**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION**

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| PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL, ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR, JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES, ROLFE MCCOLLISTER,<br><br>*Plaintiffs*,<br><br>v.<br><br>NANCY LANDRY, in her official capacity as Secretary of State for Louisiana,<br><br>*Defendant*. | Civil Action No. 3:24-cv-00122<br><br>Judge David C. Joseph<br><br>Circuit Judge Carl E. Stewart<br><br>Judge Robert R. Summerhays |

**_ROBINSON_ MOVANTS' REPLY IN SUPPORT OF MOTION TO INTERVENE**

Plaintiffs' Opposition to the *Robinson* Movants' Motion to Intervene, ECF No. 33-1 ("Opp."), is heavy on rhetoric. It casts aspersions on Movants' counsel, *see, e.g.*, *id*. at 1–2, 3, 5–6, 14, trivializes Movants' litigation victories, *see, e.g.*, *id.* at 8–10, ignores a host of case law, and mischaracterizes Movants' claims. But it is light on meaningful analysis of the law and does nothing to undermine Movants' motion.

Reading Plaintiffs' opposition brief, one would not know that the Fifth Circuit has consistently held that "Rule 24 is to be liberally construed." *La Union del Pueblo Entero* v. *Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (quoting *Brumfield* v. *Dodd*, 749 F.3d 339, 341 (5th Cir. 2014)). The Circuit has adopted a "broad policy favoring intervention" that imposes a "minimal burden" on proposed intervenors, which Movants easily clear. *Id*. (quoting *Miller* v. *Fed'n of S. Coops.*, No. 21-11271, 2022 WL 851782, at *4 (5th Cir. Mar. 22, 2022)). Movants have unique and

protectable interests in this litigation, which the State cannot adequately represent. The Court should grant Movants' motion to intervene.[1]

## ARGUMENT

### I. Movants are entitled to intervention by right under Rule 24(a)(2).

A. Movants have an interest in this litigation.

*i. Movants have an interest in defending their* Robinson *victories.*

Movants won hard-fought victories in *Robinson* v. *Landry* and seek to defend them against collateral attack. *See* Mot. Intervene, ECF No. 18-1 ("MTI"), at 7–8, 10–12. The Fifth Circuit has allowed intervention in analogous circumstances. *See id.* at 11 (citing *City of Houston* v. *Am. Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012)). Plaintiffs try to distinguish *Houston* by baldly asserting that a "moral right" to defend a sponsored ballot initiative exists. Opp. at 7. But they do not say why Movants do not have the *same* rights and interests in defending litigation victories. Just like the intervenors in *Houston*, Movants have "a particular interest in cementing their [judicial] victory and defending [SB8]." *Houston*, 668 F.3d at 294.

Plaintiffs' effort to cabin *Houston* to its facts, *see* Opp. at 7–8 (suggesting specter of collusive litigation or money expended was determinative in *Houston*), falters because it ignores the myriad other cases where courts have held that proponents of legal actions and ballot initiatives have unique interests in intervention to defend them. *See, e.g.*, *Blankenship* v. *Blackwell*, 341 F. Supp. 2d 911, 918 (S.D. Ohio 2004) (individuals who successfully challenged Ralph Nader's ballot qualification before Ohio Secretary of State had a "substantial legal interest" and "occup[ied] a

[1] Given that the Court has entered a scheduling order and based on Judge Dick's indication from the Bench that she was unlikely to find these cases sufficiently related to invoke the first-filed rule, Movants respectfully withdraw their request to transfer this case. At the time Movants filed their motion, the Defendant had not yet appeared in the case. After the Defendant appeared, Counsel for Movants conferred with counsel for Defendant, who indicated that Defendant does not oppose intervention.

unique position" in related case challenging Nader's removal from the ballot); *Inmates of The R.I. Training Sch.* v. *Martinez*, 465 F. Supp. 2d 131, 137 (D.R.I. 2006) (finding intervention appropriate "given the history of the ACLU and ACLU–RI's long and persistent effort to obtain a resolution of this issue"); *Akiachak Native Cmty.* v. *U.S. Dep't of Interior*, 584 F. Supp. 2d 1, 6 (D.D.C. 2008) (party to a settlement from other case had interest in "maintaining the terms of the settlement"); *Yniguez v. State of Ariz.,* 939 F.2d 727, 733 (9th Cir. 1991) ("[T]here is a virtual *per se* rule that the sponsors of a ballot initiative have a sufficient interest in the subject matter of litigation concerning that initiative to intervene."); *cf. Mich. State AFL-CIO* v. *Miller*, 103 F.3d 1240, 1245–47 (6th Cir. 1997) (finding intervention appropriate where, among other factors, the proposed intervenor was "a vital participant in the political process that resulted in legislative adoption of the 1994 amendments in the first place" and "a repeat player in Campaign Finance Act litigation"). This case law supports Movants' motion.

*ii. Movants' interests are specific to them.*

In addition to ignoring this case law, Plaintiffs misconstrue Movants' interest under Section 2 of the Voting Rights Act ("VRA"), contending that "at least seven of the fourteen individual Movants received no benefit from, or were objectively harmed by, SB8." Opp. at 8. As Plaintiffs tell it, Movants seek not to protect their own rights but to represent a "statewide mass of voters of a particular race." *Id*. at 7.[2] As an initial matter, Plaintiffs effectively concede that organizational

[2] Even under their unduly constrained understanding of Movants' interests, Plaintiffs effectively concede that four *Robinson* Movants have an interest here. In addition to acknowledging organizational Movants' interest, *see supra*, Plaintiffs seemingly recognize that at least two individual *Robinson* Movants—Dorothy Nairne and Clee Earnest Lowe—have a discrete interest because they were moved from a majority-white to majority-Black district. *See* Opp. at 9; *see also Johnson* v. *Mortham*, 915 F. Supp. 1529, 1536 (N.D. Fla. 1995). Plaintiffs are also factually incorrect about the district in which Movant Alice Washington lives under SB8: She lives in Congressional District 6, a majority-Black district, and thus, under Plaintiffs' theory, like the other Movants who have been drawn into a majority-Black district under SB8, would have a protectable interest here. Similarly, even under Plaintiffs' erroneous theory that it is necessary (as opposed to *sufficient*) for an intervenor to be an intended beneficiary of a challenged state action to defend it, Opp. at 7, Movants clear that bar. Plaintiffs' own papers demonstrate the State passed SB8 in response to litigation brought by the *Robinson* Movants to undilute their votes by drawing a second Black-opportunity district.

Movants Louisiana NAACP and Power Coalition for Equity and Justice have a legally protectable interest on behalf of their members. *Id*. Moreover, in minimizing individual Movants' interests, Plaintiffs ignore that Section 2 claims are *area* specific, and Movants have a specific interest in maintaining two Black-opportunity districts *in their geographical area*. A plaintiff has standing whether they live in a majority-white or majority-minority district, so long as they "reside in a reasonably compact area that could support additional [majority-minority districts]." *Nairne* v. *Ardoin*, No. CV 22-178-SDD-SDJ, 2023 WL 7673856, at *5–6 (M.D. La. Nov. 14, 2023); *see also Harding* v. *Cty. of Dall*., 948 F.3d 302, 307 (5th Cir. 2020) (standing for voters from each district in a county, whether majority-white or majority-minority). SB8 represents a victory and a protectable interest not *only* for those who were moved from majority-white to majority-Black districts. *Contra* Opp. at 8–9. Rather, individuals who lived in District 2 under the old plan also had standing to challenge the plan because their votes were diluted by packing. *See Harding*, 948 F.3d at 307 ("In vote dilution cases, the harm arises from the particular composition of the voter's own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district.") (internal quotation marks omitted). Such individuals benefited from the unpacking of that district and have a unique interest in resisting re-packing. *Contra* Opp. at 8 (suggesting reduced Black percentage of district harmed Movants); *but see id.* at 10 (acknowledging individual right to avoid "pack[ing]" or "crack[ing]" that SB8 cured).

Furthermore, even the individual Movants who continue to reside in non-majority-Black districts under SB8 have a cognizable interest in ensuring that the rulings in the *Robinson* case are sustained here. In *Robinson*, these Movants put forward illustrative maps that would include their residences in a second majority-Black district. If this Court determines that SB8 cannot stand and a new map must be drawn, each of the Movants might be placed in (or out of) a district in which

Black voters can elect their candidate of choice. They have an interest in the outcome of any such proceeding, regardless of where SB8 places them. *Each* individual Movant has prevailed in the *Robinson* litigation in showing that federal law requires a second majority-Black district drawn in *the geographic area in which they live*. Each has a specific and distinct interest in ensuring this lawsuit does not undo that legal victory. These are specific and unique interests—and are more particularized interests than those asserted by voters that the Fifth Circuit has allowed to intervene. *See*, *e.g.*, *League of United Latin Am. Citizens, District 19* v. *City of Boerne,* 659 F.3d 421 (5th Cir. 2011) (individual voter intervened to protect at-large system that governed *all* voters in the jurisdiction); *League of United Latin Am. Citizens, Council No. 4434* v. *Clements*, 999 F.2d 831, 845 (5th Cir. 1993) (en banc) (similar). Plaintiffs fail to mention this precedent or the many other cases in which courts have allowed voter intervention. *See* MTI at 7 (citing several such cases). As the Eleventh Circuit observed, "voters have been permitted to intervene in a large number—if not all—of the actions involving a [racial gerrymandering] claim." *Clark* v. *Putnam Cnty.*, 168 F.3d 458, 462 (11th Cir. 1999) (collecting cases). Plaintiffs cannot wish away this body of law by ignoring it. It straightforwardly supports intervention here.

B. The State cannot adequately represent Movants' interests.

Plaintiffs fail to acknowledge Movants' minimal burden to demonstrate inadequacy of representation. Movants "need not show that the representation by existing parties will be, for certain, inadequate." *Texas* v. *United States*, 805 F.3d 653, 661 (5th Cir. 2015) (quoting *Moore's* § 24.03[4][a][i]). Rule 24(a)(2)'s adequacy requirement "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich* v. *United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)

(citation omitted); *see also Edwards* v. *City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) ("[B]urden of showing inadequate representation is minimal."). Movants easily clear that bar.

Plaintiffs erroneously assert that two presumptions prevent Movants from intervention by right—the "ultimate objective" presumption and the "governmental entity" presumption. Opp. 10–11. Both presumptions are overcome here because Movants and the government have different *interests*, even if they share an ultimate objective. *Texas*, 805 F.3d at 661.[3] The Fifth Circuit has explained that even where a State is vigorously defending its law, its interests will often diverge from those of private intervenors who also support the law. *See, e.g.*, *Wal-Mart Stores, Inc.* v. *Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 569 (5th Cir. 2016) (state defendant's representation inadequate where the proposed intervenor's private interests "are narrower than" the defendant's "broad public mission"); *Brumfield*, 749 F.3d at 346 (similar). And in *Trbovich*, the Supreme Court held that intervention of right is appropriate when the proposed intervenor had a narrower, more specific interest than the State defendant. The Court "acknowledge[d] that the [government defendant's] and the [proposed private intervenor's] interests were 'related,' but it emphasized that the interests were not 'identical'" because the government "also had to bear in mind broader public-policy implications," while the would-be intervenors had a narrower focus. *Berger* v. *N. Carolina State Conf. of the NAACP*, 597 U.S. 179, 196 (2022) (citing *Trbovich*, 404 U.S. at 538–39).

Here, Movants' interest is straightforward and relatively limited: ensuring that their votes are not diluted by a congressional plan that violates the VRA. *See* Opp. at 10 (seemingly acknowledging properness of this interest). Even assuming the most vigorous defense of SB8, "the

[3] The "ultimate objective" presumption likely does not even apply in this case. In cases where the State "has more extensive interests to balance than do the [would-be intervenors]," it "is not evident that the ultimate-objective presumption of adequate representation even applies." *Brumfield*, 749 F.3d at 346. In this case, the State's interests are much more extensive than Movants' interests. *See infra*.

state has more extensive interests to balance than do the [Movants]." *Brumfield*, 749 F.3d at 346. Even the State recognizes that the current Defendant's "objective is in the orderly implementation of whatever election rules are in force." State of Louisiana's Mem. ISO Mot. to Intervene, ECF 53-1, at 7.

Nor can the State itself, if permitted to intervene, represent Movants' interests.[4] The State's interests include "maintaining the continuity of representation in its districting plans" and the efficient administration of elections, *Robinson* v. *Landry*, 22-cv-211-SDD-SDJ, ECF 101 at 18, 20–21 (Apr. 29, 2022), and potentially avoiding a judicially-imposed map, *see infra* (legislator quotes). State actors must also consider the broader politics at play, the cost of litigation to state coffers, administering elections under new lines, their relationship with the federal officials elected under these lines, and their relationship with the state legislature that passed these lines, among others. *See, e.g.*, *Meek* v. *Metro. Dade Cnty., Fla.*, 985 F.2d 1471, 1478 (11th Cir. 1993) (voters' interest in challenging at-large voting system diverged from state's interests, including in "the overall fairness of the election system to be employed in the future, the expense of litigation to defend the existing system, and the social and political divisiveness of the election issue") *abrogated on other grounds by Dillard* v. *Chilton Cnty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007); *Trbovich*, 404 U.S. at 538–39 ("[T]he Secretary has an obligation to protect the 'vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member.'") (citation omitted). Under *Trbovich* and Fifth Circuit precedent, these differences rebut the presumptions Plaintiffs invoke.

[4] In fact, the State and the Secretary of State have referred to Movants as "interlopers" for their attempts to intervene here, underscoring the tension between Movants and state actors. *Robinson* v. *Landry*, 22-cv-211-SDD-SJD, ECF 355 at 13 n.5 (Feb. 15, 2024).

There also remain substantial doubts as to the State's motives in this case, given its repeated insistence in the *Robinson* litigation that a map with two majority-Black districts would be unconstitutional. The State has spent two years litigating against Movants to resist a map with two majority-Black districts. Governor Landry has made clear that the State adopted SB8 only after "exhaust[ing] ALL legal remedies."[5] Louisiana's Attorney General has stated that the State passed SB8 only after "exhaust[ing] all reasonable and meaningful avenues for legal remedies" and with "a gun to [its] head."[6] During the Special Session in January, the Attorney General further stated, "You won't hear me say that I believe that that [HB1] violated the redistricting criteria. I'm defending that map, but I will defend your new map if you draw a new map."[7] Given this posture, at the very least "there is a serious *possibility* that the representation *may* be inadequate," which satisfies Rule 24(a). *Texas*, 805 F.3d at 661 (quoting Wright & Miller, 7C Fed. Prac. & Proc. Civ. § 1909 (3d ed.)) (emphases added).

## II. Alternatively, Movants should be granted permissive intervention.

Plaintiffs' Opposition gives short shrift to permissive intervention. In asserting Movants do not satisfy Rule 24(b)'s commonality requirement, Plaintiffs recite that this case is about SB8, not HB1, and brought under the Fourteenth Amendment, not the VRA. Opp. at 14. That is true as far as it goes, but it does not go far. The Court need not look further than Plaintiffs' own complaint to see commonality of facts and law. *See* ECF No. 1 at 8; *see also* MTI at 17–18. Perfect alignment between claims or facts is not a prerequisite for intervention. *United States ex rel. Hernandez* v.

[5] Office of the Governor, *Governor Jeff Landry Opens First Special Session on Court Ordered Redistricting* (Jan. 16, 2024), https://gov.louisiana.gov/news/governor-jeff-landry-opens-first-special-session-on-court-ordered-redistricting (asking the Louisiana Legislature to enact a new congressional map to avoid a map drawn "by some heavy-handed member of the Federal Judiciary").

[6] Liz Murrill (@AGLizMurrill), Twitter (Jan. 16, 2024, 4:53 PM),https://twitter.com/AGLizMurrill/status/1747376599446516056 ("[W]e have a federal judge holding her pen in one hand and a gun to our head in the other.").

[7] Louisiana Legislature, *House and Governmental Affairs Session*, at 46:54-47:04 (January 15, 2024), https://redist.legis.la.gov/default_video?v=house/2024/jan/0115_24_HG.

*Team Fin., LLC*, 80 F.4th 571, 577 (5th Cir. 2023) (The "'claim or defense' portion of Rule 24(b) . . . [is to be] construed liberally.") (quoting *Newby* v. *Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006)).

And as set forth above, the State does not adequately represent Movants' interests. *See supra*, Part I.B; *contra* Opp. at 14. All of the policies undergirding intervention—of attaining greater justice, efficiently resolving the factual and legal questions arising from the enactment of SB8, and facilitating full development of the factual record—apply in full force here. *See* MTI at 17–18; *Stallworth* v. *Monsanto Co*., 558 F.2d 257, 265 (5th Cir. 1977) (policies behind Rule 24 are "to foster economy of judicial administration and to protect non-parties from having their interests adversely affected by litigation conducted without their participation"). While Movants seek the intervention by right to which they are entitled, in the alternative, the Court should grant permissive intervention.

## CONCLUSION

The Court should grant the *Robinson* Movants' Motion to Intervene.

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Respectfully submitted,

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