No. 24-109

IN THE
Supreme Court of the United States

LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, ET AL.

Appellees.

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

BRIEF FOR EDWARD GALMON, SR., CIERRA HART, NORRIS HENDERSON, TRAMELLE HOWARD, AND ROSS WILLIAMS ("*GALMON AMICI*") AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICI* CURIAE[1]

Edward Galmon, Sr., Cierra Hart, Norris Henderson, and Tramelle Howard are Black Louisiana voters whose successful Voting Rights Act ("VRA") litigation in related proceedings resulted in the enactment of S.B. 8, the congressional districting map challenged below. That map created a new Black-opportunity district benefiting Ross Williams and thousands of similarly situated Black Louisianians who seek to maintain a VRA-compliant districting map that preserves their right to an undiluted vote. *Galmon Amici* also have an interest in the integrity of the civil litigation system, such that federal voting rights vindicated in one court are not immediately revoked by another court without their participation.

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[1] In accordance with Rule 37.2, counsel for *Galmon Amici* notified counsel of record for all parties on August 23, 2024, of their intention to file an *amicus* brief. In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The National Redistricting Foundation made a monetary contribution to fund the preparation and submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In rushing to permanently enjoin S.B. 8, the three-judge district court made a hash of the factual record and botched the legal analysis.[2] As the State of Louisiana explains in its jurisdictional statement, the district court failed to appreciate the overwhelming evidence that the predominating motivation explaining S.B. 8's enactment was the Louisiana legislature's desire to draw a Voting Rights Act-compliant map that satisfied its own political goals, rather than forfeit those prerogatives to a judicial map-drawer bound to ignore partisan advantage. The district court also erred in its conclusion that S.B. 8 failed strict scrutiny, ignoring the legislature's compelling interests in complying with multiple federal court orders that a remedial congressional districting map required two Black-opportunity districts. And it was preposterous for the lower court to subject the resulting *legislatively enacted* map in this *racial gerrymandering* challenge to the threshold compactness test imposed on *private litigants* who challenge enacted maps for violating the *Voting Rights Act*. For all these reasons, the judgment below should be reversed.

Galmon Amici write separately to correct one crucial flaw in the State's argument.[3] The State suggests

[2] It also improperly excluded *Galmon Amici*, who were entitled to intervene as of right. *See* Jurisdictional Statement, *Galmon v. Callais*, No. 24-111 (July 30, 2024).

[3] To be sure, it is not the only flaw in the State's Jurisdictional Statement. The State's assertion that racial gerrymandering claims are nonjusticiable contradicts an unbroken line of precedent spanning decades and should not be entertained.

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that "it is impossible to draw a second majority-Black district in Louisiana that looks 'better' than District 6 in the S.B. 8 map." Jurisdictional Statement at 26 ("JS"). That is false. As plaintiffs in the very litigation that confirmed Louisiana's Voting Rights Act obligation to create a second Black-opportunity district, leading to S.B. 8's enactment as a remedial map, *Galmon Amici* introduced four illustrative maps proving that Louisiana could add a second Black-opportunity district in any of multiple configurations that were even *more* compact than the previously enacted map containing only a single Black-opportunity district.

The fact that the State declined to adopt a map resembling any of these configurations further confirms that S.B. 8's departure from maximum compactness reflected motivations other than race—namely, legislators wanted to protect the reelection prospects of favored incumbents whose seats could have been threatened under a more compact Section 2-compliant map. Because the Constitution permits these political motivations, the injunction below should be reversed.

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ARGUMENT

In *Alexander v. South Carolina State Conference of the NAACP*, 144 S. Ct. 1221 (2024), this Court recently reiterated that racial-gerrymandering plaintiffs "must prove that the State 'subordinated' race-neutral districting criteria such as compactness . . . to 'racial

considerations.'" *Id.* at 1234 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).[4] By asking whether traditional criteria such as compactness were subordinated to unlawful "racial considerations," *Alexander* necessarily recognized that compactness may, alternatively, be subordinated to lawful political considerations. These permissible departures from perfect compactness for political reasons, this Court underscored, are likely to be much more common than unlawful racial gerrymanders. *See id.* (recognizing that, "at least in theory," racial gerrymandering claims may be cognizable in "those *rare instances* in which a district's shape is 'so bizarre on its face that it discloses a racial design' *absent any alternative explanation*" (emphasis added) (quoting *Miller*, 515 U.S. at 914)). Was S.B. 8 the rare example of a map with districts featuring shapes so bizarre as to be inexplicable on grounds other than race? No, it was not.

On this point, both the State and the district court are mistaken. The State represents that "it is impossible to draw a second majority-Black district in Louisiana that looks 'better' than District 6 in the S.B. 8 map." JS at 26. But the State knows better than that.

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[4] Because *Alexander* was published after the district court enjoined S.B. 8, this Court could avoid full consideration of the merits of this appeal by vacating the injunction and remanding for reconsideration in light of the principles articulated in *Alexander*. *See Wellons v. Hall*, 558 U.S. 220, 225–26 (2010) (recognizing that vacating and remanding "conserves the scarce resources of this Court, assists the court below by flagging a particular issue that it does not appear to have fully considered, and assists this Court by procuring the benefit of the lower court's insight before [this Court] rule[s] on the merits" (cleaned up)).

As it recounts, S.B. 8 was enacted after four *Galmon Amici* and other consolidated plaintiffs prevailed in the Middle District of Louisiana on their claim that the VRA requires Louisiana to create a second Black-opportunity congressional district. JS at 8–11. To secure their preliminary injunction—and to successfully defend the merits of the district court's legal analysis on appeal—the VRA plaintiffs submitted a full assembly of illustrative maps, including four proposals from *Galmon Amici*. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 778 (M.D. La. 2022) ("*Robinson I*"), *rev'd on other grounds*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson II*").[5] These illustrative maps confirmed that the task of "configuring Louisiana congressional maps with two majority-minority districts with fidelity to traditional redistricting principles [is] easy and obvious." *Id.* at 781; *see also id.* at 821 (finding task is "easily achieved"). Indeed, the Middle District found that plaintiffs' illustrative map-drawers "demonstrated, without dispute, that in terms of the objective measures of compactness, the congressional districts in the illustrative plans are demonstrably superior to the [then-]enacted plan." *Id.* at 823; *Robinson II*, 86 F.4th at 592 (affirming finding that illustrative maps satisfied compactness requirement).

Unlike the State's jurisdictional statement, the Western District of Louisiana's opinion did favorably recount testimony from the trial below that S.B. 8's "majority-Black districts were especially non-compact

[5] The Middle District of Louisiana reproduced pictures of several of the illustrative maps in its opinion granting a preliminary injunction. *See Robinson I*, 605 F. Supp. 3d at 779–80, 785.

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compared to other plans that also included two majority-minority districts." App. at 66a. But the majority never interrogated that finding for its legal significance. Crucially, if S.B. 8's departures from maximal compactness were not necessary to create two Black-opportunity districts—and *Galmon Amici*'s illustrative maps prove they were not—then there is powerful reason to doubt that S.B. 8's departures from maximal compactness were chosen for predominantly racial reasons. In other words, because legislators could have satisfied any interest in creating a second Black-opportunity district by drawing compact districts, the choice to draw non-compact districts must have reflected motivations other than a desire to create a second Black-opportunity district.

Indeed, those political motivations are reflected in the record. *Galmon Amici*'s compact illustrative maps would have jeopardized the reelection of favored incumbent Congresswoman Julia Letlow, and so the legislature chose to depart from compactness to protect her seat. *See* App. 21a, 48a–49a. Because Plaintiffs below failed to rule out the possibility that the legislature subordinated compactness to political considerations, the district court erred by entering judgment in their favor.

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CONCLUSION

The Court should note probable jurisdiction and reverse.

Respectfully submitted,

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