U.S. 30 (1986), violation considered in *Robinson*. Even the *Robinson* district court, upon rejecting Robinsons' motion to seize jurisdiction from the *Callais* three-judge court, recognized its findings did not cover SB8. Appellants also forgot that *Robinson* analyzed Louisiana's last attempt to create a second majority-Black district in the 1990s. That district, copied by SB8, slashed from Northwest Louisiana to EBR. *Robinson* agreed with the three-district court of the 1990s that this Northwest-EBR configuration

would still be noncompact and impermissible. Such findings doom SB8.

But Louisiana has a point: if Section 2 can be misapplied by a single-judge court as in *Robinson*, state legislators won't resist the temptation to leverage their "breathing room" to racially gerrymander. The answer is not for courts to stop enforcing the Fourteenth Amendment; that would merely shift the burden from state legislators and lawyers onto voters and enshrine long-term racial balkanization. Instead, either Section 2 should no longer supply a compelling interest for racial gerrymanders, or the *Gingles* and Section 2 Senate factors should actually bar unnecessary gerrymanders (as they were always meant to do). Regardless, this Court should affirm and let the district court order a remedy that (i) reflects the State's true, pre-*Robinson* preference to protect five Republican seats; and (ii) avoids a racial gerrymander and Section 2 liability.

STATEMENT OF THE CASE

I. Louisiana Voters Challenged the Legislature's First Attempt to Redistrict.

Louisiana's Legislature enacted House Bill 1 ("HB1") after the 2020 census, dividing Louisiana into six congressional districts. **J.A.87, 345**.[1] HB1 followed Louisiana's traditional district boundaries. Like the previous map (enacted in 2011), and all others since a

[1] Appellees refer to documents in the Joint Appendix filed on December 19, 2024, as "J.A." followed by page number(s); documents in the Robinson Jurisdictional Statement Appendix filed on July 30, 2024, as "R.J.S.A." followed by page number(s); and documents available on the district court docket as "Dkt." followed by the docket number, "at," and page number(s).

second majority-Black district was struck down as an unconstitutional racial gerrymander in 1996, HB1 created one majority-Black district around New Orleans. *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996); **J.A.271-74, 338-44; R.J.S.A.133a**.

Just before HB1's passage, several groups, including Robinsons, filed suit, alleging HB1's failure to create a second majority-Black district violated Section 2 of the Voting Rights Act ("VRA"). *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766, 768 (M.D. La. 2022), *vacated*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson I*").

The ensuing "*Robinson*" litigation evaluated HB1, not the later-enacted map at issue here, SB8. No illustrative plan in *Robinson* created majority-Black districts, or identified Black voters with VRA claims, in Northwest Louisiana. Those plans "connect[ed] the Baton Rouge area to the Delta Parishes along the Louisiana-Mississippi border." *Id.* at 785. The *Robinson* district court preliminarily enjoined HB1 in favor of Black voters in those areas. *Id.* It repeatedly emphasized the State's refusal to meaningfully contest, challenge, or present evidence rebutting the plaintiffs' evidence regarding those areas. *Id.* at 823. Based on this limited defense, *Robinson I* preliminarily decided what the VRA "likely" required; but it never adjudicated actual VRA liability. *Id.* at 766.

A Fifth Circuit motions panel reviewing only for clear error cautioned that plaintiffs had not yet proved 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 v. Ardoin*, 37

F.4th 208, 215 (5th Cir. 2022) ("*Robinson II*"). It warned that the district court had erred in its compactness analysis under the first *Gingles* factor—or *Gingles* 1.[2] *Id.* at 222. And it emphasized "the State put all their eggs" in one basket by mounting mainly legal arguments on *Gingles,* a strategic misstep. *Id.* at 217.

This Court stayed proceedings pending *Allen v. Milligan*, 599 U.S. 1 (2023). Post-stay, the Fifth Circuit merits panel reviewed the same record and arguments as the motions panel. *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson III*"). The panel focused solely on 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 analysis of other parts of the State. *Id.* at 590. The court emphasized the limitations of clear error review, the State's failure to present evidence (especially on *Gingles* 1), and that the State might now retool to engage the *Gingles* factors at trial. *Id.* at 592. *Milligan* it explained, "largely rejected" the "State's initial approach," but the State's preliminary injunction miscues would not bind it at trial. *Id.* The panel never

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[2] *Gingles* articulates three threshold factors ("*Gingles* 1, 2, and 3") to prove a Section 2 violation: (1) a "minority group" must be "sufficiently large and geographically compact to constitute a majority" in some reasonably configured legislative district; (2) the minority group must be "politically cohesive"; (3) the district's white majority must "vote [ ] sufficiently as a bloc" "usually to defeat the minority's preferred candidate." 478 U.S. at 50–51 (citation and footnote omitted). The Senate Judiciary Committee also instructed courts to weigh the totality of circumstances, including an enumerated list (the "Senate factors"). S.Rep. No. 97-417, 97th Cong., 2d Sess. (1982), pp. 28-29.

ordered the State to create two majority-Black districts. *Id.* at 602. Instead, the panel vacated the preliminary injunction and ordered the district court to allow the Legislature to remedy any VRA violation, possibly avoiding trial on the merits. There was no mandate to enact SB8 or repeal HB1 in January 2024. All *Robinson* decisions, up to the dismissal of the case for mootness after the enactment of SB8, were non-final.

II. The Legislature Convened to Draw a Map with Two Majority-Black Districts and Passed SB8.

The Legislature chose to act. Governor Jeff Landry called a special legislative session on January 15, 2024; SB8 was introduced, considered, and passed by January 22, 2024. **J.A.104-05**.

Of SB8's six districts, two are majority-Black—SB8-2 and SB8-6. Each barely exceeds 50% BVAP. SB8 is the State's first legislatively enacted map to allocate one-third of the State's congressional districts as majority-Black—and the first to over-proportion majority-Black seats (Louisiana's statewide BVAP is just 31.249% (**J.A.94-95, 336**)).

SB8-2 tracks a long-standing majority-Black district traced around Black precincts in New Orleans and Baton Rouge. But SB8-2 surrenders BVAP in neighboring EBR to create SB8-6. EBR contains the highest BVAP concentration in SB8-6 and forms its narrow southeastern extremity. In EBR, 112 of the 115 precincts with over 40% BVAP are carved into SB8-6. **J.A.258**.

Moving northwest, SB8-6 splits most parishes it touches. This includes rural, sparsely-populated Avoyelles Parish: two-thirds of its precincts of over

40% BVAP are carved into SB8-6. **J.A.258**. Extending a finger southwest across the Atchafalaya Swamp into Acadiana, SB8-6 only "includes Lafayette's northeast neighborhoods, which contain a predominantly Black population, while leaving the rest of the city and parish in neighboring District 3." **R.J.S.A.170a** (citation omitted); *see also* **J.A.253-54**.

Moving north into yet another region, Central Louisiana, SB8-6 splits Alexandria from Rapides Parish to carve in high BVAP areas. **J.A.254**. SB8-6 continues racially splitting parishes and cities for 125 more miles to reach Shreveport, SB8-6's Northwestern extremity just miles from the Texas border. There, it traces in precincts with 61% to 100% BVAP, while excluding lower BVAP areas. **J.A.256-57**.

The district court found SB8-6 "slashe[d]" across the State to join "four disparate metropolitan areas" (Baton Rouge, Lafayette, Alexandria, and Shreveport), precisely carving in majority-Black areas. **R.J.S.A.165a-67a**. The court credited testimony that the Black population is dispersed like a barbell, with the densest segment in the far Southeast; a narrow 250-mile, jagged handle; and the next densest cluster in Shreveport. **R.J.S.A.141a, 182a; J.A.251, 253-54, 271**. The State admits this far northwest pocket is the "key" to surmounting 50% BVAP. **State Br. 51**.

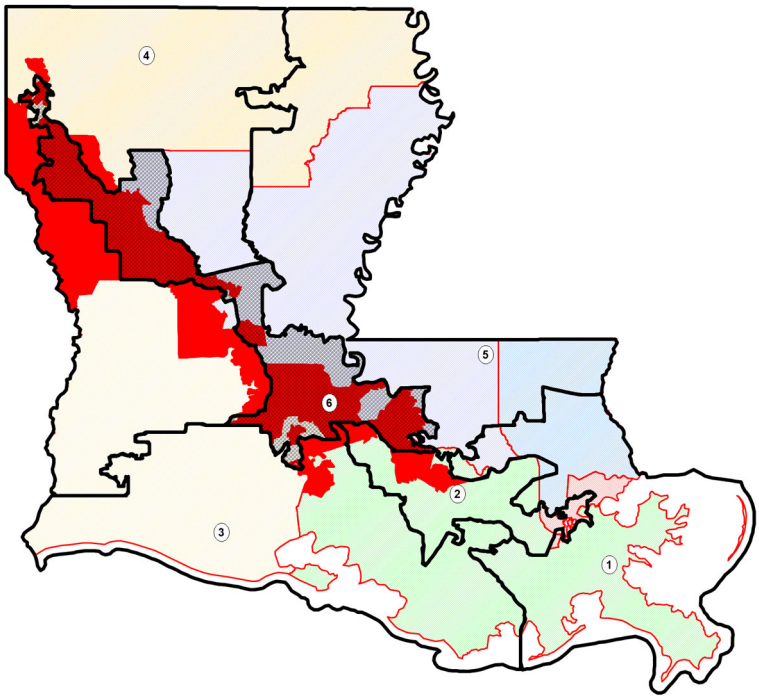
A. SB8 Mimics Louisiana's *Hays* Slash Map but Not the *Robinson* Illustrative Maps.

SB8-6 was not Louisiana's first attempt to cobble together a second majority-Black district with a Shreveport-to-Baton Rouge slash. After the 1990

Census, the U.S. Department of Justice ("DOJ") refused to preclear Louisiana's one-majority-Black-district plan, compelling it under the VRA to make two of seven districts majority-Black. *Hays*, 936 F. Supp. at 377. DOJ issued a detailed *Gingles* analysis analyzing voting patterns and other factors. *Id.* at 363. Citing DOJ's analysis as a strong basis in evidence under the VRA, Louisiana enacted a two-majority-Black-district map. *Id.* at 368-69.

The *Hays* three-judge district court sharply disagreed, finding the second district an unconstitutional racial gerrymander. *Id.* at 369-71. DOJ's letter, it held, did not satisfy Louisiana's burden to provide a strong basis that the VRA required two districts. *Id.*

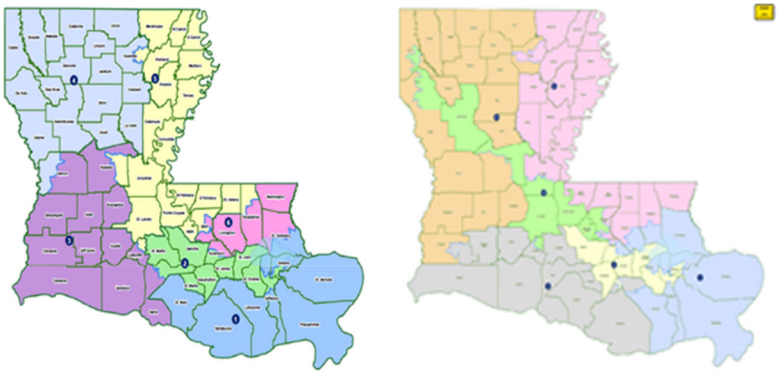
SB8-6 presents what courts "in Louisiana call a 'Goose' case" because it essentially replicates the *Hays* slash district. *Hays*, 936 F. Supp. at 367 n.33; **J.A.272-74, 384**. SB8-6 shares 70% of the *Hays* slash district's total population and 82% of its Black population. **J.A.274, 384**.



J.A.384[3] (depicting SB8 districts outlined in Black overlaid on *Hays* map with slash district in red).

SB8-6, in contrast, does not resemble the proposed maps in *Robinson*. Compare SB4, a *Robinson* illustrative map, on the left (**R.J.S.A.677a**), to SB8 on the right (**J.A.333**):

[3] Highlights adjusted for clarity.



	BVAP		
Parish	**SB4-5[4]**	**SB8-6[5]**	**+/-**
Avoyelles	8,311	5,235	-3,076
Caddo		68,784	+68,784
Catahoula[D]	1,736		-1,736
Concordia	5,613		-5,613
De Soto		5,871	+5,871
East Baton Rouge[F]	113,697	132,918	+19,221
East Carol[D]	4,043		-4,043
East Feliciana[F]	5,918		-5,918

[4] **R.J.S.A.675a-76a**.
[5] **J.A.336**.

Franklin[D]	4,779		-4,779
Lafayette	27,044	25,965	-1,079
Madison[D]	4,391		-4,391
Morehouse[D]	9,300		-9,300
Natchitoches		11,415	+11,415
Ouachita[D]	34,673		-34,673
Pointe Coupee	5,502	5,502	0
Rapides	24,239	28,675	+4,436
Richland[D]	5,546		-5,546
St. Helena[F]	4,371		-4,371
St. Landry	25,497	25,497	0
Tangipahoa[F]	8,474		-8,474
Tensas[D]	1,728		-1,728
West Baton Rouge	8,149	8,149	0
West Carroll[D]	1,010		-1,010
West Feliciana[F]	2,951		-2,951

Total:	306,972	318,011	+11,039

- Parish^{D} denotes a parish in the Delta Region.
- Parish^{F} denotes a Florida Parish.

SB8-6 sheds about half the geography of SB4, including three distinct regions of the State—the Northeast region, the Delta/Border Parishes, and Florida Parishes, which contained 30% of the maps' Black population. SB8-6 replaces those communities with a "key," distinct, and distant community 250 miles from EBR in Northwest Louisiana. **State Br. 51**. In the district court, no Appellant argued or proved that SB8-6 was substantially similar to the *Robinson* maps. Legislative leadership even characterized SB8 as a "different map than the plaintiffs in the [*Robinson*] litigation have proposed." **R.J.S.A.394a**.

B. Legislative Proceedings Focused Primarily on Race.

1. The Governor and Attorney General Opened the Session.

Governor Landry opened the legislative session by assuring legislators that as the litigator in *Robinson*, he believed the proposed maps (which became SB8) would "satisfy the Court." **J.A.98**. He never mentioned the VRA. **J.A.97-103**. Nor did he opine that a new map was necessary to comply with any provision of law. **J.A.97-103**. Instead, he urged legislators to act before a "heavy-handed member of

the Federal Judiciary" "eager to draw our Congressional maps" did so. **J.A.98-99**.[6]

The new attorney general, Elizabeth Murrill, offered no committee testimony on VRA compliance in the *Robinson*-considered area or on SB8. Murrill never told legislators the State had concluded the VRA required two majority-Black districts. **J.A.172-73**. She professed the opposite, claiming HB1 remained defensible and lawful. **R.J.S.A.353a**, **358a**, **360a.**

She went further, asserting preliminary proceedings in *Robinson* had not reached a fair or reliable result. **R.J.S.A.372a-76a**. She testified there had yet to be a trial on the merits; the case could still be tried; and any preliminary order had been vacated. **R.J.S.A.358a-59a, 362a, 364a, 372a-76a**. Another senior litigator told legislators, "Black voting-age population has been the primary criteria for this judge's rulings." **R.J.S.A.365a**.

Murrill concluded by urging the Legislature to draw a map with two majority-Black districts—not to comply with the VRA but to avoid trial. **R.J.S.A.360a-63a; R.J.S.A.376a**. Representative Farnum asked her: "Isn't [race] the only reason we're here right now . . . isn't that the predominant reason?" **R.J.S.A.365a-66a**. The Attorney General admitted, "we're here because . . . the court's telling us we have to be here. I mean . . . I think that's part of it. . . . I'm defending the map." **R.J.S.A.366a**.

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[6] The State never tempered this criticism. In this trial, the State characterized trial in *Robinson* as useless because the *Robinson* judge "had already made her views abundantly clear." **Dkt.192, at 15**.

After Murrill's testimony, the Legislature knew there had yet to be a trial on the merits in *Robinson*; the case could still be tried; HB1 was lawful; and the Legislature was under no order to draw two majority-Black districts. **J.A.113-14** (Sen. Morris); **J.A.161** (Rep. Seabaugh); **J.A.165-66, 171-73** (Sen. Pressly).

2. The Legislature's Baseline Was Two Majority-Black Districts.

After the Governor's and Attorney General's claims that the *Robinson* court would draw its own districts, the Legislature's uncompromisable "baseline," from which all else "proceeded" was a second majority-Black district. **State Jur. Stmt. 18-19**. Senator Womack, SB8's Senate sponsor, admitted "we had to draw two minority districts." **R.J.S.A.426a**. "[W]e all know why we're here. We were ordered to – to draw a new Black district, and that's what I've done." **R.J.S.A.531a-32a**.

Representative Beaullieu, SB8's House sponsor and Chairman of the House and Governmental Affairs Committee, repeated Senator Womack's opening statement on the House floor, affirming that the bill was "intended to create another Black district" and "to comply with the judge's order." **R.J.S.A.541a**. Representative Lyons, Vice Chairman of the House and Governmental Affairs Committee, concurred: "the mission that we have here is that we have to create two majority-Black districts." **R.J.S.A.497a**.

Testimony at trial from Senators Seabaugh and Pressly confirmed race was the State's primary criterion. The Legislature was only there, Senator Seabaugh testified, to draw a second majority-Black district; absent *Robinson*, the Legislature would have kept HB1. **J.A.157-58**. For this reason, legislators

only introduced maps with two majority-Black districts. **J.A.158-59**. The Legislature knew the second district could not fall below a certain BVAP quota and rejected plans that did. **J.A.160-61**. This racial quota was the criterion that, to the Legislature, could not be compromised. **J.A.158**, **159**. Senator Pressly testified that the Legislature believed it "needed to have two majority-minority districts, and any other redistricting guidelines were secondary to that"—*i.e.*, the Legislature's "fundamental" racial quota. **J.A.164-65, 171-72**.

Many legislators were ashamed to group citizens by race. **R.J.S.A.513-14a** (Rep. Carlson). Others believed Black voters deserved two of six seats because BVAP was not far below one-third. **R.J.S.A.359a-60a**, **368a-69a**, **433a**, **507a**, **516a-17a**.

Senator Womack admitted creating two majority-Black districts forced SB8-6's shape and 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." **R.J.S.A.443a**. Representative Carlson stated, "the overarching argument that I've heard from nearly everyone . . . has been race first" even though racial integration made creation of any second district "so difficult." **R.J.S.A.513a-14a**.

Legislators also recognized SB8 did not protect communities of interest. Sponsor Senator Womack admitted communities of interest were not considered when drafting SB8. **R.J.S.A.423a-24a**; *see also* **J.A.114** (Sen. Morris); **R.J.S.A.542a** (Rep. Bayham); **J.A.117** (Sen. Luneau); **R.J.A.S. 434a-35a**, **J.A.168-69** (Sen. Pressly); **Dkt.184, at 53:11-54:9** (Rep. Seabaugh).

The extra majority-Black seat also forced the Legislature to surrender its professed incumbent protection goal by sacrificing one Republican incumbent, protecting only the others. **R.J.S.A.173a-74a n.10**. Senators Pressly and Seabaugh testified that no legislator advocated for losing a Republican seat; the inevitable decision about who would theoretically lose a Republican seat flowed from the initial, uncompromisable racial quota. **J.A.159, 167, 171**. The State agreed before this Court. **State Jur. Stmt. 23**.

Finally, the Legislature recognized SB8 was a "different map than the [*Robinson*] litigation ha[d] proposed." **R.J.S.A.394a, 422a, 443a, 540a** (Sen. Womack, Rep. Beaullieu). Yet the Legislature recognized it had conducted no VRA analysis on SB8-6 or SB8-2. **R.J.S.A.429a** (Sen. Carter). The State conceded at trial that it never conducted VRA analyses of SB8 prior to enactment. **J.A.152-53**. The Legislature hired no experts and consulted no expert reports, viewing *Robinson* as "precedential" and "bind[ing] future proceedings." **J.A.152-53, 326**.

III. Appellees Challenged the Constitutionality of SB8.

On January 31, 2024, nine days after SB8 was enacted, twelve Louisiana voters ("Appellees") filed the instant lawsuit against the Louisiana Secretary of State, claiming SB8 classified voters based on their race in violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution. **J.A.22-27**. Specifically, Appellees asserted SB8-6, the newly created majority-Black district where several Appellees reside, was an unconstitutional racial gerrymander. **J.A.22-23**. Appellees requested and received a three-judge district court under 28 U.S.C.

§ 2284, and moved for a preliminary injunction. **R.J.S.A.145a**.

The district court granted Appellees' unopposed request to expedite briefing, consolidating the preliminary injunction hearing with trial on the merits. **R.J.S.A.145a-46a**. The court bifurcated trial: first to determine SB8's constitutionality (the "liability phase"); and second, to determine any remedy necessary ("remedial phase"). No one challenged this order.

The State, represented by Attorney General Murrill, intervened as a defendant. **R.J.S.A.144a**. The court allowed Robinsons to intervene permissively, **R.J.S.A.18a-19a, 144a-45a**, finding "existing representation of their interests *may be* inadequate" on specific issues. **R.J.S.A.23a** (emphasis added). It did not find the representation was inadequate, as necessary for intervention of right under Fed. R. Civ. P. 24(a). ***Id.*** The court "limit[ed] their role" as permissive intervenors. **R.J.S.A.23a**. 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**; **Dkt.189-1, at 27**.

The Saturday evening before Monday morning's trial, Robinsons moved to continue the trial, or alternatively to deconsolidate the preliminary injunction hearing from the merits. **Dkt.161; J.A.145**. The court denied the motion. **J.A.145-46**.

IV. The District Court Found SB8-6 Was Unconstitutional.

The district court found race predominated in SB8-6. It relied on both direct evidence of an overriding two-Black-seat quota from legislative

transcripts and legislators-witnesses' testimony (*supra* Section II.C) and circumstantial evidence. Appellees introduced extensive expert testimony, alternative maps, and other data showing not only that race predominated but also that SB8-6 failed strict scrutiny and *Gingles* 1 (even though the latter was not Appellees' burden).

By contrast, Appellants chose not to use all their trial time. The State presented no witnesses, only replaying legislative proceedings. **J.A.319**. Robinsons' witnesses solely contested racial predominance but presented no evidence of legislative pre-enactment Section 2 analysis of SB8-6. Appellants declined the court's invitation to introduce proper evidence from *Robinson*, refusing to present a *Gingles* (or Senate factors) analysis because, they said, the three-judge court was bound by such analysis from *Robinson*'s allegedly "precedential" and "bind[ing]" vacated preliminary injunction. **Dkt.186, at 124:20-24**; **J.A.326**. Appellants also refused to present evidence or argue that SB8-6 was substantially similar to any illustrative districts from *Robinson*. They insisted any compelling interest, strong basis, and narrow tailoring were conclusively established by *Robinson*'s "mere existence." **J.A.285-86, 311**.

The district court disagreed. On April 30, 2024, in a 60-page opinion analyzing the law and comprehensive record, it concluded SB8 was an unconstitutional racial gerrymander. **R.J.S.A.190a**. It held the State had breathing room to remedy a VRA violation but retained the burden of proving its chosen remedy arose from a "strong basis in evidence" that the VRA was violated and that it was narrowly tailored to substantially address the alleged violation.

R.J.S.A.177a-78a. The district court factually found Appellants failed to meet this burden. **R.J.S.A.182a**.

V. The District Court Enjoined SB8 as Unconstitutional and Scheduled the Remedial Phase of Trial.

The district court prohibited the State "from using SB8's map of congressional districts for any election." **R.J.S.A.190a**. But it recognized its task was incomplete; "the remedial stage of this trial" had only begun. **R.J.S.A.190a-91a**.

On May 7, 2024, the district court issued a scheduling order for the trial's remedial phase. **J.A.329-32**. It would only order an interim map on June 4, 2024, if the Legislature—in session until June 3—failed to exercise "its 'sovereign interest' [to enact] a legally compliant map." **J.A.329-31**. The court allowed briefing to proceed concurrently, permitting "[e]ach party, intervenor and amici" to submit one proposed map with unlimited evidentiary support and respond to maps of other parties. **J.A.331-32**. Parties, including Robinson Appellants and Galmon intervenors, could present Section 2 evidence regarding any proposed maps. **J.A.331-32**.

On May 15, 2024, this Court stayed district court proceedings pending appeal. Appellants filed jurisdictional statements. This Court noted probable jurisdiction and consolidated the appeals.

SUMMARY OF ARGUMENT

The district court's factual findings that Louisiana predominantly considered race in passing SB8, that SB8 lacked a strong basis in evidence, and that SB8 was not narrowly tailored to address any VRA violation were supported by overwhelming evidence. Contrary findings would have been clear

error. The district court should be affirmed; on remand it can complete the task it was days from finishing in May 2024: implementing a remedial map that tracks the Legislature's clearly expressed preferences in HB1, while avoiding another racial gerrymander and complying with the VRA. One unified factfinder, and one remedy from a court with jurisdiction over all potential claims, will finally end Louisiana's cycle of race-related litigation.

I. Direct evidence from legislative transcripts and courtroom testimony established Louisiana could not compromise its two-majority-Black-seat "baseline." **State Jur. Stmt. 18-19**. Louisiana's goal of incumbent protection was sacrificed to the racial quota, costing one Republican seat in a narrowly held Congress. *Which* incumbent was a decision forced by (or as Louisiana admits, "flowing from") the racial quota.

Traditional criteria were also subordinated to race. Circumstantial evidence confirmed what legislators admitted: SB8-6, a new 250-mile slash district joining shards of four metros and four distinct regions, was carefully traced to just exceed 50% BVAP. SB8-6 could not have emerged without an overwhelming focus on race.

II. SB8-6 failed strict scrutiny because Appellants never satisfied their burden to show (1) a compelling interest, under a strong basis in evidence, justifying racial gerrymandering, or (2) that SB8-6 was narrowly tailored, substantially remedying any VRA violation. On these facts, compliance with the VRA was not Louisiana's compelling interest. If the VRA had been implicated, the district court consulted *Gingles* as this Court has long required. It factually found SB8-6 failed *Gingles* 1 because the minority

population was not geographically compact, and the resulting district was noncompact and seriously violated traditional principles. Appellants never argued (and couldn't have showed) that SB8-6 resembled *Robinson* illustrative plans. The district court's findings allowed ample breathing room and are compelled by the trial record.

III. The district court properly exercised jurisdiction under a storied body of Fourteenth Amendment precedent. Appellees have standing under that precedent, which repeatedly considered and rejected the arguments Appellants newly raise now. The State's "odious" stereotyping of citizens based on race (even to the "shame" of many legislators and to Republicans' political detriment) and its tenacious efforts to freeze the gerrymander for the 2024 election show why the political process is insufficient to protect citizens against invidious discrimination.

IV. The district court treated Robinsons fairly and moved with the expedition required in proceedings where the State invoked *Purcell v. Gonzalez*, 549 U.S. 1 (2006), to freeze an impending remedial hearing. Robinsons fell far short of exhausting their trial time, kept their witnesses silent on strict scrutiny, and were fully heard on their repeated efforts to block *Gingles*-related evidence or findings. They consented to the timetable. They will have the right to present *Gingles* evidence and their maps in a remedial phase. This Court should affirm and remand so this odious racial gerrymander can be remedied in time for the 2026 election.

ARGUMENT

I. Race Predominated.

A. Race Predominates When Race Cannot Be Compromised.

"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 v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) ("*Shaw II*")) (footnote omitted). "Racial gerrymandering, even for remedial purposes," is still racial predominance and still triggers strict scrutiny. *Shaw I*, 509 U.S. at 657. Challengers can show racial predominance through direct or circumstantial evidence, or as here, both. *Id*. Appellees 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).

B. Race Predominated Because the Legislature Sacrificed Traditional Redistricting Factors to Purposely Draw Two Majority-Black Districts.

Thirty years ago, federal courts invalidated a racially gerrymandered majority-Black district that, for the only time prior to SB8-6, reached into Northwest Louisiana and

> thinly link[ed] minority neighborhoods of several municipalities from Shreveport in the northwest to Baton Rouge in the southeast (with intermittent stops along the way at Alexandria, Lafayette, and other municipalities), thereby artificially

> fusing numerous and diverse cultures, each with its unique identity, history, economy, religious preference, and other such interests.

Hays, 936 F. Supp. at 377; **J.A.272-74**. The Court recognized "outside New Orleans, the black population of Louisiana is so widely and evenly dispersed that, to create a Congressional district that meets the one-person-one-vote criterion and has even a simple majority black population, resort must be had to graphic design that constitutes racial Rorschach-ism." *Hays*, 936 F. Supp. at 370. Thirty years later, this perfectly encapsulates the evidence below. SB8-6 shares most of the geography and 82% of the Black population of the *Hays* slash district. Indeed, SB-6 leapfrogs *Hays*, creating two majority-Black districts out of six instead of seven—resulting in super-proportionality despite the VRA's disavowal of a right to even proportionate representation. 52 U.S.C. § 10301(b).[7]

SB8's sinuous, bizarre shape, careful tracing of racial boundaries, complete disregard of Louisiana's communities of interest, and loss of a Republican incumbent (endangering the party's margin in Congress) compel a finding of racial predominance. The district court rightly found it is utterly implausible race merely "tied" with Louisiana's

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[7] The Legislature's goal of super-proportionality for a target race magnifies the injury here compared to typical racial gerrymandering cases. This unlawful racial quota causes not only racial classification and segregation injuries but also racial discrimination and preference injuries. *Cf. SFFA*, 600 U.S. at 212, 220-21. Appellees flagged these issues in Count II of the Complaint, **J.A.60-65**, which remains pending and provides an alternative basis to affirm.

Republican-controlled Legislature's decision to eliminate one Republican congressional incumbent and protect two others. Instead, the Legislature "first made the decision" to impose the racial quota, eliminating one Republican seat, and "only then" had to choose which Republican to sacrifice. **R.J.S.A.174a**. The loss of a Republican seat and the need to protect newly endangered others was *caused by* the racial quota. No evidence supported a racial-political tie. Even had this been "more" plausible than racial predominance, the district court's contrary finding would still pass clear error review. *Cooper v. Harris*, 581 U.S. 285, 293 (2017) (finding of racial predominance "plausible in light of the full record—even if another is equally or more so—must govern" (citation omitted)). Of course, the evidence all points the other way, making this the easiest racial predominance case this Court has ever seen.

1. Direct Evidence Demonstrates Racial Predominance.

The legislative transcripts compelled the State to make a stunning concession: the Legislature's uncompromisable "baseline," from which all else "proceeded," was a second majority-Black district. **State Jur. Stmt. 18-19**.

Louisiana's legislative leadership—including both sponsors—repeatedly admitted they were redistricting mid-cycle to draw a second majority-Black district: "[W]e all know why we're here. We were ordered to – to draw a new Black district, and that's what I've done." **R.J.S.A.531a-32a**; *see also* **R.J.S.A.497a**. At trial, legislator-witnesses testified that race prevailed over politics. **J.A.157-59, 165-67**. For some legislators, this was "a shame . . . when we do not live in a . . . segregated society or nearly as

segregated as it once was 40, 50 years ago." **R.J.S.A.514a**. But many others—including Senator Duplessis, Robinsons' main legislator-witness at trial—were motivated by a calculation that Black voters "deserve" one-third of the seats, even after being told this was unlawful. **R.J.S.A.359a-60a, 368a-69a, 433a, 507a, 516a-17a**.

Legislators recognized race forced the narrow, jagged length of SB8-6. Senator Womack admitted the quota 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." **R.J.S.A.443a**.

But compactness and communities of interest were not the only traditional criteria sacrificed. The racial quota also forced the Legislature to surrender its professed incumbent protection goal by choosing one Republican incumbent to lose his seat. **R.J.S.A.173a-74a n.10** (calling the racial quota the "driving force"). The State's striking admission said it best:

> 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 Jur. Stmt. 23. Exactly. Race forced the State to abandon its desire to protect all incumbents, and "race-neutral considerations came into play only after

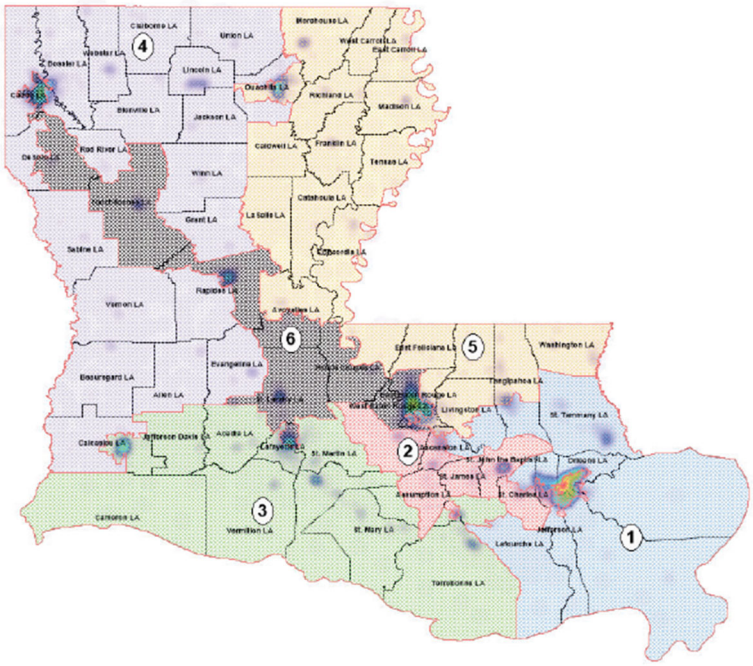
the race-based decision had been made." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (quotation omitted); *see also Bush v. Vera*, 517 U.S. 952, 975 (1996) (plurality) (holding even where "incumbency protection played a role . . . the District Court's findings amply demonstrate that such influences were overwhelmed . . . by the State's efforts to maximize racial divisions"). These concessions compelled the district court's predominance finding.

2. Circumstantial Evidence Demonstrates Racial Predominance.

Such direct evidence of a racial quota compels strict scrutiny. *Bethune-Hill*, 580 U.S. at 191. Conflicts with traditional principles are not *also* required. *Id.* But here, the district court found just that: fact and expert witnesses exposed SB8-6's racial line-drawing, noncompactness, destruction of communities of interest, parish splitting, and sacrificing incumbent protection to force a second seat.

i. SB8-6's irregular shape was necessary to include Black voters and exclude white voters. The circumstantial evidence supports the State's admissions, showing "the unusual shape of the district reflects an effort to incorporate as much of the dispersed Black population as was necessary to create a majority-Black district." **R.J.S.A.170a**. Appellees' experts proved how SB8-6 clearly traces around high-BVAP pockets over its 250-mile span. **J.A.181, 216-17, 253-54**. From EBR to Alexandria to Lafayette to Shreveport, SB8-6 carves in predominantly high-BVAP precincts and sacrifices compactness to reach around white areas in search of more distant high-BVAP neighborhoods. **J.A.253-54**. In areas of high population, SB8-6 narrows to maximize Black voters

and minimize white voters. **J.A.255**. SB8-6's barbell "handle" narrows to only 1.3 miles wide due to a high concentration of white voters. **J.A.255**. But in areas of low population, SB8-6 widens. **J.A.255**. The district court found SB8-6 "slashe[d]" across the State to join "four disparate metropolitan areas" (Baton Rouge, Lafayette, Alexandria, and Shreveport). **R.J.S.A.165a-67a**.



R.J.S.A.169a (district court order showing Plaintiffs' Exhibit 16, which illustrates how SB8-6 encircles BVAP pockets across the State).

Michael Hefner, a demographer with over 40 years of experience and lifelong Louisianan, explained that integration and dispersion of Black voters would doom any attempted majority-Black district outside New Orleans. Louisiana's highly dispersed Black population has become more dispersed since the

1990s. **J.A.251, 253-54, 281-82, 376-77**. The Fair Housing Act, Community Reinvestment Act, and school desegregation have significantly advanced integration. **J.A.281-82; R.J.S.A.189a**. Given this, it is impossible to draw a second majority-Black district without violating traditional redistricting criteria. **J.A.253**.

ii. The record showed SB8-6 subordinated compactness to race. SB8 is "not compact at all" and received a score of 0.05 on the Polsby-Popper test, the lowest and "worst" score for any district in HB1 or SB8. **J.A.190-91, 269-71, 382**. Moreover, Appellees' expert Dr. Stephen Voss concluded, after evaluating tens of thousands of simulations, that the non-compact features of SB8 are attributable to race. **J.A.217**.

iii. Evidence that SB8-6 subordinated communities of interest was overwhelming. Bill sponsor Senator Womack admitted communities of interest went unconsidered. **R.J.S.A.423-24a**. He conceded SB8-6 lacks a "heart," conceding, "it had to start somewhere." **R.J.S.A.424a**. Even Robinsons' expert admitted, "[t]here's no core, to speak of, with [SB8-2 and SB8-6]." **Dkt.184, at 246:5-7** (McCartan). Shreveport and Caddo Parish-area state senators testified that their districts shared no communities of interest with Lafayette or Baton Rouge. **Dkt.184, at 53:11-54:9** (Seabaugh); **J.A.168-69** (Pressly). Mr. Hefner testified that EBR and Shreveport, separated by 250 miles and a fundamental North-South divide, are very different communities with distinct histories, issues, cultures, and backgrounds, such that an official would struggle to adequately represent both. **J.A.263-66, 275-79**.

North and South Louisiana produce markedly different agricultural products given their contrasting topographies. **J.A.278-79**. Each agricultural faction controls its own lobbyists, historically requiring North and South Louisiana to have distinct congressmembers. **J.A.279**. North and South Louisiana also exhibit markedly different climates, crucial in natural disaster response. **J.A.168**. Even the educational needs and universities of the two differ. **J.A.168-69**.

Indeed, SB8-6 racially splits *three* of the five unified cultural regions defined by the Louisiana Regional Folklife Program—a collaborative project of various Louisiana universities and the best quantitative analysis of Louisiana cultural regions. **J.A.275-77**.

SB8-6's parishes—central communities of interest—were severely split. The district court found "there is no more fundamental unit of societal organization in the history of Louisiana than the parish," **R.J.S.A.187a** (quoting *Hays I*, 839 F. Supp. at 1200), and SB8-6 "splits six of the ten parishes that it touches." ***Id.*** Of all options, SB8-6 had the highest percentage of individuals affected by parish splits. **J.A.184-85, 370-71**. It splits its four biggest parishes, Caddo, Rapides, Lafayette, and EBR, though neither population nor traditional criteria required the splits. **J.A.279-80**.

SB8-6 split other communities, including numerous municipalities. **J.A.263**. SB8-6 followed lines in EBR only to exclude super-majority-white-VAP municipalities. **J.A.267-68**. Otherwise, SB8-6 would have exceeded the ideal district size long before it reached 50% BVAP in Shreveport. **J.A.267-68**.

Robinsons, who didn't approach their trial time allotment, proffered four witnesses to argue SB8-6 does reflect a community of interest. **R.J.S.A.149a-51a**. However, they never showed the Legislature considered SB8-6 united by any characteristic other than its racial quota and failed to persuade the factfinders. **R.J.S.A.174a**.

iv. SB8 maximized racial performance even against other allegedly VRA-remedial maps. SB8 had a higher BVAP percentage than any other considered plans, including SB4 and others resembling *Robinson*'s illustrative plans. **J.A.317**; **Dkt.186, at 30:5-8, 40:23-41:8** (Duplessis).

v. A desire to protect incumbents can't explain SB8-6's unusual shape. Evidence must be examined at the district, not the statewide, level to determine if race predominated. *Bethune-Hill*, 580 U.S. at 187, 191-92; *see also, e.g.*, *Bush*, 517 U.S. at 965-76 (scrutinizing "each challenged district"). So even if incumbent protection motivated other districts, it does not explain what predominated in the creation of SB8, where no incumbent was protected.

Moreover, even if the Court looked to other SB8 districts, Dr. Voss testified that a Legislature merely wanting to protect Congresswoman Julia Letlow's seat in SB8-5 could have enacted a compact map without gerrymandering. **J.A.192, 194**. But it didn't. Indeed, Letlow's seat is less safe under SB8 than HB1. **J.A.170**. Two majority-Black districts were unnecessary to protect Letlow. **J.A.194-95**.[8]

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[8] Appellants' allegation that the Republican Legislature targeted Republican Representative Garret Graves, the incumbent in HB1-6, to create a majority-Democrat district in SB8-6, changes

More broadly, Dr. Voss showed SB8-6 was contrary to the political interests of the Republican Legislature in maximizing incumbent protection. Using race-neutral constraints, Dr. Voss showed it was almost impossible to create two majority-Black districts in Louisiana. **J.A.214**. None of his tens of thousands of simulations randomly produced a map with two Democratic districts. **J.A.216, 219**. Dr. Voss viewed this as a significant confirmation of his results, as a second majority-Black district would almost certainly be Democratic. **J.A.215-16**. Dr. Voss concluded the non-compact features of SB8 are predominantly explained by race. **J.A.217, 219**. The district court found this compelling. **R.J.S.A.157a-58a**.

vi. Appellants claim Appellees didn't produce maps showing race, not politics, explains SB8-6. But they did: HB1 showed a non-gerrymandered map could protect all five Republican incumbents. **J.A.192-95, 217-18, 244-45, 247-48; R.J.S.A.173a-75a**. Appellees proffered a remedial map that did the same. **J.A.192-95, 217-18, 244-45, 247-48, 375; R.J.S.A.173a-75a**. SB8 was unnecessary to protect incumbents.

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nothing. First, even if true, it would only explain how Republicans chose whose district to sacrifice; it would not supplant the two-Black-seat quota as the predominant consideration. Second, the legislative record lacks reference to this consideration; the district court was entitled to disbelieve self-serving, post-hoc justifications. Third, as the district court found on the factual record, the goal of losing a Republican seat absent a two-seat quota is implausible. **J.A.173a-74a n.10**. Finally, even if punishing Graves had been a legislative goal, Dr. Voss testified the Legislature did not need two majority-Black, or non-compact, districts to achieve it. **J.A.194-95**.

Further, Appellants don't defend by claiming Louisiana sorted voters by their politics, not their race. *Cf. Alexander*, 602 U.S. at 14-15. Here, voters were clearly sorted based on their races. Appellants argue that the Legislature chose SB8-6 over Robinsons' proposals for political reasons; the tiebreaker between two racial gerrymanders was politics. But this claim gets Appellants nowhere, since race, even "used as a proxy for political characteristics" remains "a racial stereotype requiring strict scrutiny." *Bush*, 517 U.S. at 968; *see also Miller*, 515 U.S. at 914. "A plaintiff succeeds at this stage even if the evidence reveals that a legislature elevated race to the predominant criterion in order to advance other goals, including political ones." *Cooper*, 581 U.S. at 291 n.1 (citation omitted). The district court found SB8-6 was drawn based on race; it matters not whether this partially furthered political goals for neighboring districts. Any contrary finding would be clear error.

Finally, Appellants present a tailor-made map "test" that forces Appellees to accept a two-majority-Black-district quota and then prove that in this quota-world with one less Republican seat, Louisiana could have satisfied its already-compromised political goals without SB8's gerrymander. This convoluted test can't be correct: it enshrines the two-seat racial quota that compels racial gerrymanders in the first place. Furthermore, that quota is not a given, and it provided the "baseline" that forced Louisiana to subordinate its incumbent protection goals, as Appellees have shown, Appellants admit, and the district court has found.

Appellants' rigged "test" is a backdoor argument that the opinion accompanying *Robinson*'s

vacated preliminary injunction has preclusive effect on Appellees and all future litigants. Among many other problems, that position surrenders the jurisdiction of a three-judge district court over Fourteenth Amendment claims. The three-judge court, not echoes from *Robinson*, must decide whether race predominated in drafting SB8. Appellees have already shown before the three-judge court that race predominated in SB8 and will show in the remedial phase that no constitutional, VRA-compliant maps can also include a second majority-Black district. Only that result will restore Louisiana's political interest in protecting its incumbents.

C. Appellants' Citations to the VRA Prove Predominance.

Racial predominance is evident for another reason. Even if Louisiana really intended to comply with the VRA, that intent alone is evidence that race predominated, triggering strict scrutiny. *Cooper*, 581 U.S. at 292 ("When a state invokes the VRA to justify race-based districting, it must show (to the meet 'narrow tailoring' requirement) that it had 'a strong basis in evidence' for concluding that the statute required its action."). This is nothing new. *Alexander*, 602 U.S. at 8 (explaining "such concessions are not uncommon because States often admit to considering race for the purpose of satisfying our precedent interpreting the Voting Rights Act of 1965"); *Shaw II*, 517 U.S. at 904-05 (where State claimed gerrymandered district was necessary to satisfy DOJ and avoid VRA litigation, strict scrutiny applied "whether or not the reason for the racial classification is benign or the purposed remedial"); *Bush*, 517 U.S. at 984. Almost thirty years later, there remains "no

need to revisit [the Court's] prior debates." *Bush*, 517 U.S. at 984.

The State cites nothing to support its claim that its racial quota "counts" as the court's choice and not its own. *Cf.* **Dkt.192, at 1** (State admitting it "chose" to draw SB8). The State admittedly sorted citizens by race into two districts as the "baseline" from which the rest of SB8 flowed. It hopes *Robinson* can excuse strict scrutiny, but this Court foreclosed similar arguments long ago. *Bush*, 517 U.S. at 984. The strength of the *Robinson* excuse (and of the resulting district) is what strict scrutiny tests; it does not circumvent strict scrutiny. *Id*. Nor can the State neglect review of a particular plan by shifting blame onto federal courts that didn't consider SB8 or constitutional claims—particularly where *Robinson* was never tried and the State is answerable for the quality of its advocacy and defense.

II. SB8 Fails Strict Scrutiny.

A. Appellants Had the Burden to Satisfy a Two-Part Test.

Since race predominates in the State's creation of a majority-Black district, Appellants must satisfy strict scrutiny. Precisely because laws sorting voters based on their race "are by their very nature odious," *Wisconsin Legislature v. Wisconsin Elections Comm'n*, 595 U.S. 398, 401 (2022) (citation omitted), and "antithetical to the Fourteenth Amendment, whose central purpose was to eliminate racial discrimination emanating from official sources in the States," *Shaw II*, 517 U.S. at 907 (quotation omitted), strict scrutiny remains "daunting," *Alexander*, 602 U.S. at 11. Strict scrutiny is this Court's mandated method "to determine whether [racial classifications] are benign . . . or whether they misuse race and foster

harmful and divisive stereotypes without a compelling justification." *Bush*, 517 U.S. at 984. The test is twofold.

First, Appellants must show the State had a specific, compelling interest in racially segregating citizens. *Shaw II*, 517 U.S. at 908. "To be a compelling interest, the State must show that the alleged objective was the legislature's actual purpose for the discriminatory classification . . . ." *Id.* at 908 n.4 (quotation omitted). This belief must be grounded on a "strong basis in evidence" and cannot be infected with an "error of law." *Cooper*, 581 U.S. at 306. Otherwise, there is no wrong or remedy. *Id.* Even assuming the VRA is such an interest, the State must show it has "good reason to think that all the *Gingles* preconditions are met." *Id.* at 302 (quotation omitted). States must also consider the Senate factors. *Wisconsin Legislature*, 595 U.S. at 405.

Second, Appellants must prove the "use of race is 'narrowly tailored'—*i.e.*, 'necessary'—to achieve that interest." *Alexander*, 602 U.S. at 11. "This standard is extraordinarily onerous because the Fourteenth Amendment was designed to eradicate race-based state action." *Id.*

The district "must, at a minimum, remedy the anticipated violation or achieve compliance to be narrowly tailored." *Shaw II*, 517 U.S. at 916. It "must be designed as nearly as possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Id.* (quoting *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995)). It may not "subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Bush*, 517 U.S. at 979. "If, because of the dispersion of the

minority population, a reasonably compact majority-minority district cannot be created, § 2 does not require a majority district." *Id*. Thus, even where the State identifies a "strong basis in evidence" for believing a Section 2 violation occurred somewhere, the State cannot create a "majority-minority district somewhere else in the State." *Shaw II*, 517 U.S. at 917.

B. The State Had No Compelling Interest in Race-Based Districting.

At step one, the State labels its compelling interest, "VRA compliance." That fails for two reasons. First, as the State recognized before January 2024 (and has consistently argued in related proceedings), Louisiana lacks a compelling interest in VRA compliance. "The State's position is that Section 2 is no longer constitutional in Louisiana because the voter data from Louisiana . . . shows that Black voters in Louisiana today have an equal opportunity to participate in the political process and elect representatives of their choice."[9] Second, the State disavowed VRA compliance at enactment, instead focusing on its legitimate, but not compelling, interest in drawing the remedial map in place of the single-judge court.

1. VRA Compliance Is Not a Compelling Interest.

The State had no compelling interest in complying with VRA Section 2 because, as it had already recognized in a related case before it passed SB8, and as it argued just weeks ago in the U.S. Court

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[9] State Reply Brief 2, *Nairne v. Landry*, No. 24-30115 (5th Cir.) (ECF 252) (quotation omitted). *Nairne* challenges Louisiana state legislative districts.

of Appeals for the Fifth Circuit, Section 2 imposes burdens on constitutional redistricting laws that cannot be justified by Black Louisianans' needs. Defendants' Post-Trial Brief 37, *Nairne v. Landry*, No. 3:22-cv-00178-SDD-SDJ (M.D. La.) (ECF 206). The State is correct.

This Court's "acceptance of race-based state action" is "rare" and "rare for a reason." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 208 (2023) ("*SFFA*"). "Distinctions between citizens solely because of their ancestry are by their very nature odious . . . ." *Id.* (quotation omitted). That is why this Court has only found compelling interests to satisfy strict scrutiny in "the most extraordinary case[s]," *id.* at 207-08, and has "assumed" but never determined that Section 2 qualifies, *Wisconsin Legislature*, 595 U.S. at 401.

The Court has also set time limits on race-based state action. *SFFA*, 600 U.S. at 212-13; *id.* at 260 (Thomas, J., concurring); *id.* at 311, 314 (Kavanaugh, J., concurring). "[E]ven if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future." *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring) (citing *id.* at 86-89 (Thomas, J., dissenting)). This Court should not "prolong immeasurably the day when the 'sordid business' of 'divvying us up by race' is no more." *Id.* at 86 (Thomas, J., dissenting) (quoting *LULAC v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in judgment in part, and dissenting in part)).

It's time to retire the assumption that the VRA provides Louisiana a compelling interest, at least since January 2024.

Appellants adduced zero evidence at trial—and can cite nothing in the legislative record—even beginning to apply the *Gingles* totality of circumstances factors to the Louisiana of 2024. As Appellees' experts showed, the Louisiana of 1966, 1986, or even 1996, which saw the *Hays*' slash district, is no more. Statewide BVAP has flatlined while dispersing across the State, propelled by social advancements, including integration, and Hurricane Katrina. **J.A.281-82**; *cf. Milligan*, 599 U.S. at 28-29 (noting creation of compact § 2 districts has become more difficult over time).

What else has changed? Aggressive VRA-only litigation before single-judge district courts has proliferated and expanded racial gerrymanders. If Louisiana could not create 2/7 majority-Black districts in the 1990s but must enact virtually the same racial gerrymander to create 2/6 majority-Black districts today, the culprit is Section 2 "breathing room" that has suffocated Equal Protection. **J.A.272-74, 281-82.**

As the record reveals, Section 2 is abused to set racial quotas and elevate some groups over others. Such practices violate "the twin commands of the Equal Protection Clause that race may never be used as a 'negative' and that it may not operate as a stereotype." *Cf. SFFA*, 600 U.S. at 218-21; *see also Milligan*, 599 U.S. at 86 (Thomas, J., dissenting) ("To the extent § 2 requires any of this, it is unconstitutional."). If alleged compliance with this version of the VRA is unconstitutional as the State asserts, then it cannot be Louisiana's compelling interest to excuse brutal racial gerrymanders.

2. Alternatively, the State's Actual Purpose Was Not VRA Compliance.

Even assuming VRA compliance could qualify as a compelling interest, the State repeatedly disavowed such an interest. Its "actual purpose" for the discriminatory classification was to replace the *Robinson* single-judge court as the remedial map-drawer. *Shaw II,* 517 U.S. at 908 n.4 (quotation omitted). While understandable for a State "tired" (**State Br. 54**) by demands for racial quotas and fearful of a "heavy-handed" judge, that interest is not "compelling."

i. The State's posture of championing VRA compliance is a recent invention. Before, during, and after enactment, the State unambiguously proclaimed it was merely circumventing a predicted loss from an unfair tribunal; the VRA did not actually require a second majority-Black district; and the VRA was unconstitutional as applied to it. **R.J.S.A.353a, 358a, 360a, 372a-73a, 376a, 383a; J.A.113-14, 161, 172-73; Dkt.184, at 59:4-5, 62:17**; *supra* Subsection II.B.1. The State has never articulated a reasoned VRA defense—instead relying on the "mere existence" of *Robinson* and fear of post-trial remedies. Alleged super-defenses like these should have generated an embarrassment of trial evidence that the VRA required two majority-Black districts. But there was none.

ii. Alleged appeasement of an unfair court is not a "compelling interest" because it is not amenable to judicial review. "Courts may not license separating [citizens] on the basis of race without an exceedingly persuasive justification that is measurable and concrete enough to permit judicial review." *SFFA*, 600

U.S. at 217. Thus, even an interest closely related to VRA compliance, such as "an effort to alleviate the effects of societal discrimination," "is not a compelling interest" because courts cannot determine the injury or remedy. *Shaw II*, 517 U.S. at 909-10 (citation and footnote omitted).

Actual Section 2 compliance—though constitutionally infirm for other reasons, *supra* Subsection II.B.1—provides a useful contrast. If actual compliance meets *SFFA*'s standard of being exceedingly persuasive, measurable, and sufficiently concrete, it is only because the "*Gingles* framework" is sometimes effective, when "properly applied" in the required pre-enactment analysis and later through strict scrutiny, in avoiding racial gerrymandering. *Milligan*, 599 U.S. at 26-30 (collecting cases); *Wisconsin Legislature*, 595 U.S. at 404 (emphasizing "breathing room" still "does not allow a State to adopt a racial gerrymander that the State does not, at the time of imposition, judg[e] necessary under a proper interpretation of the VRA" (quotation omitted)).

Even these murky standards read like precise verdict-directors compared to Louisiana's desire to "appease" the *Robinson* court and "forestall" a judicially imposed map (prematurely surrendering its duty to defend a statute). **State Jur. Stmt. 25-26**. Louisiana's desire is neither an "exceedingly persuasive justification" nor "measurable and concrete enough to permit judicial review." *SFFA*, 600 U.S. at 217. It is not an argument that appeals to the purposes of the Fourteenth or Fifteenth Amendments, like the argument that the VRA, applied under *Gingles* and the Senate factors, actually justifies sorting Appellees by race. It does not turn on legal principles or hard evidence familiar to courts about

districts or voters' characteristics. *Cf. Wisconsin Legislature*, 595 U.S. at 403-05 (requiring "strong showing of a pre-enactment analysis with justifiable conclusions" and critiquing Wisconsin Supreme Court's *Gingles* analysis); *Cooper*, 581 U.S. at 305 (examining the VRA analysis North Carolina used to racially gerrymander and holding it erred under *Gingles* 1). It rather depends on predictions regarding the factfinder's likely disposition after trial, potential judicial remedial districts, success on appellate review, and the timing of all these decisions compared to election schedules. **State Br. 10-12**. The State's position, repeatedly conceded at trial, is that predictions about individual judges supplant expert testimony applying the VRA. **J.A.152-53, 326**. Such prognostication is grossly unsuitable for judicial review. *SFFA*, 600 U.S. at 217.

An appeasement interest undermines the goals of the Fourteenth Amendment and VRA. Rational legislatures defending VRA litigation will ask not whether the VRA requires a remedy, but whether reviewing courts will accept their remedy as a reasonable guess about the factfinder's disposition. An appeasement interest forces courts into the awkward position of judging a legislature's views of the judiciary. Worst of all, as this record shows, the promise of a litigation "pass" encourages legislators to transact in harmful racial stereotypes. *Milligan*, 599 U.S. at 86 (Thomas, J., dissenting).

A State's desire to reclaim redistricting from federal courts is a true sovereign impulse, but the Fourteenth Amendment requires more. Under our color-blind Constitution, citizens are owed facts, analysis, and compelling reasons—even if not 20/20

hindsight—in exchange for this transitory and odious focus on race. Louisiana fell far short.

C. Appellants Failed to Establish a Strong Basis in Evidence that the VRA Required a Second Majority-Black District.

Precisely because Appellants rested their entire strict scrutiny showing on the mere existence of the preliminary *Robinson* decisions, they offered no evidence—let alone a strong basis in evidence—that Louisiana needed *any* two majority-Black districts, the districts discussed in *Robinson*, or SB8-6. The State readily admitted in its opening and closing statements that the Legislature conducted no pre-enactment Section 2 analysis. **J.A.152-53** (opening); **J.A.326** (closing). These errors doom the State's case.

1. *Robinson* Could Not Supply the Strong Basis in Evidence.

Appellants piled all their chips on *Robinson*'s preliminary, vacated findings. But those findings expressly *reject* the State's "strong basis."

Robinson did not conclude a second majority-Black district could be created anywhere. Instead, its *Gingles* analysis had to follow an intensely local appraisal based on the plaintiffs' illustrative maps. *Robinson I*, 605 F. Supp. 3d at 779-89. *Gingles* 1 (the geographic compactness of the Black community for the district—also addressed by the three-judge court for SB8-6) was litigated as a series of "factual disputes" about whether the plaintiffs' illustrative maps were "reasonably configured." *Robinson III*, 86 F.4th at 592. Each *Robinson* illustrative "connect[ed] the Baton Rouge area and St. Landry Parish with the Delta Parishes far to the north along the Mississippi

River." *Id.* at 590. It was "undisputed that unless the part of the Baton Rouge area that is majority black is combined with the Delta Parishes to the north, creating a second black-majority district would be difficult." *Id.* On clear error review, the Fifth Circuit did not disturb the district court's finding that this particular configuration likely satisfied *Gingles* 1, given expert "credibility" determinations and the state's decision to "offer no evidence" on communities of interest and "produce no witness testimony." But again, those illustratives "[a]ll have their core in the delta parishes of northeast Louisiana." *Robinson II*, 37 F.4th at 218. None of this territory is in SB8-6.

Indeed, *Robinson* essentially rejected SB8-6. Louisiana's geography provides just one alternative route to surmount 50% BVAP: EBR to Shreveport, 250 miles away in Northwest Louisiana, exemplified in SB8-6 and the nearly identical *Hays* slash. Far from finding a "strong basis," *Robinson* rejected the northwest alternative as a "nonsensical configuration." *Robinson I*, 605 F. Supp. 3d at 834.[10] *Robinson* credited Robinsons' expert (in *Robinson* and *Callais*) Anthony Fairfax's testimony that the northwest alternative districts were "extremely noncompact, to the point he would never draw them."

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[10] The State, seemingly forgetting this part of the opinion, boldly (and falsely) claims that Caddo Parish was key to *Robinson*'s preliminary injunction. **State Br. 52**. But Caddo appears only one other place in *Robinson*. *Robinson I*, 605 F. Supp. 3d at 847. The reference is to Caddo's allegedly insufficient early voting locations and is buried within a lengthy exposition of decades of Black voter discrimination throughout the entire "state" under Senate Factor 1. *Id.* at 846-48. In contrast, the relevant part of *Robinson*, the 20-page discussion of *Gingles* 1, focuses on the Black population in Delta parishes, EBR, and Florida parishes. *Id.* at 778-98.

Robinson I, 605 F. Supp. 3d at 834. He insisted he "would not draw a map like that" in this case. **J.A.303**. Perhaps that is why below, Appellants avoided asking Fairfax whether SB8-6 could pass *Gingles* 1.

Robinson unsurprisingly made zero findings that Black voters in Northwest Louisiana shared communities of interest with those in the Delta, Acadiana, the Florida Parishes, and EBR. Appellants avoided trying to prove the absurd: that the entire Black population scattered across Louisiana is its own "community of interest" and can be strung together under *Gingles* 1.

Finally, in *Robinson*, the State showed the dense BVAP cluster around EBR enjoyed substantial white crossover voting and therefore could not satisfy *Gingles* 3 alone. *Robinson II*, 37 F.4th at 226. As a result, *Robinson* illustratives' second districts connected EBR's BVAP—even if approaching 70% of those districts, as Appellants suggest—with BVAP in the distant Delta and Florida parishes where lower white crossover voting yielded *districtwide* averages moving toward *Gingles* 3. *Robinson I*, 605 F. Supp. 3d at 844. *Robinson* showed EBR's BVAP cluster needs distant BVAP clusters in starkly different crossover voting environments to even entertain *Gingles* 1-3. But *Robinson* only considered the Delta and Florida clusters—not the Northwest cluster.

These facts sink Appellants' argument. Even so, *Robinson* exhibited more flaws. The district court's preliminary factfinding that the maps passed *Gingles* 1 was not a "strong basis" even for those maps. It was reviewed only for clear error. The State mounted a purely legal argument and "did not meaningfully refute or challenge Plaintiffs' evidence on compactness." *Robinson II*, 37 F.4th at 220. The Fifth

Circuit noted plaintiffs' showing on compactness "was not airtight," *id.* at 217, and their evidence had "weaknesses," *id.* at 220. It found a more serious analytical error: on *Gingles* 1, the district court had not correctly found the proposed districts contained a compact Black population or complied with traditional districting principles. *Id.* at 219.

Proceedings over the next year clarified that nothing from the vacated preliminary injunction hearing would control review of new maps. Another panel remarked the State likely "lacked a full opportunity to mount a defense at the merits," it had "less than four weeks to prepare," the district court's decision was "hasty and tentative," and there was a "need for further development of factual and legal aspects." *In re Landry*, 83 F.4th 300, 305-06 (5th Cir. 2023). A later panel sustained the district court's preliminary order under the "clear error" standard before vacating it, noting once again the State's experts were found to lack credibility and the State largely omitted "contrary testimony" on *Gingles* 1. *Robinson III*, 86 F.4th at 592. It "ordered a trial, allowing any deficiencies in the 2022 hearing to be corrected." *Id.* at 591 n.3. Finally, citing a reminder from the district court, the Fifth Circuit reminded the State "a legislatively enacted map would be subject to Equal Protection review." *Id.* at 595 n.4. The *Robinson* district court acknowledged it never adjudicated Appellees' constitutional claims or SB8. *Robinson v. Ardoin*, No. 22-CV-211-SDD-SDJ, 2024 WL 1637530, at *3 (M.D. La. Apr. 16, 2024).

The State knew of *Robinson*'s inapplicability. This is why in the legislative record, its litigators never claimed *Robinson* provided a strong basis in evidence for SB8-6 and never discussed *Robinson*'s

facts or analysis. Instead, litigators simply presented it as mandating a two-Black-seat quota. **J.A.325-26**. Indeed, they continued to claim that HB1 was valid and *Robinson*'s proceedings were neither fair nor reliable. **R.J.S.A.372a-73a**. The State's admissions in the legislative record are dispositive.

2. Alternatively, Appellants Did Not Rely on the *Robinson* Record to Supply a Strong Basis in Evidence at Trial.

But even if *Robinson* alone could have supplied the State's "strong basis," it cannot now, because Appellants refused to identify any portions of the *Robinson* record to support their burden for SB8-6. **J.A.319**. This was not for lack of opportunity.

With substantial trial time to spare, Appellants tried to move the *Robinson* record into evidence to prove its existence but not to establish any underlying facts. **J.A.283**, **286**. The district court reserved ruling, inviting Appellants to offer witnesses explaining what parts of *Robinson* the Legislature reviewed in considering SB8-6. **J.A.283-90**. The State never did. **J.A.319**. It designated no part of the legislative record discussing *Robinson*'s evidence or analysis.

Robinsons offered no expert on a Section 2 defense, moving *in limine* to starve the record of any evidence or argument applying Section 2 to SB8. Echoing the State's desire to circumvent the *Robinson* court's *Gingles* factfinding, the Robinsons desperately—but unsuccessfully—urged the same of the three-judge court. Appellees filled the evidentiary gap with part of the rebuttal planned for the Section 2 defense Appellants never mounted. **J.A.67-81**.

Appellants lost on strict scrutiny by intentionally refusing to factually defend SB8-6 as either meeting a "strong basis" or "substantially similar" to illustrative remedial districts.

D. The State Failed to Prove that Where SB8-6 Sits, There Has Been a VRA-Cognizable Wrong and SB8-6 Is the Remedy.

1. The District Court's Findings Based on Appellants' Evidentiary Showing Foreclose Finding that SB8-6 Remedies a VRA Violation.

Not only was Appellants' failure to carry their burden fatal, but Appellees established as a matter of fact and law that the VRA did not require SB8-6. *Shaw II*, 517 U.S. at 917. Based on the record, the district court found Black voters were not sufficiently large and geographically compact to constitute a majority in SB8-6. The district court's factual findings—subject only to clear error review—doom this appeal.

The district court found, "outside of southeast Louisiana, the State's Black population is dispersed," **R.J.S.A.182a**, even more so since *Hays*' nearly identical slash district was struck down in the 1990s, **R.J.S.A.189a**. That's why SB8-6 is a "bizarre" 250-mile-long slash district that "severs and absorbs majority-minority neighborhoods from cities and parishes all the way from Baton Rouge to Shreveport." **R.J.S.A.182a**. SB8-6 cuts across the same "distinct and diverse economic interests" as the *Hays*' slash district. Appellees' evidence was more convincing than testimony from Robinson witnesses that portions of widely scattered enclaves in Shreveport, Lafayette, Alexandria, and Baton Rouge, separated by hundreds

of miles of dissimilar rural expanse, happened to form a single community of interest. SB8-6 splits six of the ten parishes it touches, even though "there is no more fundamental unit of societal organization in the history of Louisiana than the parish." **R.J.S.A.187a** (quoting *Hays I*, 839 F. Supp. at 1200). SB8-6 "violates the boundaries of nearly all major municipalities in the State." ***Id.*** (quoting *Hays I*, 839 F. Supp. at 1201). It fails to account for "natural boundaries," **R.J.S.A.188a**, and as in *Miller*, "centers around four discrete, widely spaced urban centers that have absolutely nothing to do with each other, and stretches the district hundreds of miles across rural counties and narrow swamp corridors." ***Id.*** (quoting *Miller*, 515 U.S. at 908) (citing *Milligan*, 599 U.S. at 27-28). No split cities or their home parishes are large enough to require a split for equal population purposes. ***Id.*** Finally, SB8-6 is not compact based on several measures. **R.J.S.A.188a-89a**.

This factfinding dispositively eviscerates any Section 2 remedy. *LULAC*, 548 U.S. at 430-31 ("There is no §2 right to a district that is not reasonably compact."); *Shaw II*, 517 U.S. at 916 (noting if the district does not contain a "geographically compact" racial group "where that districts sits, there neither has been a wrong nor can be a remedy" (quotation and footnote omitted)).

2. Appellants' Objections Err in Law and Fact.

i. The State claims its use of the traditional criterion of "incumbency protection" alone sustains SB8-6. **State Br. 47** (citing *Bush*, 517 U.S. at 964, *Milligan*, 599 U.S. at 35). But *Bush* and *Milligan* merely hold incumbents are often a redistricting consideration; they nowhere hold a racially

predominant plan survives strict scrutiny because traditional criteria remained but were subordinated. Such circularity would render strict scrutiny useless. Further, a noncompact district that fails *Gingles* 1 cannot be resurrected as a *Gingles* defense because it exhibits some other traditional criterion (*e.g.*, incumbency protection). *Cooper*, 581 U.S. at 301-02; *Bush*, 517 U.S. at 980-81; *Shaw II*, 517 U.S. at 916. This would replace a true VRA defense with an "incumbency protection" defense. Finally, the State's factual premise is false: the evidence suggests SB8-6 is a more effective racial gerrymander than *Robinson* alternatives, such as SB4, generating a higher BVAP by enclosing a more distant, but more numerous, BVAP pocket. **J.A.317**; **Dkt.186, at 40:23-41:8**.

ii. Robinsons wrongly argue "breathing room" lets States mount a VRA defense with a gerrymandered district that is noncompact and violates traditional principles under *Gingles* 1. **Robinson Br. 41** (citing *LULAC*, 548 U.S. at 430). But *LULAC* nowhere holds a State can raise a VRA defense to racial gerrymandering by referencing a noncompact district; it merely holds that in the first instance, Section 2 does not contain a freestanding requirement that majority-minority districts be compact. 548 U.S. at 430.

iii. Both Appellants errantly argue SB8-6 is sufficiently close to the *Robinson* maps to satisfy narrow tailoring, since a State's remedial map need not precisely track the map a court would draw. But a true remedial map must "substantially address" the Section 2 violation, *Bush*, 517 U.S. at 977, *and* be reasonably compact, *LULAC*, 548 U.S. at 430-431. SB8-6 fails on both counts.

First, SB8-6 redresses no violation raised in *Robinson*. The *Gingles* inquiry, as relevant for whether a remedial district passes strict scrutiny, is intensely "local," and the State must "carefully evaluate" before enactment whether *Gingles* 1-3 and Senate factors are met for each remedial district based on "evidence at the district level." *Wis. Legislature*, 595 U.S. at 404-05. As even the *Robinson* district court suggested, *Robinson* in no way answered the VRA question for SB8-6. *Robinson*, 2024 WL 1637530, at *3.

SB8-6 covers different territory and a different "key" population rejected in *Robinson*. *Supra* Subsection II.C.1. SB8-6 jettisons the BVAP in Monroe, the Delta parishes, and the Florida parishes, which collectively supplied over 50% of the territory and 30% of BVAP in the *Robinson* illustratives. The State now concedes that the "key" to replacing these populations and edging over 50% BVAP was SB8-6's 250-mile detour to Northwest Louisiana, **State Br. 51**, an impermissible alternative in *Robinson*. *Supra* Subsection II.C.1. When 30% of a supposed community of interest is impermissible in one district but "key" to another, the mapmaker is not merely adjusting lines or substantially addressing the harm; the new district is unrecognizable.

Second, SB8-6 is not reasonably compact. *Cf. Bush*, 517 U.S. at 916. The district court's factual findings on *Gingles* 1 forbid any other conclusion. *Supra* Subsection II.D.1. As the district court factually found, EBR has a large, but insufficiently large, BVAP to create a second district. SB8-6's shared 70% BVAP from EBR with the *Robinson* illustratives simply reflects this reality. There is no adjacent concentration. Each search for the "missing"

30% requires long, arduous sojourns across swamp, river, and field; each time, the traveler claims to have stumbled upon the "lost" 30% of an allegedly natural, compact BVAP community.

Appellants bore these burdens. But they introduced no evidence at trial to meet them because they could not. They lose on strict scrutiny.

E. *Robinson*'s Vacated Preliminary Decision Does Not Preclude Fourteenth Amendment Adjudication.

Appellants' bad facts drive them to an extreme legal position: *Robinson*'s preliminary decision based on HB1, even if vacated, moot, and *incorrect* (**Robinson Br. 43**), precludes any subsequent *Gingles* analysis. Therefore, *Robinson* controls a three-judge panel considering a new Fourteenth Amendment claim about a new statute. **State Br. 46-47**.

The doctrines of res judicata and law of the case do not apply here. The parties differ, the question of whether SB8-6 (or any district) was reasonably required by *Gingles* and the Senate factors was not fully and fairly litigated in *Robinson*, and constitutional racial gerrymandering issues fell outside the case and the single-judge court's jurisdiction. As even the *Robinson* district court held:

> The Western District confronts constitutional questions that were not before this Court in the captioned matter. The appointment of the three-judge panel in *Callais* pursuant to § 2284 to reach such questions is a stark indicator that these cases are distinguished. . . . In conclusion, because

> materially different legal questions are presented, the burden of proof is different, and different parties are involved, the Court finds that the two cases do not substantially overlap.

Robinson, 2024 WL 1637530, at *3-*4 (footnote omitted). Appellants' contrary proposal, that even a vacated injunction revivifies with preclusive effect when augmented by "breathing room," conflicts with precedent.

Even when the State concludes the VRA *requires* or *demands* new majority-Black districts based on well-founded pre-enactment analysis, the State must make the requisite showing under every step of *Gingles* and the Senate factors. *Wis. Legislature*, 595 U.S. at 404. When it does, "breathing room" excuses reasonable errors with data or future predictions—not the complete preclusion of analysis. *Id.*

Appellants' degradation of these well-trod rules endangers the congressional grant of jurisdiction to three-judge courts to police racial gerrymandering.[11] Coupled with a rule prohibiting Fourteenth Amendment protections from impacting VRA litigation (*Milligan*, 599 U.S. at 20-21), a new rule awarding preclusive effect to preliminary findings

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[11] Indeed, three-judge district courts should hear all VRA claims regarding redistricting covered by § 2284. After all, VRA claims address harms covered by the Reconstruction Amendments. A single tribunal can then resolve both sides of the Fourteenth Amendment and Fifteenth Amendment coin. Some litigants are suggesting three-judge panels have jurisdiction in VRA-only cases. Proposed Findings and Conclusions of Defendant Raffensperger, *Alpha Phi Alpha Fraternity v. Raffensperger*, No. 1:21-CV-05337-SCJ (N.D. Ga.) (ECF 317, at 20).

from VRA single-judge courts leaves three-judge courts little to adjudicate in Equal Protection claims.[12]

This, in turn, seriously hobbles voters' Fourteenth Amendment protections in court. True, Appellants' preclusion rule would certainly create new breathing room for States. But the room is wholly for racial gerrymandering, filling the space formerly occupied by the Fourteenth Amendment and suffocating protections for citizens who wish to live under a color-blind Constitution.

Louisiana urges a congruent step: "tired" of litigating, it claims (if only here) to prefer completely terminating citizens' Fourteenth Amendment protections against racial gerrymandering. But Louisiana recognizes the truth in *Nairne*: the Fourteenth Amendment is not the source of Louisiana's weariness. The source is an imperial Section 2 that threatens to overwhelm redistricting with serial litigation in single-judge courts. States that redistrict to avoid federal court-imposed maps are diminished sovereigns. Restoring Louisiana's sovereignty means affirming the three-judge district court—not compelling the temporary and weak "relief" of a brutal racial gerrymander that ashamed even Louisiana's legislators.[13]

III. Appellees Have Standing.

The State challenges Appellees' standing for the first time. It is well settled plaintiffs have

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[12] The VRA defense is among the most common and dispositive to a Fourteenth Amendment claim.

[13] Moreover, precedent pre-dating *Shaw* enshrines judicial review of Fourteenth Amendment racial gerrymandering claims. *See, e.g.*, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). Thus, the Court should reject the State's justiciability challenge.

standing to challenge racial gerrymandering if they show either (1) they live in the challenged district; or (2) they have personally been subjected to racial classifications. *United States v. Hays*, 515 U.S. 737 (1995). The Parties stipulated before trial that Philip Callais, Elizabeth Ersoff, Grover Joseph Rees, and Lloyd Price reside in SB8-6. **Dkt.156, at 1-2**. Because four Appellees meet *Hays*' first criterion, the Court need not address further standing issues. *Town of Chester, N.Y. v. Laroe Estates Inc.*, 581 U.S. 433, 434 (2017) (plaintiffs have standing if one has standing).

The State empties the inkwell to cast doubt on well-settled standing law. It repeatedly misrepresents the harm in racial gerrymandering cases. It claims Appellees should have put on evidence they "do not wish to be represented by a candidate they believe District 6's Black voters would prefer[]," **State Br. 25**, and Appellees were not harmed by the Legislature carving Black voters into SB8-6 based on race, ***id.* at 27**.[14]

But the harm is not that a representative will "think and act like Black voters," **State Br. 30**, but

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[14] The State erroneously claims non-Black voters cannot be injured by racial gerrymandering. **State Br. 25**. "[T]he Equal Protection Clause . . . applies 'without regard to any differences of race, of color, or of nationality'—it is 'universal in [its] application.'" *SFFA*, 600 U.S. at 206 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).

The State also cites affirmative action, third-party standing, and "offended-observer" standing cases. **State Br. 25-26**. But even the State rightly recognizes this case is completely "unlike" those, ***id.* at 25**, so this Court need not consider them.

Finally, the State's call for some additional injury to establish standing has been considered and rejected multiple times. *See, e.g.*, *Hays*, 515 U.S. at 747; *Shaw I*, 509 U.S. at 659.

that the representative will be pressured by the Legislature's "obvious" racial classification and preference and play into racial stereotypes to prioritize the "perceived" will of one racial group over another. *Shaw I*, 509 U.S. at 648. Louisiana intentionally carved Black voters into SB8-6 to reach 50% BVAP, so non-Black voters face this "individual harm." *Id*.

The State's fear that such a rule bestows "virtually every voter in the State" with standing is unfounded. **State Br. 28**. "[W]here a plaintiff does not live in such a district, he or she does not suffer those special harms, and any inference that the plaintiff has personally been subjected to racial classification would not be justified absent specific evidence . . . ." *Hays*, 515 U.S. at 745. The State's objections to 30-year-old precedent have been "repeatedly rejected by the Court" and should not be revisited now. *Shaw II*, 517 U.S. at 904 n.2 (collecting cases).

IV. The District Court Did Not Abuse its Discretion in Consolidating Proceedings.

Robinsons bring several procedural complaints, but as permissive intervenors, they lack standing to challenge these orders on appeal. *Town of Chester*, 581 U.S. at 440. Regardless, these claims fail.

First, they claim the district court erroneously consolidated the preliminary injunction hearing with the trial on the merits because they were not yet parties and could not object. They only cite one authority; there a party was unaware of consolidation. *Pughsley v. 3750 Lake Shore Drive Co-op. Bldg.*, 463 F.2d 1055, 1057 (7th Cir. 1972). Here, as Robinsons

admit, the Secretary (the only defendant then) was aware and did not object. **Robinson Br. 50**.

The district court had myriad reasons to consolidate and expedite proceedings. **Dkt.43; Dkt.82, at 2; J.A.145-46**. Robinsons knew the schedule and represented that they would not delay trial upon intervention. **Dkt.112-1, at 9**. Their objection came several weeks after intervention on the eve of trial without cause. **J.A.145**. They have no freestanding right to a certain procedural timeline. As the district court found, they suffered no prejudice given their experience in Louisiana redistricting litigation. **J.A.146**. The State also did not oppose the timeline. It even argued before this Court that greater expedition would have been necessary to ensure a map for the 2024 election. **State Stay App.** Robinsons raised similar complaints in their stay application. **Robinson Stay App. 6-7**. The district court did not abuse its discretion by accommodating the parties' request.

Robinsons also ask this Court to vacate the permanent injunction, claiming "the equities have shifted away from Appellees" based on *Robinson*. But for all the reasons previously stated, *Robinson* is inapposite. **Robinson Br. 52**.

CONCLUSION

The State was just days from a conclusive end to this litigation when it urged an early *Purcell* stay. The district court is prepared to remedy the State's racial gerrymander and to implement any required second majority-Black district under a proper *Gingles* and Senate factors analysis. There will be no "second suit." Going forward, this Court should require VRA claims to be litigated in three-judge courts along with

Equal Protection claims so relief is awarded without serial litigation.

This Court should affirm so that on remand, the district court can enter a remedial map that respects the Legislature's clearly expressed preferences; avoids a racial gerrymander; and complies with the VRA.

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