No. 24-109

# In the Supreme Court of the United States

STATE OF LOUISIANA,
*Appellant*,

v.

PHILLIP CALLAIS, ET AL.,
*Appellees*.

On Appeal from the United States District Court for the Western District of Louisiana

## BRIEF FOR APPELLANT


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## QUESTIONS PRESENTED

1. Whether Plaintiffs failed to establish Article III standing.

2. Whether the district court majority erred in concluding that District 6 is an unconstitutional racial gerrymander.

3. Whether this case is non-justiciable.

## PARTIES TO THE PROCEEDING AND RELATED PROCEEDING

Appellant is the State of Louisiana, through Louisiana Attorney General Elizabeth B. Murrill. The State was an intervenor-defendant below.

Appellees are Phillip Callais, Lloyd Price, Bruce Odell, Elizabeth Ersoff, Albert Caissie, Daniel Weir, Joyce LaCour, Candy Carroll Peavy, Tanya Whitney, Mike Johnson, Grover Joseph Rees, and Rolfe McCollister. Appellees were plaintiffs below.

The original defendant below was Nancy Landry, in her official capacity as the Louisiana Secretary of State.

Other intervenor-defendants below were Alice Washington; Clee Earnest Lowe; Power Coalition for Equity and Justice; Ambrose Sims; Davante Lewis; Dorothy Nairne; Martha Davis; Edwin Rene Soule; Press Robinson; Edgar Cage; and the National Association for the Advancement of Colored People Louisiana State Conference (the "*Robinson* Plaintiffs"). And granted intervenor-defendant status after the trial and injunction below were Edward Galmon, Sr.; Ciara Hart; Norris Henderson; and Tramelle Howard (the "*Galmon* Plaintiffs").

The relevant order is *Callais v. Landry*, 2024 WL 1903930 (W.D. La. Apr. 30, 2024) (reasons for judgment and injunction); J.S.App.1a–146a.

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## INTRODUCTION

The divvying up of Americans by race is a stain on our Nation's history. It should be a disgraced relic of the past. Regrettably, however, this Court's voting cases force the sovereign States to continue that vile practice today—penalizing States both when they consider race too little and when they consider race too much, all in the name of enforcing our "color-blind" Constitution. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

So life goes across the Nation and in Louisiana. Happily, Louisiana today is nothing like *Plessy*'s Louisiana. Yet, the cruel irony is that Louisiana today is not just *permitted* (as the *Plessy* majority believed) to sort its citizens based on the color of their skin—it is *required* to do so, at least to some unspecified degree. That is why Louisiana arrives here unhappily.

The facts of this "impossible" case are familiar. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 65 (2024) (Thomas, J., concurring in part). The Middle District of Louisiana held—and the Fifth Circuit affirmed—that Louisiana likely violated Section 2 of the Voting Rights Act (VRA) by failing to create a second majority-Black district. Louisiana thus created a second majority-Black district. But, within a matter of weeks, the Western District of Louisiana enjoined the new majority-Black district as an unconstitutional racial gerrymander. What now?

There is no question that Louisiana should prevail here. The Court can hold as much on standing grounds. (How do self-described "non-African American voters" have Article III standing to challenge the

allegedly unconstitutional sorting of Black voters?) Or, the Court can simply reverse on the merits, reaffirming its promise not to leave "'state legislatures too little breathing room'" between the competing demands of the VRA and the Equal Protection Clause. *Allen v. Milligan*, 599 U.S. 1, 109 (2023) (Alito, J., dissenting). Either way, Louisiana prevails.

But nobody truly wins in this "sordid business" of "divvying us up by race." *LULAC v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part). And if Louisiana were to lose on these facts, that would underscore the injustice of forcing States to run an endless "legal obstacle course," *Abbott v. Perez*, 585 U.S. 579, 587 (2018), lined with "notoriously unclear and confusing" precedents, *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays). More than any before it, therefore, this case presents a compelling opportunity for the Court to "call home"—"to alter its course"—rather than "continue on." *Mathis v. United States*, 579 U.S. 500, 544 (2016) (Alito, J., dissenting).

## OPINION BELOW

The opinions below are reported at 2024 WL 1903930 and reproduced at J.S.App.1a–146a.[1]

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[1] The State's brief uses the following citation conventions:

J.A.[#] – Joint App.
J.S.App.[#a] – State's Jurisdictional Statement App.
*Robinson*.Stay.App.[#] – Applicants' Stay App., *Robinson v. Callais*, No. 23A994.
*Robinson*.J.S.App.[#a] – Jurisdictional Statement App., *Robinson v. Callais*, No. 24-110.

## JURISDICTION

The three-judge court issued its decision on April 30, 2024. J.S.App.1a–146a. The State filed an amended notice of appeal on May 7, 2024. J.S.App.147a–50a. On June 24, 2024, Justice Alito granted the State's application to extend the deadline for filing a jurisdictional statement from July 8, 2024, to July 30, 2024. *See Landry v. Callais*, No. 23A1442. The State filed its jurisdictional statement on July 30. This Court has jurisdiction under 28 U.S.C. § 1253 and noted probable jurisdiction on November 4.

## CONSTITUTIONAL PROVISIONS INVOLVED

Under the Fourteenth Amendment's Equal Protection Clause, no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Under the Fifteenth Amendment, "[t]he right of citizens of the United States to vote shall not be denied or abridged … by any State on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1.

## STATEMENT

Every ten years, the U.S. Census Bureau asks Americans to take "10 minutes on average" to complete a questionnaire about who lives in their residences. 2020 Census Questionnaire at 8, U.S. Census Bureau, https://tinyurl.com/44k3zzhv (last visited December 18, 2024). Count babies, the Bureau says, but not friends or family away at college or in jail (we'll find them on our own, promises the Bureau). *Id.* at 1.

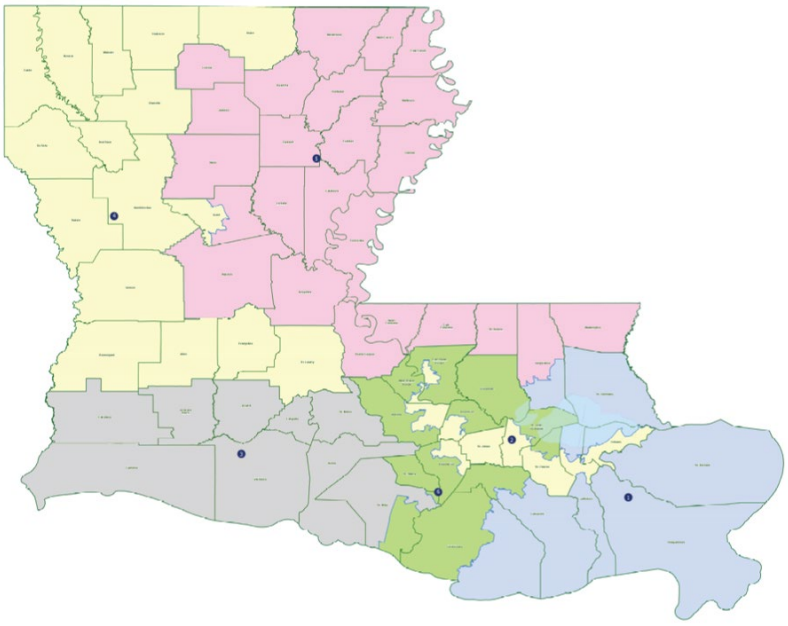
Sometimes the lead-up to the Census itself prompts litigation. *See Dep't of Commerce v. New York*,

588 U.S. 752 (2019). But more often, it is the *results* of the Census—and the States' reactions—that lead to endless litigation across the Nation. So it was (again) for Louisiana after 2020.

### A. Following the 2020 Census, the Louisiana Legislature Adopts H.B. 1.

In 2021, Louisiana received its 2020 Census results and promptly went to redistricting work. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 767 (M.D. La. 2022). That work principally involved "roadshow[s]" throughout the State, during which Louisiana lawmakers met with constituents and solicited comments about the redistricting process. *Id.* The mission: reconfigure Louisiana's six congressional districts to meet an ideal size of 776,292 Louisianans per district. *Robinson*.J.S.App.616a, 671a.

In February 2022, the Legislature passed H.B. 1 (and its Senate counterpart, S.B. 5), which adopted the following map for Louisiana's congressional districts:



J.A.345.

On March 9, 2022, however, Governor John Bel Edwards vetoed H.B. 1. *Robinson*, 605 F. Supp. 3d at 768. Although District 2 (the happy alligator-looking district that spans New Orleans) in H.B. 1 was a majority-Black district, Governor Edwards told the Legislature that "this map violates Section 2 of the [VRA]," and he "applauded proposed maps that would have created two majority-Black districts." *Robinson v. Ardoin*, 86 F.4th 574, 585 (5th Cir. 2023). On March 30, the Legislature voted to override Governor Edwards's veto, bringing H.B. 1 into effect. *Id.*

### B. The Middle District and the Fifth Circuit Determine that H.B. 1 Likely Violates Section 2 of the VRA.

**1.** The same day that the Legislature overrode the Governor's veto, two groups of plaintiffs (the *Robinson* Plaintiffs and the *Galmon* Plaintiffs) sued Louisiana in the Middle District of Louisiana, alleging that H.B. 1 violates Section 2 by failing to create a second majority-Black district. *Robinson*, 605 F. Supp. 3d at 768, 771–72.

The Middle District consolidated the proceedings and rocketed to a five-day hearing in early May—during which the State argued that H.B. 1 did not violate the VRA.[2] *Id.* at 766. Nonetheless, on June 6, 2022, the Middle District issued a 111-page order (a) enjoining the State from "conducting any congressional elections under ... H.B. 1," and (b) ordering "the Louisiana Legislature to enact a remedial plan on or before June 20, 2022." *Id.*

On the merits, the Middle District held that "two majority-minority congressional districts that satisfy [*Thornburg v. Gingles*, 478 U.S. 30 (1986)] and respect traditional redistricting principles can be drawn in Louisiana." *Id.* at 820. It also rejected "for both legal

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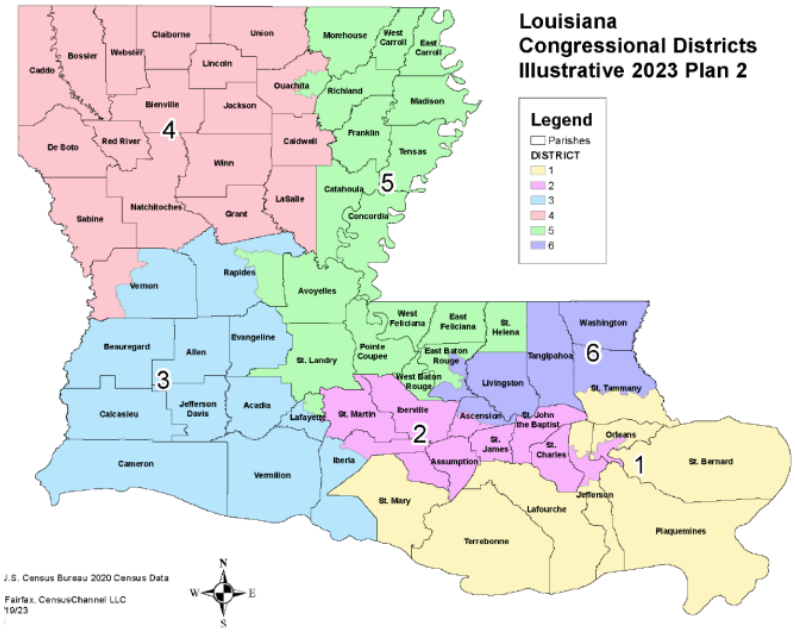
[2] As the State catalogued in its Jurisdictional Statement (at 5–7), Louisiana has not had a second majority-Black district since the 1990s because such a district was rejected in multiple rounds of litigation. For the majority below to quote (J.S.App.3a) Churchill's "Those that fail to learn from history are doomed to repeat it" line to the State, therefore, is misplaced: As the *Robinson* proceedings demonstrate, the State did not willingly draw District 6.

and factual reasons" the argument that a second majority-Black district would violate the Equal Protection Clause. *Id.* at 835.

In so holding, the Middle District cited a number of illustrative maps like the following:




*Robinson*.Stay.App.1077. District 5 was the proposed second majority-Black district, which linked parishes in northeast Louisiana with Baton Rouge in the south. As the Middle District recognized, this was necessary to create a second majority-Black district because "Louisiana's Black population is unevenly dispersed geographically when viewed statewide." *Robinson*, 605 F. Supp. 3d at 826.

Turning to the remedy, the Middle District pressed toward the creation of a two majority-Black district

map. The Middle District stated that "[t]he appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional majority-Black congressional district." *Id.* at 766. The Middle District also ordered the Legislature "to enact a remedial plan" *within two weeks*, or else "the Court will issue additional orders to enact a remedial plan compliant with the laws and Constitution of the United States." *Id.* at 766–67.

**2.** The State appealed and sought a stay pending appeal. The Fifth Circuit first granted an administrative stay but later "vacate[d] the administrative stay and den[ied] the motion for stay pending appeal." *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) (per curiam). The State then sought an emergency stay from this Court. *See Ardoin v. Robinson*, 142 S. Ct. 2892, 2892–93 (2022). This Court granted a stay and certiorari before judgment, *see id.*, and held *Robinson* pending a decision in *Milligan*, 599 U.S. 1. After the Court decided *Milligan*, the Court vacated the stay and remanded to the Fifth Circuit for "review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023).

The Fifth Circuit heard oral argument in early October 2023. At the same time, the Middle District scheduled an expedited three-day hearing to impose a court-drawn map that would conclude a day before oral argument. *In re Landry*, 83 F.4th 300, 304 (5th Cir. 2023). On the State's motion, the Fifth Circuit quickly mandamused the Middle District for failing to honor "the state legislature's entitlement to attempt

to conform the districts to the court's preliminary injunction determinations," "fors[aking] its duty[,] and plac[ing] the state at an intolerable disadvantage legally and tactically." *Id.* at 304, 308. The Fifth Circuit thus vacated the Middle District's "remedial order hearing" and directed the Middle District to conduct further scheduling "pursuant to the principles enunciated" in the Fifth Circuit's opinion. *Id.* at 305, 308.

Turning back to the injunction appeal, on November 10, 2023, the Fifth Circuit affirmed that the Middle District's injunction "was valid when it was issued." *Robinson*, 86 F.4th at 599. Specifically, the Fifth Circuit found no clear error "in [the Middle District's] necessary fact-findings nor [] legal error in its conclusions that the Plaintiffs were likely to succeed on their claim that" H.B. 1 violated "Section 2 of the [VRA]" for failing to create a second majority-Black district. *Id.* at 583.

Given the timing, however, the Fifth Circuit determined that the "preliminary injunction, issued with the urgency of establishing a map for the 2022 elections, [was] no longer necessary." *Id.* And so, the Fifth Circuit vacated the injunction and "allow[ed] the Louisiana Legislature until January 15, 2024, to enact a new congressional redistricting plan." *Id.* at 601. If the State passed on the opportunity to draw a new map, then the Middle District would "conduct a trial and any other necessary proceedings to decide the validity of the H.B. 1 map, and, if necessary, to adopt a different districting plan for the 2024 elections." *Id.* at 602. On December 15, 2023, the Fifth Circuit declined to rehear that case en banc. *Robinson v. Ardoin*, No. 22-30333 (5th Cir. Dec. 15, 2023), ECF No. 363-2.

### C. Governor Landry Calls a Special Session to Consider a New Congressional Map.

Louisiana changed in the interim. Relevant here, then-Attorney General Jeff Landry was elected governor in October 2023, and he was inaugurated on Sunday, January 7, 2024. *See* Sara Cline, *Louisiana Gov.-Elect Jeff Landry Has Been Inaugurated, Returning the State's Highest Office to GOP*, AP (Jan. 7, 2024), https://tinyurl.com/4j7wsu2n (last visited Dec. 18, 2024). On Monday, he called the Legislature into session to "legislate relative to the redistricting of the Congressional districts of Louisiana." J.S.App.11a. He urged the Legislature: "Let us make the necessary adjustments to heed the instructions of the court. Take the pen out of the hand of a non-elected judge and place it in your hands. In the hands of the people. It's really that simple." J.S.App.12a.

The Legislature convened one week later on January 15, 2024. *See* La. Const. art. III, § 2(B). Once the special session was underway, incoming Attorney General Liz Murrill again explained to the Legislature: "The courts … have told us to draw a new map. And they have indicated that we have a deadline to do that or Judge Dick will draw the map for us." *Robinson*.J.S.App.125a. So the Legislature went to work.

#### 1. Legislators understand that the *Robinson* courts required a second majority-Black district.

There is voluminous evidence that, when they reported for duty, Louisiana legislators understood the position in which the *Robinson* courts had placed them, including the following:

- Senator Price: "Regardless of what you heard, we are on a court order and we need to move forward. We would not be here if we were not under a court order to get this done." J.S.App.47a.
- Senator Fields: "[B]oth the district and the appeals court have said we need to do something before the next congressional elections." *Id.*
- Senator Womack: The Middle District "said, 'Draw a map, or I'll draw a map.'" *Id.* "[W]e all know why we're here. We were ordered to – to draw a new Black district, and that's what I've done." *Id.* at 47a–48a.
- Representative Lyons: "[T]he mission we have here is that we have to create two majority-Black districts." *Id.*
- Representative Beaullieu: "As Senator Stine said earlier in this week, 'It's with a heavy heart that I present to you this other map,' but we have to. It's that clear. A federal judge has ordered us to draw an additional minority seat in the State of Louisiana." *Id.* at 52a.

As Representative Beaullieu aptly summed things up: "We are now here because [of] the federal court['s] order that we have a first opportunity to act. If we don't act, it is very clear that the federal court will impose the plaintiff's proposed map on our state, and we don't want that." *Robinson*.J.S.App.540a.

And to be clear, this is not just the State's view of the legislative record; it was Plaintiffs' own witnesses' view in real time:

- Senator Seabaugh: "[R]eally, the only reason we were there was because of the other litigation; and Judge Dick saying that she – if we didn't draw the second minority district, she was going to. I think that's the only reason we were there." J.S.App.53a.
- Senator Pressly: "We were told that we had to have two performing African American districts. And that we were – that that was the main tenet that we needed to look at and ensure that we were able to the draw the court – draw the maps; otherwise, the Court was going to draw the maps for us." *Id.*

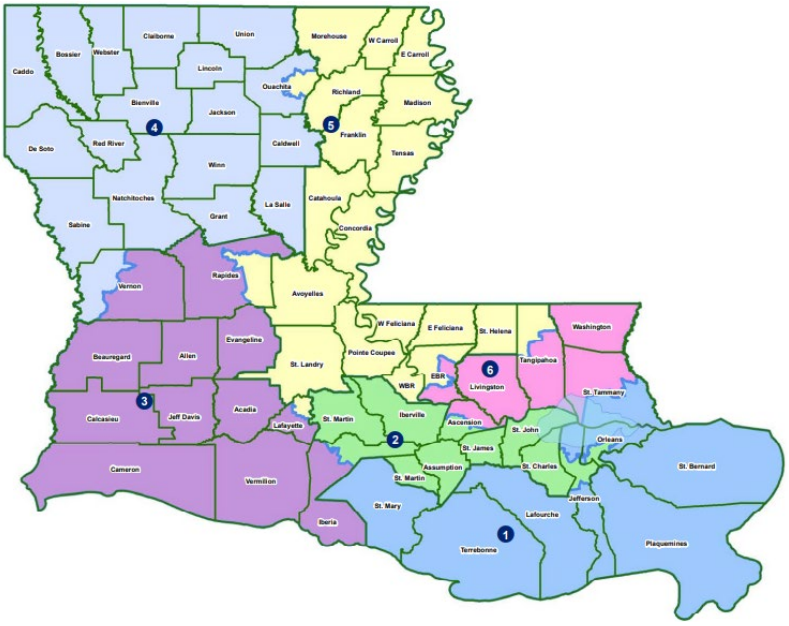
**2. The *Robinson* Plaintiffs push their preferred map, S.B. 4.**

Because the Legislature was acting in response to *Robinson*, the only remaining question was what a second majority-Black district would look like.

**a.** On this question, the *Robinson* Plaintiffs wrote—and testified—in support of S.B. 4, one of multiple options before the Legislature. Their position was more threat than request. They told the Legislature that, "should the Legislature fail in [its] duty" to create "a second majority-Black district," "the District Court will step in and impose a VRA-compliant map." *Robinson*.Stay.App.1073. They said that the Legislature was "not free to pass" any map that "fails" to create such a district—and thus, the Legislature should "pass a lawful map and avoid a court-imposed remedial map." *Robinson*.Stay.App.1075.

To that end, the *Robinson* Plaintiffs threw their weight behind S.B. 4, which—they said—"mirrors the

map jointly submitted by Plaintiffs to the District Court during remedial proceedings [in *Robinson*]." *Id.* As the S.B. 4 map below illustrates, S.B. 4 would have "create[d] a new majority-Black congressional district [District 5] by uniting communities in Baton Rouge and the Delta Parishes" in northeast Louisiana. *Id.*




*Robinson*.J.S.677a; *Robinson*.Stay.App.887, 890, 895.

Nonetheless, S.B. 4 "died in committee," after "all Democrats voted for it" and "[a]ll Republicans voted against it." *Robinson*.Stay.App.638, 523, 676.

**b.** Why did S.B. 4 die? Because it would have kicked either the Speaker of the House, Mike Johnson, or Representative Julia Letlow (who sits on the powerful Appropriations Committee) out of Congress.

This is where Louisiana geography comes into play. Speaker Johnson resides in Bossier Parish,

which lies at the *northwest* tip of Louisiana. *E.g.*, *About Speaker Mike Johnson*, https://tinyurl.com/3skskve5; J.A.212 (noting the Speaker's district "in the northwest"). Meanwhile, Representative Letlow resides in Richland Parish, which is near the *northeast* tip of Louisiana. J.A.194–95; J.A.113 (noting that Ouachita Parish is split between Speaker Johnson and Representative Letlow).

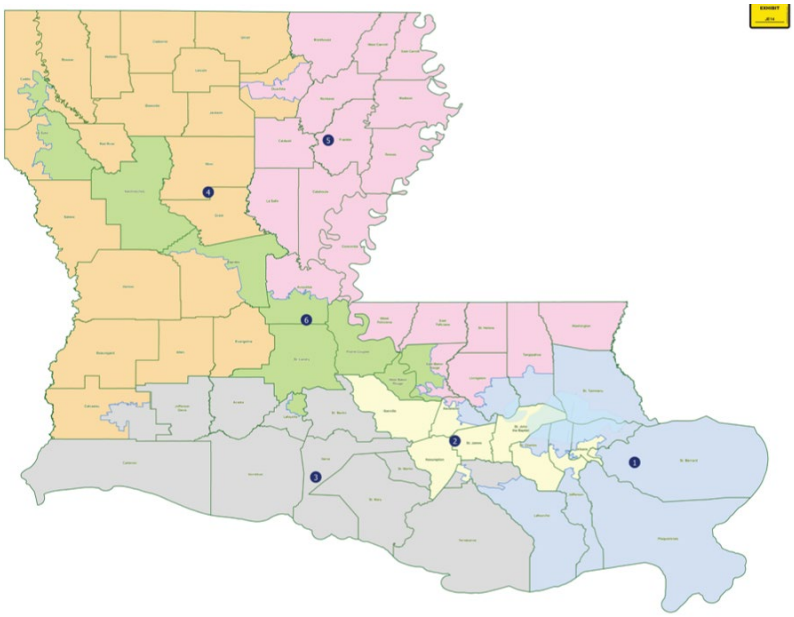
The problem with District 5 in S.B. 4 is it would encompass Richland Parish. And that would mean S.B. 4 would eliminate Representative Letlow from Congress because District 5 was slated to be a majority-Democrat district. *See Robinson*.J.S.App.673a (District 5: 52.365% registered Democrat voters). Notably, moreover, this was not a solvable problem: Even if Richland Parish were carved *out* of District 5 in S.B. 4, that would just place Representative Letlow in Speaker Johnson's northwest district, which means that one of those representatives would be eliminated from Congress by choice not to run or by primary.

This problem was compounded by a second geographic fact that the majority below acknowledged and the Middle District alluded to: Any second majority-Black district in Louisiana must include a sizable Black population from Baton Rouge in the southeast—but because the Black population "outside of southeast Louisiana ... is dispersed," the only way to draw such a district is to link Baton Rouge to the Black population in northwest Louisiana or northeast Louisiana. J.S.App.58a; *accord* J.S.App.33a–34a, 44a (crediting expert testimony). In other words, a second majority-Black district would necessarily affect a high-profile

Republican—Representative Letlow if the district extended to the northeast, and Speaker Johnson if the district extended to the northwest.

### 3. The Legislature chooses S.B. 8 over S.B. 4.

This is why the Legislature selected S.B. 8—introduced by Senator Womack—as the best incumbent-protecting solution:



J.A.333.

District 6 in S.B. 8 is a second majority-Black district. And it draws the vast majority of its total population, total voting age population, and Black voting age population from *the same seven core parishes* that anchored the new Black-majority districts in the *Robinson* illustrative maps (as mirrored by District 5 in S.B. 4). The following chart illustrates the point:

| Parish | S.B. 4 – District 5 | S.B. 8 – District 6 |
|---|---|---|
| **Avoyelles** | Total Pop.: 39,693<br>Total VAP: 30,578<br>BVAP: 8,311 | Total Pop.: 19,568<br>Total VAP: 15,185<br>BVAP: 5,235 |
| **East Baton Rouge** | Total Pop.: 216,003<br>Total VAP: 162,926<br>BVAP: 113,697 | Total Pop.: 284,582<br>Total VAP: 216,619<br>BVAP: 132,918 |
| **Lafayette** | Total Pop.: 66,681<br>Total VAP: 50,089<br>BVAP: 27,044 | Total Pop.: 61,342<br>Total VAP: 46,240<br>BVAP: 25,965 |
| **Pointe Coupee** | Total Pop.: 20,758<br>Total VAP: 16,250<br>BVAP: 5,502 | Total Pop.: 20,758<br>Total VAP: 16,250<br>BVAP: 5,502 |
| **Rapides** | Total Pop.: 60,439<br>Total VAP: 45,646<br>BVAP: 24,239 | Total Pop.: 105,304<br>Total VAP: 79,937<br>BVAP: 28,675 |
| **St. Landry** | Total Pop.: 82,540<br>Total VAP: 61,811<br>BVAP: 25,497 | Total Pop.: 82,540<br>Total VAP: 61,811<br>BVAP: 25,497 |
| **West Baton Rouge** | Total Pop.: 27,199<br>Total VAP: 20,526<br>BVAP: 8,149 | Total Pop.: 27,199<br>Total VAP: 20,526<br>BVAP: 8,149 |
| **Total** | Total Pop.: 513,313<br>Total VAP: 387,826<br>BVAP: 212,439 | Total Pop.: 601,293<br>Total VAP: 456,568<br>BVAP: 231,941 |

J.A.336 (S.B. 8 District 6); *Robinson*.J.S.App.676a–77a (S.B. 4 District 5).

As the chart illustrates, however, the core parishes are sufficient to create only a razor-thin Black majority with the total population already approaching the ideal size of 776,292. To address that issue, S.B. 4 proposed sucking all of the *northeastern* parishes into District 5—including slim Black majorities in East Carroll, Madison, Ouachita, Rapides, St. Helena, and Tensas. *Robinson*.J.S.App.676a–77a. By contrast, S.B. 8 addressed the issue by adding only three contiguous parishes in the *northwest*: all of Natchitoches, the eastern portion of De Soto, and a southern portion of Caddo. J.A.333.

This deviation was by design: It created District 4 for Speaker Johnson in the northwest and District 5 for Representative Letlow in the northeast, thereby avoiding S.B. 4's proposed elimination of one of those high-profile incumbents. Senator Womack acknowledged that S.B. 8 was "a different map than the plaintiffs in the [*Robinson*] litigation have proposed"—but he emphasized that this was "the only map" he saw that would satisfy the *Robinson* courts and "accomplish[] the political goals I believe are important for my district, for Louisiana, and for my country." *Robinson*.J.S.App.394a. Those goals, he reiterated, were "protecting Congresswoman Letlow's seat, maintaining strong districts for Speaker Johnson and Majority Leader Scalise, ensuring four Republican districts, and adhering to the command of the federal court in

the Middle District of Louisiana." *Robinson*.J.S.App.394a–95a. And this theme echoes throughout the legislative record.[3]

In fact, Senator Womack was asked directly about the S.B. 4-versus-S.B. 8 issue: "What was the predominant reason for you to create the 6th District the way it looks now vs. just going with Senator Price's bill [S.B. 4], which created a more compact district?" *Robinson*.J.S.App.395a. He answered: "[I]t was strictly – politics drove this map because of the – the – Speaker Johnson, Majority Leader Scalise, and my congresswoman, Julia Letlow, predominantly drove this map"—and he disavowed that race was "the predominant factor." *Id.*

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[3] *See Robinson*.J.S.App.420a (Senator Womack: "The boundaries in the bill I'm proposing ensure that Congresswoman Letlow remains both unimpaired with any other incumbents, and in a congressional district that should continue to elect a Republican to Congress ...."); *Robinson*.J.S.App.428a–29a (Senator Stine: "This map … safeguards the positions of pivotal figures, the United States Speaker of the House, the majority leader, and notably, the sole female member of our congressional delegation."); *Robinson*.J.S.App.401a (Senator Cloud: "As a Republican woman, I want to ... offer my support for the amendment to the map, which I believe further protects Congresswoman Julia Letlow.... I think that politically, this map does a great job protecting Speaker Johnson and Congresswoman Julia Letlow as well as Majority Leader Scalise."); *Robinson*.J.S.App.421a (Senator Womack: "[T]he map and the proposed bill ensures that four are safe Republican seats."); *Robinson*.J.S.App.538a–39a (Representative Beaullieu: "[T]his map will ensure that Louisianans will continue to benefit from [Representative Letlow's] presence in the halls of Congress for as long as she decides to continue serving our great state of Louisiana," and it "ensures that four [districts] are ... safe Republican seats," including a "solidly Republican district[]" for Speaker Johnson).

That politics overrode the S.B. 4 map was not lost on the proponents of S.B. 4. For example, Representative Newell lamented that the Legislature rejected S.B. 4 because "so much politics [] are guiding our maps instead of the policy, and the people helping us to guide our maps and our decisions." *Robinson*.J.S.App.448a; *see also Robinson*.J.S.App.444a (Representative Marcelle: "I believe that we have had several maps that would have gotten us there, but I think because of political reasons, we are here where we are today.").

On Friday, January 19, 2024, the Legislature passed S.B. 8. J.S.App.15a. Governor Landry signed the bill three days later. J.A.104.

### D. The Western District Enjoins S.B. 8 as an Unconstitutional Racial Gerrymander.

But this redistricting nightmare was only beginning. One week later, Plaintiffs in this case—self-described "non-African American voter[s]"—sued the State,[4] alleging that District 6 in S.B. 8 is an unconstitutional racial gerrymander. J.A.22–66. After a three-judge panel was convened, J.S.App.18a–19a, the parties raced to trial on April 8–10, 2024. J.S.App.2a.

On April 30, the majority held, over Judge Stewart's dissent, that race was the Legislature's predomi-

[4] The Louisiana Secretary of State was the original defendant. The Louisiana Attorney General intervened as a defendant on behalf of the State. In this Court, the Louisiana Secretary of State has given notice pursuant to Rule 18.2 that "she has no interest in the outcome of this appeal." *See* Letter, *Louisiana v. Callais*, No. 24-109 (U.S. Aug. 1, 2024).

nant consideration in enacting District 6 and that District 6 did not satisfy strict scrutiny. J.S.App.67a. The *Robinson* proceedings played virtually no role in the majority's merits analysis. The majority then enjoined the use of S.B. 8 in any election. J.S.App.68a. After the State filed a notice of appeal and the district court refused to stay its injunction, the State sought a stay of the injunction pending appeal, which this Court granted on May 15, 2024.

## SUMMARY OF ARGUMENT

**I.** The Court should principally reverse because Plaintiffs failed to establish Article III standing.

**A.** They are avowedly "non-African American voters" challenging District 6's treatment of Black voters. They submitted no evidence at trial about their politics, their religion, or anything else that could explain how the Legislature's supposed "carving" of Black voters into District 6 harmed Plaintiffs. How, then, can they claim to have suffered an Equal Protection Clause violation?

**B.** Now, to be sure, this Court's precedents assume that mere membership in a challenged district confers Article III standing. But that assumption is wrong, at least on these facts, since Plaintiffs' race is irrelevant to why they are in District 6. Similarly, the Court has suggested that (for example) a Black representative of a majority-Black district is "more likely" to favor his Black constituents over those of other races. This is an appalling approach to standing that rests on assumptions and stereotypes this Court has decried. The State thus urges the Court to disavow

theories that are plainly wrong and offensive—and hold Plaintiffs to their burden to establish standing.

**II.** If the Court reaches the merits, it should reverse.

**A.** That is primarily because Plaintiffs failed to carry to their burden to show that race was the Legislature's predominant reason for drawing District 6. Three interrelated points prove as much. *First*, any intensive racial focus came from *the* Robinson *courts*, not the Legislature. There is no basis in the Court's precedents for leaving the Legislature holding the bag. *Second*, the Legislature plainly had *two* non-negotiable criteria: District 6 had to be majority-Black (because of *Robinson*) and had to protect Speaker Johnson and Representative Letlow. That the incumbency-protection motivation was co-equal with—and almost certainly more important to the Legislature than—race ends this inquiry in the State's favor. *Third*, Plaintiffs never tried to offer an alternative map that satisfied the Legislature's two non-negotiable criteria. Under this Court's recent precedents, that alone (and certainly in conjunction with the other two points) requires reversal.

**B.** Even if the Court reached the strict-scrutiny inquiry, District 6 would survive. For starters, the Court has long assumed that compliance with the VRA is a compelling interest—and that assumption is particularly apt here given the Legislature's efforts to comply with *court decisions* that themselves articulated what VRA compliance requires. In addition, and for the same reasons, the Legislature had a strong basis in evidence for adopting District 6. The majority

below reached the opposite conclusion only by mistakenly ignoring the *Robinson* proceedings. And Plaintiffs' own efforts to memory hole *Robinson* go nowhere: There is no serious debate that the Legislature faced intense pressure to adopt a second majority-Black district or else the Middle District would draw its preferred map. And the fact that S.B. 8's District 6 is constructed upon the same core parishes undergirding the *Robinson* illustrative maps reinforces that the Legislature was well within the "good reasons" standard to adopt District 6.

**III.** However the Court resolves this case, the most important step—for Louisiana and all other States—is that the Court provide clear guidance regarding how States must navigate this notoriously unclear area of the law. But, if there is, in fact, no "breathing room" left for the States, the Court should say that, too. Whether it fixes this broken system or shelves the system altogether, the Court should put an end to the extraordinary waste of time and resources that plagues the States after every redistricting cycle.

## ARGUMENT

### I. PLAINTIFFS FAILED TO SUBSTANTIATE THEIR CLAIM OF ARTICLE III STANDING.

"Article III of the Constitution limits the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Murthy v. Missouri*, 603 U.S. 43, 56 (2024). Accordingly, one "threshold question" is whether a plaintiff has "standing to sue under Article III." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024). "To establish standing," "a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused

by the defendant, (iii) that the injury likely would be redressed by the requested judicial relief." *Id.* at 380. Put otherwise, a plaintiff "cannot be a mere bystander, but instead must have a 'personal stake' in the dispute." *Id.* at 379.

Key here is the requirement that a plaintiff identify a cognizable injury in fact. That injury "must be 'concrete,' meaning that it must be real and not abstract." *Id.* at 381. It "also must be particularized" in that it "must affect 'the plaintiff in a personal and individual way' and not be a generalized grievance." *Id.* These basic principles "screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action." *Id.* Such objections—even "strong" objections—are insufficient. *Id.*

The problem here is that Plaintiffs offered no evidence to suggest that their challenge rests on anything more than a "general" objection to District 6. *Id.* And although this Court has held that a plaintiff's residence in a challenged district confers Article III standing on him, the Court has never fully explained that theory—and it is both internally inconsistent and inconsistent with this Court's more-recent Article III decisions.

### A. Plaintiffs Offered No Evidence of Injury in Fact at Trial.

**1.** Plaintiffs are self-described "non-African American voter[s]," four of whom live in District 6.[5] J.A.27–

[5] The Court has held that a racial-gerrymandering plaintiff who does not reside in the challenged district does not have

30. The "brutal" constitutional violation they claim to have identified is that, in creating District 6, Louisiana connected "the State's high Black population" in Baton Rouge to "high BVAP precincts in Shreveport, carefully splitting and dissecting four major metropolitan areas to carve in pockets of Black voters along the way." Mot. to Dismiss 1, 9.

But, even assuming that is true, "[w]hat's it to [Plaintiffs]"? *All. for Hippocratic Med.*, 602 U.S. at 379 (citation omitted). They have expressly disavowed being Black voters, let alone the Black voters who were allegedly "carved" into District 6 based on their race. How, then, can they claim to have suffered an Equal Protection Clause violation from the supposed carving up of Black voters? After all, an Equal Protection Clause claim premised on "stigmatic injury" due to racial discrimination may be pressed only by a plaintiff who was "personally subject to the challenged discrimination" and was "personally [] denied equal treatment." *Allen v. Wright*, 468 U.S. 737, 755 (1984).

Plaintiffs did not answer this question at trial—in fact, no Plaintiff even testified at trial. All they offered was a joint stipulation stating that, as relevant here (*see supra* n.5), four Plaintiffs are registered voters who reside in District 6 with no mention of their partisan affiliation (if any) or exposition of their political

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standing to challenge that district, unless "they ... provide[] specific evidence that they were personally assigned to their voting districts on the basis of race." *Shaw v. Hunt*, 517 U.S. 899, 904 (1996). Because Plaintiffs did not present such evidence regarding those who do not reside in District 6, standing turns on the four Plaintiffs who reside in District 6—and the State here focuses on them. *See* J.S.App.69a n.1 (Stewart, J., dissenting).

views. J.S.App.17a. And so, the question remains: In the State's alleged "carving" Black voters into District 6, how were these avowedly non-Black Plaintiffs "personally subject to the challenged discrimination"? *Allen*, 468 U.S. at 755.

If Plaintiffs do not wish to be represented by a candidate they believe District 6's Black voters would prefer, Plaintiffs should say so and offer evidence regarding what candidate they believe Black voters would prefer. Without any evidence or even explanation, Plaintiffs, in effect, would ask this Court to engage in "racial stereotyping" and simply assume "what candidate 'minority voters as a group' would choose." *Alexander*, 602 U.S. at 59–61 (Thomas, J., concurring in part). Moreover, Plaintiffs should provide evidence explaining how that hypothetical representative (as of the filing of their Complaint) would not represent their views; how their vote would be unconstitutionally abridged; and the relevance of them each being "a non-African American voter." But they submitted no such evidence. As a result, Plaintiffs failed to establish that they "have a 'personal stake'" in this constitutional challenge to District 6's treatment of Black voters. *All. for Hippocratic Med.*, 602 U.S. at 379.

**2.** Several other considerations bolster this fact. *First*, this case is unlike the affirmative-action cases in which a "non-disadvantaged" plaintiff seeks to compete for a contract or college admission. *See, e.g.*, *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 280 n.14 (1978) (Powell, J.) (although Bakke "was not a 'disadvantaged' applicant," he had standing to sue "to compete for all 100 places in the class," including the 16 spots reserved for minority applicants). In such cases,

"the 'injury in fact' is the inability to compete on an equal footing." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). But here, Plaintiffs are not in competition at all, and thus there is no unequal footing on a playing field.

*Second*, Plaintiffs' reliance on District 6's treatment of Black voters runs into a third-party standing problem. Plaintiffs did not (and could not) invoke this doctrine since they do not claim to "have a close relation to" Black voters in District 6, nor is there any "hindrance to [a District 6 Black voter's] ability to protect his or her own interests." *Powers v. Ohio*, 499 U.S. 400, 411 (1999). And as just explained, Plaintiffs submitted no evidence showing that they "themselves ... suffered an injury in fact." *All. for Hippocratic Med.*, 602 U.S. at 393 n.5 (citation omitted). To allow Plaintiffs to rest their case on a purported constitutional violation committed against Black voters, therefore, would "circumvent the limits" of this Court's third-party standing precedents. *Murthy*, 603 U.S. at 76 (citation omitted).

*Third*, any attempt to root Plaintiffs' standing in District 6's treatment of Black voters would be no different than invoking so-called "offended-observer standing" in the Establishment Clause context—a theory espoused by some lower courts that "has no basis in law." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 80 (2019) (Gorsuch, J., concurring in the judgment). This would simply be "an 'I-take-offense' argument for standing" in disguise. *Id.* at 83. And that would be a non-starter for the same reason no one

thinks "a bystander disturbed by a police stop [could] sue under the Fourth Amendment." *Id.* at 80.

These additional considerations, therefore, only underscore that the Court should "begin—and end—with standing" here. *Murthy*, 603 U.S. at 56.

### B. *Hays* Is Inconsistent with This Court's Modern Cases.

This analysis, however, is complicated by this Court's racial-gerrymandering precedents, which—following *United States v. Hays*, 515 U.S. 737 (1995)—assume that a plaintiff's mere residence in a challenged district confers Article III standing. *E.g.*, *Shaw v. Hunt (Shaw II)*, 517 U.S. 899, 904 (1996); *Miller v. Johnson*, 515 U.S. 900, 909 (1995). That assumption is difficult to reconcile with the Court's more-recent precedents and common sense.

**1.** *Hays* summarily states that, "[w]here a plaintiff resides in a racially gerrymandered district," "the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action." 515 U.S. at 744–45. But the Court did not elaborate on that sentence. If it suggests that any voter who resides in a racially gerrymandered district necessarily was assigned based on his race, there are at least two problems with that assumption.

*First*, the assumption is not correct, at least on these facts. Plaintiffs' theory is that the Legislature deliberately "carve[d]" "pockets of Black voters" into District 6 to create a Black majority. Mot. to Dismiss 9. On that theory, however, the placement of any *non-Black* voter in District 6 is sheer happenstance.

For the whole goal (as Plaintiffs' theory goes) was to find just enough Black voters to create a majority in a district that satisfies the one-person, one-vote criterion—a goal that does not care about the racial makeup of District 6 voters (whether Black, white, or otherwise) once that goal is met. *See* Pamela S. Karlan, *Still Hazy After All These Years: Voting Rights in the Post*-Shaw *Era*, 26 Cumb. L. Rev. 287, 292 (1996) (the race of these voters "is irrelevant: whether they are white, Asian, Hispanic, or purple with green spots has no bearing on their assignment to [the] district").

To be sure, a plaintiff still might be able to mount evidence showing that he was, in fact, "personally [] denied equal treatment." *Allen*, 468 U.S. at 755. But Plaintiffs offered no such evidence here. And given this Court's searching Article III inquiries in recent decisions—spanning thousands of pages of evidentiary records, even at the *preliminary-injunction* stage—it is difficult to see how this evidentiary gap in a *trial record* can survive similarly searching scrutiny. *See Murthy*, 603 U.S. at 56–76; *All. for Hippocratic Med.*, 602 U.S. at 378–97.

*Second*, if every non-Black voter in District 6 necessarily has suffered an Article III injury based on their placement in that District, that undercuts the Court's rejection of the view that "*every* Louisiana citizen has standing to challenge [the entire map] as a racial classification." *Hays*, 515 U.S. at 746. For if that non-Black voter has been harmed, then so, too, has virtually every voter in the State. White voters adjoining District 6 that, for geographic reasons, would be in that District except that they are not Black. Black voters in other districts whose BVAP numbers would be

higher in their districts except for the fact that many Black voters have been assigned to District 6. And Hispanic, Asian, and other voters throughout Louisiana who are deemed simply "irrelevant" to an effort to create majority-Black districts. Karlan, *Still Hazy*, *supra* at 292. Yet the Court's precedents allow none of those other voters to sue absent special evidence.

This inconsistency is beneath our color-blind Constitution—and that is why the Court must answer it. The Court could overrule *Hays* and its progeny and hold that each Louisiana citizen has standing to challenge a racially gerrymandered district. After all, classifications based on race "demean[] us all." *Alexander*, 600 U.S. at 262 (Thomas, J., concurring) (quotation omitted). But unless and until the Court does so, there is no principled basis to single out non-Black voters in District 6 for special treatment.

**2.** *Hays* also stated that "[v]oters in [racially gerrymandered] districts may suffer the special representational harms racial classifications can cause in the voting context." 515 U.S. at 745; *see Shaw v. Hunt (Shaw I)*, 509 U.S. 630, 648 (1993) ("When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole.").

But that statement, too, cannot justify finding Article III standing. For one thing, it is pure conjecture, supported by no facts or authorities. *Cf. All. for Hippocratic Med.*, 602 U.S. at 381 ("the injury must be ... not speculative"). If the doctors in *Alliance for Hippocratic Medicine* could not rest on claims of "various

[downstream] monetary and related injuries" because such claims "lack[ed] record support and [were] highly speculative," *id.* at 390, then *a fortiori* Plaintiffs here—with zero standing evidence in hand after a trial—cannot rest on conjecture about how District 6's representative might operate.

For another thing, the *Hays* conjecture regrettably plays into the very racial stereotypes and assumptions that this Court has rightly criticized. It assumes that any Black (or "Black-preferred") representative of District 6 will think and act like Black voters in District 6—and in fact, that this representative cannot help but favor Black voters over those of other races. Indeed, this assumption is doubly offensive because embedded within it is a second assumption that all Black voters in District 6 themselves are a monolith.

With all due respect, this is an appalling basis for Article III standing. As the Court has often remarked, such assumptions and stereotypes have no place in our Constitution or society. *See, e.g.*, *Miller*, 515 U.S. at 912 (criticizing "the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls'"); *Holder v. Hall*, 512 U.S. 874, 906 (1994) (Thomas, J., concurring in the judgment) ("The basic premises underlying our system of safe minority districts and those behind the racial register are the same: that members of the racial group must think alike and that their interests are so distinct that the group must be provided a separate body of representatives in the legislature to voice its unique point of view."); *Students for Fair Admissions v. President & Fellows of Harvard*

*College*, 600 U.S. 181, 221 (2023) ("Such stereotyping can only cause continued hurt and injury, contrary as it is to the core purpose of the Equal Protection Clause." (cleaned up)).

These assumptions also directly conflict with the Court's *rejection* of the view "that a prosecutor could strike a black juror based on an assumption or belief that the black juror would favor a black defendant." *Flowers v. Mississippi*, 588 U.S. 284, 299 (2019). That is because "'[t]he core guarantee of equal protection ... would be meaningless were we to approve the exclusion of jurors on the basis of such assumptions, which arise solely from the jurors' race.'" *Id.* (quoting *Batson v. Kentucky*, 476 U.S. 79, 97–98 (1986)). Yet, that is precisely the assumption the Court implicitly invoked to speculate that, for example, a Black congressman like incoming District 6 Representative Cleo Fields is "more likely" to favor the Black voters in his District than those of other races. *Shaw I*, 509 U.S. at 648. That assumption is no less odious in this context than it was in *Swain v. Alabama*, 380 U.S. 202 (1965).

This Court has heard complaints along these lines. *See Miller*, 515 U.S. at 930 (Stevens, J., dissenting). But the Court has never answered them. *See Hays*, 515 U.S. at 747 ("Justice White's dissenting opinion in *Shaw* argued that position, but it did not prevail. Justice Stevens offers no special reason to revisit the issue here." (citation omitted)). For that reason, the State respectfully urges the Court to disavow this Article III standing theory based on these abhorrent stereotypes.

* * *

This Court recently reaffirmed that "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *All. for Hippocratic Med.*, 602 U.S. at 397 (citation omitted). So here.

Now, to be sure, Members of this Court have criticized the current state of Article III standing jurisprudence. *See, e.g.*, *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 2024 WL 5036271, at *1 (U.S. Dec. 9, 2024) (Alito, J., dissenting from the denial of certiorari); *Murthy*, 603 U.S. at 95–96 (Alito, J., dissenting). But "[i]f a majority of this Court [is not] willing to reconsider the approach [it has] taken" thus far, "it would be freakish to single out the [facts] here for special treatment." *Gundy v. United States*, 588 U.S. 128, 149 (2019) (Alito, J., concurring in the judgment). The State's only ask is that the standing "rules" be "evenhandedly applied." *Murthy*, 603 U.S. at 98 (Alito, J., dissenting). And if the State is to be haled into court for allegedly violating the Equal Protection Clause, it deserves to know—and Plaintiffs bear the burden to show—how, on this trial record, that alleged violation caused Plaintiffs an Article III injury.

## II. UNDER THIS COURT'S CURRENT PRECEDENTS, THE DISTRICT COURT MAJORITY ERRED IN CONCLUDING THAT DISTRICT 6 IS AN UNCONSTITUTIONAL RACIAL GERRYMANDER.

If the Court reaches the merits, the Court's precedents require reversal on the unique facts of this case. "Redistricting 'is primarily the duty and responsibility of the State,' and '[f]ederal-court review of districting legislation represents a serious intrusion on the most

vital of local functions.'" *Abbott*, 585 U.S. at 603. "'[I]n assessing the sufficiency of a challenge to a districting plan,' a court 'must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus.'" *Id.* "And the 'good faith of [the] state legislature must be presumed.'" *Id.*

These baseline principles are especially important in this case where—unlike in any case this Court has seen—a State has been backed into a corner by federal court decisions wielding both the VRA and the Fourteenth Amendment. And faithful application of these principles compels at least one of two conclusions: *first*, Plaintiffs failed to carry their "burden [] to show" that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within" District 6, *Miller*, 515 U.S. at 916; *second*, even if they had carried that burden, the Legislature had "the requisite strong basis in evidence" to justify District 6, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 194 (2017). On either ground, therefore, the Court's precedents require reversal.

### A. Race Was Not the Predominant Factor Motivating the Legislature's Decision to Draw District 6.

Plaintiffs were "require[d]" to "show that race was the 'predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" *Alexander*, 602 U.S. at 7. "Racial considerations predominate when '[r]ace was *the* criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Id.* (emphasis added).

Plaintiffs failed to carry that burden for at least three reasons: *first*, the race-based mandate here came from the federal courts, not the Legislature; *second*, the legislative record illustrates that *incumbency protection* was the criterion on which the Legislature would not compromise; and *third*, Plaintiffs did not even try to propose an alternative map that would both comply with the *Robinson* decisions *and* achieve the Legislature's incumbent-protection goal.

**1. The racial baseline came from the courts, not the Legislature.**

Take first the source of the Legislature's mission to add a second majority-Black district in Louisiana. No one disputes that those sources were the Middle District and the Fifth Circuit. For two years, the State opposed the use of race to draw a second majority-Black district—and the proposal of a second majority-Black district—in *Robinson*. It was the Middle District that made a race-based decision in holding that Louisiana likely must adopt two majority-Black districts. It was the Fifth Circuit that affirmed that decision. And it was only after the Middle District's intent to draw its own two majority-Black district map became an impending reality that the Legislature acted to preserve its sovereign and political interests as best it could given the threat. *Supra* pp. 11–12, 18 & n.3 (collecting examples of legislators' statements). All considerations of race, therefore, stem from the federal court decisions that impelled S.B. 8—not the Legislature.

This sequencing is important as a doctrinal matter. Plaintiffs' burden is to prove that "race was 'the predominant factor motivating *the legislature's* decision.'" *Alexander*, 602 U.S. at 7 (emphasis added). But here,

the Legislature did not randomly wake up in a special session in January 2024 and decide to draw a second majority-Black district. To the contrary, the Legislature's first preference (H.B. 1) was manifestly *not* to employ heavy-handed considerations of race. The racial focus behind S.B. 8 thus belongs to the *Robinson* courts, not the Legislature.

Having forced the State into adopting a second majority-Black district, the federal judiciary cannot wash its hands of the matter now and point at the Legislature. If a bank robber holds a gun to a teller's head, no one would say that the teller's emptying the cash drawer was self-motivated. Just so here.

**2. The Legislature's intent to protect Republican incumbents reinforces that race was not *the* predominant factor.**

**a.** The Legislature's political goals reinforce that race, at least, was not *the* predominant factor in the Legislature's decision. The majority below agreed that "[i]t is *clear from the record and undisputed* that political calculations—the protection of incumbents—played a role in how District 6 was drawn." J.S.App.40a (emphasis added). Moreover, Plaintiffs have conceded that the Legislature "espoused political goals of protecting four Republican incumbents." Mot. to Dismiss 22. This is exactly right.

The Legislature quite easily could have begun and ended its remedial task by adopting verbatim the *Robinson* Plaintiffs' preferred map, *i.e.*, S.B. 4. But that would have defeated the whole purpose of the Legislature reclaiming its sovereign redistricting pen to save

Representative Letlow from District 5, which was forecasted to be a Democrat-majority district. *See Robinson*.J.S.App.673a. Indeed, S.B. 8's sponsor, Senator Womack, acknowledged that S.B. 8 was "a different map than the plaintiffs in the litigation have proposed," but that was because he had a more pressing goal in mind: S.B. 8 was "the only map" he saw that would protect Louisiana's high-profile incumbents. *Robinson*.J.S.App.394a–95a.

The reality, therefore, was that there were *two* criteria that the Legislature "'could not [] compromise[],'" *Alexander*, 602 U.S. at 7: The new district had to be a majority-Black district (because of *Robinson*) and had to prevent Speaker Johnson and Representative Letlow from being eliminated from Congress. By definition, that means Plaintiffs cannot demonstrate that "'[r]ace was *the* criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Id.* Or, in *Miller*'s terms, it shows that incumbency protection was "not subordinated to race," which defeats the predominance inquiry. 515 U.S. at 916.

In this respect, the Court's decision in *Milligan* is instructive. There, the Court determined that race did not predominate in the drawing of an expert's map where the expert (i) admitted that "it was necessary for him to *consider* race" but (ii) insisted that it was not the predominant factor because he gave race and other factors "equal weighting." 599 U.S. at 31. The same evidence exists here. Senator Womack freely acknowledged—and numerous legislators corroborated—that S.B. 8 "adher[ed]" to the *Robinson* courts' view regarding a second majority-Black district, but he disavowed that race was "the predominant factor":

In the end, "it was strictly – politics drove this map because of the – the – Speaker Johnson, Majority Leader Scalise, and my congresswoman, Julia Letlow, predominantly drove this map," *Robinson*.J.S.App.394–95a.

Race plainly was not *the* criterion that the Legislature refused to compromise in drawing District 6. That resolves this case.

**b.** The majority below misunderstood the role of politics in this case. The majority deemed it "not credible that Louisiana's majority-Republican Legislature would choose to draw a map that eliminated a Republican-performing district for predominantly political purposes." J.S.App.49a n.10. Respectfully, that finding makes no sense—and it reflects the majority's apparent misapprehension of this case as a typical *partisan*-gerrymandering case.

This is *not* a case where, in light of new Census results, a State redraws its congressional map for political gain in the abstract. Of course—as the majority below recognized—it would make no sense for such a State to destroy its own political seats in the name of partisan gain.

But this case is different. It reflects the imminent reality that Louisiana would be projected to lose one of five Republican congressional seats when either the Middle District or the Legislature (at the Middle District's behest) adopted a second majority-Black district. Once it became apparent that the Middle District planned to impose its own two majority-Black district map in place of H.B. 1, this became a rescue operation: How could the State best protect its most important

incumbents with a two majority-Black district map coming to Louisiana? Not through S.B. 4, which placed Representative Letlow in a Democrat district. Instead, it is the district lines in S.B. 8 that answer that question because they protect both Speaker Johnson and Representative Letlow.

In fact, Plaintiffs elicited testimony at trial underscoring this point. They asked Senator Pressly if "any Republican legislator at any time suggest[ed] creating a second majority-minority seat in order to protect any congressional incumbent." J.A.167. He said:

> No. The conversation was that we would – that we were being told we had to draw a second majority-minority seat. And the question then was, okay, who – how do we do this in a way to ensure that we're not getting rid of the Speaker of the House, the Majority Leader, and Senator Womack spoke on the floor about wanting to protect Julia Letlow as well.

*Id.* That is exactly right—and it refutes the district court's mistaken belief that Republicans thought in the abstract that they needed to create a majority-Black district to *protect* Speaker Johnson and Representative Letlow. The proper understanding is that the Legislature sought to prevent the Middle District's creation of a second majority-Black district that would *harm* either Speaker Johnson or Representative Letlow. And for the reasons explained above, that confirms incumbency protection was a non-negotiable criterion—which defeats the predominance analysis.

### 3. Plaintiffs did not propose an alternative map that both follows *Robinson* and achieves the Legislature's incumbent-protection goals.

Finally, the Court's recent admonition in *Alexander* directly bears on this case: "Without an alternative map, it is difficult for plaintiffs to defeat our starting presumption that the legislature acted in good faith." 602 U.S. at 10. Specifically, in attempting to show racial predominance, a plaintiff must "produce, among other things, an alternative map showing that a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance." *Id.*

Now, as just explained, this is not a case where a State disclaims reliance on race and proclaims a partisan basis for its district lines—that is, a case where the alternative-map requirement has its most natural fit. The State has never disputed that race played a significant role in the drawing of District 6 due to the *Robinson* decisions. But the alternative-map requirement remains probative because Plaintiffs did not try to propose one that would actually (a) comply with the *Robinson* decisions and (b) protect Speaker Johnson and Representative Letlow.

This defect became unmistakable at the jurisdictional stage. There, Plaintiffs complained that any number of maps—including H.B. 1—"could have protected five (and certainly four) Republican incumbents while avoiding racial gerrymanders and adhering to traditional redistricting criteria." Mot. to Dismiss 23.

Plaintiffs are whistling past the issue. Their suggestion that the State should have adopted another *one* majority-Black district map was not a legally viable option according to the Middle District and the Fifth Circuit—and the *Robinson* Plaintiffs would have just sued Louisiana again. If Plaintiffs are suggesting that the State could have adopted a *different* second majority-Black district, that would likewise blink reality. For everyone knows that the only other way to draw a second majority-Black district is to link northeast Louisiana with Baton Rouge as the *Robinson* Plaintiffs proposed in S.B. 4—a map that the Legislature would reject 100 times out of 100 because of its irreparable harm to Speaker Johnson and Representative Letlow. That suggestion also would be disingenuous because—as the State catalogued in its jurisdictional statement (at 3, 26–28)—Plaintiffs' position is that they "have already shown that the Black population is too dispersed outside of Southeast Louisiana to draw another Black-majority district."

Plaintiffs stumbled at the jurisdictional stage by highlighting that they did not actually propose a viable alternative map. That is fatal. *See Alexander*, 602 U.S. at 35 ("A plaintiff's failure to submit an alternative map—precisely because it can be designed with ease—should be interpreted by district courts as an implicit concession that the plaintiff cannot draw a map that undermines the legislature's defense that the districting lines were 'based on a permissible, rather than a prohibited, ground.'"). If the Court reaches the merits, therefore, the Court can end its inquiry at predominance.

### B. S.B. 8 Satisfies Strict Scrutiny as Articulated by this Court's Precedents.

In all events, the State would easily clear this Court's strict-scrutiny analysis. *First*, the Court has "assumed that complying with the VRA is a compelling state interest." *Abbott*, 585 U.S. at 587. *Second*, "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Id.*; *see Bethune-Hill*, 580 U.S. at 193 ("[T]he narrow tailoring requirement insists only that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made." (citation omitted)). Both prongs are satisfied here.

#### 1. The Court's assumption that complying with the VRA is a compelling interest applies here.

The Court has long "assume[d], without deciding, that [a] State's interest in complying with the [VRA] [is] compelling." *Bethune-Hill*, 580 U.S. at 193 (citing cases). The majority below likewise "assume[d], without deciding, that compliance with Section 2 was a compelling interest for the State to attempt to create a second majority-Black district in the present case." J.S.App.53a. That was a faithful application of this Court's precedents, and Plaintiffs offer no principled reason to stray from the Court's past practice.

**a.** If the Court's assumption is valid, this case presents the most compelling scenario that this Court has seen to invoke the assumption. Both the Middle District and the Fifth Circuit told Louisiana that the VRA

likely required the State to adopt "a second-majority minority congressional district." *Robinson*, 605 F. Supp. 3d at 821; *Robinson*, 86 F.4th at 596 (rejecting the State's arguments against "enact[ing] a second majority-minority district"). Both courts reached that conclusion after over 100 pages of VRA analyses regarding what (in those courts' view) was "necessary to comply with the [VRA]." *Robinson*, 605 F. Supp. 3d at 839; *Robinson*, 86 F.4th at 583 ("The district court did not clearly err in its necessary fact-findings nor commit legal error in its conclusions that the Plaintiffs were likely to succeed on their claim that there was a violation of Section 2 of the [VRA] in [H.B. 1].").

Further, both courts agreed that "[t]he appropriate remedy in this context is a remedial congressional redistricting plan that includes an additional majority-Black congressional district"—and that this responsibility principally fell to the State. *Robinson*, 605 F. Supp. 3d at 766; *Robinson*, 86 F.4th at 601 ("We cannot conclude on this record that the Legislature would not take advantage of this opportunity to consider a new map now that we have affirmed the district court's conclusion that the Plaintiffs have a likelihood of success on the merits.").

With two federal courts telling Louisiana both that (i) a second majority-Black district is likely "necessary to comply" with Section 2 and that (ii) this is the "appropriate remedy" for the Legislature to pursue, there can be no serious question that the State had a compelling interest in complying with these dictates. If (as this Court has assumed) compliance with the VRA is

a compelling interest, then compliance with court orders telling a State how to comply with the VRA is a compelling interest, too.

**b.** For their part, Plaintiffs have not preserved any argument that the Court's assumption is invalid. *See* Mot. to Dismiss 24; Dist.Ct.Doc.190 at 14 (both accepting the assumption). Instead, their position appears to be that the State was not *sincerely* interested in complying with the VRA. Mot. to Dismiss 24–25. But that insincerity argument is perplexing. There is no basis in this Court's precedents to hold that a State (i) must repent for its past defenses in VRA litigation and (ii) pinky swear that it now believes its VRA defenses were wrong. Once backed into a corner, Louisiana—like any rational actor—opted to comply with federal court decisions dictating those courts' view of VRA compliance. Nothing more is required. *Cf. Miller*, 515 U.S. at 915 ("the good faith of a state legislature must be presumed").

In addition, under Plaintiffs' position, it is difficult to see how any State—especially one that has defended against VRA litigation—could ever constitutionally remedy a court-identified VRA violation. As here, people like Plaintiffs will invariably claim that race predominated in drawing the new map, thereby triggering strict scrutiny. And (by Plaintiffs' lights) that new map would not be supported by a compelling interest—which means a remedial map would fail strict scrutiny every time. *Cf. LULAC*, 548 U.S. at 518 (Scalia, J., concurring in the judgment in part and dissenting in part) (if VRA compliance "were not a compelling State interest, then a State could be placed in the impossible position of having to choose between

compliance with [the VRA] and compliance with the Equal Protection Clause"). Plaintiffs should thus own up to the logical consequence of their proposed "collision" between the VRA and the Equal Protection Clause. *Milligan*, 599 U.S. at 100 (Alito, J., dissenting).

**2. The State had "good reasons" to believe that District 6 was necessary to comply with the VRA.**

Turning to narrow tailoring, this "requirement insists only that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made." *Bethune-Hill*, 580 U.S. at 193 (citation omitted). "[T]he requisite strong basis in evidence exists when the legislature has '*good reasons* to believe' it must use race in order to satisfy the [VRA]." *Id.* at 194. "Holding otherwise," the Court has observed, "would afford state legislatures too little breathing room, leaving them 'trapped between the competing hazards of liability' under the [VRA] and the Equal Protection Clause." *Id.* at 196. That inquiry is easily satisfied here, and again, Plaintiffs offer no serious counterarguments.

**a. The majority below misapprehended the proper analysis.**

**i.** For the same reasons the State has articulated a compelling interest under this Court's precedents, the State—in enacting District 6—also has "a strong basis in evidence in support of the (race-based) choice that it has made." *Bethune-Hill*, 580 U.S. at 193 (citation omitted). Indeed, it is difficult to imagine a stronger basis in evidence than a federal district court and a

federal court of appeals unanimously determining that a State likely stands in violation of the VRA unless it adopts a second majority-Black district. That is not just a "*good reason[]*"; that is perhaps the *best* of reasons to draw a second majority-Black district. *Id.* at 194.

Underscoring this point is the fact that a State is not "require[d] ... to show that its action was 'actually ... necessary' to avoid a statutory violation, so that, but for its use of race, the State would have lost in court." *Id.* In other words, the "good reasons" standard may be satisfied "even if a court does not find that the actions were necessary for statutory compliance." *Id.* (citation omitted). In this case, however, the State *can* actually demonstrate as much—for two federal courts told Louisiana it likely needed to adopt a second majority-Black district to avoid a VRA violation.

Put simply, these facts are in the heartland of the "good reasons" (or "strong basis in evidence") standard—and thus, District 6 survives that scrutiny.

**ii.** In reaching the opposite conclusion below, the majority committed two interrelated legal errors.

*First*, the majority did not seriously ask whether, as a matter of law, a State has a "strong basis in evidence" to draw a second majority-Black district where, as here, a federal district court and a federal court of appeals unanimously determined that the State likely violated the VRA by failing to draw a second majority-Black district. *Cf. Bush v. Vera*, 517 U.S. 952, 994 (1996) (O'Connor, J., concurring) (a State's "'strong basis in evidence' need not take any particular form"). The majority briefly acknowledged that "[t]his strong

basis (or good reasons) standard provides breathing room to the State." J.S.App.51a (cleaned up). But then, the majority assigned zero analytical weight to the *Robinson* courts' decisions in this inquiry. In fact—critically—the majority's "strong basis in evidence" discussion mentions the *Robinson* proceedings in only one sentence. J.S.App.52a.

It is difficult to overstate the seriousness of this error. The majority treated this case like a mine-run racial-gerrymandering case where a State purports to comply with the VRA in the abstract. In doing so, the majority disregarded the *Robinson* proceedings, when, in reality, only those proceedings can explain how District 6 came to be. This is not a mine-run case. And purporting to assess the State's "reasons" for drawing District 6 but ignoring *Robinson*, *Bethune-Hill*, 580 U.S. at 196, is like Hamlet without the prince.

*Second*, and as a corollary, the majority held that District 6 is unconstitutional because it "does not comply with the factors set forth in *Gingles* or traditional districting principles." J.S.App.53a; *accord id.* at 54a–55a, 57a, 64a, 66a. Respectfully, this makes no sense.

*Gingles* is a creature of this Court's VRA jurisprudence, not the Equal Protection Clause. *See Cooper v. Harris*, 581 U.S. 285, 301 (2017). The *Gingles* factors comprise a Section 2 plaintiff's burden "for proving vote dilution." *Id.* They can become relevant in the racial-gerrymandering context when a State cites VRA compliance in defense of its map. In that context, "[i]f a State has good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district." *Id.* at 302. "But if not, then not." *Id.*

That method of assessing a VRA defense, however, does not translate to this case, where the Legislature's "good reasons" come directly from court decisions that already conducted this analysis and concluded that a second majority-Black district is warranted. *See Robinson*, 86 F.4th at 589–99 (affirming the Middle District's *Gingles* findings across the board). In assessing whether the Legislature had "good reasons" to adopt a second majority-Black district, therefore, it would make little sense to run the whole analysis *again*; then (potentially) reach a different conclusion than the *Robinson* courts; and then (potentially) ding the State for not having a "good reason" to adopt the district. That is especially true since it is well-established that the State's good reasons can suffice "even if a court does not find that the actions were necessary for statutory compliance." *Bethune-Hill*, 580 U.S. at 194 (citation omitted); *see also Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015) ("This standard, as the United States points out, 'does not demand that a State's actions actually be necessary to achieve a compelling state interest in order to be constitutionally valid.'").

Moreover, even if *Gingles* and traditional redistricting principles were relevant, the Legislature's reason for drawing District 6 is in the heartland of those analyses: "incumbency protection." *Bush*, 517 U.S. at 964; *accord Milligan*, 599 U.S. at 35. There can be no serious dispute that the Legislature placed that principle above all else in drawing District 6 to safeguard Speaker Johnson and Representative Letlow. Thus, even if the Legislature could be judged for less heavily weighting other considerations, that would

not defeat District 6. *See Bush*, 517 U.S. at 999 (Kennedy, J., concurring) ("While § 2 does not require a noncompact majority-minority district, neither does it forbid it, provided that the rationale for creating it is proper in the first instance. Districts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one."); *see also Milligan*, 599 U.S. at 97 (Alito, J., dissenting) ("[N]othing in the Constitution ... demands compliance with these criteria.").

**b. Plaintiffs' efforts to rewrite facts and history are unavailing.**

Plaintiffs have struggled to articulate a coherent defense of the decision below in light of *Robinson*. (Remember, the majority below did not make any *Robinson*-based holdings, because it ignored *Robinson* in its "good reasons" analysis.) As best the State can tell, Plaintiffs now advance two overarching *Robinson*-based arguments, both unavailing.

**i.** The first is Plaintiffs' representation at the jurisdictional stage that "there is no tension to resolve between the *Robinson* litigation and the district court's decision." Mot. to Dismiss 31; *see id.* at 30 (stating that "[t]he Fifth Circuit never ordered the State to create two majority-Black districts" and "[t]here was no court order or mandate to enact SB8 or repeal HB1 in January 2024"). No one can really believe this. After all, the Fifth Circuit went out of its way to *affirm* the Middle District's merits determination (notwithstanding its vacatur of the injunction) to pressure the State to adopt a second majority-Black district on its own. *See Robinson*, 86 F.4th at 601 ("We cannot conclude on

this record that the Legislature would not take advantage of an opportunity to consider a new map now that we have affirmed the district court's conclusion that the Plaintiffs have a likelihood of success on the merits.").

Plaintiffs also severely misapprehend the Middle District's role in this story. *See* Resp. to Stay Application 25–26, *Landry v. Callais*, No. 23A1002 (suggesting that the Middle District is "a paper tiger"). After proclaiming that Louisiana likely must adopt a second majority-Black district, the Middle District threatened to draw its own such map unless the Legislature did so in 14 days—a threat that was stalled only by this Court's stay. *Supra* pp. 8–9. And as soon as this Court lifted its stay, the Middle District attempted to hold a remedial hearing to create a second majority-Black district—an attempt stalled only by the Fifth Circuit's mandamus order. *See id.*

Our judges are not paper tigers; they are flesh-and-blood humans wielding Article III commissions—and, right or wrong, the Middle District was dedicated to creating a second majority-Black district in Louisiana. The Legislature recognized as much and immediately acted to protect its own sovereign and political interests as best it could in these circumstances.

Finally, Plaintiffs do not argue that—without the Legislature's adoption of S.B. 8—the Middle District would have *upheld* H.B. 1 and scrapped its plans to draw a second majority-Black district. That is likely because even Plaintiffs realize that this would be a fantastical argument. And given that reality, their efforts to downplay *Robinson*'s relevance here betray the weakness of their efforts.

**ii.** Plaintiffs' second argument is that District 6 is entirely unlike the illustratives in *Robinson*—and thus, the State had no strong basis in evidence to justify District 6. *See* Mot. to Dismiss 4 (District 6 "bore zero resemblance to the *Robinson* plaintiffs' proposed alternatives"); *id.* at 5 (characterizing the State as "falsely argu[ing] that a suggestion that an additional majority-minority district can be created in one part of a State allows the creation of a different majority-minority district elsewhere"); *id.* at 30 ("an established duty to draw another VRA district in a particular area does not allow the State to draw a different majority-minority district elsewhere"). That argument suffers from at least two flaws.

*First*, Plaintiffs misrepresent the facts in stating that District 6 "bear[s] zero resemblance" to the proposed maps in *Robinson*. *Id.* at 4. As detailed above, *supra* pp. 15–17, the second majority-Black districts in *both* S.B. 8 and S.B. 4 cover the same core parishes: all of West Baton Rouge, Pointe Coupee, and St. Landry; the western portion of East Baton Rouge; the northern tip of Lafayette; the eastern portion of Rapides; and the southern portion (S.B. 8) or all (S.B. 4) of Avoyelles. And—in both districts—that is *the vast majority* of the total population, voting population, and Black voting age population. *See id.* Put otherwise, the essential core populations of both S.B. 4 and S.B. 8 is exactly the same. Plaintiffs are thus wrong to say that the two districts "bear zero resemblance."

*Second*, Plaintiffs misapprehend the law in suggesting that the State lacked flexibility to deviate from the *Robinson* Plaintiffs' preferred map—S.B. 4—for overtly political reasons. As just explained, "[t]his is

not ... a case of the State drawing a majority-minority district 'anywhere,' once a § 2 violation has been established elsewhere in the State." *LULAC*, 548 U.S. at 505 (Roberts, C.J.). Moreover, the Court has "reject[ed], as impossibly stringent," the idea that "a district must have the least possible amount of regularity in shape, making allowances for traditional districting criteria." *Bush*, 517 U.S. at 977 (plurality op.). Specifically, the State is not "requir[ed] ... to 'get things just right,' or to draw 'the precise compact district that a court would impose in a successful § 2 challenge.'" *Id.* at 978. Nor is the State required "to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'" *Id.* at 977.

District 6 falls squarely within the breathing room contemplated by this Court's precedents. By capturing the vast majority of the population considered in the *Robinson* illustrative maps, District 6 "substantially addresses the potential liability" identified in the *Robinson* decisions. *Bush*, 517 U.S. at 994 (O'Connor, J., concurring) (cleaned up). Moreover, by deviating from S.B. 4 only to protect two high-profile Republican incumbents, the Legislature did "not deviate substantially ... for predominantly racial reasons"—and thus, District 6 should "be deemed narrowly tailored." *Id.*

Finally, it bears noting that the key to creating a Black majority in District 6 is linking southeast Louisiana with Caddo Parish in the northwest tip of Louisiana. Caddo brings in a total population of 122,407, a total voting age population of 91,631, and a Black voting age population of 68,784. J.A.336. Together with the seven core parishes from S.B. 4, therefore, Caddo Parish makes S.B. 8 a majority-Black district.

Because of Caddo's key role here, it is notable that the Middle District actually considered Caddo in *Robinson*. There, the Middle District credited expert evidence regarding alleged "Black voter suppression [in] modern day practices such as restricting access to polling places, restrictions on early voting, and limited mail voting." 605 F. Supp. 3d at 846–47. In particular, the Middle District credited evidence that "[t]he parish with the third-highest Black population, Caddo, was found to have only one polling location for its 260,000 residents." *Id.* at 847. The Middle District called this "pressure on access to polling locations" in "Caddo Parish." *Id.*

Since the Middle District drew Caddo into its reasons for justifying a second majority-Black district—and since Caddo is the reason why District 6 is a majority-Black district—this simply reinforces that the State was well within the "good reasons" standard to draw District 6.

* * *

On the merits, too, the State is painfully aware of how "notoriously unclear and confusing" this area of the law is, *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays), and the many compelling arguments for scrapping the entire enterprise, *e.g.*, *Alexander*, 602 U.S. at 39–41 (Thomas, J., concurring in part). Once again, however, "[i]f a majority of this Court [is not] willing to reconsider the approach [it has] taken" thus far, *Gundy*, 588 U.S. at 149 (2019) (Alito, J., concurring in the judgment), the State at the very least deserves "even-handed[] appli[cation]" of the existing "rules," *Murthy*, 603 U.S. at 98 (Alito, J., dissenting). And the Court's

existing precedents establish that District 6 is constitutional.

## III. THE STATES DESERVE WITHDRAWAL OR, AT THE VERY LEAST, RECALIBRATION.

Finally, even if the Court disagrees with every argument above, the worst possible outcome in this case would be an affirmance without any guidance to Louisiana and its sister States.

The answer cannot be that Louisiana should go adopt a one majority-Black district map—the *Robinson* Plaintiffs will just sue Louisiana again. The answer also cannot be that Louisiana should go adopt a different two majority-Black district map—Plaintiffs in this case will just sue Louisiana again. No. The State needs—and respectfully, deserves—a clear articulation of (a) what map, in this Court's view, would survive both constitutional and VRA review and (b) how States on a going-forward basis can avoid the endless litigation that unfolds after every Census.

If the Court has no such answer, the Court should say so. The best first step to any problem is admitting there is a problem. If, in fact, there is no oxygen in the "breathing room" the Court thought existed between the competing demands of the VRA and the Equal Protection Clause, the Court should say so. And saying such challenges are not justiciable would be the best outcome for everyone. For, if there is no breathing room, then there is no good reason to continue forcing States to burn millions of dollars and countless hours after every redistricting cycle as competing factions fight to see who finally succeeds in suffocating a State. No one truly wins that fight—the State loses, its voters lose, the judiciary loses, and democracy itself loses.

Louisiana is tired. Midway through this decade, neither Louisiana nor its citizens know what congressional map they can call home. Meanwhile, the *Robinson* Plaintiffs and Plaintiffs in this case are gearing up for the next round of litigation should the Court's forthcoming decision give them an opening. The madness must end—on standing, the merits, or the recognition that racial-gerrymandering cases inherently present "judicially unanswerable questions" properly left to "the political branches." *Alexander*, 602 U.S. at 66 (Thomas, J., concurring in part).

## CONCLUSION

The Court should reverse.

Respectfully submitted,

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