Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,
v.
PHILLIP CALLAIS, et al.,
Appellees.

PRESS ROBINSON, et al.,
Appellants,
v.
PHILLIP CALLAIS, et al.,
Appellees.

On Appeals 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 APPELLANTS

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INTERESTS OF AMICI CURIAE[1]

Edward Galmon, Sr., Cierra Hart, Norris Henderson, Tramelle Howard, and Ross Williams ("*Galmon Amici*") have been deeply invested in this litigation from the start. Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard are Black Louisiana voters whose successful litigation under Section 2 of the Voting Rights Act resulted in the enactment of S.B. 8, the congressional districting map challenged below. They have an interest in defending the victory they achieved in closely related litigation, such that the federal voting rights they vindicated in one court are not permanently revoked by another court. Further, because S.B. 8 directly secures Dr. Williams's, Mr. Henderson's, and Mr. Howard's right to an undiluted vote, those amici have an additional interest in defending the current configuration by reversing the injunction entered below.

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[1] 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 ARGUMENT

The district court majority radically departed from decades of this Court's racial gerrymandering precedent when it enjoined a legislatively enacted districting map that sought to both (1) ensure the reelection of favored Republican incumbents, and (2) comply with Section 2 of the Voting Rights Act. According to the district court's logic, the U.S. Constitution requires Louisiana's Legislature to choose between these two goals—protecting incumbents would have to come at the expense of the second Black-opportunity district that Section 2 requires, and compliance with Section 2 would preclude incumbent protection. That is bad law: Legislatures may pursue political interests once they satisfy federal prerequisites, even where, as here, the political interests require a nontraditional district shape.

The Legislature enacted S.B. 8, the map enjoined below, during a special legislative session in a court-ordered window to remedy the prior map's likely violation of Section 2. That Section 2 litigation made clear that, one way or another, Louisiana's 2024 congressional map would feature the two Black-opportunity districts mandated by federal law. Either the Legislature could enact a Section 2-compliant map that pursued its own explicitly political objectives, or the district court would choose a Section 2-compliant map with conventionally compact districts and maximal adherence to other traditional criteria. The Legislature chose the former option and crafted the

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necessary second Section 2 district in a manner that—unlike alternatives with more compact districts—preserved the Republican majority in Congressional District ("CD") 5. This cascade of political decisions—preempting a court-drawn remedial map, prioritizing the reelection of the CD-5 incumbent without jeopardizing seats held by other allies, and configuring district boundaries accordingly in a manner that maintained other communities of interest—is emphatically within the Legislature's prerogative. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 6 (2024) (holding maps drawn to achieve political objectives are not racial gerrymanders); *Rucho v. Common Cause*, 588 U.S. 684, 709 (2019) (holding maps drawn to achieve political objectives are not otherwise unconstitutional). Notably, Appellees (plaintiffs below) never produced an alternative map that would have achieved these political goals: Their proposal lacked the requisite second Black-opportunity district, and so it would have been quickly replaced with a compact, Section 2-compliant, court-ordered map chosen without regard for the Legislature's desired partisan goals.

The district court held that the Legislature's expressed intent to comply with its Section 2 obligations necessarily resulted in racial gerrymandering because the new Black-opportunity district is non-compact. That holding cannot be squared with the clear evidentiary record—the non-compact shape was necessary to achieve political, not racial, objectives. It also flouts a generation of binding precedent—a districting plan is not a racial

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gerrymander simply because map-drawers intend to comply with Section 2's requirements, especially where, as here, those requirements have already been elucidated by a unanimous ensemble of federal judges. This Court should reverse.

BACKGROUND

I. Federal courts determined that Section 2 likely requires two Black-opportunity congressional districts in Louisiana.

Following publication of the 2020 census results, Louisiana's Legislature enacted H.B. 1, a new congressional districting plan with only one district (CD-2) where Black voters had an opportunity to elect their preferred candidates. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 768 (M.D. La. 2022), *preliminary injunction vacated*, 86 F.4th 574 (5th Cir. 2023). Litigation successfully challenging H.B. 1 as a violation of Section 2 persuaded the Legislature that any congressional map with fewer than two Black-opportunity districts would forfeit the Legislature's prerogative to enact a map that reflected its political priorities.

A. The Middle District of Louisiana preliminarily enjoined H.B. 1.

The same day H.B. 1 was enacted, Mr. Galmon, Ms. Hart, Mr. Henderson, and Mr. Howard sued Louisiana's Secretary of State in the Middle District of Louisiana, challenging the new plan as a violation of Section 2 because it failed to include a second

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district in which Black voters would have an opportunity to elect their preferred candidates. *Id.* That action was joined with a parallel suit brought by other Black voters and civic organizations ("*Robinson* Appellants" here), and the consolidated plaintiffs moved for a preliminary injunction. *Id.* at 769. The Legislature's presiding officers and the State of Louisiana, represented by then-Attorney General Jeff Landry, intervened to defend the map. *Id.* at 768–69.

During the five-day preliminary injunction hearing held in May 2022, the consolidated plaintiffs introduced seven illustrative maps and the testimony of two expert map-drawers (Mr. Bill Cooper and Mr. Anthony Fairfax) demonstrating that Black voters in Baton Rouge could be unpacked from the New Orleans-based CD-2, where they were assigned by H.B. 1, and grouped into a newly configured CD-5 with a sufficiently large and geographically compact Black community bounded to the west by St. Landry Parish and to the north by delta parishes along the Mississippi River. *Id.* at 778–85. Plaintiffs also offered testimony from two experts (Dr. Max Palmer and Dr. Lisa Handley) demonstrating that voting in Louisiana is racially polarized, that White voters regularly defeated Black voters' preferred candidates outside of majority-Black CD-2, and that Black voters would have an opportunity to elect their candidates of choice in the illustrative maps' CD-5. *Id.* at 797–804. Plaintiffs offered two fact witnesses (Mr. Chris Tyson and Mr. Charles Cravins) who testified that the illustrative CD-5 configurations protected critical communities of interest. *Id.* at 789–91. And plaintiffs offered six other witnesses (expert witnesses Dr. Traci

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Burch, Dr. Allan Lichtman, and Dr. Blakeslee Gilpin, and fact witnesses Mr. Mike McClanahan, Dr. Dorothy Nairne, and Ms. Ashley Shelton) who testified that factors considered in the totality-of-circumstances inquiry supported a finding that H.B. 1 violated Section 2. *Id.* at 806–15.

The district court credited this extensive testimony. *Id.* at 826–27 (finding Mr. Cooper's reports "clear, substantiated by unrefuted empirical and statistical data, methodologically sound, and therefore reliable," and his testimony "candid, forthright and indicative of an in-depth comprehension of redistricting, demographics, and census data"); *id.* at 827 ("[Mr.] Fairfax's thirty years of experience in preparing redistricting plans make him well-qualified, [] and his report and supplemental reports are extremely thorough and methodologically sound."); *id.* at 841 ("The Court credits Dr. Palmer's opinions and conclusions, finding that his methods were sound and reliable. His testimony was clear and straightforward, raising no issues that would cause the Court to question his credibility."); *id.* ("Dr. Handley's extensive expertise in the area of redistricting and voting rights is reflected in her CV and was apparent from her testimony, which was thorough, careful, well-supported by data, facts and soundly reasoned."); *id.* at 829 (finding testimony of Mr. Tyson and Mr. Cravins "contributed meaningfully to an understanding of communities of interest"); *id.* at 844–51 (reviewing testimony and concluding "the totality of the circumstances weighs in favor of Plaintiffs' request for relief").

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The three sets of defendants collectively offered seven expert witnesses to dispute elements of plaintiffs' claims—two of whom had no experience in the analysis they offered at trial, two of whom had been previously discredited in redistricting cases, and two whose opinions were otherwise found unsupported and unreliable. Mr. Thomas Bryan challenged the numerosity and compactness of the Black population identified by plaintiffs, *id.* at 791–94; Dr. Christopher Blunt testified that any congressional map in Louisiana containing a second Black-opportunity district would necessarily require racial gerrymandering, *id.* at 794–95; Dr. M.V. Hood III testified that H.B. 1 deviated less than plaintiffs' illustrative maps from Louisiana's previous congressional districting plan, *id.* at 795–97; Dr. Alan Murray testified that Black and White voters are not "similarly geospatially distributed" in Louisiana, *id.* at 797; Dr. Jeffrey Lewis testified that hypothetical congressional districts with less than 50% Black voting-age population could provide Black voters an opportunity to elect their candidate of choice, *id.* at 805–06; Dr. Tumulesh Solanky testified that East Baton Rouge Parish votes more strongly than other parishes for minority-preferred candidates, *id.* at 806; and Dr. John Alford testified that polarized voting in Louisiana is attributable to partisanship, not race, *id.* at 840.[2]

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[2] Defendants also offered expert reports from Dr. Jeff Sadow and Mr. Mike Hefner but chose not to present testimony from either expert at the hearing. *See Robinson*, 605 F. Supp. 3d at 815.

The district court did not find any of this testimony persuasive. *Id.* at 824 (finding "[Mr.] Bryan's conclusions are unsupported by the facts and data in this case and thus wholly unreliable"); *id.* at 825 (finding Dr. Blunt "has no experience, skill, training or specialized knowledge in the simulation analysis he employed to reach his conclusions" and failed to "incorporate the traditional principles of redistricting required by law"); *id.* (finding Dr. Hood's testimony "unilluminating" due to the limited importance of core retention as a traditional redistricting principle); *id.* at 826 (finding Dr. Murray's testimony "untethered to the specific facts of this case and the law applicable to it"); *id.* at 843 (finding Dr. Lewis's testimony "simply unsupported by sufficient data and . . . accordingly unreliable"); *id.* at 841 (finding "there is little, if any, connection between [Dr. Solanky's] expertise and his opinions," which are "unhelpful and do not inform the Court's analysis" due to his lack of "experience in analyzing racially polarized voting patterns" and use of "an admittedly narrow data set as the basis for his conclusions"); *id.* at 840 (finding "Dr. Alford's opinions border on *ipse dixit*").

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On this robust record, the court concluded that the plaintiffs were likely to prevail on their claim that H.B. 1 violated Section 2. *Id.* at 851. Reviewing the three preconditions for a Section 2 claim that this Court identified in *Thornburg v. Gingles*, 478 U.S. 30 (1986), the district court found that (1) Louisiana's Black population is sufficiently large and compact to constitute a majority in a second congressional district, *Robinson*, 605 F. Supp. 3d at 820–21; (2)

Black voters in Louisiana are politically cohesive, *id.* at 839–41; and (3) White voters vote sufficiently as a bloc to usually defeat Black voters' preferred candidates, *id.* at 841–44. The court reviewed factors relevant to the totality-of-circumstances analysis and found that the two factors *Gingles* deemed most important—the extent of racially polarized voting and the extent to which Black candidates have been elected to public office, *see* 478 U.S. at 48 n.15—weigh "heavily in favor of Plaintiffs," *Robinson*, 605 F. Supp. 3d at 845–46. Of the remaining factors, the court found three favored plaintiffs, one favored defendants, and four were neutral or inapplicable. *Id.* at 846–51. Considering all of these factors together, the court concluded that the totality of circumstances weighed in favor of plaintiffs' request for relief. *Id.* at 851.

The district court also devoted extensive analysis to defendants' argument that racial considerations would necessarily predominate in a Louisiana congressional map that included a second Black-opportunity district. *See id.* at 831–39. The court reviewed the 1990s *Hays* litigation, where Louisiana congressional plans then in effect were found to be unconstitutional racial gerrymanders, *see Hays v. Louisiana*, 839 F. Supp. 1188 (W.D. La. 1993) ("*Hays I*"), *vacated sub nom. Louisiana v. Hays*, 512 U.S. 1230 (1994); *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996) ("*Hays II*"), and rejected the notion "that because a map with two majority-Black districts was previously invalidated by a court, there can never be an acceptable map with two Black districts." *Robinson*, 605 F. Supp. 3d at 832. The court recognized that Louisiana's population "has increased

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significantly since the 1990 census that informed the *Hays* map[s]," and thus "*Hays*, decided on census data and demographics 30 years ago, is not a magical incantation with the power to freeze Louisiana's congressional maps in perpetuity." *Id.* at 834. And, citing Supreme Court precedent, the court recognized that some consideration of race by map-drawers is necessary to comply with the VRA, and efforts to comply with the VRA "may justify the consideration of race in a way that would not otherwise be allowed." *Id.* at 835 (*quoting Abbott v. Perez*, 585 U.S. 579, 587 (2018)). The court concluded that race did not predominate in the drawing of plaintiffs' illustrative maps, which "outperformed the enacted plan on every relevant [traditional redistricting] criteria." *Id.* at 839.

Having found the equitable balance also favored plaintiffs, the court preliminarily enjoined H.B. 1 and offered the Legislature "an opportunity to enact a new map that is compliant with Section 2 of the Voting Rights Act." *Id.* at 852–58. The court denied defendants' request for a stay. Ruling at 2, *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. June 9, 2022), ECF No. 182. The Legislature, however, took no meaningful steps to enact a new map.

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B. Louisiana failed to rebut the district court's findings and conclusions.

The defendants appealed the district court's order but could not persuade any judge that the Section 2 holding was likely in error.

First, a Fifth Circuit motions panel unanimously declined to stay the injunction, finding that "[n]one of the defendants' merits challenges to the district court's order carries the day." *Robinson v. Ardoin*, 37 F.4th 208, 227 (5th Cir. 2022). The panel specifically rejected the argument that plaintiffs' illustrative maps "prioritized race so highly as to commit racial gerrymandering, or that complying with the district court's order would require the Legislature to adopt a predominant racial purpose." *Id.* at 222.

The State defendants then sought relief in this Court, insisting that the pending appeal out of Alabama warranted a stay of the injunction because it presented "an identical issue to the one [in Louisiana]—*i.e.*, when does Section 2 of the Voting Rights Act command the creation of additional majority-minority districts," Emergency Appl. for Admin. Stay, Stay Pending Appeal, & Pet. for Writ of Cert. Before J., *Ardoin v. Robinson*, 142 S. Ct. 2892, 2022 WL 2441061, at *30 (June 17, 2022). State defendants argued that the Louisiana litigation was "materially identical" to the Alabama case, offered no "daylight" from the "factual findings" and "legal errors" of the Alabama case, and presented the "precise legal issues" addressed in the Alabama case—including "how to distinguish between racial 'predominance' and racial 'awareness' for purposes of navigating between the Equal Protection Clause and Section 2 of the Voting Rights Act." *Id.*; Reply Br. in Supp. of Emergency Appl. for Admin. Stay, Stay Pending Appeal, & Pet. for Writ of Cert. Before J., *Ardoin,* 142 S. Ct. 2892, 2022 WL 2441067, at *2. This

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Court granted the motion to stay, holding the Louisiana injunction in abeyance for a full year while it adjudicated the Alabama dispute. *See Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) (mem.) (granting stay); *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023) (mem.) (vacating stay).

On June 8, 2023, this Court affirmed the preliminary injunction issued in the Alabama case, rejecting Alabama's contention that drawing a second Black-opportunity district would constitute a racial gerrymander in violation of the Equal Protection Clause. *Allen v. Milligan*, 599 U.S. 1, 41–42 (2023). This Court declined to "disturb the District Court's careful factual findings," *id.* at 23, including its credibility determinations of several of the same experts who testified in the Louisiana case, *see Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *35, 38, 57, 83 (N.D. Ala. Jan. 24, 2022), *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023) (finding Mr. Cooper and Dr. Palmer's testimony "highly credible" and questioning the credibility of defendants' expert Mr. Bryan). This Court also specifically rejected the defendants' contention that "mapmakers must be entirely 'blind' to race" to avoid running afoul of the Fourteenth Amendment, 599 U.S. at 33, noting that while "Section 2 itself 'demands consideration of race,'" that alone does not amount to a predominant

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racial motivation. *Allen,* 599 U.S. at 30 (plurality op.) (quoting *Abbott*, 585 U. S. 579, 587 (2018)).[3]

After the *Allen* decision came down, the State Defendants here asked this Court to set the Louisiana appeal for merits briefing and oral argument, previewing various alleged errors in the district court's legal reasoning. *See* Pet'rs' Letter, *Ardoin v. Robinson,* No. 21A814, to Hon. Scott Harris, Clerk of the Supreme Court of the United States (June 8, 2023). This Court declined. *Ardoin*, 143 S. Ct. at 2654. Again, the Legislature did not take any steps to enact a new map during this period.

After the stay lifted and remedial proceedings resumed in the district court, Attorney General Landry petitioned the Fifth Circuit to issue a writ of mandamus requiring the district court to advance proceedings to trial on the merits because, he argued, the preliminary injunction was substantively and procedurally flawed. *See* Pet., *In re Landry,* No. 23-30642 (5th Cir. Sept. 15, 2023), Doc. 2. The Fifth Circuit issued the writ—but not for the reasons the Attorney General enumerated, and not to provide the

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[3] On remand, the district court in *Allen* afforded the legislature an opportunity to draw a remedial map to address the likely Section 2 violation. But instead, the Alabama legislature chose to enact a new map that failed to include an additional Black opportunity district. Inj., Order, & Court-Ordered Remedial Map at 5, *Caster v. Allen,* No. 2:21-cv-1536-AMM (N.D. Ala. Oct. 5, 2023), ECF No. 253 ("*Allen* Remedy"). The court enjoined the new map—a ruling this Court declined to stay, Appl. Denied, *Allen v. Milligan*, No. 23A231 (U.S. Sept. 26, 2023)—and imposed a plan for Alabama's congressional districts drawn by a Special Master. *Allen* Remedy at 5–7.

relief the Attorney General requested. *See In re Landry*, 83 F.4th 300, 303 (5th Cir. 2023). Instead, the court determined the Legislature deserved a further opportunity "to comply with" the district court's ruling that the VRA requires a second Black-opportunity congressional district in Louisiana, and, to provide the Legislature additional time to exercise that prerogative, the court vacated an approaching preliminary injunction remedial-phase hearing in the district court. *Id.* at 307–08.

Shortly thereafter, a different Fifth Circuit panel hearing defendants' appeal of the preliminary injunction unanimously determined that the "district court did not clearly err in its necessary fact-findings nor commit legal error in its conclusions that the Plaintiffs were likely to succeed on their claim that there was a violation of Section 2 of the Voting Rights Act." *Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023), *reh'g en banc denied* Order, *Robinson v. Ardoin,* No. 22-30333 (5th Cir. Dec. 15, 2023), ECF No. 363-2. The court found that the "preliminary injunction [] was valid when it was issued" and reasoned that it was appropriate for illustrative plans to focus on different, overlapping communities of interest than the one the Legislature prioritized. *Id.* at 592–99. Rejecting the State's racial gerrymandering argument, the court emphasized that designing maps to establish "two majority-black districts . . . does not automatically constitute racial predominance" and that "race was properly considered by the Plaintiff experts when drawing their several illustrative maps." *Id.* at 594–95.

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But because the next congressional elections were no longer imminent, the Fifth Circuit concluded that the urgency of adopting a new map had lifted. *Id.* at 600–01. The court vacated the preliminary injunction and remanded to the district court with instructions to provide the Legislature additional time to enact a new remedial congressional districting plan. *Id.* at 601–02. The district court invited the Legislature to remedy the VRA violation by January 30, 2024; should it do so, the court said, "a trial on the merits" of any challenges to that new map "shall be held commencing on March 25, 2024." Minute Entry, *Robinson*, ECF No. 315.

In short, both the district court and the Fifth Circuit made clear that Section 2 likely requires a second Black-opportunity district in Louisiana, and that a new map would have to be drawn either by the Legislature or by the federal court.

II. Louisiana enacted a remedial map reflecting political priorities.

Rather than appealing the Fifth Circuit's ruling, Governor-elect Landry and other state leaders opted to take advantage of the opportunity to redraw Louisiana's congressional map in a way that would advance their own political objectives.

On January 8, 2024, Governor Landry assumed office and immediately issued a "court[-]required call

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for a redistricting special session."[4] At the start of the special session, he explained that he had done everything he could to "dispose of [the] litigation" in the Middle District, including several appeals to the Fifth Circuit and to the U.S. Supreme Court, and acknowledged there was no reasonable likelihood that H.B. 1's creation of only a single Black-opportunity district could be shown to satisfy Section 2. J.A. at 98. His office had "exhausted ALL legal remedies," Governor Landry explained, "and we have labored with this issue for far–too–long." *Id.* at 99. He called upon the legislature to adopt a new redistricting map that would "satisfy the Court and ensure that the congressional districts of our State are made right here in the Legislature and not" by a federal judge. *Id.* at 98 (cleaned up). Warning that the federal court was likely to adopt a new map itself if the Legislature failed to act, he urged the Legislature to "heed the instructions of the Court, take the pen out of the hand of non-elected Judges and place it in your hand." *Id.* at 99.

Legislators introduced several different mapping configurations during the special session, but Louisiana's political powers quickly coalesced around S.B. 8, a proposed map sponsored by Senator Glen Womack, which met their specific political objectives of protecting favored congressional incumbents and ousting Congressman Garret Graves, while adhering to all other redistricting requirements,

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[4] *Governor Jeff Landry Assumes Office*, OFF. OF THE GOVERNOR (Jan. 8, 2024), https://gov.louisiana.gov/news/governor-jeff-landry-assumes-office.

including Section 2 by making CD-6 a second Black-opportunity district.

Senator Womack frequently reiterated that S.B. 8 was "the product of a long, detailed process [and] achieves several goals" as he and Representative Gerald Beaullieu advocated for the plan in committee and on the Senate and House floor. Robinson App. at 392a. The "first" goal was the protection of Congresswoman Julia Letlow's seat in the congressional district comprising northeastern Louisiana—a seat that would likely ensure that Congresswoman Letlow "remains both unpaired with any other incumbents, and in a congressional district that should continue to elect a Republican to Congress for the remainder of this decade." *Id.* at 420a. By saving Congresswoman Letlow's seat, Republicans could instead sacrifice the seat held by Congressman Graves, who had antagonized Louisiana's key political powerbrokers, including now-Governor Landry and Majority Leader Steve Scalise, by endorsing their rivals in 2023.[5] Congressman Graves first provoked Governor Landry when he chose to back the

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[5] Tyler Bridges, *Rep. Garrett Graves Was on Top. Now He's Fighting For His Political Life. What Happened?*, BATON ROUGE ADVOCATE (Jan. 20, 2024), https://www.nola.com/news/politics/rep-garret-graves-sees-fortunes-fallsteeply/article_c4592922-b721-11ee-bba8-c3fe4cd6a7ad.html.

gubernatorial bid of rival Stephen Waguespack.[6] Then, during Majority Leader Scalise's bid for Speaker of the House, Graves praised rival Jim Jordan and undercut Scalise, allegedly spreading disparaging information about Scalise's cancer diagnosis and surfacing controversial comments Scalise had made in the past.[7] By drawing Congressman Graves, rather than Congresswoman Letlow, into the new Black-opportunity district, Louisiana's Republican leadership found in S.B. 8 a mechanism to protect an ally and oust an enemy.

S.B. 8's "second" goal was preserving four "safe Republican seats." J. Ex. 31 at 4, *Callais v. Landry*,

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[6] Tyler Bridges, *Garret Graves Endorses Stephen Waguespack in Louisiana Governor's Race*, BATON ROUGE ADVOCATE (June 7, 2023), https://www.nola.com/news/politics/garret-graves-endorses-stephen-waguespack-in-governorsrace/article_fa443074-0559-11ee-af08-27e4fcb098fe.html; Greg Larose, *In Governor's Race, We'll See if 'Wags' Can Tail Top Dog Landry*, LA. ILLUMINATOR (Mar. 8, 2023), https://lailluminator.com/2023/03/08/in-governors-race-well-see-if-wags-can-tail-top-doglandry/.

[7] Ryan Lizza, *What Steve Scalise Won't Forget*, POLITICO (Dec. 1, 2023), https://www.politico.com/news/2023/12/01/what-steve-scalise-wontforget-00129546; Gordon Russell, *'I Know What Was Being Said': Steve Scalise Suggests Garret Graves Undercut Speaker Bid*, BATON ROUGE ADVOCATE (Dec. 1, 2023), https://www.nola.com/news/politics/i-know-what-was-being-said-steve-scalise-suggestsgarret-graves-undercut-speaker-bid/article_c8fb3590-905e-11ee-86ce-4319bdb3475d.html; Mark Ballard, *How Did Steve Scalise's Dream for Speaker Get Squashed? Hardball Politics Are to Blame*, BATON ROUGE ADVOCATE (Oct. 23, 2023), https://www.nola.com/news/politics/steve-scalise-dream-to-be-speaker-and-by-hardballpolitics/article_19431f68-6f85-11ee-ba5d-73611afd20e7.html.

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No. 3:24-cv00122-DCJ-CES-RRS (W.D. La. Apr. 10, 2024), ECF No. 181-4. Senator Womack emphasized that "Louisiana's Republican presence in the United States Congress has contributed tremendously to the national discourse, and I'm very proud that both Speaker of the U.S. House of Representatives Mike Johnson and U.S. House Majority Leader Steve Scalise are both from our great state." *Id.* S.B. 8 was crafted to ensure that both Speaker Johnson and Majority Leader Scalise "will have solidly Republican districts at home so they can focus on the national leadership that we need in Washington, D.C." *Id.* Extolling S.B. 8's national political benefits, Senator Womack explained that the new map ensured that "the conservative principles retained by the majority of those in Louisiana will continue to extend past our boundaries to our nation's capital." *Id.*

Third, Senator Womack explained that he gave careful consideration to protecting communities of interest when drawing S.B. 8's new minority-opportunity district, CD-6. This district, he explained, is a commerce district: it is comprised of a corridor that "runs up Red River, which is barge traffic, commerce," and traces "I-49, which . . . goes from Lafayette to Shreveport, which is also a corridor for our state that is very important to our commerce." J. Ex. 30 at 3, *Callais*, ECF No. 181-3. He also touted collegiate ties along the corridor, as well as industrial connections, including agriculture, row crop, and cattle, along the Red River. *Id.* at 4; J. Ex. 31 at 4, *Callais*, ECF No. 181-4. Representative Ed Larvadain III identified—and Senator Womack agreed—that Rapides and Natchitoches Parishes, both in CD-6,

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share a community of interest involving the Creole Nation and Northwestern State University, where students from surrounding parishes attend. Robinson App. at 453a. CD-6 also protects lumber and timber interests by linking De Soto and Caddo Parishes, where this work is prominent, with a major plant in Natchitoches and corporate offices in Alexandria. *Id.* at 453a–54a. And CD-6 protects a healthcare-related community of interest, as many residents of the new district rely on the same hospitals in Alexandria or St. Landry for their medical needs. J. Ex. 31 at 7, *Callais*, ECF No. 181-4. Senator Womack also considered communities of interest in crafting S.B. 8's other districts. Robinson App. at 403a. In CD-4, for example, his plan kept together major military installations. *Id.*

Senator Womack's "fourth" objective was to ensure that S.B. 8 "respond[s] appropriately to the ongoing federal Voting Rights Act case in the Middle District of Louisiana." Robinson App. at 393a. Senator Womack cited the prolonged litigation in the Middle District, highlighting the preliminary injunction order finding a likely Section 2 violation and the fact that none of the State's subsequent appeals had been successful. *Id.* at 394a. He explained to his fellow legislators that "we are here now because of the federal court's order that we . . . have a first opportunity to act [and the] court's order that we must have two majority black voting age population districts." *Id.*

Senator Womack noted that he had selected S.B. 8's design after "carefully consider[ing] a number

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of different map options" because it was "the only map I reviewed that accomplished the political goals I believe are important for my district, for Louisiana, and for my country." *Id.* at 394a; *see also* J. Ex. 31 at 4, *Callais*, ECF No. 181-4. All of the illustrative plans submitted by plaintiffs in the Middle District litigation and many of the alternatives proposed during the special session—including S.B. 4 by Senator Ed Price, H.B. 5 by Representative Denise Marcelle, and H.B. 2 by Representative Wilford Carter—created districts that were more compact and split fewer parishes than S.B. 8. Crucially, however, none of these other configurations would accomplish the goals of "protecting Congresswoman Letlow's seat, maintaining strong districts for Speaker Johnson and Majority Leader Scalise, [and] ensuring four Republican districts," as Senator Womack had prioritized. Robinson App. at 394a.

Senator Womack was clear throughout the legislative process that his primary objective in crafting S.B. 8 and rejecting alternatives was political. When asked why he chose his configuration instead of the more compact S.B. 4, for example, Senator Womack answered, "*It was strictly politics* [*that*] *drove this map*." *Id.* at 398a (emphasis added) (cleaned up); *see also id.* at 423a ("This map was strictly drawn from the political aspect."); *id.* at 457a (Senator Womack agreeing that "this is more of a political map" than the alternative maps introduced during the special session and that the "primary driver" was protection of the Republican delegation, specifically Congressmembers Johnson, Scalise, Letlow, and Higgins). When asked specifically whether race was

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the predominant factor in CD-6's configuration, Senator Womack replied, "No, it's not the predominant factor"; instead, CD-6 was "predominantly" driven by the desire to protect two top-ranking members of the U.S. House of Representatives and Congresswoman Letlow's role on the House Committees for Agriculture and Appropriations, all of which represented "a lot of [] muscle" for the state of Louisiana. *Id.* at 396a.

Other legislators echoed the importance of the political priorities presented by Senator Womack. On the Senate floor, for example, Senator Jeremy Stine remarked that the map "safeguards the positions of pivotal figures, the United States Speaker of the House, the Majority Leader, and notably, the sole female member of our congressional delegation. Her role is not merely symbolic. She's a linchpin in the Appropriations [and] Education and [the] Workforce Committees, which are vital to the prosperity and well-being of our state." *Id.* at 428a–29a. He also stressed that it was crucial for the Legislature to pass the map to prevent a court-imposed map that would ignore these political objectives. *Id.*[8]

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[8] During the drafting phase, an early iteration of S.B. 8 was amended for exclusively political reasons. Senator Heather Cloud, speaking in support of an amendment adopted in the Senate committee, explained that the amendment "further protects Congresswoman Julia Letlow," and "politically, this map does a great job protecting Speaker Johnson and Congresswoman Julia Letlow as well as Majority Leader Scalise." *Id.* at 401a; *see also id.* at 402a (agreeing that her motivations were to protect specific incumbents).

Ultimately, Senator Womack explained, S.B. 8 was "politically drawn to protect our members of Congress" and to comply with the federal court's Section 2 findings. *Id.* at 445a. The Governor and other legislators agreed with Senator Womack's stated political objectives, which could be accomplished only by enacting a new map before the court commenced its own, necessarily apolitical, remedial process. The Legislature passed S.B. 8 on January 19, 2024, and the Governor signed it into law on January 22. *See* J.A. at 51.

III. *Callais* Plaintiffs collaterally attack the Section 2 remedy.

Shortly after S.B. 8's enactment, twelve "non-African American voters" ("*Callais* Plaintiffs") challenged the new map in the Western District of Louisiana as a racial gerrymander. By agreement of *Callais* Plaintiffs and Defendant Secretary of State—who had spent the previous two years seeking to delay litigation in the Middle District—the proceedings advanced at lightning speed. *See* Unopposed Mot. for Case Mgmt. Conf. & Expedited Scheduling, *Callais*, ECF No. 43 (requesting expedited schedule); Elec. Order Granting Mot. to Set Expedited Br. Schedule, *Callais*, ECF No. 62 (granting expedited schedule). The complaint was filed on January 31 and served on February 9. *See* J.A. at 22–67; Executed Summons, *Callais*, ECF No. 29. As liability proceedings raced toward the trial date, discovery was significantly truncated despite the heavily fact-intensive nature of *Callais* Plaintiffs' racial gerrymandering claim. *See*

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Robinson Stay Appl. App. at 271–72 (recounting minimal depositions and expert preparation). On April 8—exactly 60 days after the complaint had been filed—the three-judge district court commenced a 2.5-day preliminary injunction hearing consolidated with trial on the merits. J.A. at 144–47.

On April 30, 2024, the district court determined by a 2-1 vote that S.B. 8 is an unconstitutional racial gerrymander and permanently enjoined its use. *Robinson* App. 128a. The majority found that race predominated in the drawing of CD-6 because that district has an "unusual shape," includes many of Louisiana's "heavily concentrated Black population neighborhoods," and was drawn by legislators motivated to comply with rulings in the Middle District litigation. *Id.* at 169a–70a. The majority held that the Legislature's consideration of race to comply with Section 2 could not survive strict scrutiny because S.B. 8 would not have satisfied the *Gingles* test ordinarily imposed on illustrative maps submitted by litigants challenging an enacted map as violating Section 2. *Id.* at 178a. In dissent, Judge Stewart noted that CD-6's shape was readily explainable by political motivations and that the Legislature's consideration of race to avoid violating Section 2 was consistent with constitutional requirements. *Id.* at 192a.

This Court subsequently stayed the injunction pending resolution of appeals brought by *Robinson*

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Intervenors and the State. *See Robinson v. Callais*, 144 S. Ct. 1171 (2024) (mem.).

ARGUMENT

In its rush to permanently enjoin S.B. 8, the district court made significant errors in its legal analysis and factual findings. Counter to this Court's long-standing and recently affirmed racial gerrymandering precedent, the district court failed to credit the political motivations that predominated in CD-6's shape from racial motivations, failed to presume the Legislature's good faith as required—particularly where, as here, the plaintiffs failed to produce an adequate alternative map—and failed to afford the necessary breathing room owed to legislatures when they seek to comply with Section 2. *See Alexander*, 602 U.S. at 6; *Cooper v. Harris*, 581 U.S. 285, 293 (2017). These errors—independently and collectively—require reversal.

I. Politics, rather than race, was the predominant motivation for CD-6's shape.

In *Alexander*, this Court explained the two related propositions that must guide the racial gerrymandering analysis when the legislature defends its map on political grounds: "First, a party challenging a map's constitutionality must disentangle race and politics if it wishes to prove that the legislature was motivated by race as opposed to partisanship. Second, in assessing a legislature's work, we start with a presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 6. The district court did not adequately account for the

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Legislature's political motives, and it altogether failed to presume good faith.

A. Louisiana's political leaders were motivated to protect favored incumbents.

Legislatures "must have discretion to exercise the political judgment necessary to balance competing interests," and courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (cleaned up). Caution is "especially appropriate . . . where the State has articulated a legitimate political explanation for its districting decision." *Id.* (reversing district court's finding that race rather than politics was predominant factor in state's congressional redistricting plan). "If either politics or race could explain a district's contours, the plaintiff has not cleared its bar." *Alexander*, 602 U.S. at 9).

The legislative record is clear that politics—not race—ultimately determined S.B. 8's district lines and resulted in its enactment. Senator Womack's recitation of his core objectives—protecting the seats of Congresswoman Letlow, Speaker Johnson, and Majority Leader Scalise—were echoed by other bill supporters and were consistent across committee testimony and floor debates. *See* Robinson App. 232a–234a, 393a. Even though other legislators introduced other bills with two Black-opportunity districts and amendments seeking to improve compactness and parish splits, Senator Womack and the Legislature

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coalesced around S.B. 8 because it was the "only map . . . that accomplished the political goals I believe are important for my district, for Louisiana, and for my country." *Id.* at 394a; *see also id.* at 395a ("It was strictly politics [that] drove this map."); *id.* at 423a ("This map was strictly drawn from the political aspect."). When asked specifically whether race was the predominant factor in his configuration of CD-6, Senator Womack replied, "No. It's not the predominant factor." *Id.* at 395a. *Cf. Allen*, 599 U.S. at 31 ("[W]hen asked squarely whether race predominated in his development of the illustrative plans, Cooper responded: 'No. It was a consideration. This is a Section 2 lawsuit, after all. But it did not predominate or dominate.'"). Other legislators echoed the same assertion. *See, e.g.*, *id.* at 402a (Senator Cloud, who backed an amendment to S.B. 8, agreeing that the predominant reason for the amendment was not race but the protection of specific incumbent members of Congress); *id.* at 414a (Chairman Cleo Fields reminding members of the Senate & Governmental Affairs Committee of their obligation to pass a map where "race is not the predominant reason").

In fact, Senator Womack considered the minority population of CD-2 and CD-6 only to evaluate whether the "performance of it appears to be positive for the minority district." *Id.* at 396a. But, as he noted, his performance analysis of the districts focused on whether a Democratic candidate would likely win, irrespective of the voters' or candidate's

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race: "Our analysis," he made explicit, "is on party, not race." *Id.* at 399a.[9]

While race is "inherently a consideration where, as here, a governing body must respond to violations of Section 2 of the Voting Rights Act," that consideration was "plainly subordinate to the [Legislature's] preoccupation with protecting incumbency and maintaining other political advantages," and therefore did not run afoul of the Constitution. *Theriot v. Par. of Jefferson*, 185 F.3d 477, 485, 488 (5th Cir. 1999). Indeed, the Legislature's consideration of race was *necessitated by its political goals*. If the Legislature had failed to draw the second Black-opportunity district that the Middle District and Fifth Circuit deemed necessary to avoid a trial and court-chosen remedial map, then political leaders would have forfeited their prerogative to prioritize the reelection of favored allies. Faced with the choice between a remedial map selected through the apolitical judicial process and the opportunity to exercise its own political discretion, the Legislature took the map-drawing pen specifically to ensure that

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[9] The circumstantial evidence that the district court relied upon did not show that racial considerations predominated. The court cited a heat map provided by Plaintiffs' expert that shows CD-6 includes areas populated by Black adults. *Callais v. Landry*, No. 3:24-CV-00122 DCJ-CES-RRS, 2024 WL 1903930, at *16 (W.D. La. Apr. 30, 2024). But the analysis did not disentangle racial considerations from political considerations. *See Alexander*, 602 U.S. at 22 (noting that the evidence could "also support the inference that politics drove the mapmaking process"); *id.* at 9 (noting that partisan and racial gerrymanders "are capable of yielding similar oddities in a district's boundaries."

key Republican members of Congress maintained safe seats. This decision to retain "the primary responsibility" for the "inescapably political enterprise" of redistricting is not only consistent with but *expected by* the U.S. Constitution. *Alexander*, 602 U.S. at 6.

B. Plaintiffs failed to rebut the presumption of good faith owed to the Legislature.

Judicial review of an enacted map must begin "with a presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 6. This presumption "reflects the Federal Judiciary's due respect for the judgment of state legislators," minimizes the "hurl[ing of tawdry] accusations at the political branches," and undermines attempts to "transform federal courts into 'weapons of political warfare.'" *Id.* at 11 (quoting *Cooper*, 581 U.S. at 335 (Alito, J., concurring in part and dissenting in part)). Where racial gerrymandering plaintiffs fail to submit a proposed map that would "achieve[]" the State's legitimate political objectives while producing significantly greater racial balance, "it is difficult for plaintiffs to defeat [the] starting presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 10, 34–35. *Callais* Plaintiffs failed to produce such a map, and the district court neglected to draw the necessary adverse inference or otherwise presume the Legislature's good faith in the manner that this Court has required.

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Callais Plaintiffs' proposed map would not have achieved the Legislature's goal of ensuring the reelection of key incumbents because it would not have survived the Middle District's review for compliance with Section 2. The Legislature enacted S.B. 8 after the Fifth Circuit afforded it "an opportunity to consider a new map now that we have affirmed the district court's conclusion that the [Section 2 plaintiffs] have a likelihood of success on the merits." *Robinson*, 86 F.4th at 601. At the time of S.B. 8's enactment, the Middle District had already scheduled deadlines for discovery, briefing, and trial (if necessary) on any remedial map's compliance with Section 2. *See Robinson*, ECF No. 330 at 3. Thus, because *Callais* Plaintiffs' proposed map failed to create the second Black-opportunity district that Section 2 requires, it would have been quickly enjoined and replaced by a court-chosen alternative. Just as a map that purports to protect incumbents with safe districts will not, in fact, achieve that protection if the map features districts that are non-contiguous, malapportioned, or multi-member, *see* La. J.R. 21(C) (requiring contiguous districts); *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (requiring equally populated congressional districts); 2 U.S.C. § 2c (requiring single-member districts), a map will fail to achieve political goals—or any goals—if it fails to comply with Section 2.

Because *Callais* Plaintiffs failed to produce an alternative map that would have protected the reelection prospects of Republican incumbents while satisfying all other legal prerequisites—including compliance with Section 2—the district court should

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have interpreted this failure "as an implicit concession that the plaintiff[s] cannot draw a map that undermines the legislature's defense." *Alexander*, 602 U.S. at 35.

II. The Louisiana Legislature had a strong basis to believe that Section 2 requires a second Black-opportunity congressional district in Louisiana.

To the extent the Legislature did consider race in enacting SB 8, it had good reason to do so—a federal court determined that Section 2 requires a second Black-opportunity district in Louisiana, and the State's repeated efforts to disturb that finding on appeal all failed.

Notably, states need not prove that Section 2 actually required the minority-opportunity district before adopting it. Rather, to satisfy strict scrutiny's narrow tailoring requirement, the state must establish only "that it had 'good reasons' to think that it would transgress the Act if it did not draw race-based district lines." *Cooper*, 581 U.S. at 293 (quoting *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)). This standard "gives states 'breathing room' to adopt reasonable compliance measures that may prove, in perfect hindsight, not to have been needed." *Id.* (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 196 (2017)).

The Middle District litigation provided those good reasons here. The parties, including Jeff Landry and the Legislature's presiding officers in their official capacities, extensively litigated the State's Section 2

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responsibilities. In a week-long trial-like hearing before the district court, twenty different witnesses testified about the merits, and the court issued 152 pages of meticulous findings of fact and conclusions of law, ultimately holding that H.B. 1's inclusion of only a single Black-opportunity district likely violated Section 2. *See Robinson*, 605 F. Supp. 3d at 766–858; *Robinson*, 37 F.4th at 215.

The case was not close—the district court credited the testimony of every plaintiff witness and identified significant flaws in the testimony of every defense witness. *Robinson*, 605 F. Supp. 3d at 820–51. And the court focused considerable attention on the primary complaint lodged in *this* litigation—that a congressional map with two Black-opportunity districts could not be drawn without racial gerrymandering—and methodically refuted the argument. *Id.* at 834–39. Over the next 18 months, the State exhausted every avenue for appeal, pressing its racial gerrymandering arguments before this Court and before Fifth Circuit motions, merits, mandamus, and en banc panels—but not a single judge or justice indicated that the Section 2 holding was likely in error. *See Robinson*, 37 F.4th at 227; *In re Landry*, 83 F.4th at 305; *Robinson*, 86 F.4th at 583; *Ardoin*, 143 S. Ct. at 2654.

Thus, by January 2024 the Legislature had good reason to believe that Louisiana's congressional map would need to create a second Black-opportunity district to withstand Section 2 review. The creation of this district was therefore permissible, even if it may have proved, "in perfect hindsight, not to have been

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needed." *Cooper*, 581 U.S. at 293. Because race-based districting is justified wherever there is "a strong basis in evidence" for concluding that Section 2 requires a minority-opportunity district, *id.* at 292 (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278), it is tautological that such evidence is present where a court of appeals confirms a district court's comprehensive findings that the evidence indicates that Section 2 plaintiffs are likely to succeed on the merits of their claims.

Louisiana's political leaders left no doubt about their understanding that a congressional map lacking a second Black-opportunity district would be enjoined for violating Section 2. When Governor Landry issued the "court[-]required call for a redistricting special session" on the day he took office, he explained that he was doing so because of the Section 2 litigation. J.A. 98.[10] Having tested plaintiffs' evidence in every way he could as Attorney General—and having failed to identify any significant gaps in that evidence or flaws in the courts' legal reasoning—Governor Landry announced that he had "exhausted ALL legal remedies" and it was time to "heed the instructions of the Court" and "make the Adjustments necessary" to the congressional map. *Id.* at 99. S.B. 8's sponsors and supporters shared this understanding. *See* Robinson App. 352a, 393a, 539a. The district court's failure to credit this extensive evidence was reversible error.

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[10] *Governor Jeff Landry Assumes Office*, OFF. OF THE GOVERNOR (Jan. 8, 2024), https://gov.louisiana.gov/news/governor-jeff-landry-assumes-office.

CONCLUSION

By enjoining the Legislature's remedial map, the district court's ruling effectively precludes states from attempting to remedy a Section 2 violation. Redistricting's inherently political nature ordinarily provides political actors an opportunity to pursue political ends. *See Alexander*, 602 U.S. at 6. According to the district court's logic, however, if legislators intend to comply with Section 2—which inherently requires a certain quantum of race consciousness that this Court has long permitted, *see Allen*, 599 U.S. at 30, *Cooper*, 581 U.S. at 292–93; *Bush v. Vera*, 517 U.S. 952, 976–77 (1996) (plurality op.); *id.* at 990–92 (O'Connor, J., concurring)—then they cannot also seek the political goals that will regularly require departures from maximum compactness, minimal subdivision splits, or other traditional districting criteria, *see Callais v. Landry,* No. 3:24-cv-00122, 2024 WL 1903930, at *19 (W.D. La. Apr. 30, 2024) (holding map challenged as racial gerrymander must satisfy *Gingles*'s examination of politically neutral redistricting criteria). To avoid the trap laid by the majority below, legislators will have no choice but to accede to the choices of district courts tasked with adopting remedial maps in Section 2 cases, for only those maps will forsake political goals in service of aesthetics. That inversion would "essentially countermand the Framers' decision to entrust districting to political entities." *Rucho*, 588 U.S. at 701.

The Court should reverse.

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Respectfully submitted,

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