No. 24-111

IN THE
Supreme Court of the United States

EDWARD GALMON, SR., *et al.*,

Appellants,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

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

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

LALITHA D. MADDURI
JACOB D. SHELLY
DANIEL COHEN
QIZHOU GE
ELIAS LAW GROUP LLP
250 Massachusetts Ave, NW
Suite 400
Washington, D.C. 20001

ABHA KHANNA
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Ave
Suite 2100
Seattle, Washington 98101
(206) 656-0177
AKhanna@elias.law

Counsel for Appellants

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INTRODUCTION

Galmon Movants appeal the district court's denial of their motion to intervene. Jurisdiction over that appeal must lie in either the Fifth Circuit or this Court, and precedents from both courts point to this forum. Indeed, in identical circumstances—where an intervention appeal was pending in the Fifth Circuit after a three-judge district court enjoined Louisiana's congressional districting map—the Fifth Circuit disclaimed jurisdiction over the intervention appeal and this Court adjudicated the intervention dispute on the merits. *Galmon* Movants are entitled to rely on that on-point precedent to press their appeal here.

Galmon Movants were also entitled to intervene below. Plaintiffs' Motion to Dismiss or Affirm ("Mot.") fails to rebut *Galmon* Movants' explanation of Rule 24's plain text: Intervention may not be denied where the individuals or institutions purported to represent a movant's interests were not "existing parties" when the movant sought intervention. Fed. R. Civ. P. 24(a)(2). Neither *Robinson* Intervenors nor the State were existing parties when *Galmon* Movants "claim[ed] an interest" in this litigation, *id.*, and so neither could supply a basis to defeat *Galmon* Movants' intervention.

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ARGUMENT

The denial of intervention warrants summary reversal.[1]

[1] Plaintiffs' introduction hurls all kinds of wildly inaccurate accusations at *Galmon* Movants (and, inexplicably, *Robinson* Intervenors). *See* Mot. 2–5. Because of space limitations, this opposition addresses only the arguments relevant to intervention.

I. This Court has jurisdiction.

Plaintiffs pose a jurisdictional question that this Court has already answered: When this Court hears an automatic appeal from a three-judge district court's injunction, does it also review the district court's denial of intervention? Yes, it does.

Thirty years ago, during the previous constitutional challenge to Louisiana's congressional map, the Western District of Louisiana denied intervention to "St. Cyr" movants. *See Hays v. Louisiana*, 18 F.3d 1319, 1320 (5th Cir. 1994). Like here, St. Cyr movants immediately appealed the denial of their intervention to the Fifth Circuit. Like here, when the Western District subsequently enjoined Louisiana's congressional map, the State of Louisiana appealed that injunction to this Court. *Id.* Notably, the Fifth Circuit then dismissed the pending intervention appeal for lack of jurisdiction. *Id.* at 1320–21. It concluded that "once there has been a timely and appropriate appeal to the Supreme Court of a three-judge court's ruling on the merits, neither 28 U.S.C. § 1253 nor the Supreme Court's narrowing gloss suggest that the Supreme Court restrain from also considering interlocutory orders properly appealed." *Id.* (collecting cases); *see also Benson v. Beens*, 456 F.2d 244, 245 (8th Cir. 1972) (reaching same conclusion in same posture).

St. Cyr movants pursued two avenues to bring their appeal before this Court: through a petition for a writ of certiorari, and by noticing a direct appeal of the district court's injunction. In response, plaintiffs—*represented by the same counsel for Plaintiffs here*—

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argued that the Fifth Circuit lacked appellate jurisdiction and that this Court "has jurisdiction over the Appeal from the district court's denial of intervention." Br. in Opp'n, *St. Cyr v. Hays*, No. 94-754, 1994 WL 16100906, at *2 (U.S. Nov. 7, 1994). This Court indicated its agreement—it denied the certiorari petition, *St. Cyr v. Hays*, 513 U.S. 1066 (1994), and decided the intervention appeal on the merits, *St. Cyr v. Hays*, 513 U.S. 1054 (1994) (affirming district court judgment). Plaintiffs' only response to this directly on-point history is to suggest that no party filed a motion to dismiss. Mot. 21. But that is irrelevant because this Court must determine jurisdiction for itself. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–95 (1998). In *St. Cyr*—a case that parallels this one in every material respect—this Court exercised jurisdiction.

That transfer of jurisdiction from the court of appeals to this Court when the injunction is on appeal makes sense. Were the intermediate court to adjudicate the intervention appeal, its decision "could cast a shadow or impinge upon the Supreme Court's functioning." *Hays*, 18 F.3d at 1321. Reversal of the intervention denial, for example, would require vacating the orders entered in *Galmon* Movants' absence, including the order permanently enjoining S.B. 8. *See, e.g.*, *Edwards v. City of Houston*, 78 F.3d 983, 1006 (5th Cir. 1996) (reversing denial of intervention and remanding with order to reopen discovery and conduct new hearing); *City of Houston v. Am. Traffic Sols., Inc.*, 668 F.3d 291, 294 (5th Cir. 2012) (similar); *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 136 (1967) (similar). If Plaintiffs are correct that

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jurisdiction over the intervention appeal lies in the court of appeals, then the intermediate court could moot the injunction appeal in this Court—an unprecedented reversal of power.

Similarly, adjudication of the intervention appeal is necessary to decide whether *Galmon* Movants are proper parties to the injunction appeal. "Orderly judicial administration dictates that the court hearing the principal appeal should have jurisdiction over the issue as to who should participate in such appeal." *Benson*, 456 F.2d at 245. Thus, jurisdiction over this appeal must lie in this Court.[2]

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II. This Court should reverse the district court's denial of intervention.

Plaintiffs largely ignore *Galmon* Movants' substantive arguments requiring reversal, arguing only briefly that *Galmon* Movants lack an interest in this litigation and that any interest is adequately represented by *Robinson* Intervenors and the State. The district court already addressed two of those three issues correctly: *Galmon* Movants have identified sufficient interests for intervention, and those interests are not represented by the State. The district court erred, however, by holding that *Galmon* Movants' interests were represented by *Robinson* Intervenors. This was wrong twice over. *Robinson* Intervenors were not "existing parties" when *Galmon* Movants

[2] Because the only procedure to bring this direct appeal was by noticing an appeal of the injunction, Plaintiffs' timeliness and standing arguments are inapposite.

moved to intervene, and therefore *Robinson* Intervenors' interests are irrelevant to *Galmon* Movants' intervention under the plain text of Rule 24. Compounding that error, *Robinson* Intervenors do not, in fact, represent *Galmon* Movants' interests.

A. *Galmon* Movants have identified protectible interests in this litigation.

As the district court recognized, *Galmon* Movants' direct interest in the configuration of Louisiana's congressional map satisfies the requirement for intervention as of right. App.4a, 8a. "[A]n interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *Texas v. United States*, 805 F.3d 653, 658–59 (5th Cir. 2015). Notably, Rule 24(a)'s "interest requirement may be judged by a more lenient standard if the case involves a public interest question." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014). Because redistricting is a quintessential matter of public interest, that lenient standard applies here. Indeed, affected voters are regularly granted intervention in redistricting challenges. *See, e.g.*, *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 845 (5th Cir. 1993) (en banc); *cf. League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434–35 (5th Cir. 2011).

Galmon Movants identified two interests in this action. First, proposed intervenors maintain significant protectable interests in defending the outcomes of litigation they initiated. *See Prete v. Bradbury*, 438

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F.3d 949, 954–56 (9th Cir. 2006); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397–98 (9th Cir. 1995); *McQuilken v. A & R Dev. Corp.*, 510 F. Supp. 797, 803 (E.D. Pa. 1981). Four *Galmon* Movants (Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard) thus have an interest in defending S.B. 8, which was enacted as a direct result of these individuals' successful efforts in the Middle District litigation.

Plaintiffs respond that the Middle District litigation is "moot," Mot. 23, but each time they elide any mention of what caused that mootness—the legislature's enactment of S.B. 8. With S.B. 8 in place, *Galmon* Movants' legal interest evolved from seeking a Section 2-compliant map from the judiciary to defending the Section 2-compliant map they had received from the legislature. Because any injunction of S.B. 8 rips the scab off *Galmon* Movants' voting rights wound, *Galmon* Movants maintain strong interests in avoiding that re-injury.

Second, Mr. Henderson, Mr. Howard, and Dr. Williams have an interest in defending S.B. 8 because that map directly affects their voting power. *See City of Boerne*, 659 F.3d at 434–35 ("Registered voters have a sufficiently substantial interest to intervene in an action challenging the voting district in which the voters are registered." (alterations adopted) (quoting *Johnson v. Mortham*, 915 F. Supp. 1529, 1536 (N.D. Fla. 1995))). As Plaintiffs explained below, S.B. 8 unpacked Mr. Henderson's district, CD-2, to allow for the creation of a second Black-opportunity district, *see* App.189a, curing the unlawful vote dilution that he suffered under Louisiana's previous districting plan,

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see Thornburg v. Gingles, 478 U.S. 30, 46 n.11 (1986) (recognizing packing injury); *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 817–18 (M.D. La. 2022) (finding *Galmon* Movants resided in districts alleged to have been "packed or cracked"), *vacated on other grounds*, 86 F.4th 574 (5th Cir. 2023). S.B. 8 reassigned Mr. Howard, in turn, from the previously packed CD-2 to CD-6, the new Black-opportunity district. Surely, he has an interest in preserving the opportunities newly afforded by that district, particularly after he filed a lawsuit to create it. And because Dr. Williams also resides in CD-6, he, too, maintains a strong interest in defending the electoral opportunities that the new configuration provides.

Plaintiffs' accusation that *Galmon* Movants assert "generalized" grievances, Mot. 24, is oblivious both to the standard on intervention and to Plaintiffs' own standing deficiencies. While *Galmon* Movants are not required to prove standing as proposed intervenor-defendants, the interests they assert are particularized. They—unlike Louisiana voters generally—either litigated the Section 2 case that resulted in S.B. 8's enactment, reside in a district that S.B. 8 modified to comply with Section 2's obligations, or both. Plaintiffs, in contrast, are haphazardly drawn from across the state, and most Plaintiffs do not (and cannot) make any claim that their assigned district was racially gerrymandered. *See* App.80a.

Next, Plaintiffs argue that "neither Dr. Williams nor any other voter has demonstrated any right to be placed in a majority-Black district." Mot. 25. But Section 2 *does* vest Black voters with a right to districts

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where they may elect candidates of their choice when relevant conditions are present. *Allen v. Milligan*, 599 U.S. 1, 17–19 (2023). Plaintiffs contest whether those conditions are present in Louisiana, which is merely to say they disagree with *Galmon* Movants on the merits of the underlying litigation—the question of whether Louisiana's legislature had good reason to believe that Section 2 required the creation of Black-opportunity districts was at the heart of the liability-phase dispute below. The mere fact that Plaintiffs sought to extinguish *Galmon* Movants' interests in maintaining those districts does not support a finding at the intervention stage that those interests never existed.

Finally, Plaintiffs argue that *Galmon* Movants' interests can be addressed at the remedial phase. Mot. 25. But Dr. Williams inexplicably remains excluded from the remedial phase. *See* App.152a.[3] Even if he were able to vindicate his interests at the remedial phase—a result that Plaintiffs are sure to stridently oppose—that opportunity is irrelevant to whether *Galmon* Movants possesses an interest in defending the *current* shapes of CD-6 and CD-2 in the liability phase. Particularly where *Galmon* Movants contend that S.B. 8 prioritizes the Legislature's political goals,

[3] Plaintiffs appear to read differently the order permitting other *Galmon* Movants permission to intervene in remedial proceedings, Mot. 26 n.4, but 1) Dr. Williams cannot rely on Plaintiffs' interpretation over the order's plain text; 2) Plaintiffs identify no requirement to seek reconsideration before appealing; and 3) *Galmon* Movants do not seek reconsideration of a *sua sponte* order partially granting intervention; they seek reversal of the orders denying intervention.

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see App.181a—which may not receive similar emphasis in a judicially ordered remedial plan—the liability phase reflects critical terrain where *Galmon* Movants' interests will be vindicated or defeated.

B. Existing parties did not adequately represent *Galmon* Movants' interests.

Plaintiffs have failed to rebut any of the arguments in *Galmon* Movants' jurisdictional statement about why their interests were not represented by existing parties.

1. Plaintiffs and the Secretary were the only "existing parties" for purposes of Rule 24.

Plaintiffs attempt to avoid the glaring error requiring reversal—the district court's failure to recognize that *Robinson* Intervenors were not existing parties when *Galmon* Movants sought intervention—by burying their response in the final paragraphs of their motion. *See* Mot. 30–32. The analysis they do provide is incorrect. Far from a "novel theory," *Galmon* Movants' reading of Rule 24's plain text is consistent with the approach taken by courts across the country every day. Yet again, Plaintiffs pass on the invitation to identify a single federal court *anywhere* that has denied intervention due to adequate representation by a later-moving intervenor.

Nor is this a dispute about discretionary docket management. The cases Plaintiffs cite for this point do not even mention intervention, let alone hold that district courts are free to override Rule 24's "existing parties" analysis. *See* Mot. 31. The undisputed truism

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that district courts have discretion to manage certain elements of their docket does not license them to conflate *permissive* intervention—the denial of which is reviewed for abuse of discretion— with intervention *of right*—the denial of which is reviewed de novo. *See Edwards*, 78 F.3d at 995. This case concerns the latter, and the Rule governing intervention of right explicitly divests district courts of discretion. *See* Fed. R. Civ. P. 24(a) (identifying when "the court must permit" intervention).

Plaintiffs conclude by arguing that the ordinary application of Rule 24 would "preclude[] a district court from handling multiple intervention motions in a single docket entry." Mot. 30. That is wrong, and the error reveals a fundamental misunderstanding of the issues in this appeal. Indeed, *Galmon* Movants' jurisdictional statement collected examples where courts correctly resolved multiple intervention motions in a single order—the very practice that Plaintiffs appear keen to preserve. *See, e.g.*, *Garfield County v. Biden*, No. 4:22-cv-00059-DN-PK, 2023 WL 2561539, at *4 (D. Utah March 17, 2023); *Mo. Coal. for Env't Found. v. Wheeler*, No. 2:19-cv-4215-NKL, 2020 WL 2331201, at *9 (W.D. Mo. May 11, 2020). The problem with the orders below is not that they adjudicated in one docket entry multiple motions to intervene; it is that they resolved *Galmon* Movants' motions incorrectly.

Rule 24 imposes a uniform, predictable standard: an "interest relating to the property or transaction that is the subject of the action" may supply a basis for intervention of right unless another party or proposed party has already claimed that interest. Fed. R.

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Civ. P. 24(a)(2). Because *Galmon* Movants' interests were unrepresented when they moved to intervene, the district court's denial of intervention was error.

2. The State does not adequately represent *Galmon* Movants.

The State was not an existing party when *Galmon* Movants sought intervention, and it does not adequately represent *Galmon* Movants' interests. Contrary to Plaintiffs' assertions, courts have made clear that the mere invocation of a presumption of adequate representation cannot defeat intervention wherever a governmental defendant and proposed intervenors each seek to defend a challenged policy. *See, e.g.*, *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538–39 (1972) (reversing denial of intervention where government defendant did not adequately represent private intervenor); *Brumfield*, 749 F.3d at 345–46 (reversing denial of intervention where proposed intervenors offered "real and legitimate additional or contrary arguments" than government in defense of challenged program); *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("[W]e look skeptically on government entities serving as adequate advocates for private parties."); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996–97 (10th Cir. 2009) (emphasizing showing of inadequate representation "is easily made when the party upon which the intervenor must rely is the government"); *Chiglo v. City of Preston*, 104 F.3d 185, 187–88 (8th Cir. 1997) ("If the citizen stands to gain or lose from the litigation in a way different from the

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public at large, the parens patriae would not be expected to represent him."); *Fresno County v. Andrus*, 622 F.2d 436, 439 (9th Cir. 1980) (reversing denial of intervention where state defendant did not pursue all arguments offered by intervenor and government defendant adopted its position "only reluctantly after [intervenor] brought a law suit against it").

Here, there was never a doubt that the State's interests and arguments could diverge from *Galmon* Movants'. *Galmon* Movants have an interest in vindicating the Fifth Circuit's affirmance of the Middle District's determination that Section 2 requires Louisiana to create two Black-opportunity districts; the State aggressively litigated against *Galmon* Movants at every step of that litigation. *Galmon* Movants have personal interests in preserving district lines that place them in Black-opportunity districts; the State's general interest in achieving a lawful districting plan does not include a similar interest in the placement of any individual voters. *Galmon* Movants have interests in discrediting each expert Plaintiffs use to attack S.B. 8; because the State had retained in the Middle District litigation the same expert that Plaintiffs presented below, the State was likely to be conflicted out of attacking his credibility—and did, in fact, muzzle any criticism. *See* App.186a. In fact, the State's inadequate representation is conclusively resolved by the jurisdictional statement it filed in its related appeal, which mischaracterized the Middle District record, *see Galmon* Amicus Br. at 4–6, *Louisiana v. Callais*, No. 24-109 (U.S. Sep. 3, 2024), and asked for a holding that racial gerrymandering is nonjusticiable—which

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would immunize legislatures from future litigation by voters like *Galmon* Movants.

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3. *Robinson* Intervenors do not adequately represent *Galmon* Movants.

Plaintiffs' four sentences about *Robinson* Movants' interests, Mot. 27, fail to grapple with—let alone rebut—the arguments in *Galmon* Movants' jurisdictional statement.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

LALITHA D. MADDURI
JACOB D. SHELLY
DANIEL COHEN
QIZHOU GE
ELIAS LAW GROUP LLP

ABHA KHANNA
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Ave.
Suite 2100
Seattle, WA 98101
(206) 656-0177
AKhanna@elias.law

September 17, 2024

Counsel for Appellants

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