No. 23A_____

In the Supreme Court of the United States

NANCY LANDRY,
IN HER OFFICIAL CAPACITY AS THE
LOUISIANA SECRETARY OF STATE, ET AL.,
Applicants,

v.

PHILLIP CALLAIS, ET AL.,
Respondents.

EMERGENCY APPLICATION FOR STAY PENDING APPEAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants each represent that they do not have any parent entities and do not issue stock.

/s/ J. Benjamin Aguiñaga
J. Benjamin Aguinaga

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT.

INTRODUCTION

Five days out from May 15—the date by which the Louisiana Secretary of State needs to begin implementing a congressional map for the 2024 elections—Louisiana has no congressional map. Not because Louisiana did not enact a map (it did), but because, on April 30, a majority of the three-judge court below granted an injunction (sought nearly three months earlier) against Louisiana's current map. *Then* the court did not hold a status conference until May 6, with no plan for which map should be used for 2024 (the State and the Secretary suggested either the current map or the preceding map, which remains, for now, in the State's voter-registration system). And *then*, after requesting and receiving the Secretary's explanation regarding the inevitable chaos that will result from failing to have a map by May 15, the court on May 7 ordered remedial-map proceedings that will not conclude until early June.

This case screams for a *Purcell* stay. The late-breaking injunction—plus the court's blowing through election deadlines in search of an imaginary, litigation-proof 2024 congressional map—is the precise sort of "[l]ate judicial tinkering with elections law" that threatens "disruption and [] unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays). Applicants State of Louisiana and Louisiana Secretary of State Nancy Landry (collectively, the State) thus respectfully request that this Court stay pending appeal the lower court's injunction and remedial proceedings **by Wednesday, May 15.**

* * *

Louisiana's impossible situation in this redistricting cycle would be comical if it were not so serious. In June 2022, this Court granted certiorari before judgment (and a stay) because a federal judge in the Middle District of Louisiana had preliminarily enjoined Louisiana's recently enacted congressional map—H.B. 1. *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022). In that judge's view, H.B. 1 likely violated Section 2 of the Voting Rights Act (VRA) because only one, rather than two, of Louisiana's six congressional districts was majority-Black. In June 2023, this Court dismissed the writ as improvidently granted, vacated the stay, and "allow[ed] the matter to proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). But there was nothing ordinary about what happened next.

The Fifth Circuit kicked things off in November 2023 by vacating the preliminary injunction on procedural grounds, *but* it affirmed the Middle District's conclusion that H.B. 1 likely violated Section 2 of the VRA by failing to have two majority-Black districts. *Robinson v. Ardoin*, 86 F.4th 574, 587–99 (5th Cir. 2023). The Fifth Circuit also ordered the Middle District to allow the Louisiana Legislature to enact a new map (if it wished) by January 15, 2024; otherwise, the Middle District would go to trial on H.B. 1 and, if necessary, adopt a remedial map. *Id.* at 601–02. The State thus had two options: (a) go to trial on H.B. 1 before a judge that had already telegraphed that she would strike down H.B. 1 and enact her own map, or

(b) enact the State's own map. The State chose the latter.

As the trial record in this case reflects, every person involved in repealing H.B. 1 understood the mission: comply with the Middle District's and Fifth Circuit's decisions by drawing a congressional map with two majority-Black districts. That began with Governor Landry, who called a special legislative session on January 8, 2024, with a clear objective: "I think it's time that we put this to bed. Let us make the necessary adjustments to heed the instructions of the court." And legislator after legislator expressed the same view: "[W]e all know why we're here. We were ordered to draw a new black district[.]" So, by January 22, the Legislature passed (and the Governor signed) S.B. 8—a congressional map with two majority-Black districts that was carefully designed to achieve a number of political goals such as protecting House Speaker Mike Johnson, House Majority Leader Steve Scalise, and Representative Julia Letlow.

All good, right? No. A week later, the *Callais* Plaintiffs here sued, alleging that the S.B. 8 map is an unconstitutional racial gerrymander. They also quickly moved to preliminarily enjoin S.B. 8, which was subsequently consolidated with a trial on the merits. After a three-day trial on April 8–10, two judges below agreed and enjoined S.B. 8 on April 30. Judge Stewart dissented, emphasizing that the majority decision "creates an untenable dilemma for the State."

That dilemma only grew worse over the next seven days. For one thing, on May 1, a new Louisiana Supreme Court map became law, which will require the Secretary to imminently move millions of voters into different districts for that map for the 2024

elections. For another thing, since the beginning of the *Callais* litigation, the Secretary told the three-judge court that, to accurately administer the congressional election, she needs to begin implementing the 2024 congressional map (any map) by May 15. But the three-judge court did not hold a status conference until May 6, only to arrive at the conference with no 2024 plan. Instead, the court asked the Secretary if the May 15 deadline is flexible. She filed a brief the same day explaining that it was not: May 15 is a hard stop given all the tasks that must be completed before and after June 19 (which, by statute, is the deadline for candidates qualifying by nominating petition). Even marginally moving that date will result in chaos down the line as other deadlines are blown and election officials struggle to complete their tasks within further compressed timelines. Nonetheless, on May 7, the court issued an order purporting to give the Legislature until June 3 to draw a new map (again) and, in the meantime, requiring the parties to propose and submit briefing on 2024 maps, which the court would resolve on June 4 if the Legislature does not act. What May 15 deadline?

This is a textbook case for a *Purcell* stay. "Filing deadlines need to be met," candidates and voters need to "know who will be running against whom," and "state and local election officials need substantial time to plan for elections." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grants of applications for stays). After all, "[r]unning elections state-wide is extraordinarily complicated and difficult." *Id.* But where, as here, a court second-guesses election officials, tosses out election deadlines, and proposes to "swoop in and re-do" an entire congressional map on its own timeline,

that is "judicial tinkering" gone wild. *Id.* at 881. And all this was plainly avoidable: The court could have held trial sooner, decided the merits faster, or at least severed the 2024 elections from the injunction it was planning to issue on April 30, thereby avoiding the *Purcell* problem. Indeed, severing the 2024 elections is what the State proposed in the May 6 conference. But the court refused. The least-disruptive path forward at this point is to stay the injunction for the 2024 congressional elections while this appeal runs its course. *See Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

One final note: There is something poetic—though frustratingly so—about the case caption in the *Robinson* Intervenors' parallel emergency application in this case: *Robinson v. Callais*, No. 23A994 (U.S.). This case quite literally pits the *Robinson* courts' VRA rulings (failing to adopt a second majority-Black district likely violates the VRA) against the *Callais* court's Fourteenth Amendment ruling (adopting S.B. 8 with a second-majority Black district is unconstitutional)—with the State hopelessly stuck in the middle. This absurd situation is an affront to Louisiana, its voters, and democracy itself. The madness must end. Respectfully, the first step in that process is to stay the lower court's injunction against S.B. 8 and the related remedial proceedings **by Wednesday, May 15**, to ensure that Louisiana's 2024 congressional elections are disruption-free while this appeal proceeds. If the Secretary does not have a map by May 15, the only map that could be feasibly implemented after May 15 (and still avoid election chaos) is the H.B. 1 map, which remains programmed in the State's voter-registration system.

STATEMENT OF THE CASE

For thirty years, Louisiana has been trying to find the "breathing room"

between the VRA and the Fourteenth Amendment that this Court says exists. *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 196 (2017). So far, however, the State's good-faith efforts have failed. They have resulted in a series of competing and frustrating lawsuits against the State—first *Hays*, then *Robinson*, and now this case. As previous courts have said, this "back once again" issue is like "the Australian who went bonkers trying to throw away his old boomerang." *Hays v. Louisiana* (*Hays IV*), 936 F. Supp. 360, 365 (W.D. La. 1996).

So, here the State is again—bonkered out. The reality is that, if the State loses this case, then it is difficult to see how any "breathing room" existed in the first place. And the urgent reality is that—whatever the Court's decision on the merits—Louisiana desperately needs a stay of the district court's injunction and remedial proceedings that leave Louisiana with no congressional map (and no hope of one for some time) five days away from the first critical deadline.[1]

A. *Hays*: The Western District Prohibits Two Majority-Black Districts in Louisiana under the Equal Protection Clause.

In the 1980s, none of Louisiana's eight congressional voting districts was a majority-Black district. That changed in 1983 when a three-judge panel invalidated that plan, finding that it diluted minority voting strength in the New Orleans area. *See Major v. Treen*, 574 F. Supp. 325 (E.D. La. 1983). Accordingly, the Louisiana

[1] The Secretary of State joins the State in seeking a stay of the injunction pending appeal because the May 15, 2024 deadline is a firm and immovable deadline. As the Secretary of State, it is this Office's position that it will follow the orders of this Court and the court below. Any order to change the map currently programmed in the system must be received by the Secretary's Office by May 15, 2024. H.B. 1 is the map currently programmed and would cause the least election-administration disruption. But if the Secretary is going to be permitted or ordered to implement any map other than H.B. 1, it must have an order to do so by May 15—full stop.

Legislature enacted a map that "included a majority-[B]lack district in the New Orleans area." *Hays IV*, 936 F. Supp. at 363 n.5.

In the 1990s, "the [Louisiana] Legislature learned that, as a result of the 1990 census, Louisiana's congressional delegation had been reduced from eight members of the House of Representatives to seven." *Id.* at 362. At the time, Section 5 of the VRA required the State to get the U.S. Attorney General's preclearance for any proposed legislation changing Louisiana's congressional districts. And the Attorney General had made plain to the State that he would not preclear any plan that did not add a second majority-Black district—for a total of two "out of seven." *Hays v. Louisiana* (*Hays I*), 839 F. Supp. 1188, 1196 n.21. (W.D. La. 1993).

Knowing that the Attorney General would refuse to pre-clear any map with fewer than two majority-Black districts, the Louisiana Legislature twice "directed its energies toward crafting such a plan." *Hays IV*, 936 F. Supp. at 363 ("[T]he Civil Rights division of the Department of Justice was the *bete noir* that caused the Legislature to accept as inevitable the need either to produce a plan comprising two majority-minority districts or be denied preclearance . . . .").

Both times, the Legislature passed maps that (a) maintained the New-Orleans-centered majority-Black district from the 1980s and (b) created a second majority-Black district anchored in East Baton Rouge Parish and extending north along the Mississippi River into Louisiana's Delta Region and then across to Northwestern Louisiana. *See id.* at 363–64. Both times, the maps were "promptly precleared by the Attorney General." *Id.* at 364. And both times, the Western District of Louisiana

struck down the maps as racial gerrymanders that violated the Fourteenth Amendment's Equal Protection Clause. *See Hays I*, 839 F. Supp. at 1195; *Hays IV*, 936 F. Supp. at 368.

On direct appeal, this Court concluded that the *Hays* Plaintiffs lacked standing, vacated *Hays II*, and remanded the case with instructions to dismiss the Complaint. *United States v. Hays* (*Hays III*), 515 U.S. 737, 747 (1995). On remand, the Western District allowed Plaintiffs to amend their Complaint to remedy their standing deficiencies. *See Hays IV*, 936 F. Supp. at 366. The Western District then again concluded that having two majority-Black districts "constitute[d] a racial gerrymander," "declared" the map "null and void," enjoined the State from using the map "in any future elections," and "directed" the State "to implement the redistricting plan drawn by th[e] court," which contained only one majority-Black district. *Id.* at 367, 372.

The heart of that district centered on New Orleans. *See id.* at 373–74 (containing the court-ordered map in Appendix III). East Baton Rouge, the anchor of Louisiana's ill-fated second majority-Black district, was returned to a non-majority-Black district. *Id.* Since then, the Legislature has not dared to deviate from *Hays IV* by again attempting a second majority-Black district—at least not until a different federal court compelled that attempt.

B. *Robinson*: The Middle District and the Fifth Circuit Hold that the Failure to Have Two Majority-Black Districts Likely Violates the VRA.

Fast-forward thirty years. In 2020, the COVID-19 pandemic delayed the results of the 2020 Census. When those results finally arrived, Louisiana began its

decennial redistricting process. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 767 (M.D. La. 2022), *cert. granted before judgment*, 142 S. Ct. 2892 (2022), *and cert. dismissed as improvidently granted*, 143 S. Ct. 2654 (2023), *and vacated and remanded*, 86 F.4th 574 (5th Cir. 2023). In preparation for the Legislature's special redistricting session, state officials traveled across the State, holding "roadshows" to inform and collect feedback from voters. *Id.*

In February 2022, the Legislature convened in a special redistricting session and, ever mindful of *Hays IV*, passed H.B. 1—a map that included only one majority-Black district centered on New Orleans. When then-Governor John Bel Edwards vetoed H.B. 1, the Legislature voted to override his veto in March 2022. *Id.* at 768.

The same day that map took effect, two groups of plaintiffs sued in the Middle District of Louisiana. *Id.* In their collective view, Section 2 of the VRA required Louisiana to create a second majority-Black congressional district. *See id.* Their arguments hinged on proportionality—*i.e.*, because "Louisiana has six congressional districts and a Black population of over 33%," two of Louisiana's six congressional districts must be majority Black. *See* Add. 26.[2] The State of Louisiana and two of the State's Legislative leaders intervened, *Robinson*, 605 F. Supp. 3d at 768–69, and the Middle District consolidated the two cases, *id.* at 769.

In June 2022, the Middle District issued a preliminary injunction against H.B. 1 after proceeding on an extremely compressed timetable. *Id.* at 766. "The relevant question," that court said, was "whether, taking into account traditional redistricting

[2] Citations to the Appendix (*e.g.* "App. 1") refer to the Appendix filed in 23A944. Citations to the Addendum (*e.g.* "Add. 1") refer to the Addendum attached to this Application.

principles[,] . . . a reasonably compact and regular [second] majority-Black district can be drawn." *Id.* at 829. The Middle District answered that question in the affirmative: "[T]wo majority-minority congressional districts that satisfy *Gingles* and respect traditional redistricting principles can be drawn in Louisiana." *Id.* at 820. That court also rejected "for both legal and factual reasons" the argument that a second majority-Black district would violate the Equal Protection Clause. *Id.* at 835.

Recognizing the State's sovereign right to draw a new map, the Middle District gave the Louisiana Legislature about a month "to enact a new map that is compliant with Section 2 of the Voting Rights Act." *Id.* at 858. The Middle District recognized the State's "broad discretion in drawing districts to comply with the mandate of § 2" and emphasized that the State was free to draw a district different from the one the Plaintiffs had proposed or that "a court would impose in a successful § 2 challenge." *Id.* at 857–58 (first quoting *Shaw v. Hunt*, 517 U.S. 899, 917 n.9 (1996), then quoting *Bush v. Vera*, 517 U.S. 952, 978 (1996)). The Middle District reminded all that—whatever new legislation the Legislature proposed in response to the preliminary injunction of H.B. 1—the State both retained "flexibility" to avoid strict scrutiny "by respecting [its] own traditional districting principles" and deserved deference for its "reasonable efforts" to cure Section 2 liability. *Id.* (quoting *Vera*, 517 U.S. at 978).

The State appealed and sought a stay of the H.B. 1 preliminary injunction pending appeal. And the rollercoaster ride sped up. The Fifth Circuit first granted an administrative stay of the H.B. 1 injunction while it considered the State's request for a stay pending appeal, only to later "vacate the administrative stay and deny the

motion for stay pending appeal." *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022). The State then applied to this Court for an emergency stay of the H.B. 1 injunction pending appeal. *See Ardoin v. Robinson*, 142 S. Ct. 2892, 2892–93 (2022) (mem.). This Court granted the stay and certiorari before judgment and held *Robinson* in abeyance pending resolution of *Merrill v. Milligan*, 142 S. Ct. 879 (2022), a Section 2 challenge to Alabama's congressional map then pending before the Court. *Id.* at 2892–93. When *Milligan* came out, this Court lifted the stay of the H.B. 1 preliminary injunction and remanded to the Fifth Circuit for "review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023) (mem.).

The parties briefed the merits of the preliminary injunction to the Fifth Circuit, and oral argument occurred in early October 2023. *See Robinson v. Ardoin*, 86 F.4th 574, 586 (5th Cir. 2023). At the same time, the Middle District scheduled an expedited three-day hearing to impose a court-drawn map that would conclude just a day before the Fifth Circuit held oral argument. *In re Landry*, 83 F.4th 300, 304 (5th Cir. 2023). The Fifth Circuit quickly shut that down in mandamus proceedings because the Middle District failed to honor "the state legislature's entitlement to attempt to conform the districts to the court's preliminary injunction determinations," "forsook its duty[,] and placed the state an intolerable disadvantage legally and tactically." *Id.* at 304, 308. Accordingly, the Fifth Circuit granted "partial mandamus relief," vacated the Middle District's "remedial order hearing," and directed the Middle District to conduct further scheduling "pursuant to the principles enunciated" in the Fifth

Circuit's mandamus opinion. *Id.* at 305, 308.

After oral argument, the Fifth Circuit merits panel affirmed that the Middle District's preliminary injunction "was valid when it was issued." *Robinson*, 86 F.4th at 599. The Fifth Circuit found no clear errors "in [the Middle District's] necessary fact-findings nor . . . legal error in its conclusions that the Plaintiffs were likely to succeed on their claim that" HB 1 violated "Section 2 of the Voting Rights Act." *Robinson*, 86 F.4th at 583. Given the timing, however, the "preliminary injunction, issued with the urgency of establishing a map for the 2022 elections, [was] no longer necessary." *Id.* And so, the Fifth Circuit vacated the preliminary injunction and "allow[ed] the Louisiana Legislature until January 15, 2024, to enact a new congressional redistricting plan." *Id.* at 601. If the State passed on the opportunity to draw a new map, then the Middle District was "to conduct a trial and any other necessary proceedings to decide the validity of the H.B. 1 map, and, if necessary, to adopt a different districting plan for the 2024 elections." *Id.* at 602. On December 15, 2023, the Fifth Circuit declined to rehear that case en banc. *Robinson v. Ardoin*, No. 22-30333 (5th Cir. Dec. 15, 2023), ECF No. 363-2.

C. The Legislature Responds to *Robinson* by Enacting a Second Majority-Black District.

The Legislature, seeing the writing on the wall, heeded the Middle District's and Fifth Circuit's call to action. The Middle District had already enjoined H.B. 1 once as a likely violation of Section 2, so there was no serious possibility that taking H.B. 1 to trial on the merits would result in anything other than a permanent injunction of H.B. 1 and (worse still, from the Legislature's perspective) a court-

imposed map because of the 2024 election calendar. Opting to reclaim some semblance of its sovereign right to draw its own districts, the Legislature recovered the pen from the federal courts after three decades of following *Hays IV*.

On January 8, 2024—the day Governor Landry (the Louisiana Attorney General during most of *Robinson*) took office—he called the Legislature into session to "legislate relative to the redistricting of the Congressional districts of Louisiana." App. 394. Governor Landry made that call in direct response to the Fifth Circuit's exhortation to act by January 15, 2024, if the Legislature wanted to draw the map and avoid having the Middle District impose a map: "Let us make the necessary adjustments to heed the instructions of the court. Take the pen out of the hand of a non-elected judge and place it in your hands. In the hands of the people. It's really that simple." App. 880.

> These maps will satisfy the court and ensure that the congressional districts of our State are made right here in this Legislature and not by some heavy-handed federal judge. We do not need a federal judge to do for us what the people of Louisiana have elected you to do for them. You are the voice of the people and it is time that you use that voice . . . . The people of this State expect us to operate government efficiently and to act within the compliance of the laws of our nation and of our courts even when we disagree with both of them.

App. 701–02.

The Legislature convened one week later on January 15, 2024, the earliest time permitted under the Louisiana Constitution following Governor Landry's call. *See* La. Const. art. III, § 2(B). Once the special session was underway, Attorney General Liz Murrill again explained to the Legislature: "The Courts . . . have told us to draw a new map. And they have indicated that we have a deadline to do that or Judge Dick

will draw the map for us." App. 701 (cleaned up). That reclamation of sovereign responsibility echoed throughout the Legislative Session.[3]

Six proposed maps were introduced. Senator Womack, from North Louisiana, introduced S.B. 8—a map with a second majority-Black district extending from Baton Rouge to Alexandria and then northwest to Shreveport. According to Senator Womack, S.B. 8 was the only map he saw that would satisfy the *Robinson* courts and "accomplish [his] political goals." App. 779. Senator Womack and other S.B. 8 supporters explained that S.B. 8's "congressional voting boundaries . . . best achieve the goals of protecting Congresswoman Letlow's seat, maintaining strong districts for Speaker Johnson and Majority Leader Scalise, ensuring four Republican districts, and adhering to the command of the federal court in the Middle District of Louisiana." App. 862 (Representative Beaullieu discussing Senator Womack's bill).[4]

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[3] App. 917 (Senator Price: "Regardless of what you heard, we are on a court order and we need to move forward. We would not be here if we were not under a court order to get this done."); App. 885 (Senator Fields: "[B]oth the district and the appeals court have said we need to do something before the next congressional elections."); App. 426 (Chairman Beaullieu: "Senator Womack, why are we here today? What – what brought us all to this special session as it – as it relates to, you know, what we're discussing here today?"; Senator Womack: "The middle courts of the district courts brought us here from the Middle District, and said, 'Draw a map, or I'll draw a map.'"; Chairman Beaullieu: "Okay."; Senator Womack: "So that's what we've done."; Chairman Beaullieu: "And – and were you – does – does this map achieve that middle court's orders?"; Senator Womack: "It does.").

[4] *See also* App. 759 (Senator Womack making the same point); App. 758 (Senator Womack: "The boundaries in this bill I'm proposing ensure that Congresswoman Letlow remains both unimpaired with any other incumbents and in a congressional district that should continue to elect a Republican to Congress for the remainder of this decade."); App. 781 (Senator Stine: "This 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 is a lynchpin in the appropriations, education, and workforce committees which are vital to the prosperity and well-being of our state. . . . It's about ensuring our state's continued influence in the halls of power where decisions are made that affect every citizen we represent."); App. 761 (Senator Cloud: "As a Republican woman, I want to stand here -- or sit here, rather, and offer my support for the amendment to the map, which I believe further protects Congresswoman Julia Letlow. She is the only woman in the Louisiana's congressional district. She is a member of the Appropriations Committee in the US House, as Senator Womack stated, and also a member of the Agricultural Committee in the US House.

The Legislature reasonably chose to avoid another *Hays IV* situation. On Friday, January 19, 2024, the Legislature enacted S.B. 8. App. 728–29. The Governor signed the bill three days later. *Id.* And so this saga should have ended.

D. *Callais*: The Western District Enjoins S.B. 8 as an Unconstitutional Racial Gerrymander and Sets a Schedule to Produce a New Map after May 15.

But the boomerang (and the bonkers) circled back. A little over a week after S.B. 8 became law, the State was sued again in this lawsuit—this time by a set of "non-Black" plaintiffs seeking to enjoin S.B.8 for the 2024 congressional elections and beyond. *See generally* App. 1–32. Like the *Hays* Plaintiffs before them, the *Callais* Plaintiffs alleged that S.B. 8 was a racial gerrymander that violated the Equal Protection Clause. *Id.* A three-judge panel was convened. App. 400. On February 7, 2024, Plaintiffs moved to preliminarily enjoin S.B. 8. *See generally* App. 1–77. The State, through Attorney General Murrill, then intervened as defendant, App. 399, as did the plaintiffs from *Robinson*.

The Western District held a three-day trial on the merits from April 8–10, 2024. Even Plaintiffs' own witnesses, including legislators who opposed S.B. 8, recognized the Legislature's predicament: draw a second majority-Black district or let the Middle District do it. *See, e.g.*, App. 431 (Senator Seabaugh: "[R]eally, the only

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It's -- it's important to me and all of the other residents of our area that -- to have these two representatives from our crucial region in our state. I think that politically, this map does a great job protecting Speaker Johnson and Congresswoman Julia Letlow as well as Majority Leader Scalise."); App. 795 (Senator Womack: "[T]he map and the proposed bill ensures that four of our safe Republican seats, Louisiana Republican presence in the United States Congress has contributed tremendously to the national discourse. And I'm very proud of both Speaker of the US House of Representatives Mike Johnson and US House Majority Leader Steve Scalise are both from our great state. This map ensures that the two of them will have solidly Republican districts at home so that they can focus on the national leadership that we need in Washington, DC."); App. 861 (Representative Beaullieu: same).

reason we were there was because of the other litigation; and Judge Dick saying that she – if we didn't draw the second minority district, she was going to. I think that's the only reason we were there."); *id.* (Senator Pressly: "We were told that we had to have two performing African American districts. And that we were – that that was the main tenet that we needed to look at and ensure that we were able to draw the court – draw the maps; otherwise, the court was going to draw the maps for us."); Trial Tr. vol. I, 174:18–19, April 8, 2024 (Dr. Voss: "I understood that the Robinson court was the catalyst for the whole process, yes.").

On April 30, 2024, the majority held, over Judge Stewart's dissent, that race was the Legislature's predominant consideration in enacting S.B. 8 and that its consideration of race did not satisfy strict scrutiny. App. 443–44. The Western District then enjoined the use of S.B.8 in any election, leaving Louisiana without a congressional map still today. *Id.*

On May 6, the court held a status conference to hear the parties' respective positions on remedies and remedial proceedings. The Secretary of State, throughout this entire case, has not wavered in her position that "May 15, 2024, is the last possible date that the Secretary could receive a congressional map for implementation [in the 2024 election]" if she is to comply with state and federal election laws. App. 1089–90. After May 15, the only map that could be used (without causing chaos) is H.B. 1, which remains programmed in the State's voter-registration system. Add. 1 n.1.

In a post-conference filing on May 8 (and at the court's request), the Secretary

carefully walked the court back from the November, 5 2024 election date for Presidential, congressional, and other elections in Louisiana to explain that "those elections really begin months earlier on September 21, 2024." App. 1090. September 21 is the latest date under state and federal law that parish Registrars of Voters can mail all absentee ballots to overseas voters, including servicemen and women. *See* La. Rev. Stat. § 18:1308(A)(2)(a); 52 U.S.C. § 20302(a)(8). Prior to that deadline, the Secretary is responsible for proofing and printing ballots and properly assigning voters to districts. App. 1090.

In addition to all that the Secretary must accomplish before September 21, the Secretary has interim statutory deadlines she must meet. The first of those dates is the June 19, 2024 deadline for candidates to submit nominating petitions to the Registrars of Voters for certification. *Id.* Ahead of June 19, 2024, the Secretary must meet the following deadlines:

Date	Action
May 15, 2024	Deadline for the Secretary of State to receive redistricting information for Congressional and state Supreme Court districts.
May 16, 2024	Secretary of State begins reviewing precinct numbers that would need to change in each parish statewide for the Congressional and state Supreme Court districts. A document is created for each parish. The document is then proofed and submitted to the parishes for their review as well.
May 18, 2024	Annual Canvass begins and shall be complete no later than June thirtieth in each parish. La. R.S. 18:192 A.(1)(a)
May 22, 2024	Deadline for the Secretary of State to create a schedule for parishes that have to implement the most coding changes and contact each parish's Registrar of Voters for proofing changes.
May 23, 2024	Earliest feasible date coding can begin in the ERIN system, parish by parish, to build up to the statewide plan. If 30 or more parishes are impacted, this usually takes at least 3 weeks. Notably, no other work in ERIN may go on while this is implemented in each parish. ERIN can only implement one plan at a time.
June 3, 2024	Yearly maintenance of all voter equipment in the state must begin.
June 11, 2024	Deadline by which all parish Registrars of Voters must have plans

	proofed, completed, and approved for Congressional and state Supreme Court districts and any other municipal jurisdictional changes.
June 12, 2024	Deadline for all work to be completed in ERIN for statewide plans so that Registrars of Voters may update information that was held while statewide plans were implemented. As soon as this is done, the Secretary must send an updated file to State Printing to create, print, and mail voter identification cards to voters for both canvass and districting notifications.
June 17, 2024	USPS begins delivering voter identification cards for both canvass and districting to voters.
June 19, 2024	Deadline for submission of candidate nominating petitions for persons qualifying by nominating petition. La. R.S. 18:18:465(B).

App. 1090–91.

Those pre-June-19-2024 deadlines are only the beginning of all the Secretary must to do to pull off the 2024 election. After June 19, 2024, she must continue to press forward:

Date	Action
June 30, 2024	Deadline for completion of Annual Canvass. La. R.S. 18:192 A.(1)(a)
July 1, 2024	Deadline for parish governing authorities to submit precinct changes (including a precinct being established or altered in any way, including alpha division by voter surname). La. R.S. 18:532.1(E).
July 10, 2024	Statutory deadline for all parish Registrars of Voters to assign voters in ERIN to each voting district for all elections, accounting for precinct changes. La. R.S. 18:58(B)(2).
July 17, 2024	Qualifying begins. This is also the deadline for parish governing authorities to submit polling place changes. La. R.S. 18:534(b)(1).
July 19, 2024	Qualifying ends at 4:30 p.m. Certified list of candidates and qualifying fees are submitted to the Secretary of State by the clerks of court for municipal and local officials. State candidates qualify with the Secretary of State. La. R.S. 18:468(A), 18:470(A)(3)(a).[5]
July 24, 2024	Secretary of State must furnish the Supervisory Committee, Campaign Finance Disclosure Act, an alphabetical list of the candidates for each of the offices to be voted on in each election. La. R.S. 18:470.1.
July 26, 2024	Deadline for objections to candidacy or for any candidates to withdrawal by 4:30 p.m. La. R.S. 18:493, 18:1405(A); 18:501(A)(1).
August 7, 2024	Deadline for all Registrars of Voters to publish the names and

[5] This July 19 deadline is for candidates who elect to qualify for the ballot by paying a fee, while the June 19 deadline is for candidates qualifying by collecting petition signatures. See https://www.sos.la.gov/ElectionsAndVoting/BecomeACandidate/QualifyForAnElection/Pages/default.aspx (discussing the different methods of qualifying for the ballot in Louisiana).

	addresses of persons on the inactive list for one day in the official journal of the parish governing authority. La. R.S. 18:193(F).
September 21, 2024	Deadline for all Registrars of Voters to mail all overseas ballots. La. R.S. 18:1308(A)(2)(a); 52 U.S.C. § 20302(a)(8).

App. 1092. All of these deadlines combine to make May 15 that latest possible date that the Secretary can implement a new map and avoid election chaos.

But the Western District did not respect the Secretary's judgment on the realities of election administration. On May 7, relying purely on its own intuition about what is administratively possible, the court set a remedial schedule that (a) does not even start until May 17, (b) ends with a hearing on May 30, (c) gives the Legislature until June 3 to enact a new map, and (d) allows the court to impose a map on June 4 if the Legislature does not do so. App. 1079–82.

As soon as the court revealed its intention to impose a new map *after* May 15, 2024, the State and the Secretary immediately and jointly appealed the injunction of S.B. 8, Add. 1–4, and sought a stay pending appeal of the injunction and the scheduling order, Add. 5–20. The court denied that request yesterday. Add. 21–22.

ARGUMENT

The Court should stay pending appeal the district court's April 30 injunction and May 7 remedial order **by Wednesday, May 15**. In the ordinary case, "a party asking this Court for a stay of a lower court's judgment pending appeal or certiorari ordinarily must show (i) a reasonable probability that this Court would eventually grant review and a fair prospect that the Court would reverse, and (ii) that the applicant would likely suffer irreparable harm absent the stay." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grants of applications for stays). "In deciding

whether to grant a stay pending appeal or certiorari, the Court also considers the equities (including the likely harm to both parties) and the public interest." *Id.*

This "traditional test for a stay," however, "does not apply (at least not in the same way) in election cases when [as here] a lower court has issued an injunction of a state's election law in the period close to an election." *Id.* In this unique context, "[t]his Court has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and this Court in turn has often stayed lower federal court injunctions that contravened that principle." *Id.* (collecting cases). For good reason: "When an election is close at hand, the rules of the road must be clear and settled." *Id.* at 880–81. "Late judicial tinkering" is a recipe for disaster. *Id.* at 881.

In cases such as this, therefore, a plaintiff bears a "heighten[ed]" burden to "overcome the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures." *Id.* In particular—and although this Court "has not yet had occasion to fully spell out all of [the] contours" of this "*Purcell* principle"—the plaintiff, at a minimum, has to show: "(i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible without significant cost, confusion, or hardship." *Id.*

These principles overwhelmingly cut in favor of a stay here. *First*, the court's current injunction and planned overhaul of Louisiana's congressional map a month

from now is not "feasible without significant cost, confusion, or hardship," *id.*, which is itself irreparable harm to the State. *Second*, given Louisiana's unprecedented dilemma, the merits are not "entirely clearcut in favor of the plaintiff," *id.*—and for the same reason, there is a reasonable probability that this Court will note probable jurisdiction and a fair prospect that it will reverse.

I. ABSENT A STAY, THE DISTRICT COURT'S INJUNCTION PROMISES SIGNIFICANT COSTS, CONFUSION, AND OTHER IRREPARABLE HARM TO THE STATE.

A stay is principally warranted because the district court has thrown out the State's map and election timeline, ignoring the Secretary's pleas for a map by May 15 to avoid election chaos and confusion. This is not just "tinkering," *id.* at 881; it is a federal takeover, without even a gesture at judicial modesty or elementary federalism principles. And the court below had no legitimate justification to assume the role of Secretary of State. The reality is that, unless this Court grants a stay of the district court's injunction and remedial proceedings by May 15, Louisiana's 2024 congressional elections will be in disarray.

A. Louisiana Needs a Congressional Map by May 15 to Avoid Election Chaos—the District Court Said "Too Bad."

The record below is unequivocal: The Secretary needs a congressional map by May 15 to complete an onslaught of election-related tasks by critical deadlines. Notably, Plaintiffs in this case never introduced—or tried to introduce—any evidence to the contrary. The May 15 deadline is thus uncontroverted. Notwithstanding that, the district court has now made clear that Louisiana will not have a congressional map by May 15—and almost certainly not until early June. That is primarily because the April 30 injunction against S.B. 8 leaves Louisiana with no map on the books

right now. Then, by delaying the start of remedial proceedings until May 17, the district court ensured that Louisiana will remain map-less until the court imposes its own on June 4. The result, this record says, will be electoral chaos.

The Secretary outlined above—and to the district court—each of the critically important deadlines that form the timeline necessary for an orderly 2024 election cycle, beginning with May 15. *See supra* at 17–18. In light of the district court's surprising May 7 order (that not only will there be no map by May 15, but also that a map will not come until June 4), the Secretary has evaluated the detrimental effect of the district court's injunction and remedial order—and the specifics are shocking. To take just three examples:

- "If our office receives a plan on either June 3 or 4, 2024, it will be impossible to assign/code voters and implement the plan before the June 19, 2024 deadline for candidates qualifying by nominating petition to submit signatures"—and even if the Secretary could do so, "the candidates who choose to qualify this way will have no way of knowing which voters are in their district and from which they need to gather signatures prior to June 19." Hadskey Decl. ¶ 27.

- "[E]ven if the Secretary's office is able to code the districts by June 19, there will not be enough time for the local Registrars of Voters to do their part in implementing the map by July 17, 2024—the start of candidate qualifying other than through nominating petitions—while also certifying signatures for nominating petitions and the rest of their duties in this particular timeframe." *Id.* ¶ 28.

- "The June 4 deadline will also make it impossible to complete Annual Canvas"—the legally required verification process for registered voters—"on time" (*i.e.*, by the June 30 statutory deadline). *Id.* ¶ 29.

These are not even the worst problems. The worst is the perfect storm brewing over (a) the new Louisiana Supreme Court map that became law nine days ago and (b) the danger that Louisiana will not have a congressional map by May 15. If the

Secretary had a congressional map by May 15, she could implement both the Louisiana Supreme Court map and the congressional map at the same time—parish by parish—in the voter-registration system such that the system is locked only once for redistricting. *Id.* ¶ 29. But if the Secretary cannot start congressional redistricting until June 4, she will have to implement the two maps separately—which means locking the system twice. *Id.* That means double the amount of time that ordinary work (like logging voter registrations, cancellations, and the like) and the Annual Canvass cannot be completed while the system is locked up. *Id.* And here's the kicker: "if the [] system has to be locked twice for statewide implementation of two plans, as opposed to locked once for simultaneous implementation of two plans, it will be impossible to open qualifying on July 17, 2024"—the statutory deadline for when the final round of candidate qualifying by fee must begin. *Id.*

And still more downstream problems abound. "[T]he inability to code both statewide districting plans simultaneously means that the state will need to mail two separate voter identification cards"—one informing voters of their new Louisiana Supreme Court district and then a second, a few weeks later, informing voters of their new congressional district. *Id.* ¶ 30. Wholly apart from the voter confusion that this bifurcated approach would invite, the Secretary's office estimates that sending two cards instead of one will cost local parishes $220,000 in extra printing costs alone. *Id.*

In sum, the Secretary's uncontroverted testimony is that chaos, costs, and confusion are coming if she does not have a congressional map by May 15. And these are not speculative fears: In 2022, the Secretary's Office lived the nightmare of

incorrect ballots and a special election in Calcasieu Parish because "[l]ate census information caused a rushed entry of voter information and led to entry of incorrect voter information." *Id.* ¶ 24. Thus, when the Secretary says that "rushing the voter assignment process creates an unacceptable risk of error that leads to flawed elections," that is real life, not a hypothetical. *Id.* So, too, when the Secretary emphasizes that "[d]ecreasing the time to code, print, and proof these ballots"—which the injunction and remedial order below undisputedly do—"increases the likelihood that a serious mistake will be made that ultimately results in a voter receiving an incorrect ballot or voting in an incorrect district." *Id.* ¶ 23.

For these reasons, this is decidedly not a case where the State "at least" would not suffer "significant cost, confusion, or hardship." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grants of applications for stays). It is the exact opposite. If *Purcell* means anything, it requires a stay here.

B. The District Court Had No Legitimate Reason to Install Its Own Election Deadlines.

What makes this situation even more appalling is that the district court had no legitimate justification to second-guess the Secretary, install its own election timeline, and thereby jeopardize the integrity of Louisiana's 2024 congressional elections. The court said that it "considered the arguments from the Louisiana Secretary of State that May 15, 2024, is the deadline by which they must receive a congressional map in order to prepare for the November elections." App. 1080. But that's the closest it came to acknowledging the chaos it was about to invite. Instead, the court moved on to say it was "aware that in oral arguments in a related case

[*Robinson v. Ardoin*, No. 22-30333 (5th Cir.)] the same counsel for the Louisiana Secretary of State stated that they could be adequately prepared for that same November election at issue herein if they received a map approximately by the end of May." App. 1080–81. And that's all the justification the court gave for overriding the Secretary's critical election deadlines.

The district court was wrong from top to bottom. *First*, counsel *for the State*—not counsel *for the Secretary*—made that representation on rebuttal, with no member of the Secretary's Office available to chime in.[6] So, it cannot be imputed to the Secretary. *Second*, "approximately the end of May" is not inconsistent with the May 15 deadline the Secretary has impressed upon the court below for three months now—halfway through the month is "approximately" the end of the month. *Third*, that argument occurred before the Legislature considered and passed a new Louisiana Supreme Court map that has radically and unexpectedly complicated the Secretary's ability to administer orderly elections in 2024. And *fourth*, the court's June 4 deadline is not even conceivably "approximately the end of May." With all due respect, therefore, the district court's "awareness" of an argument (a) not made by the Secretary, (b) not inconsistent with the Secretary's position in this case, and (c) not made against the backdrop of a rapidly and unexpectedly changing election year in 2024 is no basis to override the Secretary's critical election deadlines.

The court below also tried to mask the magnitude of its decision-making by giving the Legislature "a full opportunity to enact a new map [by June 3] while the

[6] The argument recording is available here: ca5.uscourts.gov/OralArgRecordings/22/22-30333_10-6-2023.mp3 (at 1:20:59-1:21:29).

Court simultaneously pursues the remedial phase." App. 1081. But this is an empty offer. For one thing, as the State advised the Western District, constitutional limitations make it almost certainly impossible for the Legislature to convert an existing "shell" bill into a new map. App. 1083–88. For another thing, as the State advised the Court, it is almost practically impossible for the Governor to call a special legislative session and the Legislature to act in sufficient time. *See id.* And for yet another, the majority below gave the Legislature zero idea what sort of map would even satisfy the majority. What rational legislator—having just lived this experience in January—would run into another special session to do it all over again, but this time with no clue what the mission is? As a result of all this and the State's "failure" to navigate the federal courts' impossibly inconsistent demands, Louisiana is destined for a judicially imposed map well beyond the critical May 15 date by which the Secretary needs a map to administer orderly elections.

* * *

If the State sounds frustrated, that's because it is. States have election laws for a reason: to ensure the accurate and orderly administration of their elections. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2347 (2021) ("A State indisputably has a compelling interest in preserving the integrity of its election process." (citation omitted)). And this is an "extraordinarily complicated and difficult" undertaking. *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grants of applications for stays). So, when a federal court expressly invites the Secretary to explain the importance of an election deadline, she does so, and the court then waves

it off in favor of its own significantly delayed timeline, that is uniquely frustrating. If State sovereignty means anything—and if judicial deference to, and respect for, State election officials who are trying to accurately administer disruption-free elections and instill confidence in their voting systems mean anything—what the Western District has done (and is doing) below is wrong in capital letters. Louisiana deserves better, its voters deserve better, and democracy itself deserves better. A stay is warranted.

II. THE UNPRECEDENTED FACTS IN THIS CASE TILT THE PROBABLE-JURISDICTION AND MERITS CONSIDERATIONS IN LOUISIANA'S FAVOR.

The Court also will likely note probable jurisdiction in this case. As Justice Kavanaugh and Justice Alito recently observed, "the Court's case law" concerning the intersection of the Equal Protection Clause and the VRA "is notoriously unclear and confusing." *Id.* at 881. (This case presents that confusion problem on steroids.) Thus, in their view, a stay is warranted in cases where "the underlying merits appear to be close and, at a minimum, not clearcut in favor of the plaintiffs." *Id.* That is (at least) the case here. And for the same reasons, there is a fair prospect of reversal. *See id.* n.2. Regardless of how the Court conducts this merits analysis, therefore, it cuts in favor of a stay.

A. Race Was Not the Predominant Factor Motivating the Legislature's Enactment of S.B. 8.

To prove an impermissible racial gerrymander in violation of the Fourteenth Amendment, a plaintiff first bears the burden of "prov[ing] that 'race was the predominant factor motivating the legislature's decision to place a significant number within or without a particular district.'" *Cooper v. Aaron*, 581 U.S. 285, 291 (2017). That means that "the legislature 'subordinated' other factors—compactness, respect

for political subdivisions, partisan advantage, what have you—to 'racial considerations.'" *Id.* (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). That is an impossible burden for Plaintiffs to carry here, and the district court badly erred in holding otherwise.

1. Start with why this is an impossible burden for Plaintiffs: The predominant factor motivating the Legislature's decision to enact S.B. 8 was an order from the Middle District of Louisiana, followed by an affirmance from a unanimous Fifth Circuit panel, each holding that, unless two of the State's six congressional districts are majority-Black, the State will likely violate Section 2 of the VRA. Race was thus not a motivating factor for the Legislature at all. (After all, the State had spent the better part of two years *opposing* the consideration of race in defending H.B. 1 in the *Robinson* litigation.) It was *the Middle District* that made a race-based decision by requiring two majority-Black districts, and it was *the Fifth Circuit* that affirmed that decision. The Legislature had no say in that decision. All considerations of race, therefore, stem from the federal court decisions that impelled S.B. 8—not the Legislature.

Given this procedural backdrop, it is no surprise that virtually every legislator (and the Governor) proceeded from that court-imposed baseline: Two majority-Black districts are required. The Governor said, "Let us make the necessary adjustments to heed the instructions of the Court[.]" App. 880. And legislator after legislator said things like:

- "We all know that we've been ordered by the court that we draw [a] congressional [map] with two minority districts. This map will

> comply with the order of both the Fifth Circuit Court of Appeal and the district court. They have said that the legislature must pass a map that has two majority black districts."
>
> - "[R]eally, the only reason we were there was because of the other litigation; and Judge Dick saying that she—if we didn't draw the second minority district, she was going to."
> - "We were told that we had to have two performing African American districts."

App. 430–31.

Turning the courts' race-based dictate back on the Legislature would be a wholly unfair game of gotcha that this Court has never endorsed. Plaintiffs' burden is to prove that "race was the predominant factor motivating *the legislature's* decision." *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S. at 916). But here, the Legislature did not randomly wake up in a special session in January and decide to draw a second majority-Black district. To the contrary, the Legislature's first preference (H.B. 1) was manifestly *not* to employ heavy-handed considerations of race—but the federal courts would not permit that desire to stand. That racial consideration was thus *the* Robinson *courts'*, not the Legislature's. As a result, Plaintiffs cannot show predominance.

That is especially so given that—as the court below freely "acknowledge[d]"—the Legislature drew S.B. 8 based on political considerations untethered from the *Robinson* courts' race-based consideration. App. 427–28 (collecting examples). For example, numerous legislators explained and testified that S.B. 8 was intended to protect House Speaker Mike Johnson, House Majority Leader Steve Scalise, and Representative Julia Letlow (who sits on the powerful Appropriations Committee).

Id. That the Legislature took full advantage of non-racial considerations on which the *Robinson* courts did not tie the Legislature's hands thus underscores that the *Robinson* decisions forced the Legislature's hand in drawing a second majority-Black district. *See* App. 779 (S.B. 8 sponsor stating: "I firmly submit that the congressional voting boundaries represented in this bill best achieve the goals of protecting Congresswoman Letlow's seat, maintaining strong districts for Speaker Johnson and Majority Leader Scalise, ensuring four Republican districts, and adhering to the command of the federal court in the Middle District of Louisiana.").

2. Without apparent irony, the majority below cited all of this evidence to conclude that race predominated in the Legislature's decision to enact S.B. 8. *See* App. 428 n.10 ("[T]he Court finds that District 6 was drawn primarily to create a second majority-Black district that [the Legislature] predicted would be ordered in the Robinson litigation after a trial on the merits. Thus, it is clear that race was the driving force and predominant factor behind the creation of District 6."). *Of course* race motivated S.B. 8 at some level. What the majority failed to recognize, however, is that the *Robinson* courts made the race-based decision in this case—not the Legislature. But for the *Robinson* decisions, the Legislature would have never repealed H.B. 1 and enacted S.B. 8. Indeed, by the majority's logic, a State could never (constitutionally) remedy a VRA violation by drawing a required majority-Black district because such a remedy would always require a legislature to start from the premise that it must create a majority-Black district. That is nonsense. And the Court should reject this distorted view of the traditional predominance analysis.

B. In All Events, S.B. 8 Satisfies Strict Scrutiny.

Although Plaintiffs do not get past the threshold predominance requirement, it bears noting that their claims would still fail because S.B. 8 satisfies strict scrutiny. *See Bethune-Hill*, 580 U.S. at 193 ("Where a challenger succeeds in establishing racial predominance, the burden shifts to the State to 'demonstrate that its redistricting legislation is narrowly tailored to achieve a compelling interest.'" (quoting *Miller*, 515 U.S. at 920)).

1. To start, no one disputes that the State has a compelling interest in complying with the VRA. Even the majority below "assume[d], without deciding"—just as this Court has done for many years—"that compliance with Section 2 was a compelling interest for the State to attempt to create a second majority-Black district in the present case." App. 431; *see also, e.g.*, *Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 275–79 (2015); *Shaw v. Hunt*, 517 U.S. 899, 915 (1996). And that understates the strength of the State's position here. That is because, unlike States in other cases, the State here does not seek to comply with the VRA in the abstract; it sought to comply with the Middle District and Fifth Circuit *decisions* that themselves established what (in those courts' view) VRA compliance likely required—namely, two majority-Black districts. If VRA compliance itself is a compelling interest, then compliance with court orders telling a State how to comply with the VRA surely is a compelling interest, too.

2. Nor is there any serious dispute that S.B. 8 is narrowly tailored to achieve that interest. This Court has made clear that, in this context, "the narrow tailoring requirement insists only that the legislature have a strong basis in evidence in

support of the (race-based) choice that it has made." *Bethune-Hill*, 580 U.S. at 193. That standard is flexible by design—to give States "breathing room" to navigate "the 'competing hazards of liability under the Voting Rights Act and the Equal Protection Clause." *Id.* at 196 (citation omitted).

The State has that evidence here in spades. Specifically, the Middle District expressly held that H.B. 1's failure to include a second majority-Black district likely violated the VRA. *Robinson*, 605 F. Supp. 3d at 766. And the Fifth Circuit affirmed that analysis, holding that the Middle District "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 H.B. 1 violated Section 2. *Robinson*, 86 F.4th at 583. The legislative record and trial testimony, moreover, unambiguously demonstrate (and Plaintiffs do not dispute) that the Louisiana Legislature sought to appease the *Robinson* courts and end that litigation by adopting a map with a second majority-Black district. If that is not the *strongest* basis in evidence to support S.B. 8, then it is difficult to imagine what would be.

The majority below acknowledged all of this, App. 430–31, but never resolved the State's argument—which, if resolved in the State's favor, would be game over. Instead, the majority reasoned that "whether District 6, as drawn, is 'narrowly tailored requires the Court to address the *Gingles* factors as well as traditional districting criteria," App. 433. And the majority concluded the State "simply has not met its burden of showing that District 6 satisfies the first *Gingles* factor—that the 'minority group is sufficiently large and geographically compact to constitute a

majority in a reasonably configured district.'" App. 436. In the majority's view, S.B. 8 also "fails to comport with traditional districting principles." *Id.* There are at least two flaws in that reasoning.

First, it is directly contrary to this Court's teaching in *Bethune-Hill*—that "the narrow tailoring requirement insists *only* that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made." 580 U.S. at 193 (emphasis added). If "only" indeed means "only," then the majority below improperly grafted entirely new requirements onto the "strong basis in evidence" standard. That this Court has never directly considered whether the racial-gerrymandering standards apply in this particular context, moreover, is especially good evidence that the majority incorrectly broke new ground.

Second, even if the racial-gerrymandering standards applied here, the majority below ignored the reality that *it is impossible to draw a second majority-Black district in Louisiana that looks "better" than District 6. See* Dist. Ct. ECF No. 192 at 13 n.9. Instead, the majority tried to sidestep the issue altogether: "[T]his Court does not decide on the record before us whether it is feasible to create a second majority-Black district in Louisiana that would comply with the Equal Protection Clause of the Fourteenth Amendment." App. 442–43.[7] But that's the whole ballgame. If the State cannot actually draw a second majority-Black district consistent with the Equal

[7] Not a single map produced by any demographer in both *Robinson* and *Callais* demonstrated that there is enough Black population in southeastern Louisiana to draw two majority-Black districts in that region. Every map produced (in litigation or by the Legislature) that contained a second majority-Black district included within that district both (a) Shreveport or Monroe and the Delta Parishes from north Louisiana and (b) Baton Rouge.

Protection Clause (and, if S.B. 8 fails, the State almost certainly cannot), then the *Robinson* courts—with the threat of VRA liability—forced the State to commit a constitutional violation. Insanity.

This last point warrants one further note on this Court's voting-rights jurisprudence: The entire point of the "strong basis in evidence" standard is to give States "breathing room" between the demands of the Fourteenth Amendment and the VRA. *Bethune-Hill*, 580 U.S. at 196. But if the State is deemed to have violated the Fourteenth Amendment by adding a second majority-Black district in S.B. 8—after being told by the Middle District and the Fifth Circuit that the VRA likely requires a second majority-Black district—there is no oxygen in that room.

For all these reasons, if the strict-scrutiny analysis means anything, it surely means that the State prevails here.

III. THE COURT SHOULD TREAT THIS APPLICATION AS A JURISDICTIONAL STATEMENT AND NOTE PROBABLE JURISDICTION.

Finally, time is of the essence in ensuring that Louisiana's 2026 elections are not hampered by redistricting-related litigation. For that reason, Louisiana respectfully requests that—as it did in *Merrill*, 142 S. Ct. 879—the Court treat this application as a jurisdictional statement and note probable jurisdiction. That would permit merits briefing to be completed this summer, oral argument this fall, and a decision from this Court ahead of the Secretary's preparations for the 2026 elections.

CONCLUSION

Applicants respectfully request that the Court stay the district court's April 30 injunction against S.B.8 and the May 7 remedial order **by Wednesday, May 15**. If

the Secretary does not have a map by May 15, the only map that could be feasibly implemented after May 15 (and avoid election chaos) is the H.B. 1 map, which remains in the State's voter-registration system.

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