No. 22-492

IN THE

Supreme Court of the United States

KELVIN BUCK, ET AL.,
Appellants,
v.
MICHAEL WATSON, ET AL.,
Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi

MOTION TO DISMISS OR AFFIRM

MICHAEL B. WALLACE
CHARLES E. COWAN
WISE, CARTER, CHILD & CARAWAY, P.A.
P.O. Box 651
Jackson, MS 39205-0651
mbw@wisecarter.com
(601) 968-5534
Counsel for Appellee Mississippi Republican Executive Committee

W. TREY JONES
JACOB A. BRADLEY
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
P.O. Drawer 119
Jackson, MS 39205-0119
tjones@brunini.com
(601) 948-3101
Counsel for Appellee Secretary of State Michael Watson

LYNN FITCH
Attorney General
WHITNEY H. LIPSCOMB
Deputy Attorney General
SCOTT G. STEWART
Solicitor General
Counsel of Record
JUSTIN L. MATHENY
ANTHONY M. SHULTS
Deputy Solicitors General
MISSISSIPPI ATTORNEY GENERAL'S OFFICE
P.O. Box 220
Jackson, MS 39205-0220
scott.stewart@ago.ms.gov
(601) 359-3680
Counsel for Appellees Governor Tate Reeves, Attorney General Lynn Fitch, and Secretary of State Michael Watson

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction over a direct appeal from orders of a three-judge district court when none of the orders "grant[s] or den[ies]" an injunction. 28 U.S.C. § 1253.

2. Whether the three-judge district court acted within its discretion when it vacated a final judgment imposing a court-drawn congressional map on Mississippi on the ground that applying that judgment prospectively was "no longer equitable." Fed. R. Civ. P. 60(b)(5).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

OPINIONS BELOW

The district court's opinion and order (App.5-48) is not reported but appears at 2022 WL 2168960. That court's order denying appellants' motions to amend and correct its opinion (App.49-61) is not reported.

JURISDICTION

This Court lacks jurisdiction. Under 28 U.S.C. § 1253, this Court has appellate jurisdiction over orders "granting or denying ... an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." The orders here do not grant or deny an injunction. They dissolve an injunction. The orders are a "final decision[ ]" over which "[t]he court[ ] of appeals"—not this Court—has jurisdiction. *Id.* § 1291.

STATEMENT

1. "The 2000 census caused Mississippi to lose one congressional seat, reducing its representation in the House of Representatives from five Members to four." *Branch v. Smith*, 538 U.S. 254, 258 (2003). But the state legislature did not pass a new redistricting plan after the census results were published in 2001. *Ibid.* In October 2001, Beatrice Branch and others sued in Mississippi state chancery court, asking that court to issue a plan for the 2002 congressional elections. *Ibid.* In November 2001, John Smith and others filed a similar lawsuit in federal district court in the Southern District of Mississippi. *Ibid.* That suit named as defendants the state officials and political-party committees that oversee and administer the State's elections. The Smith plaintiffs asked the district court to enjoin any plan drawn by the state court and to order

at-large elections or "devise its own redistricting plan." *Id.* at 259. A three-judge district court was convened for that case. *Ibid.*; *see* 28 U.S.C. § 2284.

"Initially" the district court "did not interfere with" the state chancery court's efforts to develop a redistricting plan. 538 U.S. at 259. On December 5, 2001, the district court permitted Branch and the other state-court plaintiffs to intervene in the federal case and declined to grant preliminary injunctive relief to the Smith plaintiffs. *Smith v. Clark*, 189 F. Supp. 2d 502, 502-03 (S.D. Miss. 2001). The court emphasized that "the Constitution leaves with the States primary responsibility" for apportioning congressional districts. *Id.* at 503. But it added that "if it is not clear to this court by January 7, 2002 that the State authorities can have a redistricting plan in place by March 1, we will assert our jurisdiction ... and if necessary, we will draft and implement a plan for reapportioning the state congressional districts." *Ibid.*

On December 21, 2001, the state chancery court adopted a redistricting plan. 538 U.S. at 260. On December 26, the Mississippi Attorney General submitted that plan to the U.S. Department of Justice for preclearance. *Ibid.* (At the time, Mississippi was covered by section 5 of the Voting Rights Act, now codified at 52 U.S.C. § 10304, which required it to obtain approval before changes to its voting laws could take effect.) On February 14, 2002, DOJ asked the state attorney general for more information. 538 U.S. at 260. DOJ said that the 60-day period for deciding on preclearance would begin when DOJ received that information. *Ibid.* The state attorney general provided the information on February 19 and 20. *Ibid.*

By then the district court had already expressed "serious doubts" whether the chancery court's plan "will be precleared prior to the March 1 candidate qualification deadline." *Smith v. Clark*, 189 F. Supp. 2d 503, 508 (S.D. Miss. 2002). So the district court began to craft its own plan. *See id.* at 511.

On February 4, the district court issued a plan that would be used unless the chancery court's plan was timely precleared. *Smith v. Clark*, 189 F. Supp. 2d 512, 512-14, 525-27 (S.D. Miss. 2002). On February 19, the district court ordered that if the chancery court's plan was not precleared by February 25 then the district court's plan would be used for the 2002 elections. *Smith v. Clark*, 189 F. Supp. 2d 529, 548 (S.D. Miss. 2002). February 25 passed without preclearance. *Branch*, 538 U.S. at 260.

On February 26, the district court enjoined use of the chancery court's plan and ordered the district court's plan to be used in the 2002 congressional elections and all succeeding elections until the State produced "a constitutional congressional redistricting plan" that was "precleared" under section 5. *Smith v. Clark*, 189 F. Supp. 2d 548, 559 (S.D. Miss. 2002). "The basis for th[e] injunction and order," the district court explained, was "the failure of the timely preclearance" of the chancery court's plan. *Id.* at 549. As an "alternative holding" the district court ruled that the chancery court's plan could not be used because the state court had unconstitutionally usurped the state legislature's authority. *Ibid.*; *see id.* at 550-58.

On direct appeal, this Court affirmed the district court's February 26 final judgment. *Branch*, 538 U.S. 254. The Court first held that the district court properly enjoined use of the chancery court's plan.

The Court affirmed the injunction "on the basis ... that the state-court plan had not been precleared and had no prospect of being precleared in time for the 2002 election." *Id.* at 265; *see id.* at 261-65. Having affirmed on that basis, the Court did not reach the district court's alternative holding and "vacate[d]" that holding "as a basis for the injunction." *Id.* at 265; *see id.* at 265-66. The Court next held that the district court properly fashioned and ordered its own redistricting plan, rather than ordering at-large elections. *Id.* at 266-72; *id.* at 273-76 (4-Justice opinion); *id.* at 285-92 (Stevens, J., concurring in part and in judgment).

2. From 2002 through 2010, "every congressional primary and general election in Mississippi ... occurred under the court-drawn plan" in the February 26, 2002 final judgment. *Smith v. Hosemann*, 852 F. Supp. 2d 757, 758 (S.D. Miss. 2011). This was because the state legislature "ha[d] not produced" a redistricting plan to satisfy the final judgment. *Ibid.*

The 2010 census showed that population changes had caused "the four districts in the court-drawn plan" to become malapportioned—unequal in population. 852 F. Supp. 2d at 758. But the legislature did not adopt a new plan. *Id.* at 759-60. As the January 2012 qualifying deadline for congressional candidates approached, *id.* at 759, two things happened. First, appellants here—seven black Mississippians of voting age who live in the State's four congressional districts (often called the "Buck plaintiffs")—filed a lawsuit challenging the court-drawn plan as malapportioned. *Id.* at 761. That suit was consolidated with the *Smith* case. *Ibid.* Second, several parties in the *Smith* case—including some appellees here—asked the district court to amend its final judgment to adopt a new plan that complied with federal law. *Id.* at 762; *see* Fed. R.

Civ. P. 60(b)(5) (district court "may relieve a party ... from a final judgment" when "applying [the judgment] prospectively is no longer equitable"). With the January deadline nearing, on December 19, 2011, the district court issued a proposed court-drawn plan, calling for any "objections, comments, and suggestions" to the plan by December 22. 852 F. Supp. 2d at 762.

On December 30, 2011, the district court amended its 2002 final judgment to adopt the plan that it had proposed on December 19. 852 F. Supp. 2d at 762-67. The court ruled that applying the 2002 final judgment prospectively was "no longer equitable" because of changed "factual circumstances": "the four districts [we]re now malapportioned, violating the constitutional one person, one vote requirement." *Id.* at 764. The court adopted a new plan that complied with that requirement. *Id.* at 764-67. The court ordered that its new plan be used in the 2012 congressional elections and all succeeding elections until the State produced "a constitutional congressional redistricting plan" that was "precleared" under section 5. *Id.* at 767. The court reemphasized that "the primary responsibility for reapportionment lies with the State" and that if the State "can timely reapportion the districts in a constitutionally acceptable manner, the federal courts have no duties to draw the district lines." *Id.* at 759. The court stepped in only when it had "bec[o]me clear that the State" could not have a precleared plan in place by the January 2012 qualifying deadline. *Ibid.*

3. From 2012 through 2020, "every congressional primary and general election" in Mississippi "occurred under the court-drawn plan" in the December 30, 2011 final judgment. App.6. But on January 24, 2022, the Mississippi Governor signed into law a new four-district congressional plan, House Bill 384. *Ibid.*

H.B. 384 equalized the four districts' populations, *see* D. Ct. Dkt. 151-2 at 2, and was drawn using criteria the district court had used in drawing the 2002 and 2011 plans, *see* D. Ct. Dkt. 151-4 at 7. Appellants proposed a competing plan that differed from H.B. 384 mainly on how to draw Congressional District 2 (in west Mississippi) to equalize the districts' population. Appellants' plan included a black voting-age population (62.11%) near H.B. 384's (63.74%) for District 2. *See* D. Ct. Dkt. 151-2 at 1, 2 (H.B. 384); D. Ct. Dkt. 151-3 at 2, 3 (appellants' plan).

The appellee state officials and Mississippi Republican Executive Committee (together, appellees) moved the district court under Fed. R. Civ. P. 60(b)(5) to vacate the 2011 final judgment and hold that H.B. 384 meets all legal requirements. App.10-11, 15 n.8. Appellants argued that vacatur was not warranted because H.B. 384 is an unlawful racial gerrymander and had not been precleared, so the 2011 judgment was not satisfied. App.13. In their papers opposing vacatur, appellants asked the court to modify the 2011 judgment by adopting their proposed plan. *Ibid.*; *e.g.*, D. Ct. Dkt. 151 at 7. Appellants did not file a motion for modification. The Smith plaintiffs joined the motion to vacate, D. Ct. Dkt. 147; the Mississippi Democratic Executive Committee joined appellants' opposition, D. Ct. Dkt. 167; and the Branch plaintiffs declined to participate further.

In a May 23, 2022 order, the district court vacated the 2011 final judgment. App.25-26. The court ruled that changed circumstances had made that judgment "inequitable in two respects." App.24; *see* App.20-26.

First, because of population shifts (and as the parties did not dispute) "all four districts from the 2011

court-drawn congressional map" had become malapportioned, so the 2011 plan was now unconstitutional. App.20. These "[c]hanged factual conditions" warranted relief under Rule 60(b)(5) because Mississippians would otherwise "be denied an established constitutional right affecting their vote." *Ibid.*

Second, the law has undergone "a significant change" since 2011. App.20; *see* App.20-23. In *Shelby County v. Holder*, 570 U.S. 529, 557 (2013), the U.S. Supreme Court held unconstitutional the coverage formula in section 4(b) of the Voting Rights Act, now codified at 52 U.S.C. § 10303(b). Because of that decision, "Mississippi is no longer covered by § 5's preclearance requirement." App.22. The 2011 judgment rested on the then-existing requirement that Mississippi obtain preclearance. App.20-21. *Shelby County* "nullified" the judgment's requirement of preclearance. App.22. Appellants argued that *Shelby County* was not a significant change in the law because it "did not declare § 5 unconstitutional." App.23 n.10. The court rejected that argument, explaining that "even though § 5 itself has survived, its applicability has not." *Ibid.* After *Shelby County*, "no jurisdiction formerly covered by § 4(b), including Mississippi, is currently subject to the requirements of preclearance under § 5." *Ibid.* Because Mississippi "is no longer a covered jurisdiction under § 4(b) and is therefore no longer subject to § 5 preclearance, the basis for th[e] court's injunction no longer exists." *Ibid.*

Given these "significant changes in both the factual conditions and the law" since the 2011 final judgment, the court held that "it is inequitable under Rule 60(b)(5)" for that judgment "to continue to be applied prospectively and to require" the State to "continue using" the court's 2011 plan. App.23-24. So the court

"vacated in its entirety" the 2011 judgment. App.25 (capitalization omitted).

The court declined to reach appellants' argument that H.B. 384 is an unconstitutional racial gerrymander (App.24-25) or appellees' argument that H.B. 384 satisfies all legal requirements (*see* App.15 n.8). No matter how those questions were answered, the court explained, "apply[ing] the 2011 final judgment prospectively" was "inequitable" and so the judgment could not stand. App.15 n.8; *see* App.24-25 (resolving appellants' argument "is unnecessary" to decision "to vacate the 2011 final judgment under Rule 60(b)(5)"). The court emphasized that appellants could bring "a new suit raising identical issues seeking the same relief" against H.B. 384. App.25; *see* App. 16 n.8, 24 n.11 (same). The court added that no party had moved to stay the election and that precedent suggested that the election processes were "too far advanced for the federal courts to interfere." App.25 (invoking *Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006) (per curiam)). The qualifying deadline for the House of Representatives was March 1 and primary day was June 7. *See* Miss. Code Ann. §§ 23-15-299, 23-15-359(3), 23-15-1031.

Judge Bramlette joined the district court's opinion and wrote a special concurrence. App.26-28. He noted: "All panel members agree that 'the lateness of the hour' dictates that the elections scheduled for 2022 should proceed according to the map adopted by H.B. 384." App.27 (quoting *Purcell*, 549 U.S. at 5-6). Judge Wingate dissented. App.28-48. He agreed that the elections already underway should proceed under H.B. 384. App.43. But he expressed doubts about H.B. 384's legality and maintained that the court should have resolved that issue. App.43-44; *see* App.28-43.

In a July 25, 2022 order, the court denied appellants' motions to amend and correct its May 23 order. App.49-55. Appellants had argued that vacatur was improper because appellees had not satisfied the 2011 judgment's requirements. *See* App.51-53. Rejecting that argument, the court explained that Rule 60(b)(5) "does not require that the enjoined party satisfy the injunction for the injunction to be vacated." App.51. That rule allows vacatur when applying the judgment prospectively "is no longer equitable," Fed. R. Civ. P. 60(b)(5)—a condition met here. App.51-53. The court reemphasized that appellants could file a new lawsuit challenging H.B. 384. App.54. Judge Wingate dissented in part, reiterating his view that the court should have decided H.B. 384's legality. App.55-61.

4. The July 25 order triggered plaintiffs' window to appeal from the May 23 and July 25 orders. Fed. R. App. P. 4(a)(4)(A) (time to appeal runs from entry of order disposing of Rule 52(b) and Rule 59 motions). A notice of appeal to the Fifth Circuit was due August 24, 2022. Fed. R. App. P. 4(a)(1)(A), (a)(4). Appellants filed a notice of appeal on September 22, 2022. App.3. The notice says that they appeal to this Court. *Ibid.*

ARGUMENT

The Court should dismiss this appeal or summarily affirm the judgment below.

I. The Court Should Dismiss This Appeal For Lack Of Jurisdiction.

This Court lacks jurisdiction over this appeal.

This Court's mandatory appellate jurisdiction is narrow. It extends to orders of three-judge district courts "granting or denying ... an interlocutory or

permanent injunction." 28 U.S.C. § 1253. The courts of appeals' appellate jurisdiction is broader. Those courts have "jurisdiction of appeals from all final decisions of the district courts of the United States ... , except where a direct review may be had in the Supreme Court." *Id.* § 1291. The courts of appeals also have "jurisdiction of appeals from ... [i]nterlocutory orders of the district courts of the United States ... granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court." *Id.* § 1292(a)(1).

Under these provisions, the courts of appeals—not this Court—have appellate jurisdiction over district-court orders dissolving or refusing to modify injunctions. Congress authorized direct appeals to this Court only from orders "granting or denying" injunctions, not from orders dissolving or refusing to modify injunctions. 28 U.S.C. § 1253. Congress granted the courts of appeals appellate jurisdiction over "[i]nterlocutory orders ... dissolving injunctions, or refusing to ... modify injunctions," *id.* § 1292(a)(1), and over "final decisions" dissolving or refusing to modify injunctions, *id.* § 1291. *See Gerstein v. Coe*, 417 U.S. 279, 279 (1974) (per curiam) (three-judge district-court orders that fall outside 28 U.S.C. § 1253 are "appealable to the Court of Appeals").

The orders here constitute a final decision dissolving (and refusing to modify) an injunction, so this Court lacks jurisdiction over this appeal. Appellants noticed an appeal from a May 23, 2022 order and a July 25, 2022 order. App.3. (The notice of appeal identifies two July 25 orders, but those are the same order—one reflects a docketing error. *See* D. Ct. Dkts. 205, 206.) In the May 23 order, the district court

"vacated in its entirety" its "2011 Final Judgment" imposing a permanent injunction. App.25 (capitalization altered). That order dissolves (and refuses to modify) an injunction. And it is a final order: it disposed of a Rule 60 motion and was the final judgment because a separate judgment was not required. Fed. R. Civ. P. 58(a)(5). In the July 25 order, the court denied motions, under Rules 52(b) and 59, to amend and correct the May 23 order. That order does not grant or deny an injunction; it lets stand the May 23 order dissolving the injunction. The orders constitute a final decision of a district court. Section 1291 allows for direct review of the orders only to the court of appeals.

Nor can appellants invoke section 1253 by claiming that the orders here "deny[ ]" an injunction. The district court made its one and only decision to grant or deny an injunction in 2002. That order granting an injunction permitted a direct appeal to this Court—which was taken—under section 1253. *Branch v. Smith*, 538 U.S. 254, 261 (2003). Since then, all orders on the injunction have modified, refused to modify, or dissolved it, and have been appealable, if at all, to the court of appeals under section 1291. Allowing a party to manufacture jurisdiction through creative labeling—for example, calling an order refusing to modify an injunction an order "denying" an injunction—would defeat section 1253's narrow authorization of direct appeals.

Besides section 1253, appellants cite 28 U.S.C. § 2101(b), 28 U.S.C. § 2284, S. Ct. R. 18, and S. Ct. R. 29. JS 1; App.3. None authorizes this appeal. Section 2101(b) provides that direct appeals to this Court that are "authorized by law" shall be taken "within sixty days" from final judgment. For reasons given above, a direct appeal to this Court is not "authorized by law"

here. Section 2284 speaks to convening three-judge courts. It does not say when an appeal from such courts is authorized and it does not authorize this appeal. Rule 18 addresses procedural matters for direct appeals that are "authorized by law." S. Ct. R. 18.1. It does not itself authorize this appeal. Rule 29—cited in the notice of appeal but not the jurisdictional statement—concerns filing and service. It too does not give this Court jurisdiction over this appeal.

This Court should dismiss this appeal, as it has done in like cases. *Coleman v. Brown*, 922 F. Supp. 2d 1004, 1025-48 (E.D. Cal./N.D. Cal. 2013) (refusing to dissolve or modify injunction), *appeal dismissed for lack of jurisdiction sub nom. Brown v. Plata*, 571 U.S. 948 (2013) (citing 28 U.S.C. § 1253); *Backus v. South Carolina*, No. 11-3120, Dkt. 239 (D.S.C. Mar. 10, 2014) (per curiam) (denying Rule 60(b) relief), *appeal dismissed for lack of jurisdiction*, 574 U.S. 801 (2014). Appellants must file a new lawsuit. They had 30 days from the July 25, 2022 order to notice an appeal to the court of appeals. Fed. R. App. P. 4(a)(4)(A). They did not file a notice of appeal until September 22, 2022—59 days after that order. App.3. They missed their deadline.

II. Alternatively, The Court Should Summarily Affirm The Judgment Below.

If this Court concludes that it has jurisdiction, it should summarily affirm. The district court properly vacated the 2011 final judgment and this case is not a vehicle for addressing any substantial question.

A. The district court was correct to vacate the 2011 final judgment. App.20-26.

A district court "may relieve a party ... from a final judgment" when "the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). Rule 60(b)(5) allows for relief from a judgment when "'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). When a State is enjoined, courts must "ensure that 'responsibility for discharging the State's obligations is returned promptly to the State and its officials' when the circumstances warrant." *Id.* at 450 (quoting *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 442 (2004)).

The district court soundly applied those principles to vacate the 2011 final judgment. The court identified two changes that made applying the 2011 final judgment "no longer equitable." Fed. R. Civ. P. 60(b)(5). First, "all four districts from the 2011 court-drawn congressional map" had become malapportioned, so the 2011 plan was now unconstitutional. App.20. This fact is undisputed. *Ibid.*; JS 10. The district court properly ruled that it would have been inequitable to leave in place a judgment that would "den[y] an established constitutional right affecting [Mississippians'] vote." App.20. Second, the law had undergone "a significant change" since 2011. *Ibid.*; *see* App.20-23. The 2011 judgment rested on the then-existing requirement of preclearance. App.20-21. *Shelby County v. Holder*, 570 U.S. 529 (2013), eliminated that requirement. The panel reasonably held that this "nullified" the 2011 judgment's preclearance

requirement, App.22, and that continuing to apply that requirement would be inequitable, App.23-24.

Having reasonably found that these changes made it "inequitable" for the 2011 final judgment "to continue to be applied prospectively to require" the State to "continue using" the 2011 court-drawn map, App.23-24, the court reasonably vacated the judgment. App.25; *see Browder v. Director, Dep't of Corrections of Illinois*, 434 U.S. 257, 263 n.7 (1978) (Rule 60(b) decisions are reviewed for abuse of discretion). That approach was especially proper given the imperative to return authority to state officials (*Horne*, 557 U.S. at 450) and the advanced stage of the 2022 election process (*see Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006) (per curiam)). Although Judge Wingate dissented, he agreed that H.B. 384 should be used for the 2022 elections. App.43. The court emphasized that it was not resolving appellants' objection to H.B. 384 and that they could challenge that plan in a new lawsuit. App.16 n.8, 24-25 & n.11; App.54.

Appellants contend that vacatur was "not suitably tailored to the change in factual circumstances of malapportionment." JS 11; *see* JS 10-12. They say that appellees "anticipated that the 2011 court-drawn plan would become malapportioned by 2022" and that "'[o]rdinarily, ... modification should not be granted where a party relies upon events that actually were anticipated' when the injunction was entered." JS 11 (quoting *Rufo*, 502 U.S. at 385). This argument fails. Appellants draw that "[o]rdinar[y]" practice from *Rufo*, but *Rufo* involved not merely an injunction but a consent decree. 502 U.S. at 378. When a party consents to an injunctive decree, it makes sense to generally hold that party to its agreement through events "that actually were anticipated at the time it entered

into [the] decree." *Id.* at 385. After all, the party foresaw those events but agreed to the decree anyway. This case does not involve a consent decree. It involves an injunction that the court entered and maintained because of the absence of an approved, legislatively drawn map. So any practice against modification is misplaced here. In any event, appellants concede that the district court could not use any "[o]rdinar[y]" practice against modification here. Appellants "agree that the 2011 court-drawn plan" is now "malapportioned" (JS 10) and thus had to be "modified" (JS 12). So appellants admit that the 2011 judgment was, as the district court ruled, now inequitable: it violated the Constitution. That being so, the district court acted within its discretion in relieving appellees from that judgment. Indeed, the district court had made clear for two decades that it would return redistricting to the State as soon as possible. *Supra* pp. 2-3, 5. Vacatur was "suitably tailored" to that aim.

Appellants also contend that vacatur was "not suitably tailored to a change in the law because there has not been a change in the law." JS 12; *see* JS 12-13. Appellants say that the law on racial gerrymanders has not changed. JS 12-13. But the district court did not claim or rely on any such change. It relied on the fact that *Shelby County* "nullified" a core requirement of the 2011 judgment—preclearance under section 5. App.22; *see* App.20-24. Appellants say that "there has not been a change in the law concerning § 5—only § 4(b)." JS 13. But "even though § 5 itself has survived, its applicability has not." App.23 n.10. After *Shelby County*, "no jurisdiction formerly covered by § 4(b), including Mississippi, is currently subject to the requirements of preclearance under § 5." *Ibid.* That section 5 now poses no barrier to a State's voting

laws—when it could have before—is "plainly a significant change in the law." App.22; *see Voketz v. City of Decatur*, 904 F.3d 902, 909 (11th Cir. 2018) (even if section 5 would have "prohibited implementing" a city's non-precleared law before *Shelby County*, "that plainly is not the case now that" the city "is no longer a covered jurisdiction" and so is not subject to section 5). Preclearance had been the injunction's core requirement for two decades. *See Branch*, 538 U.S. at 265 (affirming 2002 injunction "on the basis ... that the state-court plan had not been precleared and had no prospect of being precleared in time for the 2002 election"). Because Mississippi is "no longer subject to § 5 preclearance, the basis for" the 2011 judgment "no longer exists." App.23 n.10. The district court acted within its discretion in relieving appellees from that judgment.

B. The decision below also does not provide a vehicle for addressing any substantial question.

First, to the extent that appellants fault the district court on the questions that it resolved, this case does not present a vehicle for addressing a question of broad importance. The district court exercised its discretion under Rule 60(b)(5) to make an equitable ruling based on the circumstances of this case. App.20-26. The court's case-specific discretionary ruling, arising in the Rule 60 context, does not present a clean and substantial question warranting plenary review.

Second, to the extent that appellants fault the district court on the questions that it did not resolve, this case does not present a vehicle for addressing those questions. Appellants contend that H.B. 384 is "an unconstitutional racial gerrymander," so the district court's vacatur "created or perpetuated a

constitutional violation." JS 14; *see* JS 14-15. Appellees disagree with that view. *See*, *e.g.*, D. Ct. Dkt. 156 at 6-18. But the district court did not rule on H.B. 384's constitutionality and it made clear that appellants may file a new lawsuit pressing that view. App.16 n.8, 24-25 & n.11; App.54. Because the district court did not decide that issue, this case is not a vehicle for this Court to address it. If the issue warrants this Court's review, that review will be an option after a district court decides it in a new case.

CONCLUSION

This Court should dismiss this appeal or summarily affirm the district court's judgment.

Respectfully submitted.

MICHAEL B. WALLACE
CHARLES E. COWAN
WISE, CARTER, CHILD & CARAWAY, P.A.
P.O. Box 651
Jackson, MS 39205-0651
mbw@wisecarter.com
(601) 968-5534
Counsel for Appellee Mississippi Republican Executive Committee

W. TREY JONES
JACOB A. BRADLEY
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
P.O. Drawer 119
Jackson, MS 39205-0119
tjones@brunini.com
(601) 948-3101
Counsel for Appellee Secretary of State Michael Watson

LYNN FITCH
Attorney General
WHITNEY H. LIPSCOMB
Deputy Attorney General
SCOTT G. STEWART
Solicitor General
Counsel of Record
JUSTIN L. MATHENY
ANTHONY M. SHULTS
Deputy Solicitors General
MISSISSIPPI ATTORNEY GENERAL'S OFFICE
P.O. Box 220
Jackson, MS 39205-0220
scott.stewart@ago.ms.gov
(601) 359-3680
Counsel for Appellees Governor Tate Reeves, Attorney General Lynn Fitch, and Secretary of State Michael Watson

January 18, 2023