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IN THE SUPREME COURT OF THE UNITED STATES

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LOUISIANA,)

Appellant,)

v.) No. 24-109

PHILLIP CALLAIS, ET AL.,)

Appellees.)

- - - - -

PRESS ROBINSON, ET AL.,)

Appellants,)

v.) No. 24-110

PHILLIP CALLAIS, ET AL.,)

Appellees.)

- - - - -

Washington, D.C.

Monday, March 24, 2025

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:07 a.m.

1 APPEARANCES:

2 J. BENJAMIN AGUIÑAGA, Solicitor General, Baton Rouge,
3 Louisiana; on behalf of the Appellant in Case
4 24-109.

5 STUART C. NAIFEH, New York, New York; on behalf of the
6 Appellants in Case 24-110.

7 EDWARD D. GREIM, Kansas City, Missouri; on behalf of
8 the Appellees.

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P R O C E E D I N G S

(10:07 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 24-109, Louisiana versus Callais, and the consolidated case.

Mr. Aguiñaga.

ORAL ARGUMENT OF J. BENJAMIN AGUIÑAGA
ON BEHALF OF THE APPELLANT IN CASE 24-109

MR. AGUIÑAGA: Thank you, Mr. Chief Justice, and may it please the Court:

Louisiana would rather not be here. We didn't want to be in the emergency docket in 2022. We didn't want to be on the emergency docket in 2024. And today, I mean, God bless my friends on both sides of this case, but we would rather not be caught between two parties with diametrically opposed visions of what our congressional map should look like. But this has become life as usual for the states under this Court's voting cases.

And our fundamental question today is: How do we get out of this predicament? Now, I think there are at least three ways to do that. First, you should reverse on standing grounds

1 because the only theory of harm in the red brief
2 is that our Black representative of District 6
3 will play into racial stereotypes by favoring
4 the Black voters of District 6.

5 Second, you should reverse on racial
6 predominance, because the district court wrongly
7 assumed that our intentional creation of a
8 majority Black district in light of the Robinson
9 decisions automatically established racial
10 predominance.

11 And, third, you should reverse on the
12 "good reasons" inquiry, because the district
13 court wrongly, in our view, believed that the
14 Robinson decisions played no role in the "strong
15 basis in evidence" inquiry.

16 And in the end, I want to emphasize
17 that the larger picture here is important,
18 because in an election year, we faced the
19 prospect of a federal court drawn map that
20 placed in jeopardy the Speaker of the House, the
21 House majority leader, and our representative on
22 the Appropriations Committee.

23 And so in light of those facts, we
24 made the politically rational decision. We drew
25 our own map to protect them. This Court's

1 breathing room precedence allowed that decision.

2 I welcome the Court's questions.

3 JUSTICE THOMAS: So as I understand
4 your argument, you accept -- we are to accept
5 that the court, the Robinson court, required
6 that there be two districts and that your only
7 interest is in preserving two incumbents in
8 northeast Louisiana?

9 MR. AGUIÑAGA: That's correct, Your
10 Honor. I mean, we have two Article III court
11 decisions that say the VRA likely requires
12 Louisiana to draw a second majority Black
13 district. Those were the facts presented to us.

14 In light of those decisions, we said,
15 well, we can't allow the federal court to draw
16 the Robinson illustrative maps because that
17 would have placed Julia Letlow in a majority
18 Democrat district. And so we took matters into
19 our own hands and said we're going to protect
20 our most high profile incumbents, draw our own
21 map that ensures that Speaker Johnson and
22 Representative Letlow remain in Congress. And
23 in --

24 JUSTICE THOMAS: So in order for us to
25 -- for -- to -- to use that line, wouldn't we

1 have to accept that the district court was
2 right, the Robinson court was correct?

3 MR. AGUIÑAGA: Your Honor, I think the
4 way this case has been litigated, the way it
5 comes to the Court, the plaintiffs have not put
6 on a pseudo-VRA case to say that the Robinson
7 courts were wrongly decided. I mean, of course,
8 as you know, in the Robinson litigation we took
9 the position that we should have prevailed. We
10 lost. We lost on those arguments.

11 And at the end of the day, I think in
12 the strict scrutiny analysis that this Court's
13 cases set out, the question is, do we have a
14 good reason in relying on what the federal
15 courts told us that the VRA likely required?

16 And I think that's the fundamental
17 error. If you look at pages 53a to 66a of our
18 JS appendix, that's the district court's good
19 reasons analysis. It says not one word about
20 the Robinson decisions. And with all due --
21 with all respect to the district court, I think
22 that's not how the good reasons inquiry runs.

23 I mean, I think, fundamentally, when
24 you have Article III courts telling you that
25 this is what the VRA likely requires, a rational

1 state is going to run with exactly what the
2 federal court says. We're in the business of
3 complying with federal court decisions. And
4 when they told us that we needed to draw a
5 second majority Black district, that's what we
6 did.

7 And I want to go back to the larger
8 context because I think that's the important
9 factual backdrop here, which is we're in an
10 election year. It's 2024. The Fifth Circuit,
11 if you look at page 601 of its decision, the
12 Fifth Circuit says you have a few weeks to --
13 now that we have affirmed the district court's
14 likelihood of success on the merits finally --
15 finding, you have two weeks, a few weeks to go
16 back, consider drawing your own map.

17 And it's an election year. We're
18 talking about the Speaker of the House. No
19 rational state gambles with those high-stakes
20 seats in that situation.

21 And our request to this Court is to
22 say, well, given that unique circumstance where
23 you have two layers of Article III courts
24 telling a state what the VRA likely requires,
25 that is a good reason for the district -- for

1 the -- for the state to do what it did.

2 CHIEF JUSTICE ROBERTS: Well, I mean,
3 do -- do you think the Robinson court was
4 correct?

5 MR. AGUIÑAGA: Your Honor, you know,
6 in our heart of hearts, we've never shied away
7 from our position in the Robinson decisions,
8 which is that we should have prevailed. At the
9 end of that litigation, in the preliminary
10 injunction stage, we lost.

11 And so we faced a choice. Do we take
12 a gamble and go to trial, lose at final
13 judgment, endure a court-drawn map, and hope
14 that an appellate court will then step in on the
15 back end of the process and save us from the
16 federal court drawn map? Or do we say, if the
17 courts said what they said, what the VRA likely
18 requires, can we work with that and find a way
19 to save our incumbents on our own?

20 And so, Your Honor, I -- you know, I
21 -- I'm not going to stand here and say that the
22 Robinson courts were right, but I will say that
23 what is set in stone is what they've said. That
24 is the law. And we took that as gospel and went
25 back to the drawing board and drew District 6.

1 JUSTICE KAVANAUGH: One -- one of the
2 arguments that the appellees raise is that
3 there's a durational limit on the authority of
4 Section 2 to -- for states to create additional
5 majority-minority districts. I think that's
6 pages 36 to 38 of the Appellees' brief.

7 I know that the State of Louisiana in
8 separate litigation is taking exactly that same
9 position, as I understood it and read it. And
10 I'm wondering what you think we should do with
11 the Appellees' argument about the durational
12 limit here.

13 MR. AGUIÑAGA: Sure. A couple of
14 things, Justice Kavanaugh.

15 The first thing I think you do is you
16 disregard it because, until the red brief,
17 plaintiffs in this case never disputed this
18 Court's assumption that compliance with the VRA
19 is a compelling interest. So I think that part
20 of the brief where they talked about what we're
21 arguing in another case, that's really beside
22 the point here because they forfeited that
23 compelling interest argument.

24 But on the merits, absolutely. In the
25 Nairne case, our position is in Louisiana, at

1 least as applied to Louisiana, Section 2 is
2 unconstitutional. The reality today is we have
3 lost that argument so far, and, you know, we are
4 duty-bound to comply with the VRA, and
5 especially in this context where you have
6 federal court decisions telling us what the VRA
7 likely requires.

8 I -- I don't think there's any serious
9 argument that that is not a compelling interest,
10 that we do not have a compelling interest in
11 complying what the federal courts have told us.

12 JUSTICE KAVANAUGH: And that separate
13 litigation's now in the Fifth Circuit; is that
14 correct?

15 MR. AGUIÑAGA: It's in the Fifth
16 Circuit in the Nairne case. The Fifth Circuit
17 panel heard oral argument in January. That
18 issue may well be before this Court. The
19 ultimate unconstitutionality issue may well be
20 before this Court this fall. But at least as
21 things stand now, we're duty-bound to comply
22 with the Voting Rights Act. And when a district
23 court and a panel in the Fifth Circuit say the
24 Voting Rights Act likely requires you to adopt a
25 second majority Black district, we're going to

1 do that, Justice Kavanaugh.

2 JUSTICE ALITO: What if the Robinson
3 decision were plainly wrong? Let's say it -- it
4 didn't apply Gingles at all. Would you still
5 have a good reason to follow it?

6 MR. AGUIÑAGA: No, Justice Alito. And
7 I think that goes to -- I know the United States
8 withdrew its brief in this case, but I think
9 that's the sort of unusual circumstance that
10 provides a very, very narrow exception to our
11 position, which is you can imagine an extreme
12 case where the VRA courts just wildly got the
13 law wrong, got the facts wrong, and nobody --
14 objective -- as an objective matter, nobody
15 would agree that that was a circumstance where a
16 state could reasonably rely on those decisions
17 and make --

18 JUSTICE ALITO: But what if it weren't
19 wildly wrong? They didn't just ignore Gingles,
20 but it's wrong. You look at it and it's wrong.
21 They -- they misapplied something.

22 MR. AGUIÑAGA: And, Your Honor, I
23 think the -- the -- the less wild, the less
24 wildly wrong the decision becomes, I think the
25 harder it is for a plaintiff, like Plaintiffs in

1 this case, to come in on the back end in an
2 Equal Protection Clause case and say: We should
3 just relitigate what happened in the VRA
4 litigation all over again.

5 And that didn't happen in this case.
6 I mean, nothing prohibited Plaintiffs from
7 coming to the district court and putting in all
8 the evidence to say, like, if you actually look
9 at what was in the record in Robinson, flat
10 wrong, you should just relitigate what happened
11 in the Middle District and the Fifth Circuit.

12 They didn't do that. I think that
13 option is available --

14 JUSTICE ALITO: All right.

15 MR. AGUIÑAGA: -- to plaintiffs in a
16 future case.

17 JUSTICE ALITO: Thank you. Thank you.

18 JUSTICE SOTOMAYOR: I'm sorry, you're
19 saying in this case they didn't argue Robinson
20 was wrong?

21 MR. AGUIÑAGA: Your Honor --

22 JUSTICE SOTOMAYOR: They didn't put in
23 any evidence to relitigate the Robinson issue?

24 MR. AGUIÑAGA: Justice Sotomayor, they
25 did not put on the full panoply of evidence that

1 was in the Robinson decision.

2 JUSTICE SOTOMAYOR: They say you bear
3 that burden.

4 MR. AGUIÑAGA: Your Honor, our burden
5 was to show that we had a good reason for
6 enacting District 6. And our position is that
7 you have two Article III court decisions that go
8 through our like -- the -- the Robinson
9 plaintiffs' likelihood of success on the merits.

10 That itself is based on the
11 evidentiary record in the Robinson litigation,
12 almost 400 docket entries in the district court
13 --

14 JUSTICE SOTOMAYOR: I --

15 MR. AGUIÑAGA: -- in the Middle
16 District.

17 JUSTICE SOTOMAYOR: I'm taking a step
18 back, okay?

19 If they had said that Robinson was
20 wildly wrong, they would have relitigated in
21 front of the district court based on the very
22 voluminous district court decision. It was over
23 150 pages, filled with the arguments on both
24 sides, right?

25 MR. AGUIÑAGA: That's exactly right,

1 Your Honor. And --

2 JUSTICE SOTOMAYOR: But what they came
3 in and said, instead, was merely because you
4 were trying to comply with Robinson, that showed
5 you let race predominate, correct?

6 MR. AGUIÑAGA: That's correct, Justice
7 Sotomayor. And --

8 JUSTICE SOTOMAYOR: So their approach
9 wasn't saying relitigate Robinson. They're just
10 saying that's not a compelling state interest.

11 MR. AGUIÑAGA: That's correct, Justice
12 Sotomayor. And our position here is that can't
13 be right. I mean, this Court has never seen a
14 set of circumstances where you have federal
15 courts telling a state: This is what the law
16 likely requires of you.

17 And then --

18 JUSTICE SOTOMAYOR: But we do have at
19 least three cases that say you don't have to be
20 right on whether you needed to comply with
21 Title II, you just have to have a good faith
22 basis, correct?

23 MR. AGUIÑAGA: That's right, Your
24 Honor. You have a case -- for example,
25 you case -- you look at a case like Bush versus

1 Vera, a case that says the state doesn't have to
2 draw the precise compact district that a VRA
3 court would have drawn.

4 Or you look at a case like a
5 Bethune-Hill that says a state doesn't have to
6 show that it would have lost at trial but for
7 its use of race.

8 I mean, that's the sort of breathing
9 room and flexibility that this Court's cases
10 bake into the analysis.

11 JUSTICE SOTOMAYOR: Now, we have at
12 least three cases that have said, unlike what
13 the district court said here, the district court
14 said that the reason why race predominated is
15 because you decided to comply with Section 2.
16 Correct?

17 MR. AGUIÑAGA: That's correct, Your
18 Honor.

19 JUSTICE SOTOMAYOR: And in at least
20 three cases we've said that's not the starting
21 proposition, correct?

22 MR. AGUIÑAGA: That's correct, Your
23 Honor.

24 JUSTICE SOTOMAYOR: One of them
25 Bethune-Hume -- Hill.

1 MR. AGUIÑAGA: That -- that's correct.

2 This Court has said --

3 JUSTICE SOTOMAYOR: So but we have
4 said that once you try to comply with Section 2,
5 that the new map you create has to substantially
6 address the likely Section 2 violation?

7 MR. AGUIÑAGA: That's correct, Your
8 Honor.

9 JUSTICE SOTOMAYOR: All right. How
10 does the map that you enacted do that? We know
11 the Robinson map was more compact, followed more
12 traditional criteria than the legislature's
13 first created map, okay?

14 So we know that that would have
15 resolved the Section 2 violation using
16 traditional criteria. One of their arguments
17 here, and one that the district court pointed
18 to: But, wait a minute, this map's different,
19 and it doesn't fit all the criteria.

20 So how do we say that that follows our
21 guidance?

22 MR. AGUIÑAGA: Mr. Chief Justice, may
23 I answer?

24 CHIEF JUSTICE ROBERTS: Certainly.

25 MR. AGUIÑAGA: So Justice Sotomayor, I

1 think you begin with the Robinson illustrative
2 maps as a baseline, and you ask: How closely
3 does the state's enacted map approximate what
4 the Robinson illustrative map looked like and
5 did?

6 And then if it deviates, you ask that
7 substantially addresses question: Well, why did
8 the state deviate? And did it deviate so much
9 that the state's map doesn't actually
10 substantially address the -- the baseline
11 violation identified in Robinson?

12 And the reason -- the answers to those
13 questions in this case, the only reason we
14 deviated from the Robinson illustrative map is
15 to protect our high-profile incumbents. And
16 then --

17 JUSTICE SOTOMAYOR: But both --

18 MR. AGUIÑAGA: -- the substantially --

19 JUSTICE SOTOMAYOR: Both maps created
20 seven -- seven voting districts, correct?

21 MR. AGUIÑAGA: We have six districts,
22 correct, Your --

23 JUSTICE SOTOMAYOR: I'm sorry.

24 MR. AGUIÑAGA: Both maps created two
25 majority Black districts.

1 JUSTICE SOTOMAYOR: Two majorities.
2 But both of them relied on the same district --
3 having the same number of districts?

4 MR. AGUIÑAGA: That's correct, Your
5 Honor.

6 JUSTICE SOTOMAYOR: And 70 percent of
7 District 6's, which is -- so -- was 70 percent
8 of the Robinson map, correct? District 6?

9 MR. AGUIÑAGA: That's correct, Your
10 Honor. The very core of District 6 is the very
11 core of the Robinson illustrative map.

12 JUSTICE SOTOMAYOR: We have also said
13 very clearly that if two reasons coexist, race
14 and politics, that 50/50 means that race doesn't
15 predominate, correct?

16 MR. AGUIÑAGA: That's what this
17 Court's precedents say, Your Honor.

18 JUSTICE SOTOMAYOR: Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Justice Thomas?

22 Justice Alito? Okay.

23 Justice Kagan?

24 Justice Kavanaugh?

25 JUSTICE KAVANAUGH: What's the limit

1 on that, in terms of your answer to Justice
2 Sotomayor? You know, 50 percent? 40 percent?
3 30 percent? And what are -- what kind of
4 guidance do you think we could give? Because
5 one of the legitimate concerns of your brief and
6 the amicus briefs are to give clearer guidance.

7 What do you think the limit is on
8 taking the political considerations into account
9 in fashioning a remedial district that
10 substantially addresses the violation?

11 MR. AGUIÑAGA: Well, I think one of
12 the limits, Justice Kavanaugh, is numerical,
13 right? I mean, in Shaw 2 the Court said that a
14 20 percent overlap was insufficient. In LULAC,
15 you know, less than 50 percent was insufficient.

16 Here, we're in the neighborhood of
17 70 percent. So I think as a numerical matter,
18 that's going to be one pretty clear guidepost
19 for the lower courts on how closely a state is
20 approximating the illustrative map.

21 And I think the other thing is just
22 to -- to really assess why the state deviated
23 from the baseline map. And I think that's one
24 of the things where I don't know that there is
25 any dispute in this case, on both sides, why we

1 didn't adopt SB4. We adopted SB8.

2 The sole reason in Senator Womack's
3 own statements is SB8 was the only map that
4 would protect our -- our high-profile
5 incumbents.

6 JUSTICE KAVANAUGH: So the rule I
7 think you want is political considerations are
8 fine to take into account in doing the map, the
9 second map. And 50's kind of a floor on that?

10 MR. AGUIÑAGA: I -- I think so. I
11 mean, this Court has never spelled out what
12 "substantially addresses" means as a numerical
13 matter. And to my mind, if I'm between 60 and
14 80 percent, I think that's substantial. But
15 obviously a judgment call for this Court.

16 JUSTICE KAVANAUGH: Thank you.

17 CHIEF JUSTICE ROBERTS: Justice
18 Barrett?

19 JUSTICE BARRETT: I just want to be
20 sure I understand your question to Justice
21 Alito. Justice Alito asked you, you know, if
22 the Robinson decision was patently wrong, could
23 it still be a good reason.

24 And you said: Well, you know, if
25 it -- if it was patently wrong, no, but we were

1 obeying the federal court orders. This wasn't
2 patently wrong.

3 What -- what is the point at which --
4 because it's an odd situation, right, where the
5 later district court has to essentially take as
6 preclusive the earlier district court's
7 determination of the Section 2 violation, right?
8 But it's not entirely preclusive because you
9 left room for the later court to say: Well,
10 that was patently wrong, so we're not going to
11 follow it.

12 What is the line?

13 MR. AGUIÑAGA: So I think there are
14 two ways in which it's not automatically
15 preclusive, Justice Barrett.

16 I think the first is regardless of
17 what the earlier court decisions say, when the
18 state acts, it has to substantially address
19 the -- the -- the baseline violation. So that's
20 one way in which -- if we fail to do that, if we
21 adopted an SB8 map that had only 20 percent
22 overlap with the Robinson illustratives, then
23 that's one way in which the VRA decisions are
24 not preclusive here. We lose this case.

25 I think the other way -- and I think

1 this is what your question was getting at -- is
2 that in the wildly wrong case, you know, I think
3 we just can't -- we can't dispute that there may
4 be some case where objectively, on both sides of
5 the aisle, everybody agrees that the court just
6 got the law and the facts wrong. I think that's
7 a case we have to give up. And we're happy to
8 give it up.

9 But barring that case, when a federal
10 court -- two federal courts tell a state what
11 the law requires, to me, that means that there
12 should be a very, very high bar in this Court's
13 precedence for second-guessing what those
14 federal courts say.

15 And I think you just leave that
16 hypothetical out there as -- as a potential odd
17 case that may never arise. But we acknowledge
18 that, you know, it is out there.

19 JUSTICE BARRETT: I mean, is it also
20 because of the position that it puts the state
21 in here? I mean, it's not just a matter of your
22 obedience to the federal court order -- which I
23 appreciate, you know, you would be obedient to
24 the federal court order -- but it's also that if
25 you had continued to litigate the Robinson -- if

1 you had continued to litigate in Robinson, you
2 risked having the court-imposed map.

3 And so it's really your litigation
4 risk that's part of the calculus here?

5 MR. AGUIÑAGA: That's one risk, Your
6 Honor. I think it's both litigation risk and
7 political risk. Because remember, if you look
8 at page 601 of the Fifth Circuit's decision,
9 they say: Now that we have affirmed the
10 district court on the merits, we don't doubt
11 that the legislature might want to take this
12 opportunity to draw a new map now, and we're --
13 here's the deadline, January 15, 2024.

14 You can call that litigation risk.
15 You can call that political risk. Whatever it
16 is, it's forcing the state to make up a call.

17 JUSTICE BARRETT: It's wrapped up
18 together, yeah.

19 MR. AGUIÑAGA: That's correct.

20 JUSTICE BARRETT: If you're going to
21 lose, then you risk that the district court's
22 going to impose a map on you.

23 MR. AGUIÑAGA: That's exactly right,
24 Justice Barrett.

25 JUSTICE BARRETT: All right. Okay.

1 CHIEF JUSTICE ROBERTS: Justice
2 Jackson?

3 JUSTICE JACKSON: So can I just
4 clarify? There's no dispute that the court's
5 order was the reason that Louisiana did this,
6 did the new map, right?

7 MR. AGUIÑAGA: Mr. Greim can correct
8 me if I'm wrong, but I don't think so, Your
9 Honor.

10 JUSTICE JACKSON: And the question is
11 whether or not the fact that you had a court
12 order was good enough reason for you to do it?
13 Is that what you understand the basic question
14 to be?

15 MR. AGUIÑAGA: That's correct. Not
16 just one order, but two layers of orders, yes,
17 Your Honor.

18 JUSTICE JACKSON: And I guess I'm
19 still a little confused as to why it matters
20 whether the court order was right or not. You
21 -- you -- you were still being compelled by the
22 court to do what you did in this case, correct?

23 MR. AGUIÑAGA: That's correct, Justice
24 Jackson. I guess all I was trying to -- the
25 point I was trying to drive home is that you

1 could imagine -- and I -- I think that's why the
2 United States' withdrawn brief calls it an
3 unusual circumstance, where, like, the -- like,
4 the VRA decisions were just wrong, just plainly
5 wrong, and nobody would rely on them.

6 But this is nowhere close to that.
7 And I -- you know, it may well be that this
8 Court never sees a situation where that sort of
9 wildly erroneous --

10 JUSTICE JACKSON: But I guess that
11 hypothetical invites us to even engage in and
12 question, you know, an inquiry as to whether or
13 not this was a wildly wrong case. And I -- I'm
14 just worried about that as a way of going about
15 handling this sort of situation.

16 I mean, Justice Barrett points out
17 that we have a prior court order. You say, and
18 -- and it's clear that it was affirmed by the
19 Fifth Circuit, that to a certain extent it is
20 preclusive on the facts of whether or not
21 there's a likely VRA violation here. And having
22 a likely VRA violation is all that was necessary
23 for the -- the state to take the steps that it
24 did.

25 So I just don't know that we need to

1 even engage in the thought process of what if
2 the court order was wrong?

3 MR. AGUIÑAGA: Right.

4 JUSTICE JACKSON: I mean, it existed.
5 And if it existed, then it seems to me that
6 there is a good reason for Louisiana to have
7 followed it.

8 MR. AGUIÑAGA: I think --

9 JUSTICE JACKSON: Yeah?

10 MR. AGUIÑAGA: I think that's exactly
11 right, Justice Jackson. And that's why that may
12 well be the unicorn case, the unicorn case that
13 says, you know, black is green. Like nobody,
14 like, objectively agrees with that. But that
15 case may also never arise. If I --

16 JUSTICE JACKSON: Let me ask you about
17 substantially addressed the violation. Was that
18 something that the district court addressed in
19 this case? I didn't see that as part of its
20 analysis. And isn't that another basis for
21 finding error here?

22 MR. AGUIÑAGA: It did not, Your Honor.
23 And, yes, that is an independent legal ground
24 for finding error. And that's why I pointed the
25 Court to -- if you look at pages 53a to 66a of

1 our JS appendix, that's the good reasons
2 analysis. And you see nothing about Robinson
3 there. You see nothing about the Robinson
4 illustrative maps.

5 With all due respect, that -- that
6 factual background is what explains SB8. And so
7 you can't assess the legality of our map without
8 referring as a baseline to the comparison
9 against the Robinson litigation.

10 JUSTICE JACKSON: Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 Mr. Naifeh.

14 ORAL ARGUMENT OF STUART C. NAIFEH
15 ON BEHALF OF THE APPELLANTS IN CASE 24-110

16 MR. NAIFEH: Mr. Chief Justice, and
17 may it please the Court:

18 This Court has been clear that states
19 have breathing room to take reasonable efforts
20 to comply with the Voting Rights Act, and they
21 may also balance the many other interests that
22 enter the redistricting calculus.

23 And so it was a perfectly appropriate
24 after two federal courts had found that
25 Louisiana had likely violated Section 2, that

1 the state sought to comply with those rulings
2 and that it exercised its authority to protect
3 favored incumbents and unite preferred
4 communities of interest.

5 And accounting for those kinds of
6 political considerations is squarely the
7 legislature's prerogative. And breathing room
8 ensures that courts don't unnecessarily intrude
9 on the legislative domain simply because the
10 state is attempting to comply with the Voting
11 Rights Act.

12 But the district court did exactly
13 that in finding that the State's chosen remedy
14 for the violation shown in Robinson was
15 unconstitutional. And it committed three errors
16 in doing so.

17 First, it treated the intent to comply
18 with the Voting Rights Act as inherently
19 suspect. Second, it dismissed Robinson as a
20 good reasons for the state to engage in remedial
21 redistricting. And, third, it demanded that the
22 State's chosen remedy maximize compactness and
23 compliance with traditional redistricting
24 principles even when that precluded the State
25 achieving its political objectives.

1 Those errors denied the State the
2 flexibility to make political judgments, balance
3 competing interests, and comply with federal
4 law. And so we ask the Court to reverse the
5 decision below.

6 And I welcome the Court's questions.

7 JUSTICE THOMAS: Could you take a
8 minute or so and describe exactly what the
9 underlying Voting Rights Act violation was?

10 MR. NAIFEH: Absolutely, Your Honor.

11 JUSTICE THOMAS: And how it was
12 remedied.

13 MR. NAIFEH: Yes. The district court
14 in the Robinson case looked at the history,
15 looked at the history of discrimination, looked
16 at modern instances of discrimination. It found
17 that there were extreme disparities in the Black
18 communities in the region around Baton Rouge and
19 to St. Landry Parish and into other parishes,
20 and also in the delta region, which was drawn
21 into our illustrative map.

22 So it looked at that history. It
23 found that based on that, those conditions,
24 current conditions, not just history but current
25 conditions, that Black voters in Louisiana had

1 less opportunity to elect candidates of choice
2 than other voters.

3 And so it looked at the totality of
4 the circumstances. It found that there was a
5 compact -- a compact map could be drawn and that
6 race did not predominate in the illustrative
7 maps. And, therefore, it found that that -- the
8 polarization, and it found that Section 2 had
9 likely been violated.

10 JUSTICE GORSUCH: Counsel, what do we
11 do about the fact that Robinson I was just
12 litigated through a preliminary injunction? And
13 I understand that the Court has -- has suggested
14 that there's a compelling interest in abiding
15 Section 2, but here we don't have a final
16 judgment. And that's a little -- little --
17 little awkward to say that a preliminary
18 injunction, which even in the existing
19 litigation, has no binding effect going forward,
20 right? I mean, you get a PI, you can lose on
21 the merits. It happens all the time. Right?

22 So what do we do about that?

23 MR. NAIFEH: Well, I think first, Your
24 Honor, the -- this Court has found good reasons
25 on much less than that. It's found good reasons

1 based on, you know, legislatures' analysis of
2 past election results, on demographics of
3 districts and turnouts --

4 JUSTICE GORSUCH: No, I understand --

5 MR. NAIFEH: -- and things like that.

6 JUSTICE GORSUCH: -- that, but here
7 it's based on a court action. But the court
8 action was preliminary.

9 MR. NAIFEH: It was preliminary in a
10 -- in a very formal sense, but the record in
11 Robinson was very robust. It was a five-day
12 evidentiary hearing. The court heard from 21
13 witnesses. There were hundreds of exhibits.

14 And the court made a reasoned decision
15 based on that record. And not only was it the
16 district court's decision, but that decision was
17 then affirmed by the Fifth Circuit with the
18 benefit of this Court's decision in Milligan
19 that -- that found that the district court had
20 correctly identified a likely violation of
21 Section 2.

22 And so under any circumstances, that
23 -- you know, under this Court's precedent,
24 that's more than enough to find good reasons for
25 the state to engage in remedial redistricting.

1 JUSTICE ALITO: Well, it was not only
2 a preliminary injunction. It was a preliminary
3 injunction that was vacated by the Fifth Circuit
4 because there was no longer any irreparable harm
5 at the time when the Fifth Circuit decided the
6 appeal. And the Fifth Circuit said, you know,
7 we're not convinced that this is the right
8 result, this will be the right result in the
9 end. Isn't all that true?

10 MR. NAIFEH: Well, not all of it, Your
11 Honor. First, the Fifth Circuit said that the
12 harm is still present. So it was a balance of
13 the equities, really, that was the basis for
14 vacating the injunction. And you can see that
15 in the Fifth Circuit --

16 JUSTICE ALITO: All right. But it's a
17 -- it's a vacated preliminary injunction.

18 MR. NAIFEH: It's vacated, yes, Your
19 Honor, on the balance of the inequities. But
20 the Fifth Circuit very clearly affirmed the
21 merits of the district court's decision, its
22 determination that the Plaintiffs were likely to
23 prevail on the merits.

24 JUSTICE ALITO: Why is this situation
25 different from the situation in Miller, which I

1 don't think you discuss in your brief, where the
2 state said we adopted this map because that was
3 required to get preclearance from the Justice
4 Department?

5 And the court just blew right past
6 that. So what's the difference?

7 MR. NAIFEH: I think there's a very
8 big difference, Your Honor, between the Justice
9 Department making a pre-litigation assessment
10 about what Section 5 requires, which in Miller,
11 the Court made clear was -- would be subject to
12 judicial oversight, and a -- and an Article III
13 court in an adversarial setting looking at the
14 evidence and making a determination that Section
15 2 has likely been violated.

16 JUSTICE ALITO: Well, I come back,
17 then, to the question I asked Mr. Aguiñaga.
18 What if the underlying decision -- what if the
19 district court decision is wrong? What if you
20 read it and you say this is wrong, it applied
21 the wrong standard?

22 MR. NAIFEH: Well, I think, Your
23 Honor, if there were some unusual circumstance
24 like that, and then you'd also maybe want to
25 look at why did the state not defend it if it

1 was so wrong? You know, unusual circumstances
2 like collusion, like a responsible official's
3 failure to defend a map, which does happen from
4 time to time. Then you might look with more
5 skepticism at the decision itself.

6 JUSTICE ALITO: Well -- well, why
7 isn't this a situation where if you look at the
8 face of the decision, it's wrong? And you just
9 summarized what the -- what the Middle District
10 judge held, and it was wrong under LULAC. It's
11 wrong.

12 The question is whether there is a
13 minority -- whether there's a minority
14 population that is sufficiently compact to be --
15 to be included in a district that sufficiently
16 respects traditional districting lines, not
17 whether, once you've identified a -- bits of
18 minority population, it is possible to draw a
19 district that's compact.

20 That's contrary to what LULAC said.
21 And it's just what the -- but that's what the
22 Middle District said. And it's what you just
23 said in summarizing what they held.

24 MR. NAIFEH: Well, absolutely, Your
25 Honor. The standard is: Is the minority

1 population sufficiently compact to form the
2 majority in a reasonable configured district?
3 And --

4 JUSTICE KAGAN: Right. We said that
5 in Allen, didn't we? That was pretty recent.
6 That was last year, two years ago, whatever?

7 MR. NAIFEH: Absolutely, Your Honor.

8 JUSTICE KAGAN: We said it in
9 Wisconsin legislature? Sufficiently large and
10 compact to constitute a majority in a reasonably
11 configured district. That's exactly what they
12 did.

13 I mean, LULAC has some language -- it
14 actually goes back and forth between the two,
15 but we have repeated now several times,
16 including in our most recent decision, the
17 standard that was used here.

18 MR. NAIFEH: Absolutely, Your Honor.
19 And the way that standard is typically applied
20 is that if there is a reasonably configured
21 district that is majority-minority, that's the
22 evidence that the minority population is
23 sufficiently compact. And --

24 CHIEF JUSTICE ROBERTS: How -- I mean,
25 if you look at CD6, what does "reasonably

1 compact" mean?

2 MR. NAIFEH: Well --

3 CHIEF JUSTICE ROBERTS: I mean,
4 it's -- it's a snake that runs from one end of
5 the state to the other. That -- I mean, how is
6 that compact?

7 MR. NAIFEH: Well, absolutely, Your
8 Honor. So CD6 is the remedial district. That
9 was not offered as an illustrative district to
10 prove a Section 2 violation. And states have
11 flexibility when they are drawing remedial
12 districts that a plaintiff in a Section 2 case
13 might not have.

14 We can't draw non-compact districts to
15 prove the Section 2 violation, but once we have
16 shown that --

17 JUSTICE KAGAN: So in Robinson, they
18 were looking at a totally normal-looking
19 district, right?

20 MR. NAIFEH: It was a much --

21 JUSTICE KAGAN: It's kind of square,
22 and it's like there's nothing unusual about it.

23 MR. NAIFEH: Indeed.

24 JUSTICE KAGAN: It actually looks like
25 the district that the -- the -- the State went

1 in with, right?

2 MR. NAIFEH: Absolutely. It's very
3 similar to the state's -- the CD5 in the -- in
4 the original map enacted in 2022. And so that's
5 the evidence --

6 JUSTICE SOTOMAYOR: It performed
7 better on traditional criteria.

8 MR. NAIFEH: Yeah.

9 JUSTICE SOTOMAYOR: The Robinson map
10 performed better on criteria -- on traditional
11 criteria than Louisiana's map, correct?

12 MR. NAIFEH: Yes, that --

13 JUSTICE SOTOMAYOR: First map.

14 MR. NAIFEH: -- that is correct.

15 It -- it --

16 JUSTICE GORSUCH: So what do we do
17 about that? You came up with some compact maps.
18 Louisiana chose a snake, as the Chief Justice
19 called it, instead, squiggling from one end of
20 the state to the other.

21 Even if -- even if there were good
22 reason for the district court -- for equal
23 protection purposes, the state had good reason
24 to draw another district, didn't it have good
25 reason to draw this district?

1 MR. NAIFEH: Well, it had good reason
2 to believe that it had to draw some remedial
3 district --

4 JUSTICE GORSUCH: No, I -- I'm
5 spotting you that.

6 MR. NAIFEH: -- in this case.

7 JUSTICE GORSUCH: We're moving past
8 the preliminary injunction stuff --

9 MR. NAIFEH: Yes.

10 JUSTICE GORSUCH: -- whether they had
11 good reason. I'm asking: Is this one narrowly
12 tailored? Is this one the appropriate district?

13 MR. NAIFEH: Yes. So the question the
14 court asks there is: Does the district that the
15 state drew, the remedial district, substantially
16 address the violation?

17 JUSTICE GORSUCH: And that's my
18 question for you.

19 MR. NAIFEH: And so here, as
20 Mr. Aguiñaga explained, the district includes
21 substantially -- a substantial part of the same
22 population. The core of the district is
23 identical to the districts that were at issue in
24 Robinson to our illustrative districts. It's
25 about -- at least 70 percent of the population.

1 JUSTICE GORSUCH: Of the population.
2 But geographically it's wildly different.
3 And -- and so what do we do about that?

4 MR. NAIFEH: Well, I think the
5 geography is not really the -- the issue.
6 Because as this Court pointed out in -- back in
7 the '60s in Reynolds versus Sims, legislators
8 represent people; they don't represent
9 geography.

10 JUSTICE GORSUCH: Yeah, but
11 districting is supposed to take into account --
12 I mean, we're going to go around the tree, I
13 suppose. But districting is also supposed to
14 take into account compactness and conti --
15 contiguity -- sorry -- and -- and traditional
16 districting principles.

17 And this one -- you didn't propose
18 this district.

19 MR. NAIFEH: No, we did not propose
20 this district, but we believe the district
21 remedies the violation because it includes most
22 of the population from the illustrative
23 districts.

24 And states are not constrained. This
25 Court has said repeatedly that states don't have

1 to draw the compact districts that a court would
2 impose. They can take other considerations into
3 account, including political ones.

4 JUSTICE JACKSON: And I'm wondering
5 whether or not we're conflating the standards
6 in -- in a way as we have this conversation. I
7 mean, the original Section 2 violation was
8 established via the map that was compact, that
9 you created, that showed that another
10 majority-minority district could be drawn.

11 And in response to that, the State,
12 for political reasons, said: We're not going to
13 adopt that map; we need to make a different one
14 in order to reach the goal of remedying this
15 violation because of political reasons.

16 So at that point I'm wondering whether
17 we are even in a world in which strict scrutiny
18 is applying. Because the state's motivation for
19 drawing the squiggly snake -- snake map is not
20 race. Its motivation at that point is clearly
21 politics, because that's what it's saying it's
22 doing, choosing that map over the one that you
23 proposed.

24 MR. NAIFEH: And --

25 JUSTICE JACKSON: So do we even need

1 to get into the -- the analysis of about narrow
2 tailoring? Because it seems we've -- we've left
3 it, because we're now in the world of political
4 map drawing, right?

5 MR. NAIFEH: Absolutely, Your Honor.
6 And this -- the line this Court has long drawn
7 is between consciousness of race and racial
8 predominance. And that distinction is important
9 to preserving states' flexibility to account for
10 these kinds of political considerations, while
11 also --

12 JUSTICE JACKSON: And -- and what I --

13 MR. NAIFEH: -- complying with federal
14 law.

15 JUSTICE JACKSON: -- hear you saying
16 is the reason why we're looking at a snake-like
17 map rather than the compact map is because of
18 political considerations.

19 MR. NAIFEH: Politics is the only
20 reason that the state chose that map over the
21 compact maps that were offered in Robinson.

22 CHIEF JUSTICE ROBERTS: Counsel, you
23 said what's important on compactness is where
24 the core of the district is?

25 MR. NAIFEH: Well, it's not a question

1 of compactness, Your Honor. It's a question of
2 the remedy. Does it remedy the violation that
3 had been shown?

4 This Court has never said that states
5 are required to draw compact districts. There's
6 no obligation to draw compact districts if
7 they're not doing it for -- you know, if they're
8 not drawing a non-compact district predominantly
9 based on race without an adequate justification.

10 So they can draw compact districts --
11 non-compact districts as a remedy once a
12 violation has been shown.

13 CHIEF JUSTICE ROBERTS: And you think
14 the drawing of this district was not
15 predominantly based on race?

16 MR. NAIFEH: I think that --

17 CHIEF JUSTICE ROBERTS: I mean, it
18 runs from one side of the state angling up to
19 the other, picking up populations -- Black
20 populations as it goes along.

21 MR. NAIFEH: Well, Your Honor, that
22 was the Plaintiff's position, but if -- as --
23 the State identified interests -- communities of
24 interest that it had joined in that district, in
25 that shape.

1 And if you look at the historians
2 of -- Louisiana historians' amicus brief, they
3 explain that there's -- it's not by chance that
4 there are significant Black populations in that
5 corridor along the Red River. It's a result of
6 history.

7 It's a result of the history of
8 slavery, of Jim Crow, and of the disparities
9 that prevented the lack of economic
10 opportunities that kept people there over
11 generations.

12 And so those ties are still there
13 throughout the district. There are family ties,
14 there are community ties, there are religious
15 ties for -- among those communities that are
16 drawn together in that district.

17 And that's part of what the state
18 identified. What the legislature identified was
19 the interests that they were drawing together,
20 in addition to the political reasons.

21 So it's not a district that randomly
22 draws together pockets of Black population.

23 JUSTICE GORSUCH: What the Chief is
24 trying to get at is certainly politics played a
25 role in this district, but didn't race?

1 MR. NAIFEH: Absolutely, Your Honor.

2 The state was trying to draw a district that
3 would remedy the violation that we had shown in
4 Robinson.

5 JUSTICE GORSUCH: Which is another way
6 of saying race predominated, isn't it?

7 MR. NAIFEH: Well, I -- I would
8 disagree with that, Your Honor. I think that --
9 that means race was one consideration. And this
10 Court has long said in cases --

11 JUSTICE GORSUCH: Isn't it -- isn't it
12 -- I'm sorry. I'm sorry, Chief.

13 CHIEF JUSTICE ROBERTS: No, go ahead.

14 JUSTICE GORSUCH: Well, isn't -- isn't
15 saying race is one consideration another way of
16 saying race predominated? And how do we square
17 that with the Fourteenth Amendment's promise
18 that race should play no role --

19 MR. NAIFEH: Well --

20 JUSTICE GORSUCH: -- in our -- in our
21 laws?

22 MR. NAIFEH: Well, in the
23 redistricting context, this Court has long
24 recognized that legislators are always aware of
25 race.

1 And the fact that race was one thing
2 they were considering when they drew the map
3 does not mean it was the predominant thing. It
4 means that it was one of many considerations
5 that they had. Politics was another.
6 Communities of interest was another.

7 And without some evidence that would
8 disentangle those things and show that, well,
9 actually, race -- among all of those
10 considerations the state was considering, race
11 was the one that actually drove the lines, race
12 does not -- the Plaintiffs have not borne their
13 burden to prove that racial predominance.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Thomas?

17 JUSTICE THOMAS: In some of these
18 redistricting cases, the argument is that
19 certain -- a certain percentage of the Black
20 population is excluded, and you redraw the map
21 to include that pop -- population.

22 And what I'm interested in here is
23 exactly what the violation was and exactly how
24 this map solves that or addresses that
25 violation.

1 MR. NAIFEH: So the violation was that
2 the map adopted in 2022 dilutes the votes of
3 Black Louisianians by denying them an equal
4 opportunity to elect candidates of choice. And
5 the way we showed that was through drawing from
6 illustrative districts and included this -- this
7 common core of seven parishes in the center of
8 the state and connecting that with populations
9 in the delta, which was a similar configuration
10 to the State's map. So ours was sort of a
11 least-changed map that would remedy the
12 dilution.

13 The State included that same core and
14 it drew together other different pop -- pop --
15 Black populations in the district to create a
16 remedial district that would remedy the
17 dilution. And I think, in that sense, this case
18 is most like Abbott.

19 In Abbott, the -- the Texas court --
20 or the Texas court had held that there was a
21 Voting Rights Act violation and the state needed
22 to add additional majority-minority districts.
23 The way the state did that was that it drew
24 together voters, some voters, in that southwest
25 Texas area where the violation had been proven,

1 with other voters in a different part of the
2 state.

3 And this Court said that was fine,
4 they did it for incumbent protection purposes.
5 The fact that it was the least compact district
6 in the state was not even part of the analysis
7 and it -- because the state had the flexibility
8 to remedy that violation in a way that also
9 advanced political goals.

10 CHIEF JUSTICE ROBERTS: Justice Alito?

11 JUSTICE ALITO: Well, let me ask you a
12 question about illustrative District 5 that was
13 before the Middle District of Louisiana in the
14 Robinson case. So that district combined Black
15 populations near Baton Rouge and Lafayette in
16 the southeast region of the state with splotches
17 of Black populations near Monroe, Bastrop, and
18 Tallulah in the far northeast corner of the
19 state.

20 Now, how can the failure to combine
21 these far-distant populations in a map in a
22 single district be regarded as the cracking of a
23 concentration of Black voters?

24 MR. NAIFEH: Well, the district court
25 recognized that our illustrative maps were more

1 compact, split fewer parishes than the State's
2 map in creating a new --

3 JUSTICE ALITO: Yeah, the map -- the
4 --

5 MR. NAIFEH: -- minority Black
6 district, and that is the --

7 JUSTICE ALITO: The map scored well on
8 those -- on those criteria. But how can that be
9 regarded as cracking?

10 MR. NAIFEH: The -- the -- those
11 populations -- the way the effects test under
12 Section 2 works, and, again, I would -- you
13 know, those determinations are -- you know, were
14 made in the Middle District in litigation that
15 the State chose not to appeal. So those are not
16 -- those have not been part of this litigation.

17 But to answer your question, the way
18 the effects test works is it looks at the way
19 the map is drawn and whether it could be drawn
20 differently so that it would not have those --

21 JUSTICE ALITO: Okay. I --

22 MR. NAIFEH: -- the limited impacts.

23 JUSTICE ALITO: I understand that.

24 And not only are these populations distant from
25 each other, isn't it the case that they differ

1 in some fundamental respects and, therefore, may
2 not be part of the same community of interest?

3 The -- the concentration near Baton
4 Rouge and Lafayette are -- are people who live
5 in an -- in urban areas. The people who are way
6 up in the northeast part of the state are --
7 live in rural areas, small towns. Their values
8 may be quite different, much more religious
9 perhaps than the people down in the other part
10 of the state. Isn't that true?

11 And -- and just last one, one last
12 question, don't -- doesn't voting in the 2024
13 election substantiate that?

14 MR. NAIFEH: Your Honor, the district
15 court looked at the evidence of the shared
16 interests in Robinson -- the district court in
17 Robinson looked at the evidence of the shared
18 interests among these communities that were
19 drawn together in our illustrative districts.
20 That was part of the evidence that we put on.
21 The court heard testimony from lay witnesses,
22 the court heard testimony from expert witnesses
23 about how they identified those shared interests
24 and how they drew the maps.

25 And so the court made a determination

1 that there were shared interests among the Black
2 voters that were in that district and that they
3 would be advanced by having an opportunity to
4 elect a candidate of choice.

5 JUSTICE ALITO: All right. Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor?

8 JUSTICE SOTOMAYOR: The problem I see
9 is that Louisiana's original 2022 map does
10 exactly what Justice Alito is saying, is joining
11 together white voters --

12 MR. NAIFEH: It --

13 JUSTICE SOTOMAYOR: -- who don't
14 necessarily have shared interests.

15 MR. NAIFEH: Well, Your Honor, it does
16 -- it is a similar configuration. So it's a --
17 you know, it does extend from the Florida
18 parishes in the -- in the southeast and then
19 wrap around the -- the little -- the ankle of
20 the boot and head up to the delta. So it's a
21 very similar configuration.

22 JUSTICE SOTOMAYOR: That's the point,
23 which is what you've done is tie together
24 communities of interest in a different way,
25 correct?

1 MR. NAIFEH: Absolutely, Your Honor.

2 And --

3 JUSTICE SOTOMAYOR: And one that
4 complies with -- complies with Section 2 but
5 keeps your political needs?

6 MR. NAIFEH: Exactly, Your Honor. And
7 that's what the district court in Robinson
8 found.

9 JUSTICE SOTOMAYOR: Not your political
10 needs, but Louisiana's political needs. Okay.
11 Thank you.

12 CHIEF JUSTICE ROBERTS: Justice Kagan?

13 JUSTICE KAGAN: If I understand the
14 questions a couple of my colleagues are asking
15 about, it's really -- it was Robinson right, not
16 was the decision below right. And as to whether
17 Robinson was right, do you think that we're well
18 positioned in this case to address that issue?

19 MR. NAIFEH: I do not, Your Honor. I
20 -- I -- the Robinson decisions were appealed to
21 the Fifth Circuit.

22 JUSTICE KAGAN: Six different Fifth
23 Circuit judges.

24 MR. NAIFEH: Yes. One -- the one --
25 there was a stay panel that looked at the merits

1 and found the State was not likely to prevail in
2 the appeal. And then that was borne out by the
3 merits panel that agreed that the district court
4 had correctly found --

5 JUSTICE KAGAN: We had the opportunity
6 to do about it at one point. We let it go. Six
7 circuit court judges. As I understand the
8 Respondent's argument in this case, the
9 Respondents are not standing here -- I mean,
10 they might think Robinson was wrong, but their
11 brief is not premised on the idea that Robinson
12 was wrong. Is that correct?

13 MR. NAIFEH: That is absolutely
14 correct, Your Honor. The -- the merits of the
15 Robinson decision have not really been part of
16 this litigation at all.

17 JUSTICE KAGAN: Yeah. And the General
18 here was saying, you know, look, they litigated
19 Robinson a lot. They took it to the Fifth
20 Circuit twice. They litigated it a lot and,
21 like at some point, you -- a state takes its
22 loss and decides that it has to get on with
23 things. And that's exactly what the State here
24 did.

25 MR. NAIFEH: Absolutely, Your Honor.

1 The State was not in a position to simply ignore
2 the Robinson rulings. It was not in a position
3 to draw another map that would dilute the votes
4 of the Black Louisianians that -- you know,
5 whose rights had been violated.

6 JUSTICE KAGAN: And that's a
7 reasonable thing. I mean, if we're -- we say
8 all the time states to have to have breathing
9 room. States have to have breathing room. This
10 state used its breathing room to say, after we
11 litigated this and we litigated this again and
12 we knew we were going to lose because six Fifth
13 Circuit judges had told us so, it was time to
14 get on with things and draw our map that served
15 our political objectives.

16 MR. NAIFEH: Absolutely. That's
17 exactly what breathing room provides, that kind
18 of ability for states to take those political
19 calculations into account.

20 JUSTICE KAGAN: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Gorsuch?

23 Justice Kavanaugh?

24 JUSTICE KAVANAUGH: Two questions.
25 One, a general equal protection question and

1 then a more specific Section 2 -- question.

2 On equal protection law, we've, of
3 course, said and the Court's long said, that
4 race-based remedial action must have a logical
5 end point, must be limited in time, must be a
6 temporary matter. Of course, in school
7 desegregation and university admissions.

8 What -- how does that principle apply
9 to Section 2?

10 MR. NAIFEH: Your Honor, I think that
11 Section 2 is -- the -- the way that -- as it --
12 as it has been applied through Gingles is tied
13 to current conditions. It requires a totality
14 of the circumstances analysis that looks at
15 current conditions. It looks at current -- at
16 racially polarized voting today. It looks at
17 examples of discrimination today. So it's tied
18 to current conditions, and there doesn't need to
19 be an artificial time limit on how Section 2
20 would apply because it's -- it's always applied
21 based on current conditions.

22 JUSTICE KAVANAUGH: And, second, on
23 the specific questions here, on the race
24 politics, I just want to disaggregate this. My
25 understanding of your position is that the

1 reason that there's a second majority-minority
2 district required is because of race, because of
3 Section 2, but the choice between which
4 majority-minority district to use was made
5 entirely on politics. Is that your position?

6 MR. NAIFEH: Yes, that -- that is our
7 position.

8 JUSTICE KAVANAUGH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Barrett?

11 JUSTICE BARRETT: So is your
12 understanding of breathing room -- I just want
13 to be sure I understand your answers to Justice
14 Kagan. Is your answer -- is your answer to
15 Justice Kagan, your understanding of what
16 breathing room allows a state to do, necessarily
17 mean that any time there's a district court
18 order finding a Section 2 violation, that is
19 reason for a Fourteenth Amendment claim to then
20 later lose? Because compliance with Section 2
21 would always be a reason for the State to draw a
22 race-based district?

23 MR. NAIFEH: Your Honor, absent some
24 unusual circumstance like collusion, a decision
25 by an Article III judge provides about the best

1 reasons that a state can have for thinking it
2 faces Voting Rights Act liability. It's been
3 adjudicated to have likely violated the Voting
4 Rights Act.

5 And this Court has said "good reasons"
6 means that there is a light -- you know, that
7 there -- that -- just -- the State has good
8 reasons to believe it faces Voting Rights Act
9 liability.

10 So yes, I would say that when there is
11 an Article III determine -- judge's
12 determination, in this case affirmed by the
13 Fifth Circuit, that's about the best reasons
14 this Court has recognized as -- as requiring
15 remedial action.

16 JUSTICE BARRETT: So let me follow up
17 then on Justice Kavanaugh's question. He
18 pointed out there's two steps here. One, you
19 had to draw a Second District based on race, but
20 the shape of that Second District was based on
21 political considerations.

22 What if that wasn't the case? What if
23 they didn't like the one imposed by the Robinson
24 map, your map, and said: We're going to draw a
25 different one? But expressly said, the whole

1 time -- didn't talk about the speaker, didn't
2 talk about anyone else, didn't talk about
3 politics. Just said: We're doing this because
4 of race. We don't like that other map. Race,
5 race, race.

6 So the shape of it was also based on
7 race, which is different than the other one.

8 MR. NAIFEH: Well, I think part of the
9 strict scrutiny analysis is that you have to
10 look at was race used in a way that wasn't
11 necessary to comply with Section 2.

12 So if -- you know, if -- if they used
13 race since, you know, they packed Black voters
14 in the district because they wanted to use that
15 as a proxy for -- or as a pretext for doing, you
16 know, partisanship through race, that might
17 be -- that might render it invalid.

18 JUSTICE BARRETT: So that would be an
19 example where there wouldn't -- you couldn't
20 just point to the earlier Section 2 litigation
21 as the compelling interest?

22 MR. NAIFEH: No, Your Honor. Well,
23 it's the compelling -- it is the compelling
24 interest. The question is: In remedying the
25 violation, did they use race in a way that

1 wasn't necessary --

2 JUSTICE BARRETT: Tailoring -- Right.

3 MR. NAIFEH: -- to remedy the
4 violation, and they used it for some, you know,
5 other illegitimate purpose.

6 JUSTICE BARRETT: For tailoring
7 purposes. Okay. Thank you.

8 MR. NAIFEH: For tailoring purposes.

9 CHIEF JUSTICE ROBERTS: Justice
10 Jackson?

11 JUSTICE JACKSON: Yeah, just to follow
12 up on Justice Barrett's point.

13 Your -- your point is just that the
14 previous litigation provides the compelling
15 interest to good reason to go forward. But
16 there's still always the narrow tailoring. And
17 we're looking at what it is the State is
18 actually doing with respect to it's remedy,
19 right?

20 MR. NAIFEH: Yes, absolutely.

21 JUSTICE JACKSON: Has the Court ever
22 held that race predominates whenever a state
23 draws a district to comply with Section 2?

24 I -- I thought we suggested the
25 opposite in Shaw v. Reno.

1 MR. NAIFEH: This Court has not held
2 that. The Court has expressly said that
3 intentional creation of a majority-minority
4 district does not, on its own, prove racial
5 predominance. That was -- the Court said that
6 in Bush versus Vera. And then in Bethune-Hill,
7 the Court refused to find predominance even
8 where the state had a 55 percent target. That
9 was just one consideration in the predominance
10 analysis. It wasn't the whole analysis.

11 JUSTICE JACKSON: And is it the
12 plaintiffs' burden -- the plaintiffs in the
13 equal protection case burden to disentangle race
14 from politics in a case like this?

15 MR. NAIFEH: Yes, of course. It's the
16 plaintiffs' burden at the first stage on
17 predominance.

18 JUSTICE JACKSON: Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Mr. Greim.

22 ORAL ARGUMENT OF EDWARD D. GREIM

23 ON BEHALF OF THE APPELLEES

24 MR. GREIM: Mr. Chief Justice and may
25 it please the Court:

1 With one exception that we'll get to
2 in a moment, there is nothing new or
3 extraordinary in the fact pattern presented by
4 this case. This is Shaw II again. This is
5 Miller again. This is Bush v. Vera again.

6 From the very beginning of this
7 Court's racial gerrymandering jurisprudence, it
8 was born in an error where states were drawing
9 majority-minority districts allegedly in order
10 to comply with the VRA, whether it was DOJ
11 pressure under Section 5 or fear of Section 2
12 liability.

13 In Shaw II the -- the District 12, the
14 unusual district in North Carolina, was not
15 drawn where DOJ wanted the Second District to be
16 drawn. It was drawn there to protect democratic
17 incumbents.

18 In each of these cases, the State
19 always says it wants to protects incumbents, and
20 that's why its district is not quite the same as
21 -- as DOJ wants or as the Plaintiffs in Section
22 2 want. So that is -- there is nothing new
23 about that in this case.

24 What the -- what the appellants claim
25 is new is Robinson. But Robinson was not a

1 final decision. And we can avoid all the
2 problem about how final it was or how convincing
3 it was by simply asking the Defendant on strict
4 scrutiny to bring this mountain of great
5 evidence into the court and -- and -- and show
6 why there's a strong basis in evidence for
7 drawing a Second District and to show why it's
8 narrowly tailored.

9 But ultimately they didn't do that
10 here because the decision was badly fluid and
11 because the district judge in Robinson, at page
12 834, looked at the original Hays slash map,
13 which is so close to this map, and said that the
14 districts there were diffuse and nonsensical.
15 And so that's why it never came up, and that's
16 our problem here.

17 I'm happy to answer questions.

18 JUSTICE THOMAS: Do we have to accept
19 Robinson, which is not being -- which is not on
20 appeal here, as a given?

21 MR. GREIM: Justice Thomas, we don't
22 have to. Instead, we -- we should have looked
23 to the Defendants to bring out the parts in
24 district court about Robinson that they thought
25 were so compelling. And they never did. They

1 actually tried to block any discussion of
2 Section 2 at the district court level.

3 JUSTICE SOTOMAYOR: I -- I'm sorry.

4 JUSTICE THOMAS: No, go ahead. No, go
5 ahead.

6 JUSTICE SOTOMAYOR: They have a
7 decision by a lower court that they're likely to
8 succeed. They have a -- an appeal of a
9 temporary restraining order, where that court
10 says they're likely to win. And we have a
11 merits panel who looks at it and says they're
12 likely to win.

13 They can't -- that's not enough to
14 provide a good faith basis for believing that
15 they need to comply with Section 2? That's what
16 you're saying.

17 MR. GREIM: Well, there -- there's two
18 answers to that.

19 First of all, if they did believe
20 that, the answer, so that we wouldn't have to
21 speculate here, would be: Bring the evidence to
22 the district -- the three-judge district court.

23 JUSTICE SOTOMAYOR: Why did they have
24 to do that?

25 MR. GREIM: Be --

1 JUSTICE SOTOMAYOR: Meaning, what
2 you're asking for is a relitigation of Robinson
3 in total.

4 MR. GREIM: Well --

5 JUSTICE SOTOMAYOR: But -- but it's
6 not whether they were right or wrong. We've
7 said that. "Good faith" doesn't mean that
8 you're proven -- that you had to do this. It's
9 just whether you had a good faith basis to
10 believe you should do it.

11 MR. GREIM: But in Wisconsin
12 legislature, this Court said that the -- the
13 breathing room is for reasonable mistakes in the
14 data. But you have to make your showing.

15 JUSTICE SOTOMAYOR: I mean -- well,
16 we'll --

17 MR. GREIM: You have to make your
18 showing. We --

19 JUSTICE SOTOMAYOR: We'll go back to
20 that. Thank you.

21 JUSTICE JACKSON: Counsel, can I just
22 ask you, because some of the things that you
23 have said makes it seem as though you're
24 suggesting that Louisiana's pointing to the
25 court order was pretextual. In other words, you

1 say: If they believed that the court was
2 ordering them.

3 So do you have some basis for
4 disputing what Governor Landry said: We are
5 here today because the federal courts have
6 ordered us to perform our job. We have
7 exhausted all legal remedies, and we have
8 labored with this issue for too long, and that's
9 why we're drawing the map?

10 I mean, it's -- do you concede that
11 Louisiana at least sincerely believed that the
12 courts were requiring it to do this?

13 MR. GREIM: Well, I -- I think I would
14 simply point to the litigating position of
15 Louisiana throughout the case, including just a
16 few minutes ago. I mean, in their heart of
17 hearts, they don't believe the VRA requires
18 this.

19 JUSTICE JACKSON: No, I understand
20 they thought the courts were wrong. But the
21 question is: Did they believe that a court was
22 ordering them to do it?

23 I mean, I -- I -- I -- I am sort of
24 concerned about your view -- as seemingly
25 expressed, and I want you to clarify it -- that

1 a court order compelling you to do something is
2 not a good reason for you to do it.

3 MR. GREIM: Justice Jackson, I'll --
4 I'll just fall back on General Murrill's
5 comments to the legislature, making clear that
6 the state was not under a court order at the
7 time.

8 Instead, the Fifth Circuit said: You
9 you can either go back and defend this district
10 without using your Allen v. Milligan style
11 theories, and actually put in evidence on the
12 Gingles factors, which they hadn't done, or you
13 can go draw a VRA-compliant map.

14 They were not ordered to simply go
15 draw --

16 JUSTICE JACKSON: But that goes --

17 MR. GREIM: -- a new map.

18 JUSTICE JACKSON: -- to the remedy.
19 I'm -- I'm asking about the violation. We had
20 many judges, as other justices have set forward,
21 that looked at the actual merits of the question
22 of whether or not there would be a VRA violation
23 if a new map wasn't drawn.

24 So Louisiana felt, I think they're
25 saying, compelled to do something about this.

1 And you seem to be questioning whether or not
2 they were. And I'm just trying to clarify that.

3 MR. GREIM: Well, I mean, at the end
4 of the day, we -- we do have to take Louisiana
5 at their word. But -- but I just want to be
6 clear, they were given a choice to actually go
7 in and raise a defense. And I think reading --
8 reading Robinson makes this clear.

9 The court says time and again:
10 Louisiana, you raised the Alabama arguments from
11 Allen v. Milligan. You tried to use experts to
12 show that Gingles I was violated because of the
13 intent of the illustrative map drawers, but you
14 never put in actual evidence on the types of
15 factors that Justice Alito was talking about.

16 JUSTICE JACKSON: So --

17 JUSTICE KAGAN: I guess I don't
18 understand, Mr. Greim. Like, what should
19 Louisiana have done? Louisiana litigated this
20 case. It lost in the district court. It lost
21 twice in the Circuit Court.

22 You know, if I read the list of the
23 judges, I'm just going to tell you that if you
24 lose those judges, you're going to lose.

25 (Laughter.)

1 JUSTICE KAGAN: We didn't -- we had no
2 interest in taking the case. It was brought to
3 us, we said no. What -- what was Louisiana
4 supposed to do?

5 MR. GREIM: Well, I think in this case
6 the Fifth Circuit laid out the options. I mean,
7 they -- first of all, Louisiana had no reason to
8 think -- I mean, the -- the same illustrious
9 list of judges pointed out that you can start
10 over again. You could retool and maybe don't
11 use *Allen v. Milligan* as the road map this time.

12 I mean, that -- that hint was clearly
13 given to the State. And --

14 JUSTICE KAGAN: So I -- I guess I get
15 the idea that it did have the option to keep on
16 finding ways to litigate this question, but what
17 -- I mean, there were -- there were ways that it
18 could have refused to give up. I take that
19 point.

20 But at some point, it said, you know,
21 we've -- we've -- we've been told we're wrong by
22 seven judges, and we're going to accept that and
23 we're going to move on and find a map. And then
24 the State lawyers come in and, I mean, the --
25 the record is like the State lawyer says there

1 can be no better reasons to believe that the VRA
2 required a second majority Black district than a
3 precedential opinion of the Fifth Circuit
4 affirming that a map with a single majority
5 Black district likely violated Section 2. And
6 the State lawyer talks about all the process
7 that they went through and all -- and hearing
8 that they had and the maps that were submitted.
9 And she says what better reason could there be
10 for this?

11 So, like, at a certain point, like, I
12 -- I get that you -- that there might have been
13 other options, but that's the whole point about
14 breathing room, right? Breathing room is states
15 have choices. And -- and this was one state
16 that decided on this choice that you don't agree
17 with, but it was, like, well, well, well within
18 the parameters of, like, a good faith reasonable
19 choice.

20 MR. GREIM: Justice Kagan, if that
21 were true, then the -- what the State should
22 have done is brought that before the district
23 court. What the State argued in the district
24 court was -- is that Robinson's mere existence
25 was dispositive, that we were essentially

1 estopped from even bringing our claim for that
2 reason.

3 And so if the evidence was so
4 compelling in Robinson, all they had to do was
5 use their trial time -- they didn't even use all
6 their trial time -- and show us the key points.

7 JUSTICE GORSUCH: Counsel, you know,
8 if we're going to defer to the Fifth Circuit,
9 they also found a constitutional violation here
10 too. So they're speaking out of all sides of
11 all mouths down there. And I'm not sure that's
12 how the system works anyway.

13 But I have a question for you on the
14 -- on the remedy. Your -- your friends on the
15 other side say, okay, race predominated in -- in
16 -- in creating a Second District, but race
17 didn't play a role in the squiggly line
18 district. It was politics.

19 And -- and -- and -- I -- I want to
20 get your response to that.

21 MR. GREIM: Sure, there are two
22 responses, Justice Gorsuch. First of all,
23 Senator Womack in the -- in his presentation --
24 he is the sponsor of the bill -- said there is
25 just not enough Black voter population in

1 southeast Louisiana. And he says that is why
2 the district is drawn up to Shreveport, up I-49
3 and up the Red River to Shreveport. So the
4 sponsors were very clear that that's what they
5 were doing. So you could look just -- you could
6 look at the evidence.

7 But the other issue is this: The only
8 reason that politics began to matter at this
9 level was because they accepted that there had
10 to be a second Black majority district. That
11 then caused the problem of losing an incumbent
12 and having to choose who is going to be lost.

13 JUSTICE GORSUCH: But what does it
14 mean to say race or politics predominate? I
15 mean, I had thought the Fourteenth Amendment
16 said we don't look at race. "Predominate" says
17 you can up to a point, but I don't know what
18 that point would be. And I -- I don't know, can
19 two things predominate? Can politics and race
20 predominate? I don't know.

21 MR. GREIM: Justice Gorsuch, that may
22 be a problem in some racial gerrymandering
23 cases. It's not a problem here, though, because
24 everyone admits that step 1 of the process, in
25 fact, the State admits in its briefing, the

1 baseline was to draw a second Black majority
2 district.

3 Everything else that -- that happened,
4 you know, flowed from that. And that's enough
5 under Bethune-Hill, under Cooper, under several
6 of the Court's cases.

7 JUSTICE JACKSON: That's enough for
8 predominance? We have a case that says that if
9 you are drawing a second or a third or whatever
10 Black majority district, you satisfy the racial
11 predominance --

12 MR. GREIM: What -- what --

13 JUSTICE JACKSON: -- requirement?

14 MR. GREIM: What I was quoting was
15 that the standard for predominance is that the
16 initial decision that couldn't be compromised.
17 And, actually, just last --

18 JUSTICE SOTOMAYOR: I'm sorry. Then
19 there's no way to comply with Section 2.

20 MR. GREIM: Well --

21 JUSTICE SOTOMAYOR: If -- if what
22 you're saying is you can never -- a state could
23 never in good faith redraw a map if it believes
24 that it's solve -- going to draw a map that is
25 going to solve a Section 2 violation. That's

1 what you're saying.

2 MR. GREIM: No, Justice Sotomayor.

3 JUSTICE SOTOMAYOR: It's a vicious
4 cycle they can't get out of.

5 MR. GREIM: No, Justice Sotomayor.
6 They would then show on strict scrutiny a strong
7 basis in evidence for drawing that map. And so
8 -- and -- and that's what Shaw II --

9 JUSTICE SOTOMAYOR: But that's what
10 they've done. That's what they've done here.
11 They've got a judge saying you violated it.
12 There's an alternative map that meets all
13 traditional criteria. Go draw your own map, but
14 make sure you get a second out because that's
15 the only way to remedy this violation.

16 MR. GREIM: Well --

17 JUSTICE SOTOMAYOR: And they come up
18 with a second map or a different map that shows
19 -- that they show is based purely on politics.
20 They -- they wanted to save three incumbents, so
21 they drew lines to save three incumbents.

22 MR. GREIM: Justice Sotomayor, I think
23 it is helpful to look at the remedial map. I
24 mean, first of all, Senator Womack stated that
25 it was for the purpose of capturing additional

1 Black voters that it was drawn that way.

2 But -- but we can skip a lot of the
3 difficult issues that have been raised here by
4 going to one point. And that point is from Shaw
5 II, from Miller, and from Bush, and actually
6 LULAC as well, which is that you can never have
7 a Section 2 remedial map that fails Gingles I.
8 That that is -- that is not geographically
9 compact and does not comply with traditional
10 redistricting criteria. And that's what the
11 district court found here as a matter of fact.

12 We have a factual finding from the
13 district court --

14 JUSTICE SOTOMAYOR: Thank you --

15 MR. GREIM: -- on that point.

16 JUSTICE SOTOMAYOR: -- counsel.

17 JUSTICE KAVANAUGH: Well, their answer
18 to that, I think, is the 70 percent. So can you
19 just address that?

20 MR. GREIM: Sure. So the 70 percent
21 does not trump the geographical compactness
22 requirement. I -- I will address that, but I
23 want to make very clear that, no matter what,
24 even if you've covered a lot of the old
25 population, you can't draw a non-compact

1 remedial district. And that -- that decides the
2 case.

3 But the other problem is this: First
4 of all, I think the correct number is something
5 like 67 percent. We -- we looked. But it's
6 over half of the population. And that really
7 matters when you're looking at Gingles because,
8 remember, Gingles hinges on some very fine
9 calculations.

10 And when you lop off 100,000 Black
11 voters in 14 parishes, have to find 100,000 new
12 Black voters in another area of the state, you
13 can't just assume that that's substantially
14 related. The 20 percent issue also, if you go
15 back and look at Shaw II, the 20 percent they're
16 talking about is Mecklenburg County. They're
17 talking about the Black voter core of that
18 county. The court's referring to 20 percent of
19 the area of that District 12, but we -- and we
20 couldn't tell. We looked for this.

21 You can't -- it may -- it likely was a
22 much higher percentage of the Black vote
23 population of District 12, but it's not in the
24 record and I have not been able to figure it
25 out.

1 JUSTICE JACKSON: Counsel, speaking of
2 the record, I -- I -- I have to point to what
3 the Appellants' point to on page 18 of their
4 brief -- this is the State's brief -- when they
5 talk about Senator Womack. You've mentioned him
6 several times. And, apparently, he was asked
7 directly what was the predominant reason for you
8 to create the Sixth District this way, the way
9 it looks now, versus just going with Senator
10 Price's bill, which created a more compact
11 district. And he answered it was strictly
12 politics. Politics drove this map because of
13 the Speaker Johnson, Majority Leader -- Leader
14 Scalise, and my Congresswoman Julia Letlow,
15 predominantly drove this map.

16 And he disavowed that race was the
17 predominant factor. You've said exactly the
18 opposite several times here. So can we just get
19 some clarity on what Womack's position was?

20 MR. GREIM: Sure. First of all,
21 Senator Womack said a lot of things. What I
22 quoted from Senator Womack was accurate, but
23 what Senator Womack was doing was distinguishing
24 between the Robinson maps, or what everyone
25 presumed them to be, and the new district.

1 The problem, though, is that this
2 Court has never said that there is a second
3 intent analysis done on strict scrutiny. In
4 fact, Justice Kennedy specifically in Bush
5 v. Vera said -- in response to Justice O'Connor
6 suggesting that that could be the standard, said
7 we've never recognized that, and no -- no case
8 from this Court ever asked --

9 JUSTICE JACKSON: Well, let me put it
10 this way: If -- if Louisiana had accepted the
11 initial Robinson map, would you have brought
12 your litigation? Would you have been able to
13 make the argument that this was not compact,
14 this was some -- somehow a violation or -- what
15 -- what would your position have been?

16 MR. GREIM: Well, we don't have all
17 the facts in front of us, but -- but we would
18 have scrutinized it, and if the record had been
19 what it was in Robinson so far, we absolutely
20 would have brought the case.

21 And then they would have come into our
22 -- our case and said: Well, you know, we think
23 it's -- it's compact. You know, we only looked
24 at plan-wide compactness, and that's why we won.

25 I mean, I -- I think we would have

1 prevailed. But it's a hypothetical.

2 JUSTICE KAGAN: I guess I don't quite
3 understand the role compactness plays in your
4 analysis, because -- and this goes back to
5 Justice Kavanaugh's point, that there's really
6 sort of two steps.

7 I mean, once Robinson has provided
8 Louisiana with a good reason to think that there
9 was a Section 2 violation that they needed to
10 remedy by creating another minority district,
11 once that happened, what Louisiana did was,
12 like, look at this map and say: Essentially we
13 have three incumbents, and we know which two are
14 really important for the State to keep.

15 And they created a map that made sure
16 that they kept the two incumbents that were most
17 important for the State to keep.

18 And, like, why isn't that, like,
19 completely within the prerogative of a state?
20 That has nothing to do -- I mean, it creates a
21 less compact district, no doubt about that.
22 But, you know, we've never said to states: Oh,
23 you've got to go with compactness when the
24 speaker of the House is going to be thrown out.

25 I mean, it's totally within the

1 prerogative of the state to say: Incumbent
2 protection, and particular incumbents, are
3 really super important to us.

4 MR. GREIM: Two responses, Justice
5 Kagan. First of all, we -- we're in strict
6 scrutiny at this point. I mean, the state has
7 racially gerrymandered Black and white voters.

8 JUSTICE KAGAN: No, but -- but
9 there's, like, two steps here. One is, is there
10 good reason to think there is a Section 2
11 violation? Robinson has created the premise of
12 thinking that there's good reason that you need
13 to create another map.

14 Now the question is: What does that
15 map look like? It's the remedial question.
16 It's the -- does the -- does the map
17 substantially address the Section 2 violation
18 that you have good reason to think exists?

19 And the State said: You know, the
20 Plaintiffs have presented these maps that would
21 substantially address that. We have a better
22 map that would substantially address that, that
23 also allows us to keep our incumbent. Better,
24 because it allows us to keep our incumbents.

25 I mean, what's wrong with that?

1 MR. GREIM: So --

2 JUSTICE KAGAN: If -- if the State
3 can't do that, the State has no breathing room.

4 MR. GREIM: Well, first of all, we
5 disagree with the first premise of the question.

6 But here's, I think, where -- where
7 the problem is. This -- this Court is going to
8 have to overrule Shaw II and Miller if it holds
9 that you don't have to draw a geographically
10 compact remedial district.

11 Because the Court in Shaw II said:
12 Looking at District 12, there is no way we can
13 find that there is a geographic --
14 geographically compact population of any
15 population of that district. And that is why --
16 that's why they lost in Shaw.

17 JUSTICE KAGAN: I think this is a
18 little bit backwards, Mr. Greim, because you
19 only get to evaluate CD6 if we find that there
20 was good reason to think that there was a
21 substantial likelihood of a -- a -- a -- a
22 voting rights violation.

23 So -- so that good reason is provided
24 by Robinson. And -- and Robinson says that
25 there's a compact minority population whose

1 Section 2 rights are likely being violated.
2 Once Robinson says that, the question, you know,
3 only becomes whether CD6 substantially addresses
4 that Section 2 violation.

5 But the compactness inquiry, which is
6 the -- is, you know, is there a compact district
7 such that Section 2 is being violated, that
8 happens at the first step of the analysis. And
9 Robinson has already addressed that question.

10 MR. GREIM: Well, but unfortunately,
11 Robinson is addressing a different area of the
12 state. And -- and that's the problem. That --
13 that's why compactness is a backstop.

14 The other problem is this: In states
15 where you are wringing out the very last
16 elements of Black voting population, it's --
17 it's inevitable that whatever the gerrymander is
18 that's finally drawn is -- is probably going to
19 have some fair slice of what was in the original
20 maps.

21 That's why if you only focus on
22 overlap, you're missing the key issue from Shaw
23 II and from Miller, which is that you have to
24 have a graphically compact remedial district,
25 full stop.

1 And that's the backstop that keeps us
2 from having to draw lines and figure out how
3 much of Mecklenburg County was really in each
4 district, and -- and whether 67 percent and over
5 half the territory is enough.

6 And, again, it matters because these
7 are Gingles districts. And all we know is the
8 average for the whole district. We don't even
9 know that the section we're gathering combines
10 with the new voters to satisfy Gingles.

11 JUSTICE KAVANAUGH: You're --

12 JUSTICE ALITO: Maybe I'm missing the
13 thrust of the question. But the question seems
14 to be: Is it not the case that if you grant the
15 premise, then on the remedial -- at the remedial
16 phase, anything goes?

17 Now, can that possibly be correct?

18 Suppose that the -- the district
19 that's created is not the -- the parts of the
20 district are not even connected. You've got an
21 island here, an island there, an island here, an
22 island there. Would that be okay?

23 MR. GREIM: Absolutely not. And --
24 and that's the problem.

25 JUSTICE KAGAN: Mr. Greim, it is not

1 an anything goes inquiry. We have said it has
2 to substantially address the voting rights
3 population.

4 So, for example, where we -- there was
5 a remedial district that addressed only
6 20 percent of the people whose rights were
7 actually violated, we, of course, struck that
8 down.

9 But here, the district addressed
10 70 percent of the people whose rights were being
11 violated, which seems like a ways different from
12 20 percent. And seems to suggest that the
13 voting rights district was -- the voting rights
14 violation was being substantially addressed,
15 which is the only thing we've ever required at
16 that point.

17 MR. GREIM: But -- well, actually,
18 Justice Kagan, in Shaw II the Court says that
19 the remedial district must be compact. It must
20 hold a geographically compact population.

21 And, you know, why not just take
22 Shreveport, skip the intervening territory and
23 not have it be contiguous, and add that to what
24 is claimed to be the core of this district?

25 Now, again, it was the State's burden

1 to show this in the district court. This
2 argument was never raised in the district court.

3 There was no evidence whatsoever in
4 the record about how many of the people from the
5 original district were in there. And whether by
6 combining them with the new populations, we have
7 anything that looks like a Gingles district.

8 Because, again, their entire argument
9 was the mere existence of Robinson completely
10 satisfies strict scrutiny. And that cannot be
11 correct.

12 JUSTICE KAVANAUGH: Your lead argument
13 in the brief for why there was no compelling
14 interest here in the race-based redistricting on
15 page 36 was the durational point, the
16 Constitution. The authority of a state to
17 engage in race-based redistricting must have an
18 end point.

19 You haven't mentioned that so far.
20 The other side said that that argument has been
21 forfeited. And I want to get your response to
22 that. The fact that you haven't mentioned it so
23 far certainly supports what they're saying on
24 that, but I'll give you a chance to respond.

25 MR. GREIM: Sure. I mean, the problem

1 with this case is that we think the appellees
2 win many different ways. And this is an
3 argument we're making on the side of the case
4 that is the State's burden.

5 And so I don't think the law supports
6 that it's our duty to anticipate, you know,
7 second or third or fourth reasons why they'll
8 fail under strict scrutiny and make sure we
9 raise them below. And -- and so I don't think
10 it's -- I don't think the argument was ours to
11 forfeit. I guess I can put it that way.

12 But -- but the problem is this: If
13 you go back to Robinson, the evidence on
14 current -- current racial context in Louisiana
15 that still requires this purely effect-based
16 test was very thin. They could have actually --
17 in fact, they would have had to have raised that
18 in the district court below.

19 But they never did do that. Again,
20 they didn't bring in any Gingles evidence, let
21 alone the kind of evidence that would say: If
22 you look around Louisiana, there are still a lot
23 of barriers to Black citizens voting. So that's
24 not in the record, and I think there's a reason
25 for that.

1 And I think that shows us that Section
2 2 is no longer performing the function that it
3 was assigned, that -- that Congress thought it
4 was going to perform back in 1982. Now we're --
5 why are we seeing so many Section 2 cases? Why
6 are we suddenly now -- as voters are becoming
7 more integrated, why are we suddenly finding new
8 Section 2 districts everywhere?

9 I think that's a problem.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas?

13 Justice Alito?

14 Justice Barrett?

15 Justice Jackson?

16 JUSTICE JACKSON: I just have one
17 final question. And it's -- the Robinson map,
18 the proposed Robinson map that had the Black
19 district that would be one that might oust Julia
20 Letlow, is it your position that the Black
21 district drawn in that map was not sufficiently
22 compact?

23 MR. GREIM: Your Honor, we -- we think
24 if we have a chance to litigate that, which we
25 would at the remedial phase, assuming that

1 that's raised again, we think we'll be able to
2 show that it's not sufficiently compact, that
3 there are far from -- far-flung Black
4 communities in northern Louisiana, and even in
5 the delta parishes in Lafayette, that don't have
6 very much in common with the -- the more dense
7 population of East Baton Rouge.

8 And I think we'll be able to show it
9 doesn't perform as well.

10 JUSTICE JACKSON: Thank you.

11 MR. GREIM: But it's not in the
12 record.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Rebuttal, counsel?

16 REBUTTAL ARGUMENT OF J. BENJAMIN.

17 AGUIÑAGA ON BEHALF OF THE APPELLANT IN CASE 24-109

18 MR. AGUIÑAGA: Thank you, Mr. Chief
19 Justice. Just three brief points.

20 First, on racial predominance. I
21 would emphasize this Court's decision last year
22 in Alexander, where the Court emphasized
23 caution, that when a federal court says that
24 race was a legislature's predominant purpose in
25 drawing the district, it accuses that

1 legislature of offensive and demeaning conduct.

2 If that caution applies in the
3 ordinary case, respectfully it should especially
4 heightened here in a case where two Article III
5 courts are telling a state to use race to draw a
6 second majority district. So Justice Jackson,
7 we don't think the Court needs to get to strict
8 scrutiny because race did not predominate under
9 Alexander.

10 Second, on the question of strict
11 scrutiny, my friend talks a lot about Shaw and
12 compactness. But, respectfully, my friend
13 ignores footnote 9 of Shaw II. There in
14 footnote 9 of Shaw II, this Court said that even
15 a plaintiff in a successful Section 2 case does
16 not have a right to be in the ultimate remedial
17 district that is drawn. That's because, that
18 footnote emphasizes, a state has broad leeway to
19 draw that district. Respectfully, there is no
20 holding in this Court's cases that require us to
21 satisfy Gingles in drawing the remedial district
22 as we did here.

23 The third point is just one about next
24 steps. With all due respect, we'd rather not be
25 back at the podium this fall defending a new map

1 against a new challenge. This Court's cases
2 promise breathing room. We operated in that
3 breathing room in drawing District 6. And if
4 this Court holds otherwise, then respectfully I
5 don't know what this Court's voting cases mean.

6 We ask you to reverse. Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 The case is submitted.

10 (Whereupon, at 11:27 a.m., the case
11 was submitted.)

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