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

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ARGUMENT

"The Constitution entrusts state legislatures with the primary responsibility for drawing congressional districts, and redistricting is an inescapably political enterprise." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 6 (2023). Consistent with that foundational principle, this Court has repeatedly assured legislatures that they "retain a flexibility that federal courts … lack," to consider their own policy preferences when remedying a §2 violation, *Bush v. Vera*, 517 U.S. 952, 978 (1996), and that courts will give them "breathing room" so they are not "trapped between the competing hazards of liability under the Voting Rights Act and the Equal Protection Clause," *Bethune-Hill v. Va. State Bd. of Elections,* 580 U.S. 178, 196 (2017) (cleaned up).

Appellees ask the Court to renege on these promises and invalidate Louisiana's 2024 congressional map, SB8, as a racial gerrymander despite a federal court having already determined that §2 likely required a second opportunity district for Black voters, and even though politics, not race, drove the shape of the district the Legislature ultimately chose to address the §2 violation. Principles this Court has repeatedly reaffirmed foreclose Appellees' legal arguments, and their construction of the evidence, even were it correct, does not support the district court's conclusions. If Appellees prevail, it will lead to greater judicial involvement in redistricting, duplicative collateral litigation, and an intolerable lack of certainty for legislatures tasked with redistricting.

Nevertheless, Appellees' brief is instructive in elucidating what is *not* disputed in this case. There is no dispute that the *Robinson* district court found that Louisiana's 2022 plan, HB1, likely violated §2, and that the Fifth Circuit affirmed that finding after this

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Court declined to review it. Br.4-5; *see Ardoin v. Robinson*, 143 S. Ct. 2654 (2023); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023) (*Robinson III*). There is no dispute that, in reaching that conclusion, *Robinson* found that a reasonably configured second majority-Black district could be drawn without racial predominance. Br.4; *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 838 (M.D. La. 2022) (*Robinson I*). There is consequently no dispute that the Legislature then drew SB8 with a second majority-Black district, CD6, to comply with §2 as applied by the *Robinson* courts. Br.6. There is no dispute that SB8 was chosen over more compact plans with two majority-Black districts, including the *Robinson* illustrative plans and SB4 (Price-Marcelle), nor that SB8 was drawn to protect specific, named incumbents whereas the other maps would not. J.A.370-372; J.S.A.154a, 164a. Finally, it is undisputed that CD6 draws at least 70% of its population from parishes shared with those more compact plans. Br.50.

Under these uncontested facts, Appellees' racial-gerrymandering claim fails. First, these facts show that Louisiana deliberately chose a less compact plan than necessary to comply with §2, and that, in doing so, the State sought to accomplish nonracial political goals. These facts, particularly when applying the presumption of legislative good faith, establish that politics predominantly explains CD6's shape. *Alexander*, 602 U.S. at 9-10. At minimum, they show that race and politics were deeply intertwined as the Legislature crafted a map to protect specific incumbents, connect communities along a major transportation corridor, and satisfy §2. Appellees were obliged to disentangle those considerations to prove race predominated. *Id*. Their failure to do so requires reversal.

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Second, even if the undisputed facts did not dispose of the racial-predominance question, they establish that SB8 was narrowly tailored to satisfy §2. With at least 70% of its population drawn from areas where *Robinson* found vote dilution, CD6 substantially addresses a specific, identified instance of racial discrimination. *Vera*, 517 U.S. at 977; *Shaw v. Hunt*, 517 U.S. 899, 909 (1996) (*Shaw II*). And undisputed facts establish that CD6 departs from "a hypothetical court-drawn district"—the compact *Robinson* illustrative district—to achieve Louisiana's nonracial goal of protecting preferred incumbents. *Vera*, 517 U.S. at 994-995 (O'Connor, J., concurring). The district court found CD6 insufficiently tailored only because it applied an incorrect legal standard whereby a §2 remedial district—unlike any other district a state draws—must not stray from traditional districting principles for any reason. Reversal is warranted. Because the undisputed facts show that CD6 is narrowly tailored, this Court should remand with instructions to enter judgment for Appellants.

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I. Like the District Court, Appellees Misapply this Court's Racial-Predominance Standards.

Appellees base their contention that race predominated on three legal errors. First, they contend the Legislature's avowed effort to resolve the *Robinson* litigation by drawing a second majority-Black district establishes racial predominance. Br.7-12. This Court has repeatedly rejected that premise, recognizing that the intentional creation of a majority-minority district does not, standing alone, prove racial predominance. Second, contrary to *Alexander*, Appellees argue that the Legislature's political goals were not genuinely held, excusing their obligation to disentangle race and politics. Third, Appellees offer the flawed syllogism that, because CD6 superficially resembles the district

struck down as a racial gerrymander in *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996) (*Hays III*), it must itself be a racial gerrymander. Br.23. Unlike in *Hays* (but consistent with the legal principle *Hays* represents), here the legislative record leaves no doubt that politics, not race, drove CD6's configuration.

A. The Legislature's Deliberate Compliance with Federal Law Is Not *Per Se* Racial Predominance.

Appellees offer a series of arguments that all boil down to the contention that Louisiana's conscious creation of a second majority-Black district—as §2 required—was enough to make race predominate. But as this Court has repeatedly made clear, complying with §2 "demands consideration of race." *Allen v. Milligan*, 599 U.S. 1, 30-31 (2023) (plurality opinion) (citing *Abbott v. Perez*, 585 U.S. 579, 587 (2018)). But as Justice Kavanaugh emphasized in his *Milligan* concurrence, to succeed under §2, a plaintiff must ordinarily present an illustrative map that creates a new majority-minority district *without* subordinating "compactness principles and other traditional districting criteria" for the purpose of "group[ing] together geographically dispersed minority voters into unusually shaped districts." *Id.* at 43 (Kavanaugh, J., concurring). As such, the intentional creation of a majority-minority district to satisfy §2 is not in itself proof of racial predominance. *Vera*, 517 U.S. at 958; *see also Bethune-Hill*, 580 U.S. at 191-192 (racial gerrymandering claim requires a holistic predominance analysis).

1. *Appellees' Recitation of the Legislative Record Proves Only an Intent to Comply with §2.*

Appellees offer the same legally erroneous view of the legislative and trial records as the district court.

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They incorrectly argue that lawmakers' statements announcing their intent to resolve the *Robinson* litigation and their recognition that doing so would require a map with a second majority-Black district are proof of racial predominance. Br.24-26. On the contrary, the *Robinson* courts had already found that creating such a district *did not* require racial predominance. *Robinson III*, 86 F.4th at 591-595. That Louisiana intended to comply with the VRA proves only that race was "*a* motivation" for SB8. *Easley v. Cromartie*, 532 U.S. 234, 241 (2001). It says nothing about whether race, relative to other considerations, predominated in the specific lines the Legislature drew. *Id.* at 253.

Appellees also misconstrue Senator Womack's observation that southeast Louisiana's Black population was insufficient to create two majority-Black districts there. J.S.A.442a-443a. Seizing on that statement, they make the unsupported leap that CD6's riverine configuration connecting Baton Rouge in the southeast to Shreveport in the northwest was necessary to create a second majority-Black district. Br.25. They ignore the *Robinson* courts' finding that an illustrative majority-Black district joining Baton Rouge and northeast Louisiana was reasonably configured, and they exclude the critical context that Senator Womack was explaining why SB8 was "a different map than the plaintiffs in the [*Robinson*] litigation have proposed." J.S.A.443a. And he explained the reason for that difference: Senator Womack offered SB8, despite being aware that it was less compact than the *Robinson* maps, J.S.A.395a, because it was the only map that achieved his "*political goals*." J.S.A.392a-394a (emphasis added). Far from constituting a concession that VRA-compliance required a noncompact district or that race predominated, these statements simply highlight that

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race and politics were intertwined in the Legislature's line-drawing.

2. Circumstantial Evidence Fails to Prove Racial Predominance.

Appellees' circumstantial evidence reveals that the features of CD6 on which the district court focused were driven by politics, not race. First, Appellees make much of evidence that CD6 includes more predominantly Black than predominantly White precincts. Br.26-27. But as Appellees' expert conceded, every majority-Black district *by definition* meets that description. Doc.185, 332:14-17. In short, this circumstantial evidence merely shows that CD6 is majority Black and proves nothing more than that Louisiana intentionally drew a district to satisfy §2. It does not support the district court's racial predominance finding. *Cf. Milligan*, 599 U.S. at 32-33 (plurality opinion) (evidence that map drawer set out to create a majority-Black district did not establish racial predominance).

Repeating the panel majority's error, Appellees also dubiously claim that SB8's single additional parish split compared to HB1 is enough to prove that the Legislature subordinated parish integrity to race. Br.29. But SB8's additional parish splits resulted from political considerations, not race. The amendment splitting Avoyelles Parish was intended solely to further strengthen Representative Letlow's district. J.S.A.399a-404a. Splitting DeSoto and Caddo Parishes was necessary to maintain key assets in Speaker Johnson's district, while preserving the core of Representative Letlow's district in northeast Louisiana. *See* Appellants' Br.14-15. By contrast, as SB4 shows, splitting many parishes was *not* necessary to create a map with two majority-Black districts. Indeed, Appellees' own evidence shows that the Legislature rejected

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alternative maps with two majority-Black districts that split fewer parishes than either SB8 or HB1. J.A.370. SB4, which Appellees recognize was "a *Robinson* illustrative map," Br.9, split only eleven. J.A.370. The district court therefore clearly erred in concluding that SB8's parish splits demonstrated racial predominance.

The district court likewise erred in overriding the Legislature's preferred communities of interest. In developing SB8, one of Senator Womack's enumerated goals, echoed by others in the contemporaneous legislative record, was configuring CD6 along the Red River and I-49 to join specific commercial and community interests. *See, e.g.*, J.S.A.421a, 452a-457a, 396a. Appellees' assertion that their community-of-interest evidence was more persuasive to the factfinder than Appellants' is belied by the record. The district court did not rely on Appellees' evidence but rather on its own extra-record research and preference for the Acadiana region. J.S.A.184a-88a. In any event, the district court exceeded its proper role when it usurped the Legislature's prerogative to privilege certain interests and instead substituted its own judgment that others should have mattered more. *See Vance v. Bradley*, 440 U.S. 93, 110-111 (1979) ("The District Court's responsibility for making 'findings of fact' certainly does not authorize it…to reject the legislative judgment.") (cleaned up).

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3. Political Goals Were Not Subordinated to Race Simply Because They Were Considered After the Robinson *Rulings.*

Appellees contend that predominance is proven merely by the chronology of events leading to SB8. Br.23-24. According to Appellees, Louisiana considered how to protect favored incumbents only after *Robinson* found the State had likely violated §2. At bottom,

Appellees' "chronology controls" argument is simply another way of saying that Louisiana's intentional compliance with §2 amounted to *per se* racial predominance. But even where a state is "committed from the outset" to creating a majority-minority district, that aim is not "independently sufficient to require strict scrutiny." *Vera*, 517 U.S. at 962. That Louisiana first faced a court ruling spelling out its §2 obligations and then developed a plan precisely crafted to achieve its political goals within §2's constraints merely proves that *both* considerations were at play in the Legislature's line-drawing choices. *See Cromartie*, 532 U.S. at 253-254 (reversing racial-predominance finding where "the legislature considered race, along with other partisan and geographic considerations"). Chronology alone does not demonstrate racial predominance.

4. The Record Is Devoid of Evidence that Race Influenced the Choice of SB8 Over Other VRA-Compliant Options.

Neither Appellees nor the district court point to any evidence that the Legislature's preference for SB8 over SB4 was motivated by race. Appellees speculate that this choice was due to the higher BVAP in SB8's majority-Black districts, but there is no evidence that SB8 was designed with that outcome in mind or that any legislator preferred SB8 for that reason. Indeed, the Legislature rejected an amendment that increased the BVAP in SB8's majority-Black districts but also reduced compactness and added parish splits. *See* J.S.A.466a-468a; 537a-538a. And, contrary to Appellees' speculation, several legislators expressed a preference for SB4, despite its smaller Black majorities, because they were comfortable it provided Black voters the required opportunity to elect candidates of choice. J.S.A.84a-90a; 433a-434a. Ultimately, these legislators

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supported SB8 because they recognized that it was the only VRA-compliant map that the legislative majority would pass and the Governor would sign. *See*, *e.g.*, J.S.A.84a-90a, 433a-434a, 450a-452a, 454a-457a. The only reason for the preference for SB8 reflected in the legislative record was that, unlike other maps, it protected favored incumbents and joined priority commercial and community interests. *See* Appellants' Br.9-16.

Appellees likewise cite no evidence for their new argument that, in pursuing political objectives, the Legislature used race as a proxy for partisanship. Br.32. The Legislature's recognition that complying with §2 by creating an additional majority-Black district might have a partisan impact is not the same as using race as a proxy for partisanship. Louisiana did not manipulate CD6's racial composition to achieve its political goals; it sought to achieve those goals while addressing its independent obligation to satisfy §2. This is a necessary condition in any redistricting involving §2 compliance alongside other objectives. It does not prove that race predominated.

Appellees acknowledge that politics drove the choice of SB8 over SB4. Br.32. Their contention that this choice was a choice "between two racial gerrymanders," *id.*, is foreclosed by the record. The district court did not, and could not, find that the *Robinson* illustrative maps were racial gerrymanders, J.S.A.189a, and *Robinson* found exactly the opposite. *See Robinson III*, 86 F.4th at 593-595.

B. Appellees Failed to Disentangle Race and Politics.

The legislative record unambiguously shows that SB8 was drawn to accomplish four goals—provide a safe district for Representative Letlow, protect the safe

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districts of Speaker Johnson and other favored incumbents, join interests along the Red River and I-49 corridor, and create a second Black-opportunity district as required by §2. And the record is equally clear that achieving the political goals, not §2 compliance, necessitated CD6's specific configuration. *See* Appellants' Br.30-35. But even were the prioritization of politics not so clear, Appellees were obligated to overcome the presumption of good faith and provide evidence, such as an alternative map, that disentangled these competing considerations and showed which predominated. *Alexander*, 602 U.S. at 9-10. The district court and Appellees sidestepped that analysis, instead viewing all the evidence in light of their belief that the decision to comply with §2 necessarily trumped all other factors.

Appellees contend that, even if race and politics had provided equally plausible explanations for CD6's contours, on clear error review, this Court must affirm. Br.24 (citing *Cooper v. Harris*, 581 U.S. 285 (2017)). But the issue here is not an evidentiary one: It is not, as in *Cooper*, whether two views of the evidence are equally plausible. Rather, it is that, under *Alexander*, where the Legislature's political explanation for its choices is plausible—regardless of how plausible a race-based explanation may be (here, not at all)—the presumption of good faith requires the racial-gerrymandering plaintiff to disentangle race and politics. 602 U.S. at 20. The clear-error standard does not excuse the district court's failure to hold Appellees to their burden.

Appellees disclaim their obligation to disentangle race and politics on the theory that the Legislature's political calculus—the choice of which incumbents to protect—somehow shows that race overrode what Appellees say *should have been* the Legislature's

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objective of maximizing the Republican majority in Congress. Br.16, 24, 26. But, even if Louisiana's legislative majority preferred in the abstract not to remedy HB1's vote dilution because of the potential partisan impact, that again shows only that *one* of the drivers of SB8 was the State's obligation to comply with §2. It does not "rule out" that the effort to save favored incumbents with high-ranking leadership and committee positions had a greater influence than race on CD6's specific design. *Alexander*, 602 U.S. at 24.

Furthermore, Appellees effectively concede they are unable to provide an alternative map that achieves the Legislature's political objectives. They contend that requiring them to provide a map that would have resolved *Robinson* and avoided a court-imposed plan (thereby protecting the State's prerogative to redistrict according to its political priorities) amounts to a "rigged test"—one they admit they cannot satisfy.

Instead, Appellees suggest that HB1—the very map the *Robinson* court enjoined for violating §2—should be accepted as their alternative map. Br.31. Appellees' alternative-map test is no test at all; it ignores *Robinson* and repackages their argument that any effort to comply with §2 amounts to *per se* racial predominance. As detailed above, this Court's longstanding precedents foreclose that argument. *Alexander*'s alternative-map rule is not a "rigged test;" it requires only that Appellees identify a *lawful* map that accomplishes the State's incumbent-protection goals. *Alexander*, 602 U.S. at 34-35. Because Appellees cannot show that Louisiana's political goals could have been accomplished in an alternative map that would have passed legal muster under §2, they have failed to disentangle race and politics.

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Appellees' suggestion that *Cooper* allows them to skip the predominance inquiry altogether is likewise wrong. Br.33. Like every other racial-gerrymandering case, *Cooper* holds that once predominance is shown, a state raising a §2 defense must satisfy strict scrutiny. 581 U.S. at 291-292. It does not relieve Appellees of their burden to prove predominance.

C. *Hays* Is Not Controlling.

Both Appellees and the district court incorrectly treat *Hays* as dictating a finding of racial predominance because CD6 bears a superficial resemblance to the district *Hays* overturned. According to the district court, merely by configuring CD6 along the Red River and joining Baton Rouge and Shreveport within it, Louisiana failed to "learn from history." J.S.A.130a. Appellees, meanwhile, contend that, simply because CD6 draws 70% of its population from areas shared with the district invalidated in *Hays*, it, too, must be a racial gerrymander. Br.8, 22-24.

But Appellees and the district court take the wrong lesson from *Hays*. *Hays* stands not for the notion that any district running along the Red River is unconstitutional, but that, where the legislative record lacked any evidence of nonracial motivations for a district's noncompact shape, an inference that race predominated was appropriate. In *Hays*, legislators presented no evidence of political or other permissible motivations for the new district. Indeed, the state's cartographer "concentrated virtually exclusively on racial demographics." *Hays III*, 936 F. Supp. at 368. In stark contrast, the Legislature's political motivations here were omnipresent in the legislative record and were understood by legislators and the public. J.S.A.392a-395a, 420a-423a, 433a-434a, 440a-443a,

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538a-541a, 38a-39a, 43a, 46a, 60a-61a, 83a-84a, 87a-89a, 109a, 116a-117a.

Likewise, *Hays* rejected a community-of-interest justification for the district as a "*post hoc* rationalization" because it was offered for the first time at trial. *Hays v. Louisiana*, 862 F. Supp. 119, 122 (W.D. La. 1994). By contrast, SB8's sponsor and other legislators *contemporaneously* identified the common economic, educational, and other interests united in CD6 as considerations that informed the district's configuration. J.S.A.66a-67a, 421a, 452a-457a. *Hays* is a different case with a different map drawn on different demographic data by a different legislature with different priorities. It has no bearing on this case.

Race did not predominate in SB8's design. Nevertheless, this court need not decide the racial predominance question, because SB8 satisfies strict scrutiny.

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II. If Strict Scrutiny Applies, It Is Satisfied.

Louisiana's consideration of race was narrowly tailored to serve its compelling interest in complying with §2. *See Abbott*, 585 U.S. at 587. Narrow tailoring requires only that a state had "good reasons" to believe the statute required its use of race. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015) (*ALBC*). This Court has held that a redistricting plan is narrowly tailored where, as here, it substantially addresses the State's potential VRA liability. *Shaw II*, 517 U.S. at 915; *Vera*, 517 U.S. at 979. Appellees scramble this framework. They first contend that VRA compliance is not a compelling interest when the state acts in response to an adverse court decision, unless the state first concedes liability. They then misapprehend the narrow-tailoring inquiry, incorrectly demanding that the state prove that the VRA "requires" its specific

chosen remedy. Br.47. Under the correct legal standard, SB8 readily satisfies strict scrutiny.

A. The Legislature Had a Compelling Interest in Complying with the VRA.

This Court has long recognized that compliance with §2 is a compelling interest. *E.g.*, *Shaw II*, 517 U.S. at 915. Were the law otherwise, "then a State could be placed in the impossible position of having to choose between compliance with [the VRA] and compliance with the Equal Protection Clause." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 518 (2006) (*LULAC*) (Scalia, J., concurring in the judgment in part and dissenting in part). Disregarding this black-letter principle, and contrary to the court below, J.S.A.175a, Appellees propose a new standard requiring courts to second-guess the genuineness of a state's desire to conform to federal law. Br.35. They further assert—for the first time—that §2 does not provide a compelling interest because it is allegedly unconstitutional as applied to Louisiana.

First, Appellees contend that §2 compliance did not provide a compelling state interest because Louisiana's true aim was "appeasement" of the *Robinson* court, not "[a]ctual Section 2 compliance." *See* Br.39-42. They baselessly malign the *Robinson* court as "unfair" and contend, in effect, that the State was constitutionally bound to defy its rulings. Br.39. But states may not simply disregard the decisions of federal courts, even when they disagree with them. *See Cooper v. Aaron*, 358 U.S. 1 (1958). Acceding to a federal court ruling applying §2 *is* "actual §2 compliance." *Cf. id.* at 19-20. SB8 was adopted to advance that compelling interest.

Next, Appellees for the first time challenge §2's constitutionality as applied to Louisiana and argue

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that compliance with an allegedly unconstitutional law cannot be a compelling interest. Br.36-38. Because it was not raised below, Appellees' constitutional argument is waived. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 120 (1976). In any event, the argument fails on its merits.

Appellees' first purported constitutional argument is not about the constitutionality of §2 at all. Instead, Appellees contend that Louisiana is estopped from relying on §2 compliance as a compelling interest because in a different case about a different map, state officials argued that §2 had been unconstitutionally applied. Br.36. Appellees cite no case supporting their novel contention that a state's litigation position challenging a federal statute's constitutionality exempts the state from complying with that law. The mere fact that Louisiana disputed §2's constitutionality in another proceeding cannot render its interest in avoiding a §2 violation any less compelling. *Cf. Vera*, 517 U.S. at 991-992 (O'Connor, J., concurring) (given this Court's history of applying and upholding §2, "it would be irresponsible for a State to disregard the §2 results test").

Appellees next misguidedly argue that applying §2 to Louisiana in *Robinson* was unconstitutional. Br.38 (arguing that facts in Louisiana have changed and §2 should no longer be applied). Appellees effectively ask this Court to review *Robinson*, not the actions of the State or the decision of the court below. But the *Robinson* decisions are not on appeal here, and this Court should not review them.

Moreover, Appellees' argument that §2 is insufficiently tied to current conditions to justify its application in Louisiana rests on a false premise. As this Court recognized in *Milligan*, the *Gingles* standard is inherently tied to current conditions. Under *Gingles*,

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§2's "exacting requirements…limit judicial intervention to those instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate." *Milligan*, 599 U.S. at 30 (cleaned up). Satisfying *Gingles* requires evidence of the *current* size and compactness of the minority population and *ongoing* patterns of racially polarized voting; it demands an assessment of whether, in the totality of circumstances, minority voters *presently* lack a fair opportunity to participate in the political process and elect candidates of choice. *Id.* at 28-29. Whenever and wherever conditions do not allow plaintiffs to satisfy the *Gingles* framework, §2 does not require a race-conscious remedy. That is not the case in Louisiana, as the *Robinson* court found. *Robinson I*, 605 F. Supp. 3d at 844-851 (detailing extensive evidence of ongoing discrimination, racialized politics, and polarized voting).

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B. SB8 Is Narrowly Tailored to Comply with §2.

When drawing districts to comply with §2, a state's effort is narrowly tailored if it has "good reasons" to believe the statute requires its use of race, and the remedial district substantially addresses the potential liability. *Bethune-Hill*, 580 U.S. at 194; *Vera*, 517 U.S. at 977. It is beyond dispute that *Robinson* found Louisiana potentially liable for violating §2, 605 F. Supp. 3d at 851, providing strong reasons to believe §2 required an additional majority-Black congressional district. Appellees concede that CD6 includes at least 70% of the Black population from the illustrative district offered to prove that violation. Br.50. CD6 thus substantially addresses the potential §2 liability identified in *Robinson*. In support of their contention

that SB8 nevertheless fails narrow tailoring, Appellees distort the record in *Robinson*, invent new legal standards for assessing remedial maps, and repeat the district court's error in suggesting §2 imposes a freestanding compactness requirement.

1. None of Appellees' Arguments Undermine the "Good Reasons" Provided by Robinson.

First, Appellees contend that because none of the maps in *Robinson* included Shreveport in a majority-Black illustrative district, *Robinson* foreclosed the inclusion of Shreveport in SB8's remedial district. Br.43. But the State was not required to draw "the precise compact district that a court would impose." *Vera*, 517 U.S. at 978. Moreover, Appellees' assertion that *Robinson* rejected any remedy that includes Shreveport and Baton Rouge in the same district is false. The *Robinson* court held that *Hays*'s invalidation of the district challenged there did not undermine the constitutionality of the plaintiffs' illustrative plans. *Robinson I*, 605 F. Supp. 3d at 832-834. It said nothing about how the State might configure a remedial district.

Appellees' other attempts to cast doubt on the Legislature's inclusion of Shreveport in CD6 are similarly unfounded. Appellants' demographer's explanation that he would never offer the *Hays* district as an *illustrative* district has no bearing on the validity of CD6 as a legislatively drawn *remedial* district. While §2 plaintiffs are required to put forward reasonably configured districts to satisfy *Gingles*, states drawing remedial districts are not so constrained. *Vera*, 517 U.S. at 978-979. Likewise, Appellees' assertion that the *Robinson* court did not consider evidence of vote dilution in northwest Louisiana is incorrect. In addition to the evidence of

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discrimination referenced by Louisiana, State's Br.52, the court cited multiple elections showing high levels of racial polarization in HB1's CD4, which includes all the northwest Louisiana parishes included in SB8's CD6. *Robinson I*, 605 F. Supp. 3d at 834-835.

Second, Appellees seek to rewrite the "good reasons" standard by arguing, on a variety of unsupported and nonsensical grounds, that *Robinson* does not support SB8's adoption. They first decry the *Robinson* ruling as "preliminary." Br.42. But this Court has been clear that states need not face certain defeat in court before having "good reasons" to address potential VRA liability; race-conscious remedial action may be appropriate without *any* court-determined §2 violation. *ALBC*, 575 U.S. at 278-279. The *Robinson* court's finding that the plaintiffs were substantially likely to succeed in proving their §2 claim, affirmed in substance by the Fifth Circuit, was "good reason" for Louisiana to believe it faced potential §2 liability.

Appellees further suggest that *Robinson* provides insufficiently good reasons for the Legislature's action because it was decided by a single district judge and because it was reviewed under the clear error standard. But that would apply to *any* §2 ruling. The existence of vote dilution under §2 is a question of fact reviewed for clear error even after judgment. *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986). Moreover, even if the standard of review were relevant to whether "good reasons" exist, Appellees' argument is unsupported by the Fifth Circuit's decision, which affirmed, in addition to its factual findings, *Robinson's* application of the relevant legal principles and its rejection of many of the arguments Appellees make here. *Robinson III*, 86 F.4th 574, 591-595. Likewise, as a general matter, §2 claims are decided by a single

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judge no matter the stage of the case. *Cf. Milligan*, 599 U.S. at 16-17. That does not make them subject to revision by a three-judge court in a collateral racial-gerrymandering case.

In addition, even were the quality of the State's defense of HB1 relevant, Br.44-45, Appellees' suggestion that it was feeble is belied by *Robinson*'s procedural history. Moreover, Appellees have identified no evidence or legal argument the State failed to offer. Indeed, the Attorney General's advice to the Legislature that further litigation would be fruitless suggests that the State had no evidence or argument beyond what it had already presented. Given Louisiana's robust defense of HB1, Appellees' disagreement with the Attorney General's assessment provides no basis to undermine the good reasons for the State's conclusion that §2 required a second majority-Black district.

At bottom, Appellees' arguments against the good reasons provided by *Robinson* create the very bind for states this Court has carefully avoided. And they are an invitation for gamesmanship, allowing racial-gerrymandering plaintiffs to mount collateral attacks in more favorable forums on any §2 decisions they are unhappy with. This Court should reject that invitation.

Third, Appellees erroneously assert that the failure to introduce the *Robinson* record into evidence or offer evidence of a "pre-enactment analysis" undermines the "good reasons" *Robinson* supplied for the State's remedial action. Br.41-42. Appellees' suggestion that the Legislature's map-drawing was uninformed by the *Robinson* findings is incorrect. During the 2024 Special Session, the Legislature received advice from the State's Attorney General about the requirements of federal law and the effect of the *Robinson* rulings. *See* J.S.A.352a-356a. Additionally, all the relevant

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vote-dilution evidence was described in the district court and Fifth Circuit decisions, with which the Attorney General was familiar. *See Robinson I*, 605 F. Supp. 3d at 820-851; *Robinson III*, 86 F.4th at 588-599. Moreover, during the Special Session, *Robinson* counsel submitted written and oral testimony to legislators explaining the evidence and conclusions from that litigation. J.S.A.486a-496a, Doc.183-38; *cf. Vera*, 517 U.S. at 994-995 (O'Connor, J., concurring) (litigation over city-council districts could provide strong basis in evidence to draw remedial congressional district in the same area). The court below was not required to second-guess the *Robinson* courts' determination that §2 required a second majority-Black district, and the Legislature was not required to disregard the Attorney General's advice or conduct its own competing §2 analysis before having "good reasons" to think it would transgress the VRA if it did not draw a remedial district.

Fourth, Appellees contend that "it is impossible to draw a second majority-Black district without violating traditional redistricting criteria." Br.28. That assertion is unsupported by the record,[1] conflicts with the findings in *Robinson*, and goes beyond the district court's decision, which expressly declined to make that finding. *See* J.S.A.128a. Indeed, where one federal court has already found that the state constitutionally can (and, to satisfy §2, must) create two Black-opportunity districts, it would place the State in an untenable position for another court to reach the

[1] The only support offered for this assertion is Appellees' expert Michael Hefner, who offered no expert evidence on the subject, but merely stated that *he* was unable to draw a reasonably configured second majority-Black district when attempting to do so "for [his] own edification." J.A.253.

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conflicting conclusion that a constitutional remedy for that violation is "impossible."

2. SB8 Substantially Addresses the VRA Violation.

Appellees contend that CD6 does not substantially address the violation in *Robinson* because it "covers different territory and a different…population." Br.50. But in arguing that CD6 is different from *Robinson*'s majority-Black illustrative district because it sheds 30% of that district's Black population, Appellees concede that 70% of the Black population is shared between them. Appellees counter that, even if it keeps the vast majority of the *population*, CD6 excludes "50% of the territory" in the *Robinson* illustrative district. But "[l]egislators represent people, not trees or acres." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). By drawing 70% or more of its Black population from areas where the *Robinson* plaintiffs proved vote dilution, CD6 substantially addresses the §2 violation found in *Robinson*.[2]

Appellees next argue that CD6 fails as a remedy because a "true remedial map must 'substantially address' the Section 2 violation…*and* be reasonably compact," and, they say, CD6 is not compact. Br.49. In so doing, they repeat the district court's error. Once a state has a strong basis in evidence to believe a §2 violation exists, it has leeway to pursue any legitimate, nonracial policy goal in its remedial district—and to deprioritize traditional districting principles in their pursuit. *Shaw II*, 517 U.S. at 917 n.9. Appellees cite *LULAC* in support of their invented standard, but

[2] It bears remarking that Appellees' argument that the *Hays* district and CD6 are similar uses the very same method they object to as an assessment of whether the *Robinson* district and CD6 are similar. Br.8.

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LULAC does not impose an independent, freestanding compactness requirement for remedial districts. To the contrary, *LULAC* confirmed that §2 "does not forbid the creation of a noncompact majority-minority district." 548 U.S. at 430 (citing *Vera*, 517 U.S. at 999 (Kennedy, J., concurring)).

Appellees concede, as they must, that §2 does not require compact districts, but then illogically assert that if a state avails itself of that leeway, it has no defense to a racial gerrymandering claim, regardless of its reasons for choosing a noncompact design. Br.49. The empty promise of flexibility in Appellees' rule would effectively mandate that §2 districts "have the least possible amount of irregularity in shape"—a view this Court has rejected as "impossibly stringent." *Vera*, 517 U.S. at 977-978. "States retain a flexibility that federal courts enforcing § 2 lack," because a "constitutional problem arises only from the subordination of [traditional redistricting] principles to race," not from failing to maximize adherence to them. *Id*.

When the appropriate legal standard is applied, it is clear SB8 substantially remedies the §2 violation identified in *Robinson* and is narrowly tailored to comply with the VRA.[3]

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III. The Pending 2024 Election Counseled Against, Not in Favor of, Consolidation of the Trial.

The district court's summary denial of Appellants' deconsolidation motion was a stark abuse of discretion

[3] Appellees also erroneously suggest that the Court can affirm based on Count II of their Complaint, alleging intentional discrimination. Br.23 n.7. But the district court did not reach that claim, and Appellees adduced no evidence to support it.

that should be corrected. Appellees wrongly argue that the *Robinson* Appellants do not have standing to appeal the consolidation because they were permissive intervenors. Br.55. The sole case Appellees cite merely holds that an intervenor must establish Article III standing in an appeal seeking relief different from the named parties. *Town of Chester v. Laroe Ests. Inc.*, 581 U.S. 433, 440 (2017). It does not impose heightened standing requirements on permissive intervenors. Consolidation severely prejudiced Appellants' ability to present their case. *See* Appellants Br.49-52. There is no question they have Article III standing.

On the merits, Appellees assert the district court had "myriad reasons" to consolidate, but the only reason they identify is the then-impending 2024 election. Br.56. Consolidation was not necessary to protect Appellees' purported interests in the 2024 election: A preliminary injunction would have avoided any possible injury pending trial. Fed. R. Civ. P. 65. Moreover, now that the 2024 election has concluded, even that rationale for consolidation no longer holds.

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CONCLUSION

This Court should reverse the decision below.

Respectfully submitted,

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