Nos. 24-109 and 24-110

In the Supreme Court of the United States

STATE OF LOUISIANA, APPELLANT

v.

PHILLIP CALLAIS, ET AL.

PRESS ROBINSON, ET AL., APPELLANTS

v.

PHILLIP CALLAIS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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QUESTIONS PRESENTED

In 2024, Louisiana redrew its congressional districts in response to court decisions finding that its prior map likely violated Section 2 of the Voting Rights Act of 1965, 52 U.S.C. 10301. This case involves a claim that one of the redrawn districts, Congressional District 6, was racially gerrymandered in violation of the Equal Protection Clause. This brief addresses the following questions:

1. Whether a State's intentional creation of a majority-minority district to comply with Section 2, without more, establishes racial predominance and requires the State to satisfy strict scrutiny.

2. Whether the district court erred in holding that Louisiana's use of race in drawing Congressional District 6 was not narrowly tailored to achieve the compelling interest of complying with Section 2.

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TABLE OF CONTENTS

Page

Interest of the United States 1
Statement:
A. Legal background 2
B. Louisiana's 2022 redistricting process and the *Robinson* Section 2 litigation 4
C. Louisiana's 2024 redistricting process 8
D. Proceedings below 10
Summary of argument 12
Argument 15
A. This Court need not address predominance, but if it reaches the issue it should reiterate that the intentional creation of a majority-minority district does not necessarily establish that race predominated 16
B. This Court should vacate and remand because the district court applied incorrect legal standards in holding that CD6 failed strict scrutiny 22
1. A State need only have a strong basis in evidence to conclude that Section 2 requires a remedial district 22
2. The district court applied the wrong legal framework 27
Conclusion 33

TABLE OF AUTHORITIES

Cases:

Abbott v. *Perez*, 585 U.S. 579 (2018) 19, 20, 22-25, 28
Abrams v. *Johnson*, 521 U.S. 74 (1997) 22, 24
Alabama Legislative Black Caucus v. *Alabama*, 575 U.S. 254 (2015) 4, 25, 31
Alexander v. *South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024) 2-4, 12, 13, 17, 19
Allen v. *Milligan*, 599 U.S. 1 (2023) 2, 3, 13, 20, 23, 26

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Cases—Continued: Page

Ardoin v. *Robinson*:
142 S. Ct. 2892 (2022) 7
143 S. Ct. 2654 (2023) 7
Bethune-Hill v. *Virginia State Bd. of Elections*,
580 U.S. 178 (2017) 4, 19, 25, 28, 29, 31
Bush v. *Vera*, 517 U.S. 952 (1996) 15, 18-20, 25, 26, 31, 33
Connor v. *Finch*, 431 U.S. 407 (1977) 24
Cooper v. *Harris*,
581 U.S. 285 (2017) 3, 4, 13, 15, 17, 22, 23, 25, 27, 31
Lawyer v. *Department of Justice*,
521 U.S. 567 (1997) 24
League of United Latin Am. Citizens v. *Perry*,
548 U.S. 399 (2006) 14, 23, 26, 32
Miller v. *Johnson*,
515 U.S. 900 (1995) 16, 17, 20, 21, 23, 24, 30
Perry v. *Perez*, 565 U.S. 388 (2012) 24
Purcell v. *Gonzalez*, 549 U.S. 1 (2006) 12
Robinson v. *Ardoin*:
86 F.4th 574 (5th Cir. 2023) 7, 8, 24, 28, 30
37 F.4th 208 (5th Cir. 2022) 6
605 F. Supp. 3d 759 (M.D. La. 2022) 5, 6, 8, 20, 24, 28, 30
Shaw v. *Hunt*, 517 U.S. 899 (1996) 3, 16, 20, 25, 26, 30-32
Shaw v. *Reno*, 509 U.S. 630 (1993) 3, 19
Thornburg v. *Gingles*, 478 U.S. 30 (1986) 2, 3, 27
White v. *Weiser*, 412 U.S. 783 (1973) 24
Wisconsin Legislature v. *Wisconsin Elections Comm'n*, 595 U.S. 398 (2022) 23, 28, 29, 31
Wise v. *Lipscomb*, 437 U.S. 535 (1978) 24

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Constitution and statutes: Page

U.S. Const.:
Art. III 13, 30
Amend. XIV (Equal Protection Clause) 2, 3, 19, 23, 25
Amend. XV 23
Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (52 U.S.C. 10301) 1
§ 2, 79 Stat. 437 .....1-7, 12-16, 18, 20-32
52 U.S.C. 10301(b) 2
52 U.S.C. 10308(d) 1

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INTEREST OF THE UNITED STATES

This case is a challenge to the constitutionality of a redistricting plan Louisiana adopted in response to court decisions finding a likely violation of Section 2 of the Voting Rights Act of 1965 (VRA), Pub. L. No. 89-110, 79 Stat. 437 (52 U.S.C. 10301). The Department of Justice enforces Section 2. 52 U.S.C. 10308(d). The United States thus has a significant interest in the interpretation and application of the relevant constitutional and statutory provisions. In particular, the United States has an interest in ensuring that States

have latitude to adopt districts that comply with both Section 2 and the Equal Protection Clause.

STATEMENT

A. Legal Background

Redistricting is "a traditional domain of state legislative authority" that is subject to federal statutory and constitutional requirements. *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 7 (2024). This case concerns the requirements governing the consideration of race in districting.

1. Section 2 of the VRA prohibits districting plans that "render[] a minority vote unequal to a vote by a nonminority voter." *Allen* v. *Milligan*, 599 U.S. 1, 25 (2023). Specifically, Section 2 bars voting practices that result in members of a racial minority group "hav[ing] less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. 10301(b).

In *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), this Court identified three "preconditions" for a claim alleging that a districting scheme violates Section 2. *Id.* at 50. First, the relevant minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Ibid.* That typically requires plaintiffs to produce "illustrative maps" showing that an additional majority-minority district could be drawn while "comport[ing] with traditional districting criteria." *Allen*, 599 U.S. at 20. Second, the minority group must be "politically cohesive." *Gingles*, 478 U.S. at 51. Third, the "majority" must "vote[] sufficiently as a bloc" to allow it "usually to defeat the minority's preferred candidate." *Ibid.* If those preconditions are satisfied, the court must then determine whether, in "the totality of the circumstances," the dis-

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tricting scheme leaves minority voters with "less opportunity than white voters to elect representatives of their choice." *Id.* at 80.

The usual remedy for a Section 2 violation is "drawing a majority-minority district." *Cooper* v. *Harris*, 581 U.S. 285, 302 (2017); see *Allen*, 599 U.S. at 41. But that does not mean a State must adopt one of the illustrative districts the plaintiffs used to satisfy the first *Gingles* precondition. To the contrary, "States retain broad discretion in drawing districts to comply with the mandate of § 2," *Shaw* v. *Hunt*, 517 U.S. 899, 917 n.9 (1996) (*Shaw II*), and a legislature is free to craft a remedial map that cures the violation while also navigating other interests implicated by the "inescapably political enterprise" of districting, *Alexander*, 602 U.S. at 6.

2. The Equal Protection Clause of the Fourteenth Amendment prohibits racial gerrymandering—that is, the unjustified, predominant use of race in drawing districts. *Shaw* v. *Reno*, 509 U.S. 630, 642 (1993) (*Shaw I*). "But given 'the complex interplay of forces that enter a legislature's redistricting calculus,'" this Court has "repeatedly emphasized that federal courts must 'exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.'" *Alexander*, 602 U.S. at 7 (citation omitted).

A plaintiff bringing a racial-gerrymandering claim accordingly must prove that race was the "dominant and controlling" consideration in a legislature's decision "to place a significant number of voters within or without a particular district." *Shaw II*, 517 U.S. at 905 (citation omitted). "To make that showing, a plaintiff must prove that the State 'subordinated' race-neutral districting criteria" to "'racial considerations.'" *Alexander*, 602 U.S. at 7 (citation omitted). If the plaintiff can

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meet that high bar, the burden shifts to the State to prove that its map "furthers a compelling governmental interest" and is "'narrowly tailored'" to achieve that interest. *Ibid.*

"This Court has long assumed that one compelling interest is complying with operative provisions of the [VRA]," including Section 2. *Cooper*, 581 U.S. at 292. When a State invokes Section 2 to justify the predominant use of race in districting, however, it is not required to prove that Section 2 actually required the districts it drew. Instead, a State satisfies the "narrow tailoring requirement" if it has "a 'strong basis in evidence' in support of the (race-based) choice that it has made." *Alabama Legislative Black Caucus* v. *Alabama*, 575 U.S. 254, 278 (2015) (*ALBC*) (citation omitted). That standard "gives States 'breathing room' to adopt reasonable compliance measures that may prove, in perfect hindsight, not to have been needed." *Cooper*, 581 U.S. at 293 (quoting *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U.S. 178, 196 (2017)).

B. Louisiana's 2022 Redistricting Process And The *Robinson* Section 2 Litigation

This case arose from Louisiana's attempt to redraw its congressional districts after a district court and the Fifth Circuit held that Louisiana's original plan likely violated Section 2.

1. After the 2020 Census, Louisiana had to redraw its six districts for the United States House of Representatives. J.S. App. 5a-6a.[1] In March 2022, the Louisiana legislature enacted House Bill 1 (HB1). *Id.* at 6a. HB1 contained only one majority-Black district, Con-

[1] Except as otherwise noted, references to "J.S. App." refer to the appendix in No. 24-109.

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gressional District 2 (CD2), which encompassed New Orleans and extended west and north to reach parts of Baton Rouge. *Id.* at 7a; see J.A. 345 (HB1 map). Governor John Bel Edwards vetoed HB1, but the legislature overrode the veto. J.S. App. 7a.

2. Two sets of plaintiffs sued Louisiana's Secretary of State in the United States District Court for the Middle District of Louisiana. *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759, 768 (M.D. La. 2022) (*Robinson I*). The plaintiffs alleged that HB1 violated Section 2 by "packing" some Black voters into CD2 while "cracking" others throughout the other five districts. *Id.* at 771. After a five-day evidentiary hearing, the *Robinson* district court granted the plaintiffs' motion for a preliminary injunction barring the use of HB1 in the 2022 congressional election. *Id.* at 766, 769. In a detailed opinion, the court held that the plaintiffs were likely to prevail on their Section 2 claim and that the other preliminary-injunction factors were met. *Id.* at 766-858.

With respect to the first *Gingles* precondition, the *Robinson* district court found that the plaintiffs were likely to succeed in proving that Black voters could constitute a majority in a second reasonably configured district. *Robinson I*, 605 F. Supp. 3d at 820-821; see *id.* at 778-797, 820-839. The court explained that the plaintiffs had "put forth several illustrative maps which show that two congressional districts with a [Black voting age population (BVAP)] of greater than 50% are easily achieved." *Id.* at 821; see *id.* at 779-780, 785 (maps). The court found that the illustrative maps outperformed HB1 across multiple measures of compactness; better respected political subdivisions; preserved communities of interest; and avoided incumbent pairing. *Id.* at 827-831. With respect to the second and third *Gingles* pre-

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conditions, the court found that Black voters in Louisiana voted cohesively but were consistently overridden by white-bloc voting. *Id.* at 797-806, 839-844. And the court further found that under the totality of the circumstances, HB1 denied Black voters a meaningful opportunity to elect their candidates of choice. *Id.* at 807-815, 844-851.

In response to the State's argument that the *Robinson* plaintiffs' illustrative maps were the product of racial gerrymandering, the district court found that "the record does not support a finding that race predominated in the illustrative map-making." *Robinson I*, 605 F. Supp. 3d at 838. The court explained that if the plaintiffs' experts had "engaged in race-predominant map drawing," the resulting maps "would surely betray this imbalanced approach by being significantly less compact, by disregarding communities of interest, or some other flaw"—yet the illustrative maps "outperformed the enacted plan on every relevant criteria." *Id.* at 839.

Finally, the district court concluded that "[t]he appropriate remedy" for the Section 2 violation was "an additional majority-Black congressional district." *Robinson I*, 605 F. Supp. 3d at 766. In light of this Court's "instruct[ion]" that state legislatures "should have the first opportunity" to choose a remedial plan, *ibid.*, the district court gave the Louisiana legislature a window to enact "a new map that is compliant with Section 2," while noting that the court would have to impose its own map if the legislature failed to act. *Id.* at 858; see *id.* at 852, 856-858.

3. The *Robinson* district court and the Fifth Circuit declined to stay the injunction pending appeal. *Robinson* v. *Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) (per curiam) (*Robinson II*); see *id.* at 216-227 (finding that the

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State was unlikely to succeed on appeal). This Court then stayed the injunction, granted a writ of certiorari before judgment, and held the case in abeyance pending the Court's decision in *Allen*, a similar Section 2 case from Alabama. *Ardoin* v. *Robinson*, 142 S. Ct. 2892 (2022). But after issuing its decision in *Allen*, the Court dismissed the writ as improvidently granted and returned the case to the Fifth Circuit. *Ardoin* v. *Robinson*, 143 S. Ct. 2654 (2023).

4. The Fifth Circuit unanimously upheld the district court's conclusion that the *Robinson* plaintiffs were "likely to succeed on their claim that there was a violation of Section 2." *Robinson* v. *Ardoin*, 86 F.4th 574, 583 (2023) (*Robinson III*). The Fifth Circuit examined the *Gingles* preconditions and the totality of the circumstances, finding no legal errors and no basis for disturbing the district court's factual findings at either stage. *Id.* at 589-599. In particular, the Fifth Circuit upheld the district court's finding that race did not predominate in the drawing of the *Robinson* plaintiffs' illustrative maps, concluding that the plaintiffs' experts considered the goal of creating a second majority-minority district "alongside and subordinate to the other race-neutral traditional redistricting criteria." *Id.* at 595.

The Fifth Circuit thus held that the preliminary injunction "was valid when it was issued." *Robinson III*, 86 F.4th at 599. But because the 2022 election had passed, the Fifth Circuit vacated the injunction and remanded with instructions to pause proceedings until mid-January 2024 to allow the legislature to "create new districts." *Id.* at 600-601. The Fifth Circuit instructed that if the legislature failed to do so, the district court should proceed to a trial and (if necessary)

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"adopt a different districting plan for the 2024 elections." *Id.* at 602.

C. Louisiana's 2024 Redistricting Process

On January 8, 2024, Governor Jeff Landry called the Louisiana legislature into a special session to adopt a new map. J.S. App. 11a. He explained that the State "ha[d] labored with this issue for far too long" and urged lawmakers to "heed the instructions of the court," while emphasizing the importance of the legislature, rather than "a non-elected judge," holding "the pen" on redistricting. *Id.* at 11a-12a (citation omitted).

During the special session, legislators repeatedly recognized that they needed to draw "two [majority-minority] districts" to "comply with the order of both the Fifth Circuit Court of Appeals and the district court." 24-110 J.S. App. 176a (citation omitted); see, *e.g.*, *id.* at 177a, 497a, 541a. In the words of Senator Glen Womack, who sponsored the redistricting bill that ultimately passed, the *Robinson* court "said, 'Draw a map, or I'll draw a map.' * * * So that's what we've done." *Id.* at 457a.

At the same time, legislators sought to achieve political goals, including protecting favored incumbents. The legislature accordingly rejected a proposal, Senate Bill 4 (SB4), that closely tracked the *Robinson* plaintiffs' illustrative maps by drawing a new majority-Black district that linked Baton Rouge with the Delta parishes along the Mississippi River to the north. See *Robinson I*, 605 F. Supp. 3d at 779, 785 (illustrative maps); 24-110 J.S. App. 677a (SB4 map); Stay Appl. App. 1073-1076, *Robinson* v. *Callais* (No. 23A994) (letter from the *Robinson* plaintiffs endorsing SB4). Such a map would have placed Republican Congresswoman Julia Letlow, who lives in the northeast corner of the State, in the new

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majority-Black district. J.S. App. 115a (Stewart, J., dissenting). The governor and the Republican majority in the legislature sought to avoid that outcome and supported a different proposal (SB8) that created a second majority-Black district while preserving safe seats for Congresswoman Letlow, House Speaker Mike Johnson, and House Majority Leader Steve Scalise. *Id.* at 20a-22a, 40a; *id.* at 108a-118a (Stewart, J., dissenting); see, *e.g.*, 24-110 J.S. App. 43a, 393a, 456a, 458a.

Under the final version of SB8, as under the original 2022 map, one majority-Black district, CD2, is centered around New Orleans. 24-110 J.S. App. 394a; see J.S. App. 7a, 16a. The new majority-Black district, CD6, incorporates the same core as the *Robinson* plaintiffs' illustrative districts. Like those districts, CD6 starts in East Baton Rouge and includes St. Landry, Pointe Coupee, and West Baton Rouge Parishes, as well as part of Avoyelles Parish and part of the cities of Alexandria and Lafayette. 24-110 J.S. App. 314a (SB8 map). But rather than turning north to follow the Mississippi River, CD6 continues northwest up the Interstate 49 corridor through Natchitoches and parts of DeSoto and Caddo Parishes to Shreveport. *Ibid.*; see *id.* at 394a.

Senator Womack explained that SB8 was "a different map than the plaintiffs in the [*Robinson*] litigation have proposed," but that it was "the only map" that "accomplished the political goals [he] believe[d] are important for [his] district, for Louisiana, and for [his] country." 24-110 J.S. App. 394a. Or as Senator Womack summed it up later: "[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. At the same time, I tried to protect Speaker Johnson, Minority Leader Scalise, and my representative, Congresswoman Letlow." *Id.* at 531a-532a. The

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legislature passed SB8 and Governor Landry signed the map into law. J.S. App. 15a.

D. Proceedings Below

1. Appellees are "non-Black voter[s]" who reside in each of Louisiana's congressional districts. J.S. App. 17a (citation omitted). Appellees sued Louisiana's Secretary of State, alleging that CD6 is an unconstitutional racial gerrymander. *Id.* at 18a. The State and one set of the plaintiffs from the *Robinson* litigation intervened as defendants. *Id.* at 17a-18a. A three-judge district court consolidated a preliminary-injunction hearing with an expedited trial on the merits. *Id.* at 19a. Then, in a divided decision, the court entered judgment for appellees and enjoined the use of SB8. *Id.* at 1a-146a.

a. The majority first held that race predominated in the drawing of CD6. J.S. App. 39a-51a. It concluded that CD6 "only encompasses the parts of [several] cities that are inhabited by majority-Black voting populations, while excluding neighboring non-minority voting populations." *Id.* at 41a. The majority also relied on a "heat map" showing concentrations of Black voters, which it considered to be strong circumstantial evidence that CD6 was drawn to "collect" Black voters. *Id.* at 44a. In addition, the majority relied on what it deemed to be direct evidence of racial predominance. *Id.* at 46a-50a. The majority acknowledged that it was "clear" and "undisputed" that "political considerations—the protection of incumbents—played a role in how District 6 was drawn." *Id.* at 40a. But the majority concluded that race played a "qualitatively" larger role. *Id.* at 49a (citation omitted).

b. The majority next held that CD6 could not survive strict scrutiny. J.S. App. 51a-66a. It acknowledged that when a State seeks to comply with the VRA, the narrow-

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tailoring requirement demands only that the State have "good reasons" to believe that compliance requires drawing race-based lines. *Id.* at 51a (citation omitted). But the majority concluded that the State's compelling interest in VRA compliance "does not support the creation of a district that does not comply with the factors set forth in *Gingles* or traditional districting principles." *Id.* at 53a.

Proceeding from that premise, the majority asked whether CD6 satisfied the *Gingles* preconditions. J.S. App. 54a-66a. Without acknowledging the *Gingles* analysis in the *Robinson* decisions, the majority determined that the first *Gingles* precondition was absent because, in its view, the State's Black population was "dispersed" "outside of southeast Louisiana," *id.* at 58a, and CD6 did not sufficiently comply with traditional districting principles such as compactness and respect for political subdivisions, *id.* at 58a-66a.

c. Judge Stewart dissented. J.S. App. 69a-146a. He would have found that race did not predominate in the drawing of CD6, and he argued that the circumstantial evidence on which the majority relied in finding predominance failed to account for the legislature's nonracial political considerations. *Id.* at 78a-106a. Judge Stewart also criticized the majority for "disregard[ing]" direct evidence that the legislature's political objectives were the dominant consideration in determining CD6's ultimate shape. *Id.* at 106a; see *id.* at 108a-119a.

In the alternative, Judge Stewart would have held that CD6 satisfies strict scrutiny. J.S. App. 131a-145a. In his view, the *Robinson* decisions gave the State a "strong basis in evidence" to believe that it was required to draw a second majority-Black district. *Id.* at 136a. Judge Stewart thus criticized the majority for running

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its own *Gingles* analysis. *Id.* at 134a-138a; see *id.* at 142a-143a. Finally, Judge Stewart argued that CD6 "reasonably remedies" the Section 2 violation that the *Robinson* courts had identified. *Id.* at 143a-145a.

2. In May 2024, this Court stayed the district court's injunction. 144 S. Ct. 1171 (citing *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam)). As a result, the SB8 map was used for Louisiana's 2024 congressional elections.

SUMMARY OF ARGUMENT

The analysis of a racial-gerrymandering claim has two steps: The plaintiffs bear the burden to show that race predominated in the drawing of district lines, and the State must then establish that its use of race was narrowly tailored to serve a compelling interest such as compliance with Section 2 of the VRA. Here, this Court need not decide whether the district court was correct to find predominance because the court applied the wrong legal framework at the second step.

A. The predominance standard requires plaintiffs 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* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 7 (2024) (citation omitted). The parties hotly dispute how to apply that familiar standard to the unusual circumstances presented here. But rather than resolve that case-specific question, the Court should bypass the predominance inquiry and vacate the decision below based on the district court's failure to apply the proper narrow-tailoring framework.

We do not take a position on the parties' predominance dispute. But if the Court addresses that issue, it should reiterate that a legislature's intent to create a

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majority-minority district does not by itself establish racial predominance and is instead a "factor" to be considered "as part of 'a holistic analysis.'" *Allen* v. *Milligan*, 599 U.S. 1, 32 (2023) (plurality opinion) (brackets and citation omitted). That recognition is consistent with the nature of the predominance inquiry, which demands a showing not just that the State pursued a race-conscious goal but that it did so by "subordinat[ing]" race-neutral considerations. *Alexander*, 602 U.S. at 7 (citation omitted). Subjecting every attempt to create or preserve a majority-minority district to strict scrutiny would impede VRA compliance, intrude on States' traditional authority over districting, and inject the federal courts into even more redistricting disputes.

B. The district court adopted an improper approach to strict scrutiny. The court correctly proceeded on the understanding that Louisiana had a compelling interest in complying with Section 2. But in addressing narrow tailoring, the court ignored the *Robinson* courts' VRA determinations and instead required the State to show that its chosen remedial district could have satisfied the first *Gingles* precondition if the district had been used as an illustrative map by a Section 2 plaintiff. That was error.

At the outset, the narrow-tailoring standard does not require a State to prove that Section 2 *actually required* it to draw the challenged remedial district. Instead, a State need only have "a strong basis in evidence" or "good reasons" to believe that the VRA required its action. *Cooper* v. *Harris*, 581 U.S. 285, 292-293 (2017) (citation omitted). At least absent unusual circumstances, a finding of likely Section 2 liability by an Article III court will give a State good reason to believe that remedial action is necessary. And that standard was unques-

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tionably satisfied here: The *Robinson* district court engaged in an exhaustive Section 2 analysis; the Fifth Circuit unanimously upheld the district court's conclusions; and the district court was poised to hold a trial and impose its own remedial map if the State had not taken the opportunity to draw a new majority-minority district before the 2024 election.

CD6 as ultimately enacted was different from—and less compact than—the majority-minority districts in the illustrative maps on which the *Robinson* courts relied in finding a likely Section 2 violation. But a State is not required to adopt the map put forward by private plaintiffs, nor the one that a court might have imposed. Legislatures have broad authority to balance the many competing considerations implicated by districting, and they must have reasonable latitude to comply with Section 2 while also achieving their other legitimate goals. The district court thus erred in requiring the State to show that its chosen remedial district satisfied the *Gingles* preconditions.

Instead, the district court should have asked whether CD6 as drawn "substantially addresses the § 2 violation" identified in *Robinson*. *League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 431 (2006) (citation omitted). This Court has made clear that a legislature cannot remedy a Section 2 violation by drawing a majority-minority district in an entirely different part of the State or a district that includes only a small fraction of the voters whose votes were unlawfully diluted under the prior plan. *Ibid.* But a remedial district is sufficiently tailored if it substantially addresses a Section 2 violation and does not "subordinate traditional districting principles to race substantially more than is

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'reasonably necessary.'" *Bush* v. *Vera*, 517 U.S. 952, 979 (1996) (plurality opinion).

Because the district court failed to apply that framework here, this Court should follow its usual practice and remand to allow the district court to apply the correct standard in the first instance. We note, though, that appellants' briefs highlight record evidence suggesting that the State may well be able to carry its burden. Appellants explain, for example, that CD6 shares the same core parishes as the *Robinson* illustrative districts and encompasses a substantial majority of the Black voters who were found to have a Section 2 right. There thus appears to be a far greater degree of overlap than in prior cases where the Court has rejected remedial districts for not substantially addressing a potential Section 2 violation.

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ARGUMENT

This Court has previously considered equal-protection challenges to majority-minority districts that States asserted were drawn to comply with the VRA. The framework for assessing those challenges is now well-settled: The plaintiffs bear the burden of demonstrating that race was the "predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Cooper* v. *Harris*, 581 U.S. 285, 291 (2017) (citation omitted). If the plaintiffs carry that burden, strict scrutiny requires the State to "establish that it had 'good reasons' to think that it would transgress the [VRA] if it did *not* draw race-based district lines." *Id.* at 293 (citation omitted).

This case is the Court's first occasion to consider a challenge to a district adopted based not on a State's own view about what Section 2 requires, but instead on

court orders finding a likely violation of the statute. At least absent unusual circumstances, such judicial findings give a State good reasons to conclude that it had to draw a majority-minority district to comply with the VRA. Accordingly, the most straightforward way to resolve a case in this posture will often be to bypass the sensitive, fact-intensive predominance inquiry and instead simply ask whether the State's chosen remedial district "substantially addresses the § 2 violation" identified in previous VRA litigation. *Shaw* v. *Hunt*, 517 U.S. 899, 918 (1996).

Rather than following that approach here, the district court first held that race predominated in the Louisiana legislature's drawing of CD6 and then, at the strict-scrutiny stage, conducted its own analysis of whether the State's chosen remedial district satisfied the *Gingles* preconditions. In doing so, the district court did not meaningfully consider the findings and orders of the *Robinson* courts in the prior Section 2 litigation. That approach to strict scrutiny was erroneous, and this Court should therefore vacate and remand to allow the district court to apply the correct legal standard in the first instance.

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A. This Court Need Not Address Predominance, But If It Reaches The Issue It Should Reiterate That The Intentional Creation Of A Majority-Minority District Does Not Necessarily Establish That Race Predominated

1. "'It is well settled that 'reapportionment is primarily the duty and responsibility of the State.'" *Miller* v. *Johnson*, 515 U.S. 900, 915 (1995) (citation omitted). "Electoral districting is a most difficult subject for legislatures," and this Court has thus emphasized that "States must have discretion to exercise the political

judgment necessary to balance competing interests." *Ibid.* In light of those sensitivities, the Court has required plaintiffs bringing racial-gerrymandering claims to satisfy the predominance standard in order to "untangle race from other permissible considerations" in the districting process. *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 7 (2024).

In defining what constitutes predominance, this Court has emphasized that although legislatures will "almost always be aware of racial demographics," it "does not follow that race predominates" merely because the State engaged in race-conscious districting. *Miller*, 515 U.S. at 916. Instead, the inquiry is necessarily comparative: The question is whether "race" rather than "other districting principles" was "the legislature's dominant and controlling rationale in drawing its district lines." *Id.* at 913. In other words, the plaintiffs must prove that "the legislature 'subordinated' other factors"—such as "compactness," "respect for political subdivisions," and "partisan advantage"—"to 'racial considerations.'" *Cooper*, 581 U.S. at 291 (citation omitted).

The predominance standard "has a very substantial legal component" defined by this Court's precedents. *Alexander*, 602 U.S. at 19. But the ultimate question whether race predominated in the drawing of a particular district is a "finding[] of fact" reviewable only for clear error. *Cooper*, 581 U.S. at 293. Accordingly, although this Court "of course retain[s] full power to correct a court's errors of law," *ibid.*, it may not overturn a predominance finding unless the district court applied an incorrect legal standard or this Court is "left with the definite and firm conviction that a mistake has been committed," *id.* at 309 (citation omitted).

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2. In this case, the district court acknowledged that "[r]ace consciousness, on its own, does not make a district an unconstitutional racial gerrymander." J.S. App. 39a. The court likewise observed that "districts may be drawn for remedial purposes." *Ibid.* And in finding that race predominated in the drawing of CD6, the court relied on circumstantial evidence about the shape, geography, and demographics of the district, *id.* at 40a-46a, to find that CD6 was designed to "collect" high-BVAP areas in several municipalities, *id.* at 44a-45a. The court thus concluded that the predominant role of race "is reflected in," among other things, "the division of cities and parishes along racial lines, the unusual shape of [CD6], and the evidence that the contours of the district were drawn to absorb sufficient numbers of Black-majority neighborhoods." *Id.* at 49a-50a.

Appellants contest the district court's predominance finding. The State argues (Br. 35-37) that the legislature's undisputed "political imperatives," 24-110 J.S. App. 394a, were the dominant and controlling reasons that led the legislature to reject the more compact maps identified in the *Robinson* litigation in favor of CD6 as ultimately drawn. The *Robinson* appellants similarly argue (Br. 29-36) that specific lines in CD6 were the product of the legislature's political goals, not its effort to comply with Section 2. Cf. *Bush* v. *Vera*, 517 U.S. 952, 967-968 (1996) (plurality opinion) ("In some circumstances, incumbency protection might explain as well as, or better than, race a State's decision to depart from other traditional districting principles, such as compactness, in the drawing of bizarre district lines.").

Resolving those disputes would require this Court to make case-specific pronouncements and review fact-intensive determinations about the legislature's reasons

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for drawing particular district lines. Other racial-gerrymandering challenges may require the Court to undertake such inquiries, but this one does not. Whatever the merits of the district court's predominance finding —a question we do not address—the court's separate determination that CD6 fails strict scrutiny was predicated on the application of the wrong legal standards. See pp. 22-33, *infra*. This Court may therefore bypass predominance, focus on the district court's holding that CD6 flunks strict scrutiny, and vacate the decision below based on the court's failure to apply the correct legal framework. Such a ruling would likely provide greater clarity to States and courts navigating the "competing hazards of liability" of the VRA and the Equal Protection Clause, *Abbott* v. *Perez*, 585 U.S. 579, 587 (2018) (citation omitted), than a case-specific holding about whether race predominated under the particular (and unusual) circumstances presented here.

3. If the Court reaches the predominance issue, however, it should reiterate that the mere intentional creation of a majority-minority district, without more, does not establish racial predominance. "[R]ace consciousness does not lead inevitably to impermissible race discrimination." *Shaw* v. *Reno*, 509 U.S. 630, 646 (1993); see *Alexander*, 602 U.S. at 19 n.6. In *Vera*, a plurality of this Court thus explained that "[s]trict scrutiny does not apply" to "all cases of intentional creation of majority-minority districts." 517 U.S. at 958. In *Bethune-Hill* v. *Virginia State Board of Elections*, 580 U.S. 178 (2017), this Court was "unwilling to conclude that a State's maps were produced in a racially predominant manner" even though the legislature used an express BVAP target; the Court instead remanded for a "'holistic analysis'" of predominance that could take

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account of all considerations in addition to that target. *Allen* v. *Milligan*, 599 U.S. 1, 32 (2023) (plurality opinion) (describing and quoting *Bethune-Hill*, 580 U.S. at 192-193). And just two Terms ago, in *Allen*, a plurality rejected the argument that race necessarily predominated in illustrative maps drawn by an expert in a Section 2 case, even though the expert set out to draw majority-minority districts. 599 U.S. at 30-33.

Thus, even though Section 2 compliance "demands consideration of race," *Abbott*, 585 U.S. at 587, the relevant line for equal-protection purposes is "between consciousness and predominance," *Allen*, 599 U.S. at 33 (plurality opinion). The question is whether the need to draw a majority-minority district is the legislature's "dominant and controlling rationale" in choosing the boundaries it actually selects. *Miller*, 515 U.S. at 913; see *Shaw II*, 517 U.S. at 905. For instance, a racial target may be probative of predominance where the target highly constrains the legislature's options. By contrast, a racial threshold is less probative where it is not particularly constraining and is consequently less likely to dictate the legislature's specific line-drawing choices. And a State's effort to comply with Section 2 by creating a majority-minority district does not constitute racial predominance if the State relies on multiple criteria and race does not overwhelm the line-selection process. Cf. *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759, 838-839 (M.D. La. 2022) (finding that race did not predominate in the creation of the *Robinson* plaintiffs' illustrative maps, in part because they outperformed the State's original map across multiple redistricting criteria).

That understanding reflects a longstanding position of the United States that is important to preserving States' latitude to comply with the VRA while maintain-

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ing their traditional authority over districting. As the United States has explained, "[i]f every attempt" to "avoid dilution under Section 2" or "otherwise to draw majority-minority districts triggered strict scrutiny, federal courts could become overly involved in redistricting, 'representing a serious intrusion on the most vital of local functions.'" U.S. Amicus Br. at 23, *Virginia House of Delegates* v. *Bethune-Hill*, 587 U.S. 658 (2019) (No. 18-281) (quoting *Miller*, 515 U.S. at 915) (brackets omitted); see, *e.g.*, U.S. Amicus Br. at 12, *Easley* v. *Cromartie*, 532 U.S. 234 (2001) (No. 99-1864). Courts hearing racial-gerrymandering challenges to districts adopted to comply with Section 2 must therefore carefully evaluate the degree to which a racial threshold actually dictated the legislature's line-drawing choices, rather than automatically equate the creation of a majority-minority district with predominance.

Here, the district court's predominance analysis relied on more than the mere fact that the Louisiana legislature sought to create a second majority-Black district. See p. 18, *supra*. Some statements in the opinion, however, could be read to conflate the desire to create a majority-minority district with racial predominance. See J.S. App. 84a, 107a (Stewart, J., dissenting); Robinson Br. 26-29. The court emphasized, for example, legislators' statements acknowledging the importance of complying with the *Robinson* courts' orders. J.S. App. 46a-48a. The court noted that the legislature "first made the decision to create a majority-Black district" before considering political goals. *Id.* at 49a. And the court further reasoned that if the Republican-controlled legislature had truly been motivated by political objectives, it would not have created a second majority-Black district at all—effectively treating evidence of the leg-

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islature's VRA-compliance motivation as akin to a smoking gun. *Id.* at 49a n.10; see *id.* at 50a (noting that "the Legislature's decision to increase the BVAP of District 6 to over 50 percent was not required to protect incumbents"). To the extent this Court addresses the predominance issue, it should make clear that more is required to establish that a State subordinated other considerations to race.

B. This Court Should Vacate And Remand Because The District Court Applied Incorrect Legal Standards In Holding That CD6 Failed Strict Scrutiny

In holding that CD6 failed strict scrutiny, the district court committed significant legal errors. At the outset, the court neglected to recognize that the *Robinson* courts' decisions gave the State a strong basis in evidence for concluding that it had to draw an additional majority-Black district anchored in East Baton Rouge. And as a result of that error, the court committed another: It subjected CD6 to a new *Gingles* analysis rather than asking whether the district substantially addressed the Section 2 violation that the *Robinson* courts had already found.

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1. A State need only have a strong basis in evidence to conclude that Section 2 requires a remedial district

a. At the second step of the racial-gerrymandering analysis, the burden shifts to the State to prove that its use of race is narrowly tailored to serve a compelling state interest. See *Cooper*, 581 U.S. at 292. "This Court has long assumed that one compelling interest is complying with operative provisions of the [VRA]." *Ibid.*; see, *e.g.*, *Abbott*, 585 U.S. at 587; *Abrams* v. *Johnson*, 521 U.S. 74, 91 (1997). This case has been litigated on

the same assumption, and no party asks this Court to revisit it.[2]

Based on that settled understanding, this Court's "precedents hold that a State can satisfy strict scrutiny if it proves that its race-based sorting of voters is narrowly tailored to comply with the VRA." *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U.S. 398, 401 (2022) (per curiam). Narrow tailoring, in turn, requires the State to demonstrate that it had "'a strong basis in evidence'" or "'good reasons'" for "concluding that the [VRA] required its action." *Cooper*, 581 U.S. at 292 (citations omitted).

b. Although this Court has applied that standard in several cases where a State invoked the VRA as a defense to an equal-protection claim, the Court has not yet confronted a case where, as here, a State faces active Section 2 litigation and courts have concluded that Section 2 likely requires an additional majority-minority district. In applying strict scrutiny in such circumstances, three principles from this Court's decisions are especially salient.

First, this Court has long been emphatic that "reapportionment is primarily the duty and responsibility of the State." *Miller*, 515 U.S. at 915; see *Abbott*, 585 U.S.

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[2] With good reason: If Section 2 compliance "were not a compelling state interest, then a State could be placed in the impossible position of having to choose" between complying with a valid federal statute and complying with the Equal Protection Clause. *League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 518 (2006) (Scalia, J., concurring in the judgment in part and dissenting in part) (discussing VRA Section 5); see *Allen*, 599 U.S. at 41 (reaffirming that Section 2, including its race-conscious remedies, is a valid exercise of Congress's authority to enforce the Fifteenth Amendment); see also U.S. Amicus Br. at 15-16, *Walen* v. *Burgum*, No. 23-969 (Dec. 10, 2024).

at 603. Because "[f]ederal-court review of districting legislation" is "a serious intrusion on the most vital of local functions," *ibid.*, upon finding a legal violation, a reviewing court should strive to allow the state legislature to cure the infirmity itself through the enactment of a new remedial map, rather than imposing a judicially crafted map as a first resort. See *Lawyer* v. *Department of Justice*, 521 U.S. 567, 576 (1997); *White* v. *Weiser*, 412 U.S. 783, 795-796 (1973); *Wise* v. *Lipscomb*, 437 U.S. 535, 539-540 (1978) (opinion of White, J.). The *Robinson* courts adhered to that principle here. See *Robinson I*, 605 F. Supp. 3d at 857-858; *Robinson* v. *Ardoin*, 86 F.4th 574, 601 (5th Cir. 2023).

Legislatures should keep the pen whenever possible because redistricting inevitably entails the exercise of "political judgment," *Perry* v. *Perez*, 565 U.S. 388, 393 (2012) (per curiam)—the kind of judgment that a federal court is ill-suited to replicate. See, *e.g.*, *Abrams*, 521 U.S. at 101. As this Court explained in a related context, "a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies" with the requirements of federal law; "federal courts," in contrast, "possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name." *Connor* v. *Finch*, 431 U.S. 407, 414-415 (1977).

Second, and relatedly, this Court has emphasized that even where Section 2 liability has been proven, a State is not required to adopt one of the illustrative maps proffered by Section 2 plaintiffs. "States retain broad discretion in drawing districts to comply with the mandate of § 2," and even once a violation has been shown, any given minority voter does not have a "right" to be placed in the new remedial district that the State

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is required to draw. *Shaw II*, 517 U.S. at 917 n.9. Nor does a Section 2 remedial district "hav[e] to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'" *Vera*, 517 U.S. at 977 (plurality opinion).

Third, this Court has repeatedly cautioned that even under strict scrutiny, States must have "breathing room" to navigate the competing imperatives of the VRA and the Equal Protection Clause. *Bethune-Hill*, 580 U.S. at 196; see *Cooper*, 581 U.S. at 293. That breathing-room principle extends to the State's ex ante assessment of whether a Section 2 violation exists at all; a State may "adopt reasonable compliance measures that may prove, in perfect hindsight, not to have been needed." *Cooper*, 581 U.S. at 293; see *Alabama Legislative Black Caucus* v. *Alabama*, 575 U.S. 254, 278 (2015). It likewise extends to a State's choice of remedy: As noted, a State is not required to "draw 'the precise compact district that a court would impose in a successful § 2 challenge.'" *Vera*, 517 U.S. at 978 (plurality opinion) (citation omitted). Thus, "deference is due" to a State's "reasonable fears of, and to [its] reasonable efforts to avoid, § 2 liability." *Ibid.*

c. The strong-basis-in-evidence standard, applied in light of those principles, "harmonize[s]" the demands of Section 2 and the Equal Protection Clause and enables States to navigate "'competing hazards of liability'" while still maintaining their sovereign prerogatives. *Abbott*, 585 U.S. at 587 (citation omitted). But that does not mean that once a State has "good reasons" to believe Section 2 requires a majority-minority district, it may draw the district however and wherever it likes. Instead, this Court has held that to satisfy strict scrutiny, a remedial district must "substantially address[] the § 2

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violation." *League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 430 (2006) (*LULAC*) (citation omitted); see *Shaw II*, 517 U.S. at 915.

Accordingly, a State cannot remedy the dilution of minority votes in one part of the State by drawing a majority-minority district in another part of the State, see *LULAC*, 548 U.S. at 430, or by drawing a district that encompasses only a small portion of the minority voting population with a Section 2 right, see *Shaw II*, 517 U.S. at 917-918. But a remedial district is narrowly tailored to achieve compliance with Section 2 if it "substantially addresses" a reasonably perceived statutory violation, *Vera*, 517 U.S. at 977 (plurality opinion) (citation omitted), and does not "subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid" the violation, *id.* at 979 (citation omitted); see U.S. Amicus Br. at 34, *ALBC*, *supra* (No. 13-895) (advocating the same standard).

That standard does not, however, require a State's chosen remedial district to satisfy the same compactness requirements that the first *Gingles* precondition imposes on Section 2 plaintiffs. The first *Gingles* precondition ensures that Section 2 does not *require* a State to draw a noncompact district. See *Allen*, 599 U.S. at 18. But "States are not prevented from taking into account race-neutral factors in drawing permissible majority-minority districts," and "[d]istricts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one." *Vera*, 517 U.S. at 999 (Kennedy, J., concurring). The shape of a State's chosen remedial district is relevant at the narrow-tailoring stage only insofar as it bears on whether the district substantially addresses the perceived Section 2 violation and whether it does so without

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subordinating other districting principles to race substantially more than is reasonably necessary to achieve that compelling interest.

2. The district court applied the wrong legal framework

In holding that CD6 failed strict scrutiny, the district court doubly erred. First, the court failed to recognize that the *Robinson* courts' finding of a likely Section 2 violation provided the State with a strong basis in evidence to believe that it needed to draw a second majority-minority district. Second, the court conducted its own *Gingles* analysis and required the State to show that CD6 satisfied the first *Gingles* precondition. Instead, the court should have asked whether CD6 substantially addresses the Section 2 violation that the *Robinson* courts found.

a. The *Robinson* district court's finding of a likely Section 2 violation—which was upheld by the Fifth Circuit—provided the State with a strong basis in evidence to believe that it needed to draw a second majority-minority district. The strong-basis-in-evidence standard is less demanding than the showing a plaintiff must make to prevail in a Section 2 suit. Such a plaintiff must meet all three *Gingles* preconditions and prove that, in the totality of the circumstances, an existing map leaves minority voters with "less opportunity than white voters to elect representatives of their choice." *Thornburg* v. *Gingles*, 478 U.S. 30, 80 (1986); see *id.* at 50-51. By contrast, "[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." *Cooper*, 581 U.S. at 302. That lower threshold allows States to preemptively seek to comply with the VRA and gives them room "to make reasonable

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mistakes" in doing so. *Wisconsin Legislature*, 595 U.S. at 404.

At least absent unusual circumstances, a State will have good reason to believe that Section 2 requires it to draw a majority-minority district where, as here, a court has actually found a likely violation of the statute. To prove narrow tailoring, a State need not "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." *Bethune-Hill*, 580 U.S. at 194 (citation and ellipses omitted). Where a State *has* lost in court—when it has received decisions finding a Section 2 violation and faces the prospect of a court-imposed map if it fails to draw an additional majority-minority district—the State has more than carried its burden.

Contrary to appellees' contention (24-109 Mot. to Dismiss or Affirm 29-30), that is true even when the relevant court order is a preliminary injunction. A court's evaluation of likelihood of success at the preliminary-injunction stage can provide a State with good reasons to believe that the Section 2 claim will ultimately prevail. Cf. *Abbott*, 585 U.S. at 610 (holding that a district court's "preliminary" approval of interim districting plans "gave the Legislature a sound basis for thinking that the interim plans satisfied all legal requirements"). And that conclusion applies with particular force here, where the district court's order was entered after a five-day hearing, was based on a detailed analysis of the merits, and was unanimously upheld on appeal. See *Robinson I,* 605 F. Supp. 3d at 818-851, *Robinson III*, 86 F.4th at 589-599.

Appellees emphasize that because the *Robinson* decisions were issued in a preliminary-injunction posture,

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they did not determine what Section 2 "*actually required*." 24-109 Mot. to Dismiss or Affirm 29. But again, the question is not whether a remedial district was "actually necessary." *Bethune-Hill*, 580 U.S. at 194 (citation and ellipses omitted). Instead, it is whether, "at the time of imposition" of the remedial district, the State had good reason to conclude that a Section 2 remedy was required. *Wisconsin Legislature*, 595 U.S. at 404. That standard was amply satisfied here. Appellees' contrary approach—which would apparently require a State to litigate a VRA suit to final judgment (and perhaps appeal) before adopting a remedial district—would exacerbate the timing challenges inherent in redistricting disputes and create unjustified uncertainty for legislatures, candidates, and voters. Here, for example, if the State had insisted on going to trial rather than enacting a remedial map, the district court likely would have imposed its own map for the 2024 elections based on one of the *Robinson* plaintiffs' illustrative maps, depriving the State of its sovereign authority over districting and thwarting the legislature's political objectives. See pp. 6-8, 24-25, *supra*.

Similarly, appellees err in asserting (24-109 Mot. to Dismiss or Affirm 24) that this Court's decision in *Wisconsin Legislature* establishes that a district drawn to respond to decisions in VRA litigation cannot survive strict scrutiny unless the State subjectively agrees that its original map violated Section 2. The Court's decision in *Wisconsin Legislature* simply reiterated that it is not enough for the entity adopting a remedial district to believe that a majority-minority district "*may* be required." 595 U.S. at 403-404 (citation omitted). But it would "ask too much from state officials," *Bethune-Hill*, 580 U.S. at 195, to require them, after a hard-fought

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court battle, to profess their agreement with a finding of illegality before they may comply with the court's order.

Appellees are correct that this Court has "exercised vigilance when States defend strict scrutiny based *on third-party litigation threats regarding the VRA*." 24-109 Mot. to Dismiss or Affirm 24. But there is a world of difference between a State's acquiescence in the Department of Justice's prelitigation assessment in an objection letter, see *Miller*, 515 U.S. at 921; *Shaw II*, 517 U.S. at 906, and a legislature's response after a VRA claim has in fact been adjudicated by two Article III courts. Appellees are also mistaken in contending (24-109 Mot. to Dismiss or Affirm 29-30) that the State's litigation choices in *Robinson* mean that the resulting judicial decisions could not give the State good reasons to believe that an additional majority-minority district was required. The State challenged the *Robinson* plaintiffs' case under *Gingles* and the totality-of-the-circumstances inquiry. See *Robinson I*, 605 F. Supp. 3d at 772-775, 821 n.248, 822, 826, 829-832, 840-841, 843, 845, 847, 849-851; see also *Robinson III*, 86 F.4th at 587, 589-592. And both the district court and the Fifth Circuit held the *Robinson* plaintiffs to their burden of proof, examining the record in detail. See *Robinson I*, 605 F. Supp. 3d at 776-851; *Robinson III*, 86 F.4th at 589-599.

b. Instead of recognizing that the *Robinson* decisions provided the State with a strong basis in evidence to believe that Section 2 required a second majority-minority district, the district court ran the *Gingles* analysis anew. That was error. To be sure, when a State draws a remedial district before facing any VRA litigation and invokes Section 2 as a justification, reviewing courts must analyze the *Gingles* preconditions to deter-

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mine whether the State had a sufficient basis to believe that Section 2 required its action. See *Wisconsin Legislature*, 595 U.S. at 400, 403-406; *Cooper*, 581 U.S. at 301-306; *Vera*, 517 U.S. at 956-957, 978-979 (plurality opinion); *Shaw II*, 517 U.S. at 914-917. But this case is different. Here, the State acted based on a prior court finding, upheld on appeal, that Section 2 likely required a second majority-minority district. That finding, and the evidence on which it was based, gave the State the requisite "good reason" to believe that Section 2 required it to act, and there was no cause to require the State to shoulder the burden of demonstrating the *Gingles* preconditions anew.

c. Rather than embarking on its own *Gingles* analysis, the district court should have asked whether CD6 substantially addresses the Section 2 violation identified in *Robinson* without subordinating other districting principles to race substantially more than was reasonably necessary to achieve that goal. See pp. 25-27, *supra*. Because the district court did not undertake that analysis, this Court should follow its usual practice and remand to allow the district court to apply the correct standard in the first instance. See, *e.g.*, *Bethune-Hill*, 580 U.S. at 193; *ALBC*, 575 U.S. at 275.

Appellants' arguments before this Court indicate that the State may well be able to show that CD6 satisfies strict scrutiny under the proper standard. Appellants note that SB8's CD6 includes "the same seven core parishes that anchored the new Black-majority districts in the *Robinson* illustrative maps (as mirrored by District 5 in [SB4])." Louisiana Br. 15 (emphasis omitted); see *id.* at 15-17, 50; see also Robinson Br. 6-7, 11-12. Appellants also explain that CD6 drew the "vast majority" of its voting age population and Black voting age

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population from those seven parishes that overlap with SB4 in whole or in part. Louisiana Br. 15, 50; see *id.* at 16 (chart listing CD6's VAP and BVAP from those seven parishes as 456,568 and 231,941, respectively); J.A. 336 (listing CD6's total VAP and BVAP as 589,017 and 318,011, respectively); see also Robinson Br. 11 (noting that the seven overlapping parishes "account for about 77.5% of CD6's total [voter] population and about 73.0% of its Black [voter] population"). Those figures suggest that CD6 encompasses a substantial majority of the Black voters who were found in *Robinson* to have a Section 2 right.

That indicates a far greater degree of overlap than what was present in prior cases where this Court has rejected remedial districts for not substantially addressing a potential Section 2 violation. In *LULAC*, for example, the Court rejected a claim that Texas's creation of a majority-Latino congressional district could make up for the dismantling of an opportunity district elsewhere in the State, because "the majority of Latinos" in the old district were left out of the new one. *LULAC*, 548 U.S. at 431. Similarly, in *Shaw II* the Court rejected North Carolina's purported remedial district because the county containing a "concentration of minority voters that would have given rise to a § 2 claim" constituted "not more than 20% of the [remedial] district." 517 U.S. at 918.

Moreover, although the State chose to adopt a remedial district that was less compact than the illustrative districts on which the *Robinson* courts relied, the record indicates that it did so in service of race-neutral goals—in particular, a desire to protect incumbents and accomplish other political aims. See pp. 8-9, *supra*. That evidence suggests that CD6's relative lack of com-

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pactness was the result of the State's effort to fulfill its compelling interest in Section 2 compliance while also protecting other legitimate interests—not "race-based districting unjustified by a compelling interest," such as "gratuitous race-based districting" or the "use of race as a proxy for other interests." *Vera*, 517 U.S. at 999 (Kennedy, J., concurring).

Again, this Court need not and should not adjudicate those questions in the first instance. But the evidence suggesting that the State may well be able to satisfy the proper legal standard provides further reason for this Court to resolve this case by correcting the district court's legally erroneous approach to strict scrutiny and remanding for further proceedings.

CONCLUSION

The judgment of the court of appeals should be vacated and remanded for further proceedings.

Respectfully submitted.

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