No. 23-_____

In the United States Court of Appeals for the Fifth Circuit

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

PETITION FOR A WRIT OF MANDAMAS

On Petition for a Writ of Mandamus from the
United States District Court
for the Middle District of Louisiana
No. 3:22-cv-00211 (Hon. Shelly D. Dick)

JEFF LANDRY
Louisiana Attorney General
ELIZABETH B. MURRILL
Solicitor General
SHAE MCPHEE
Deputy Solicitor General
MORGAN BRUNGARD
Assistant Solicitor General
ANGELIQUE DUHON FREEL
CAREY TOM JONES
JEFFREY M. WALE
Assistant Attorneys General

JASON B. TORCHINSKY
PHILLIP M. GORDON
EDWARD M. WENGER
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK, PLLC
15405 John Marshall Highway
Haymarket, VA 20169

OFFICE OF THE ATTORNEY GENERAL
LOUISIANA DEPARTMENT OF JUSTICE
P.O. Box 94005
Baton Rouge, LA 70804
murrille@ag.louisiana.gov

Attorneys for the State of Louisiana

JOHN C. WALSH
SHOWS, CALI & WALSH, L.L.P.
P.O. Box 4046
Baton Rouge, LA 70821
john@scwllp.com

PHILLIP J. STRACH
THOMAS A. FARR
ALYSSA M. RIGGINS
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Raleigh, NC 27603
phillip.strach@nelsonmullins.com

Counsel for R. Kyle Ardoin, in his official capacity as Secretary of State of Louisiana

CERTIFICATE OF INTERESTED PERSONS

Under the fourth sentence of Fifth Circuit Rule 28.2.1, the Petitioners are governmental parties and therefore need not furnish a certificate of interested parties.

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

STATEMENT REGARDING ORAL ARGUMENT

The case giving rise to this petition for a writ of mandamus involves ongoing litigation over the State of Louisiana's congressional-district boundaries. The district court has scheduled a hearing on a preliminary-injunction motion that sought relief before the congressional elections held in November 2022 (roughly nine-months ago), and it has refused to set a trial date for final adjudication of the Plaintiffs' claims, even though resolution of their claims (including conclusion of the appellate process) is essential before the November 2024 congressional elections. The Petitioners, Louisiana Attorney General Jeff Landry and Louisiana Secretary of State R. Kyle Ardoin (collectively, "the State"), respectfully submit that oral argument (set expeditiously) is likely to assist the Court in resolving this petition for a writ of mandamus.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other

STATEMENT OF THE RELIEF SOUGHT

The State seeks an order directing the district court to vacate the currently scheduled preliminary-injunction remedial hearing and to instead set a trial date regarding the Plaintiffs' Section 2 Voting Rights Act challenges to the State of Louisiana's congressional districts.

STATEMENT OF THE ISSUE

The issue giving rise to this petition for a writ of mandamus is whether a district court may rely upon a preliminary-injunction order it entered in 2022 that specifically and solely granted relief regarding the 2022 congressional elections to forego a final trial on the merits of the Plaintiffs' Voting Rights Act claims in advance of the 2024 congressional elections.

INTRODUCTION

For thirty years, the State of Louisiana's congressional districts included one that was majority-Black. When the State twice tried to create a second majority-Black district, a federal court struck its maps as unconstitutional under the Fourteenth Amendment's Equal Protection Clause. *See Hays v. Louisiana*, 839 F. Supp. 1188, 1191 (W.D. La. 1993); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996). Despite this history, two sets of Plaintiffs challenged Louisiana's 2022 congressional-district maps, asserting that Section 2 of the Voting Rights Act forbids the State from establishing a map with fewer than two majority-Black congressional districts. *See, e.g.*, ECF No. 1.[1] Along with their complaint, they sought preliminary-injunctive relief premised solely and explicitly on their desire to secure new maps before the November 2022 midterm elections. ECF Nos. 41, 42. The district court acquiesced, and after a tremendously expedited hearing, granted their requested relief, ECF No. 173, only to have its order stayed by the United States Supreme Court, *see Ardoin v. Robinson*, 142 S. Ct. 2892, 2892 (2022).

The 2022 midterm elections have come and gone, which renders moot the district-court-ordered remedial hearing and clears the way for

an ultimate, fulsome, and timely trial on the merits of the Plaintiffs' claims. The district court, however, has refused to set a trial date for ultimate resolution of the Plaintiffs' Voting Rights Act challenges. Instead, it has ordered "that the preliminary injunction hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3–5, 2023 . . . ." ECF No. 250. It has since made clear that this hearing will consider solely the remedial map that the court will order the State of Louisiana to implement. *See* ECF Nos. 267, 275.

In so doing, the district court is poised to exceed its jurisdiction, trammel the fundamental fairness of the proceedings before it, and flout new, binding authority issued by the United States Supreme Court. Logic dictates that the federal courts cannot enter *prospective* relief based on a preliminary-injunction request premised on a purported need for resolution by a date that passed more than two-hundred days ago. Rudimentary elements of this Nation's adversarial tradition forbid a court from striking a legislative act as unconstitutional without first allowing the

[1] All ECF citations are to the dockets consolidated at *Robinson v. Ardoin*, No. 3:22-cv-211 (M.D. La.).

State a chance to fully and fairly defend its actions, which necessarily takes longer than the expedited, preliminary hearing that the district court held roughly a year ago. And prudence dictates that, given the Supreme Court's latest Section 2 and Equal Protection jurisprudence, a full trial needs to occur.

The Court should grant the State's petition for a writ of mandamus, vacate the remedial hearing scheduled to begin on October 3, and order the district court to set a trial on the Plaintiffs' Voting Rights Act claims.

STATEMENT OF THE CASE

A. After the 2020 decennial census, Louisiana retained six congressional districts. Between June 2021 and February 2022, the Legislature began preparations for redrawing its districts in accordance with all state and federal statutory and constitutional requirements. After an extraordinary session that convened on February 1, 2022, Louisiana adopted a map that maintained the "core districts as they [were] configured" to "ensure continuity of representation." ECF No. 159. As has been the case for three-decades, one of the six congressional districts is majority-Black.

Two sets of plaintiffs immediately sued the Louisiana Secretary of State. *See* ECF No. 1. Both argued that Section 2 of the Voting Rights Act

mandated that the State's congressional voting maps contain a second majority-Black district. *See* ECF No. 1. General Landry (among others) intervened in defense of the maps, ECF No. 30, the district court eventually consolidated the two actions, ECF No. 33, and weeks after filing their respective complaints, the Plaintiffs moved for a preliminary injunction in advance of the November 2022 midterm elections, ECF Nos. 41, 42.

Over the State's objection, the district court rammed through a frantically rushed preliminary-injunction hearing. Expert-witness reports, for example, had to be prepared in two-weeks. ECF No. 35, 63. After an evidentiary hearing, the district court took no action for twenty-four days. *See* ECF No. 173. On June 6, 2022, however, it granted the Plaintiffs' request for a preliminary injunction and began to prepare for a hearing regarding remedial maps. ECF No. 173. The district court's order arrived on the last day of Louisiana's legislature's Regular Session, but it ordered the State to procure a legislatively created remedial map by June 20, 2022, ECF No. 173, despite testimony from Louisiana's chief election official that it was infeasible to implement a new congressional plan before the November 2022 congressional elections, ECF No. 177-1, at 9.

B. The State immediately moved the district court to stay the preliminary-injunction order pending appeal. ECF No. 177. Among other things, the State pleaded with the district court that "the Legislature ha[d] no ability to meet th[e] deadline" the court had set, ECF No. 177-1, at 11, because "the Legislature must now convene a new Extraordinary Session to consider redistricting legislation," ECF No. 177-1, at 11 (citing La. Const. art. 3, § 2(B)). The Louisiana Constitution sets a seven-day notice period "prior to convening the legislature in extraordinary session," *id.*, and it also imposes a nondiscretionary requirement that "each bill shall be read at least by title on three separate days in each house," La. Const. art. 3, § 15(D). The district court denied the motion but stated in its order that "[i]f Defendants need more time to accomplish a remedy, . . . the Court will favorably consider a *Motion* to extend the time to allow the Legislature to complete its work." ECF No. 182, at 3 (italics in original).

The State accepted the district court's offer and moved for an extension of time to enact a remedial map, noting that the extraordinary-session requirements meant that, as scheduled, "the Legislature will have only five days to introduce, deliberate over, and pass a bill enacting a

plan through the legislative process required by Louisiana law." ECF No. 188. Because five days is not enough time for the Legislature to complete "the most difficult task a legislative body ever undertakes," *Covington v. North Carolina*, 316 F.R.D. 117, 125 (M.D.N.C. 2016) (three-judge court), *aff'd*, 137 S. Ct. 2211 (2017) (citation omitted), the State asked the district court for (at a minimum) ten extra days, ECF No. 188-1, at 2. The district court responded by ordering the Speaker of the Louisiana House of Representatives and the President of the Louisiana Senate to "appear **IN PERSON**" for a hearing on the extension request, ECF No. 189 (bolding and capitalization in original), and then denied it from the bench, ECF No. 196.

C. Meanwhile, the proceedings on appeal continued. This Court denied the State's motion to stay but expedited briefing and oral argument. *See* Robinson v. Ardoin, 37 F.4th 208, 232 (5th Cir. 2022). On June 28, 2022, however, the United States Supreme Court (1) granted the State's application for a stay of the district court's preliminary-injunction order, (2) construed the State's application for a stay as a petition for a writ of certiorari before judgment, (3) granted certiorari before judgment, and

(4) held the case in abeyance pending *Merrill v. Milligan*, No. 21-1086 and No. 21-1087. *See Ardoin v. Robinson*, 142 S. Ct. 2892, 2892 (2022).

On June 8, 2023, the Supreme Court issued its opinion in *Allen v. Milligan*. 143 S. Ct. 1487, 1502 (2023). Two weeks later, it dismissed the writ in the Louisiana's case and ordered "the matter to proceed before the Court of Appeals for the Fifth Circuit for review *in the ordinary course* and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 2023 U.S. LEXIS 2684, *1 (Jun. 26, 2023) (emphasis added). This Court has since calendared oral argument for October 6, 2023 (less than a month from now). *See* 8/22/2023 Notice of Calendaring, *Robinson v. Ardoin*, No. 22-30333 (5th Cir.).

D. In light of the Supreme Court's reactivation of this case, the district court conducted a status conference on July 12, 2023. ECF No. 246. On July 17, 2023, it issued an order stating that "*the preliminary injunction* hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3–5, 2023." ECF No. 250 (emphasis added). The parties submitted competing scheduling orders; the Plaintiffs proposed a schedule that would allow "for any party . . . to submit a new or amended map along with supporting expert evidence,"

ECF No. 256, at 2, while the Defendants explained why doing so on an expedited basis cannot work, since new plans mean redoing all the expert analyses required to litigate those plans, ECF No. 255.

In an attempt to avoid another fiasco, the State, on August 25, 2023, filed an emergency motion to cancel the hearing on remedy and to instead enter a scheduling order for trial. ECF No. 260. In it, the State, first, set out the obvious: without a scheduling order, briefing, new maps, or exchange of expert material, it would be impossible to prepare for a three-day fact-intensive remedial-map hearing in the six weeks. ECF No. 260-1, at 4–7. It also reminded the district court that it had not yet actually ruled on merits of the Plaintiffs' Section 2 claims, and pointed out that it is error to "improperly equate[] 'likelihood of success' with 'success,'" especially given "the significant procedural differences between preliminary and permanent injunctions." ECF No. 260-1, at 7–10 (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 394 (1981)). And, finally, it pointed out that the Court had no jurisdiction to conduct a remedial hearing in *October 2023* based on a preliminary-injunction motion advanced by the Plaintiffs solely to seek *temporary*, *prospective* relief before *November 2022*. ECF No. 260-1, at 10.

The district court denied the motion on August 29, 2023, in an order that addressed none of the substantive objections that the State raised. ECF No. 267. Instead, the district court stated, essentially, (1) a lot of stuff happened in 2022,[2] and (2) "there is adequate time to update the discovery needed in advance of the hearing to take place October 3–5, 2023." ECF No. 267. It declined to elaborate further why it thought the time was sufficient.

[2] This isn't a hyperbolic description. The entirety of the district court's reasoning is as follows:

> This case has been extensively litigated. The parties have conducted expansive discovery, presented testimony from twenty-one witnesses, introduced hundreds of exhibits into evidence throughout a five-day preliminary injunction hearing, and filed hundreds of pages of pre- and post-hearing briefing—all of which culminated in this Court's 152-page Ruling on liability. On the eve of the remedial hearing, this matter was stayed by the United States Supreme Court. The preparation necessary for the remedial hearing was essentially complete. The parties were ordered to submit proposed remedial maps. The Defendants elected not to prepare any remedial maps. The Plaintiffs disclosed proposed remedial maps; witnesses and exhibits were disclosed; expert reports were disclosed; and Defendants deposed Plaintiffs' identified experts. The only remaining issue is the selection of a congressional district map—a limited inquiry—which has been the subject of disclosure and discovery in the run up to the June 29, 2022 remedy hearing that was stayed on the eve of trial.

ECF No. 267, at 2.

SUMMARY OF ARGUMENT

Although mandamus is an extraordinary remedy, the Court will encounter few cases more appropriate for its use than this one. The district court has refused to set a trial on the merits of the Plaintiffs' Voting Rights Act Section 2 claims, and instead it plans to rely on its resolution of a preliminary-injunction order that (1) was justified based on an event that has since passed (the November 2022 congressional elections), (2) was rushed so terrifically that the State was not able to fully defend its work, and (3) relied on now-outdated Section 2 and Equal Protection jurisprudence. Each of these factors demonstrate that the State has a clear and indisputable right to relief; taken together, they compel that conclusion.

The State has also satisfied the other mandamus criteria. If the writ does not issue, the Louisiana electorate will experience profound and irreparable injury because the issues the State advanced here will not be fully litigated before the 2024 congressional elections, at which point Louisiana voters will suffer through an election with congressional districts that are likely gerrymandered based on race. And even though a merits

panel of this Court will hear oral argument this coming October, the preliminary-injunction posture divests it of jurisdiction to address errors arising after the district court's Summer 2022 preliminary-injunction order. In other words, the State has no other avenue for vindicating the interest of Louisianans, and irreparable injury will ensue unless immediate relief arrives. And because foundational issues regarding the franchise and the Equal Protection Clause are at play, the circumstances here counsel in favor of this Court's prompt action.

REASONS WHY THE WRIT SHOULD ISSUE

The Court should issue the State's requested writ of mandamus. Specifically, (1) it has a clear and indisputable right to it, (2) it has no other adequate means of relief, and (3) issuance is plainly appropriate under the circumstances." *In re Gee*, 941 F.3d 153, 157 (5th Cir. 2019) (per curiam); *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc). Given that all three prongs are satisfied, mandamus is appropriate.

I. BECAUSE THE DISTRICT COURT CANNOT ISSUE A REMEDY WITHOUT FIRST DECIDING THE MERITS OF THE PLAINTIFFS' SECTION 2 CLAIMS, THE STATE IS INDISPUTABLY ENTITLED TO RELIEF.

A. As noted above, the Plaintiffs filed their motions for a preliminary injunction specifically requesting that the district court issue immediate relief before the 2022 congressional elections. ECF Nos. 41, 42. When the district court granted their motions, it explicitly reasoned that the "Plaintiffs have demonstrated that they will suffer an irreparable harm if voting takes place in the 2022 Louisiana congressional elections" under the enacted maps. ECF No. 173, at 141. Had it not reached this conclusion regarding the 2022 Louisiana congressional elections, it could not have found that the Plaintiffs demonstrated the purported irreparable injury necessary for issuance of a preliminary injunction.

The 2022 congressional elections were held nine months ago. An injunctive remedy is necessarily and solely prospective. This means that the need for a remedial map to avoid a purported injury inflicted during the 2022 congressional election no longer exists (i.e., it is now moot). And *that* means that the district court no longer has jurisdiction to issue a preliminary-injunctive remedy.

If a petition for a writ of mandamus seeks to "confine a trial court to a lawful exercise of its prescribed authority," this Court "should issue the writ almost as a matter of course." *In re Reyes*, 814 F.2d 168, 170 (1987) (quoting *United States v. Denson*, 603 F.2d 1143, 1145 (5th Cir. 1979) (en banc)) (quotations omitted). Given that the district court lacks jurisdiction to "reset" to *October 2023* a preliminary-injunction remedial hearing considering whether action was necessary before elections held in *November 2022*, the district court is plainly acting outside of its prescribed power. *See* ECF No. 250. And when a "judicial usurpation of power" arises, mandamus should issue. *In re Reyes*, 814 F.2d at 170 (quoting *Will v. United States*, 389 U.S. 90, 95 (1967)).

B. Even if the district court had jurisdiction to "reset" the now-moot preliminary-injunction remedial hearing (and it does not), the district court still erred by declining to resolve the merits of the Plaintiffs' Section 2 claims by way of a full trial. The State has not had the opportunity to fully and fairly litigate the merits of its enacted maps, given the remarkably expedited preliminary-injunction proceedings. Whether enshrined in the due process clause, principles of federalism, or basic fairness, it remains true that "*all litigants*[]" have a "right to the 'integrity

and accuracy of the fact-finding process,'" *United States v. Thoms*, 684 F.3d 893, 900 (9th Cir. 2012) (quoting *United States v. Bergera*, 512 F.2d 391, 393 (9th Cir. 1975)), which would be trampled if the district court is permitted to move past the full and fair resolution of the merits and onto considerations of a remedy.

These procedures matter. It is constitutional-level error to "improperly equate[] 'likelihood of success' with 'success,'" especially given the "the significant procedural differences between preliminary and permanent injunctions." *Camenisch*, 451 U.S. at 394. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties *until a trial on the merits can be held*." *Id.* at 395 (emphasis added). "Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Id.*

Most critically, "[a] party . . . is *not required to prove his case in full* at a preliminary-injunction hearing, . . . and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Id.* (emphasis added). And, for more than

a century, the Supreme Court has enshrined the notion that *every* litigant must be afforded "an opportunity to present" its defense *and then* to have a "question" *actually* "decided" against it before a remedy may issue. *Fayerweather v. Ritch*, 195 U.S. 276, 299 (1904).

For this reason, the district court cannot "force the parties" via Rule 65(a)(2) consolidation "to sacrifice their right to fully present the available evidence." *Dillon v. Bay City Const. Co.*, 512 F.2d 801, 804 (5th Cir. 1975). Simply put, deciding that a claim is "likely to succeed" is not the same as "actually litigat[ing] and resolv[ing]" a claim. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). And providing a remedy for a claim that has not yet been "actually litigated and resolved" offends *every* notion of fundamental fairness. *Id.*; *see also Fayerweather*, 195 U.S. at 299.

These are the stakes. The State was prevented from fulsomely defending its case by virtue of the expedited preliminary-injunction proceedings, and the resulting preliminary-injunction opinion from the Court did not fully resolve—and as a matter of law, could not have fully resolved—the merits of the Plaintiffs Section 2 claims. "[A]t preliminary injunction stage, "the court is called upon to assess the *probability* of the plaintiff's ultimate success on the merits" and "[t]he foundation for that

assessment will be more or less secure" depending upon multiple factors, including"—critically relevant here—"the pace at which the preliminary proceedings were decided." *Sole v. Wyner*, 551 U.S. 74, 84–85 (2007). The State has fought vigorously for the mere opportunity to make its case, and at every turn, the district court has expedited, truncated, and—most recently—flat out refused to allow the State to defend its enacted maps.

The State raised these issues to the district court. *See* ECF No. 260. In response, the district court retorted that "[t]he parties have conducted expansive discovery, presented testimony from twenty-one witnesses, introduced hundreds of exhibits into evidence throughout a five-day preliminary injunction hearing, and filed hundreds of pages of pre- and post-hearing briefing—all of which culminated in this Court's 152-page Ruling on liability." ECF No. 267, at 2. But this sort of bean-counting does not suffice, and has never sufficed, to show that a claim has been fully and fairly adjudicated. Resolving Section 2 claims require "'an intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the 'past and present reality,'" *Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986)), which means mountains of expert and fact discovery. And both

the quantity *and* the quality of the evidentiary presentation matters, especially as a court weighs "the most difficult task a legislative body ever undertakes." *Covington*, 316 F.R.D. at 125 (three-judge court), *aff'd*, 137 S. Ct. 2211 (2017). Despite the district court's superficial recitation of the evidentiary *quantity* before it during the preliminary-injunction proceedings, the lack of evidentiary *quality*, given the rushed nature of the proceedings during the run-up to the 2022 congressional elections, is what renders a full trial on the merits critical to ensuring that the district court reaches a correct and just outcome before the 2024 congressional elections.

C. There is, moreover, the changing legal landscape in the wake of *Allen v. Milligan* and *Students for Fair Admissions v. University of North Carolina*, both of which the Supreme Court issued while it held the case below in abeyance. In the former, the Supreme Court addressed Section 2 of the Voting Rights Act for the first time in fourteen years, and it clarified how the *Gingles* preconditions apply. Relevant to this case, the Supreme Court elucidated "how traditional districting criteria limit[] any tendency of the VRA to compel proportionality," *id*. at 1509, which means

that the district court's reliance (in part) on a proportionality as a legitimate goal is no longer tenable and must be revisited. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022). *Milligan* also emphasized the centrality of communities of interest in the Section 2 analysis, which has featured prominently at every stage of this case. *See* 143 S. Ct. at 1505. And Justice Kavanaugh's concurring opinion in *Milligan* stressed that it is the compactness of the minority community—not solely the compactness of the proposed districts—that must be evaluated. *Id.* at 1518 (Kavanaugh, J., concurring).

The latter case, in turn, changed fundamentally the way in which States may consider race when taking state action. The *Students for Fair Admissions* Court underscored that as race-based legislative acts reach their intended ends, they become obsolete and less likely to survive Equal Protection scrutiny. This principle followed the Court's decision in *Shelby County v. Holder*, which struck as unconstitutional a different Voting Rights Act provision because "[o]ur country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions." 570 U.S. 529, 557 (2013).

* * *

There is no legally defensible reason to allow the district court's preliminary-injunction order to control its resolution of the Plaintiffs' claims on the merits. The district court no longer has jurisdiction to issue the relief they sought. The truncated timeline under which it was adjudicated the Plaintiffs' preliminary-injunction motion prejudiced the State's right to a fulsome adversarial process and ran afoul of the notion that "[w]hen the vindication of important legal rights necessarily hangs in the balance, the law must require whatever is essential to preserve the integrity of the fact-finding process," even if the State is a litigant. *Bergera*, 512 F.2d at 393. And the governing law has changed. In other words, the State plainly has a clear right to the relief he is seeking via this petition.

II. THE STATE'S ONLY ADEQUATE REMEDY IS MANDAMUS

Under these circumstances, the State has no other adequate means of vindicating the State's rights. The district court's decision *not* to set a trial and to instead rely on its preliminary-injunction order is not immediately appealable under any statute or doctrine for which the under-

signed is aware. And resolution on appeal after the district court's remedial hearing will ossify the injury inflicted onto the State into one that cannot be remedied.

Specifically, the 2024 congressional elections are roughly sixteen-months away. This is *just* enough time to hold a trial on the merits of the Plaintiffs claims and to allow the appellate process to run its course in advance of those elections. It will *not* be enough time, however, if the State is forced to wait until *after* the district court resolves the now-moot preliminary-injunction motion to raise the issue (i.e., whether the district court erred by not holding a trial *at all*). The district court's resolution of the now-moot preliminary-injunction remedial proceedings will not occur until mid-October at the earliest, which means that an appeal from the anticipated injunction to administer a particular map will likely not be resolved until early 2024, and the trial that the district court should schedule for late-2023 will not be scheduled until mid-to-late 2024.[3] At that point, the citizens of Louisiana are again left without any certainty

[3] The Secretary of State's calendar demonstrates that filing for Congress takes place in July of 2024, and maps need to be in place weeks before that deadline: https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2024.pdf.

as to their congressional districts in the run up to a Congressional election, and the prospect of the need for the State to seek relief from any such late election related orders under the *Purcell* doctrine becomes a far more likely outcome.

Direct appeal will not suffice to remedy a district court's error. By the time this court sees this case again, the error "will have worked irreversible damage and prejudice by the time of final judgment." *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 289 (5th Cir. 2015). That is precisely the situation facing every one of Louisiana's eligible voters if this litigation is not resolved in its entirety before the 2024 congressional elections.

And forthcoming resolution of the preliminary-injunction appeal does not provide a pathway for the relief that the State seeks through this petition for a writ of mandamus. The merits panel addressing that portion of this case does not have appellate jurisdiction to address any of the irreparable injuries that have been, or will be, inflicted *after* the summer 2022 order giving rise to that appeal. All *those* errors, including the ones alleged via this Petition, merge into the final judgment or another

interlocutory appeal of the remedial map for purposes of this Court's jurisdiction, which means (as noted), they cannot be remedied (given the passage of time).[4]

Whether or not the State prevails before the preliminary-injunction merits panel this coming Fall, the harms will persist. *See Camenisch*, 451 U.S. at 394 ("Because the only issue presently before us—the correctness of the decision to grant a preliminary injunction—is moot, the judgment of the Court of Appeals must be vacated and the case must be remanded to the District Court for trial on the merits."). Delaying now accomplishes nothing but a guarantee that the 2024 election cycle will witness the same pandemonium as the 2022 election cycle. For this reason, the State has satisfied the second mandamus-petition consideration.

[4] *See* 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3905.1 ("[T]he general rule [is] that an appeal from final judgment opens the record and permits review of all rulings that led up to the judgment."); *id.* § 2962 ("Upon an appeal from the final decree every interlocutory order affecting the rights of the parties is subject to review in the appellate court."); *see also Satanic Temple, Inc. v. Texas Health & Hum. Serv. Comm'n*, No. 22-20459, 2023 WL 5316718, at *2 (5th Cir. Aug. 18, 2023).

III. MANDAMUS IS PLAINLY APPROPRIATE GIVEN THE CIRCUMSTANCES.

Finally, the circumstances plainly warrant an exercise of this Court's discretion. At issue are the constitutional and statutory voting rights of hundreds of thousands (maybe millions) of Louisiana citizens when they cast their ballots during the 2024 congressional elections. It is, of course, "always in the public interest to prevent the violation of a party's constitutional rights," *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014), which in and of itself counsels in favor of this Court's immediate action. Additionally, its bears reiterating that the district court's preliminary-injunction order requires the State to consider race in redistricting *more* than it has already, and the more that the State does so, the more it offends the fundamental Equal Protection Rights enshrined in the Fourteenth Amendment. Because "race-based sorting of voters" may be allowed *only* if doing so "serves a 'compelling interest' and is 'narrowly tailored' to that end," *Cooper v. Harris*, 581 U.S. 285, 292 (2017), the Court should err on the side of acting now to make sure the State has the opportunity to defend against the race-based sorting that the Plaintiffs request.

CONCLUSION

For the foregoing reasons, the Court should grant mandamus relief and instruct the district court to set expeditiously a trial on the merits of the Plaintiffs' Voting Rights Act claims.

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY
PHILLIP M. GORDON
EDWARD M. WENGER
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK, PLLC
15405 John Marshall Highway
Haymarket, VA 20169
jtorchinsky@holtzmanvogel.com

Attorneys for
Petitioner Jeff Landry

JEFF LANDRY
Louisiana Attorney General
ELIZABETH B. MURRILL
Solicitor General
SHAE MCPHEE
Deputy Solicitor General
MORGAN BRUNGARD
Assistant Solicitor General
ANGELIQUE DUHON FREEL
CAREY TOM JONES
JEFFREY M. WALE
Assistant Attorneys General
OFFICE OF THE ATTORNEY GENERAL
LOUISIANA DEPARTMENT OF JUSTICE
P.O. Box 94005
Baton Rouge, LA 70804
murrille@ag.louisiana.gov

Attorneys for
Petitioner Jeff Landry

/s/ Phillip J. Strach (Lead Counsel)
PHILLIP J. STRACH
phillip.strach@nelsonmullins.com
THOMAS A. FARR
tom.farr@nelsonmullins.com
ALYSSA M. RIGGINS
alyssa.riggins@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
301 HILLSBOROUGH ST, SUITE 1400
RALEIGH, NC 27603
TELEPHONE: (919) 329-3800
FACSIMILE: (919) 329-3799

JOHN C. WALSH
john@scwllp.com
SHOWS, CALI & WALSH, L.L.P.
P.O. BOX 4046
BATON ROUGE, LA 70821
TELEPHONE: (225) 346-1461
FACSIMILE: (225) 346-5561

Attorneys for Petition Kyle R. Ardoin

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the length limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it is 4,876 words, excluding the parts that are exempted under Rule 32(f). It complies with the typeface and type-style requirements of Rule 32(a)(5) and Rule 32(a)(6) because it is printed in 14-point Century Schoolbook font, a proportionally spaced typeface with serifs.

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, a true and correct copy of the foregoing was filed via the Court's CM/ECF system and served via email and Federal Express on the following parties:

John Nelson Adcock
Adcock Law LLC
3110 Canal Street
LA
New Orleans, LA 70119
225-284-6327
Fax: 504-308-1266
Email: jnadcock@gmail.com

Jonathan Hurwitz
Robert A. Atkins
Adam Savitt
Amitav Chakraborty
Briana Sheridan
Daniel Sinnreich
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
212-373-3000
Email: jhurwitz@paulweiss.com
ratkins@paulweiss.com
asavitt@paulweiss.com
achakraborty@paulweiss.com
dsinnreich@paulweiss.com

Jared Evans
Sara Sara Rohani
NAACP Legal Defense Fund
700 14th St NW
Suite 600
Washington, DC 20005
318-652-2203
Email: jevans@naacpldf.org
srohani@naacpldf.org

Kathryn C. Sadasivan
Leah C. Aden
NAACP Legal Defense & Educational Fund
40 Rector Street
FL 5
New York, NY 10006
702-606-6049
Email: ksadasivan@naacpldf.org
laden@naacpldf.org

Nora Ahmed
American Civil Liberties Union Foundation of Louisiana
1340 Poydras St
Suite 2160
New Orleans, LA 70112
917-842-3902
Email: nahmed@laaclu.org

Sarah E Brannon
American Civil Liberties Union Foundation
Voting Rights Project

915 15th St NW
Washington, DC 20005
202-675-2337
Email: sbrannon@aclu.org

Sophia Lin Lakin
American Civil Liberties Union Foundation
Voting Rights Project
125 Broad Street
Ste 18th Floor
New York, NY 10004
212-519-7836
Email: slakin@aclu.org

Stephanie Legros
ACLU of Louisiana
Legal
1340 Poydras St
Ste 2160
New Orleans, LA 70112
504-444-6046
Email: swillis@laaclu.org

Stuart C. Naifeh
NAACP Legal Defense Fund
40 Rector Street
5th Floor
New York, NY 10006
212-965-2200
Email: snaifeh@naacpldf.org

Tiffany Alora Thomas
Harvard Law School
Voting Rights Project
6 Everett St
Suite 4105
Cambridge, MA 02138
617-998-1582
Email: tthomaslundborg@law.harvard.edu

Tracie L. Washington
8004 Belfast Street
New Orleans, LA 70125
504-899-1889
Fax: 504-899-1091
Email: tlwesq@cox.net

Victoria Wenger
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street
Ste 5th Floor
New York, NY 10006
212-965-2267
Email: vwenger@naacpldf.org

Yahonnes Cleary
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
212-373-3000
Email: ycleary@paulweiss.com

I hereby further certify that on September 15, 2023, a true and correct copy of the foregoing was caused to be delivered to the district court by Federal Express:

Hon. Shelly D. Dick
U.S District Court, Middle District of Louisiana
777 Florida Street,
Suite 301
Baton Rouge, LA 70801

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY