No. 24-109

In the
Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,
v.

PHILLIP CALLAIS, ET AL.,
Appellees.

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

SECRETARY OF STATE NANCY LANDRY'S RESPONSE IN OPPOSITION TO ROBINSON INTERVENOR-APPELLANTS' MOTION TO STRIKE

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September 24, 2025

Robinson Intervenor-Appellants' Motion to Strike attempts to make a complicated situation straightforward. That attempt fails. There is nothing straightforward about redistricting litigation in Louisiana this decade. And there is nothing straightforward about the postures of the parties on this supplemental question. Robinson Intervenor-Appellants' Motion to Strike should be denied.

First, Robinson Intervenor-Appellants' selectively quote the Secretary's August 2024 letter, omitting the key phrase "[i]n the current posture of the case." As detailed more fully in the Secretary's Supplemental Appellee Brief, the posture of the case has unquestionably changed since August of 2024.

Second, Robinson Intervenor-Appellants argue that the Secretary should have withdrawn her August 2024 letter. In support of this argument, Robinson Intervenor-Appellants cite to no known rule or precedent. That is because, as far as the Secretary can tell, there is none. This situation is entirely unique and based only on the Court's August 1, 2025, supplemental briefing order.

Third, Robinson Intervenor-Appellants were on notice that the Secretary intended to take the position that S.B. 8 is unconstitutional. Counsel for the Secretary proclaimed as much when probed at a hearing in the Louisiana legislative case, where counsel for Robinson Intervenor-Appellants, including the Motion to Strike's signatory, were present on August 6, 2025. App'x at 6a-7a. Moreover, counsel for the Secretary clearly informed counsel for all other parties of her intent to file a Supplemental Appellee Brief on September 12, 2025 via email. Mot. App'x 1. Counsel for Robinson Intervenor-Appellants never responded or attempted to confer. Had

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they, counsel for the Secretary would have informed them that counsel for the Secretary informed the Clerk of the Secretary's plan to file a Supplemental Appellee Brief, and no objection was raised.

Moreover, it is undisputed that the Secretary was listed as an Appellee at the time the August 1, 2025, supplemental briefing order was entered. It is further undisputed that despite the State, now "switching its position on the constitutionality of S.B. 8[,]" filed a Supplemental Appellant Brief and will now likely file a Reply Brief in support of Appellees. Robinson Mot. at ¶¶5, 14, 16.[1] Strangely, Robinson Intervenor-Appellants take no issue with that gamesmanship, which allows the State a second bite at the apple and weeks longer to prepare to respond to the Robinson Intervenor-Appellant's opening Supplemental Brief. If anyone has prejudiced the Robinson Intervenor-Appellants, it is the State, by getting weeks longer to reply to the Robinson arguments, while the Secretary, whose position aligned with the Appellees on the supplemental question presented, did not. If anything, the Secretary's filing of an appellee brief showed the Robinson Intervenor-Appellants consideration that the State did not, because in filing a Supplemental Appellee Brief, the Secretary forwent a reply brief, that Robinson Intervenor-Appellants apparently concede she would have been entitled to file. Robinson Intervenor-Appellants simply cannot claim prejudice from the Secretary's alleged inconsistency and failure to provide early notice, when her legal arguments have never been inconsistent, Sec'y

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[1] Citations are to Robinson Intervenor-Appellants' September 18, 2025 Motion to Strike. Robinson Intervenor-Appellants re-filed a Motion to Strike on September 23, 2025, where the cited paragraphs are now ¶¶5,10.

Supp. Br. at 29-37, and when the State did not provide the Court any notice that it intended to change its substantive position in this appeal. Any alleged prejudice can be alleviated by allowing the Robinson Intervenor-Appellants' request for enlargement of the word count, to which the Secretary consented.

Finally, the Secretary's Supplemental Appellee Brief provides arguments raised by no other party that she is uniquely situated to address. This includes, but is not limited to, arguments regarding election administration, and especially relevant to this Motion, arguments that the shift in position by the Robinson Intervenor-Appellants from the original 2022 litigation reveals that the original *Robinson* court provided a purely erroneous legal theory which the Legislature relied upon in enacting S.B. 8, meaning that under *Cooper v. Harris*, 581 U.S. 285, 306 (2017), S.B. 8 is unconstitutional. *See also* Sec'y Supp. Br. at 29-37. To the extent Robinson Intervenor-Appellants (or the State) want to argue that the Secretary's unique positions here can be adequately represented by the State, that is simply an illusion. The Secretary has always had separate counsel in this matter, and has taken a separate position on the merits and on the question presented today.

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In sum, with such an important question on the line, a question the Secretary has undeniably maintained a consistent position on throughout Louisiana's redistricting litigation this decade, Robinson Intervenor-Appellants seek to prevent this Court from the benefit of hearing from Louisiana's chief election official and her consistent position simply because they do not like it. Nothing in the rules or equity demands such an outcome, and the Secretary respectfully asks that this Court deny

Robinson Intervenor-Appellants' Motion to Strike, but grant their request for an enlargement of the word count.

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Respectfully Submitted,

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APPENDIX

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TABLE OF APPENDICES

Page

APPENDIX — EVIDENTIARY HEARING IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA, DATED AUGUST 6, 2025. . . . . 1a

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

DR. DOROTHY NAIRNE, ET AL	*	CIVIL ACTION
	*	
VERSUS	*	NO. 3:22-178-SDD
	*	
R. KYLE ARDOIN, ET AL	*	AUGUST 6, 2025

* * * * * * * * * * * * * * * * *

EVIDENTIARY HEARING
BEFORE THE HONORABLE SHELLY D. DICK
UNITED STATES CHIEF DISTRICT JUDGE

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APPEARANCES:

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FOR THE INTERVENORS, PHILLIP DEVILLIER AND CAMERON HENRY:	OFFICE OF THE ATTORNEY GENERAL, LOUISIANA DEPARTMENT OF JUSTICE BY: C. TOM JONES, ESQ. 1885 NORTH THIRD STREET BATON ROUGE, LOUISIANA 70804
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INDEX

PAGE

PLAINTIFFS' WITNESS:

COMMISSIONER SHERRI WHARTON HADSKEY

DIRECT EXAMINATION BY MS. GIGLIO 9

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(AUGUST 6, 2025)

(CALL TO THE ORDER OF COURT)

THE COURT: OKAY. GOOD MORNING.

BE SEATED.

CALL THE CASE, PLEASE.

THE DEPUTY CLERK: THIS IS CIVIL ACTION NO. 22-178, *DR. DOROTHY NAIRNE AND OTHERS VERSUS R. KYLE ARDOIN AND OTHERS.*

THE COURT: OKAY. GOOD MORNING, COUNSEL.

WOULD YOU MAKE YOUR APPEARANCES FOR THE RECORD, PLEASE.

MS. BRANNON: YOUR HONOR, THIS IS SARAH BRANNON FOR THE PLAINTIFFS AND ACLU.

THE COURT: GOOD MORNING, MS. BRANNON.

GO AHEAD.

MR. CLARK: GOOD MORNING, YOUR HONOR.

ROBERT CLARK OF COZEN O'CONNOR FOR THE PLAINTIFFS.

MR. NAIFEH: STUART NAIFEH FROM THE LEGAL DEFENSE FUND FOR THE PLAINTIFFS.

THE COURT: GOOD MORNING.

MS. GIGLIO: GOOD MORNING, YOUR HONOR.

AMANDA GIGLIO FROM COZEN O'CONNOR FOR THE PLAINTIFFS.

THE COURT: GOOD MORNING.

COUNSEL FOR THE DEFENDANTS?

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MR. STRACH: GOOD MORNING, YOUR HONOR.

PHIL STRACH FOR -- COUNSEL FOR THE SECRETARY OF STATE.

THE COURT: GOOD MORNING, MR. STRACH.

MR. STRACH: GOOD MORNING.

MS. RIGGINS: GOOD MORNING, YOUR HONOR.

ALYSSA RIGGINS, ALSO FOR THE SECRETARY OF STATE.

THE COURT: GOOD MORNING.

MR. WALSH: GOOD MORNING, YOUR HONOR.

JOHN WALSH, SECRETARY OF STATE.

MR. SMITH: GOOD MORNING, YOUR HONOR.

BRANDON SMITH FOR THE ATTORNEY GENERAL'S OFFICE.

MR. JONES: TOM JONES, ALSO, YOUR HONOR, FOR CAMERON HENRY.

THE COURT: I'M SORRY. I KNOW THAT MY COURT REPORTER IS NOT GOING TO HEAR THAT, SIR.

MR. JONES: I KNOW. I'VE BEEN SICK FOR A WEEK. LET ME TRY THIS MICROPHONE.

THE COURT: THANK YOU, SIR.

MR. JONES: IT'S TOM JONES, YOUR HONOR. I'M WITH THE ATTORNEY GENERAL'S OFFICE, AND WE'RE HERE TODAY FOR PHILLIP DEVILLIER AND CAMERON HENRY IN THEIR OFFICIAL CAPACITIES.

THE COURT: THANK YOU, SIR.

OKAY. AGAIN, GOOD MORNING.

THE COURT ORDERED AN EVIDENTIARY HEARING ON THE

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PRACTICAL CONCERN, YOUR HONOR, IS WE'VE GOT ALL THESE APPELLATE CASES THAT ARE DIRECTLY GOING TO IMPACT THIS CASE, AND DOES THE COURT MOVE FORWARD IN AUGUST AND THEN HAVE TO DO A REDO. RIGHT? AND JUST -- IT'S -- FROM A JUDICIAL ECONOMY, JUDICIAL EFFICIENCY PERSPECTIVE, THAT SEEMS TO US --

THE COURT: I'M AGAINST IT. I'M AGAINST A REDO, JUST SO THAT YOU KNOW.

MR. STRACH: YEAH. I DON'T WANT TO DO A REDO.

THEN THE OTHER PROBLEM IS A MORE PRACTICAL CONCERN, WHICH, AS MS. HADSKEY KIND OF REFERRED TO ON THE STAND, IS IF THE COURT SAYS "ALL RIGHT, IN AUGUST HERE'S YOUR NEW LEGISLATIVE DISTRICTS" AND THEN CARDS START GETTING MAILED OUT TO PEOPLE BECAUSE THE ELECTION MACHINERY HAS GOT TO RUN, THEN THE FIFTH CIRCUIT COMES BACK AND SAYS "NO," OR THE U.S. SUPREME COURT COMES BACK WITH A COMPLETELY DIFFERENT SECTION 2 STANDARD, WHICH BRINGS US BACK INTO THIS COURT COMING BACK --

THE COURT: WOULDN'T THEY HAVE TO -- THEY WOULD HAVE TO STEP BACK *MILLIGAN*, WHICH WAS JUST TWO YEARS AGO.

MR. STRACH: I DON'T THINK SO. I ACTUALLY THINK -- YOU KNOW, I HOPE I DON'T GET IN TROUBLE FOR SAYING THIS. BUT I THINK THAT THE DISTRICT THAT THE LEGISLATURE DREW WAS A PRETTY BRAZEN RACIAL GERRYMANDER, AND THAT'S MY CLIENT'S POSITION. AND SO I DON'T THINK THEY'D HAVE TO STEP BACK. I THINK THAT THEY MIGHT TWEAK SOME ASPECTS OF *ALLEN*. I THINK THEY MIGHT FINALLY START HONING IN ON WHAT'S COMPACTNESS MEAN AND WHAT

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DOES POPULATION COMPACTNESS MEAN, ALL OF WHICH WERE A DIRECT ISSUE IN THIS CASE, AND THEY MIGHT START TIGHTENING UP THE *GINGLES* STANDARDS. I THINK, AT A MINIMUM, THAT'S WHAT THEY'RE GOING TO DO. AGAIN, YOU KNOW, THEY MIGHT THROW THE WHOLE FRAMEWORK OUT ALTOGETHER. I DON'T THINK THEY'RE GOING TO DO THAT, BUT THEY MAY TIGHTEN UP THE POPULATION COMPACTNESS STANDARD SO THAT YOU CAN'T JUST USE COMPUTER TECHNOLOGY TO STRING TOGETHER BLACK COMMUNITIES ANYMORE AND SAY, "OH, THIS IS A VRA DISTRICT."

SO I THINK -- I THINK THAT -- I MEAN, I DON'T THINK THEY HAVE TO WALK BACK *ALLEN*. I THINK THEY HAVE TO TWEAK IT.

THE COURT: WELL, IF THE RESULT IS JUST TO GIVE FURTHER CLARIFICATION TO *GINGLES* AND NOT WALK BACK *MILLIGAN* AS I QUESTIONED, THEN DRAWING A REMEDIAL MAP IN THIS CASE IS PRETTY STRAIGHTFORWARD. I MEAN, WE HAVE TO TAKE INTO ACCOUNT -- YOUR WORDS -- THE TWEAKING, BUT IT'S NOT A NEW DAY DAWNING, IF YOU'RE READING THE TEA LEAVES CORRECTLY.

MR. STRACH: IT COULD BE, YOUR HONOR. THE DISTRICTS THAT HAVE BEEN DRAWN BY THE PLAINTIFFS IN THIS CASE, IF I'M RIGHT ABOUT HOW THE SUPREME COURT MIGHT TWEAK SECTION 2 IN *CALLAIS* OR COULD COMPLETELY UNDO IT, THEN THOSE DISTRICTS WOULD NOT FLY, IN MY MIND.

THE COURT: RIGHT.

BUT IF IT'S JUST A TWEAK, IT SEEMS TO ME THAT

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CERTIFICATE

I, SHANNON THOMPSON, CCR, OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF LOUISIANA, CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT, TO THE BEST OF MY ABILITY AND UNDERSTANDING, FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

Shannon Thompson

SHANNON THOMPSON, CCR

OFFICIAL COURT REPORTER

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