No. 23A282

IN THE SUPREME COURT OF THE UNITED STATES

IN RE JEFF LANDRY, *IN HIS OFFICIAL CAPACITY AS THE LOUISIANA ATTORNEY GENERAL*, ET AL.

On Application for Stay Pending Appeal from the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF IN SUPPORT OF EMERGENCY APPLICATION FOR STAY OF WRIT OF MANDAMUS

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CORPORATE DISCLOSURE STATEMENT

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

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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:

The mandamus panel engaged in elaborate contortions to provide relief that Defendants did not seek on grounds that Defendants did not advocate. Defendants' obligatory defense of that ruling does nothing to address its serious flaws.

Defendants asked the mandamus panel to vacate the district court's remedial hearing, purportedly to save time by moving directly to trial. Instead, however, the panel *postponed* the hearing, which will only *delay* advancing to the trial stage. And the panel did so on the basis that Louisiana's Legislature needed more time to enact a remedial map "to conform the districts to the court's preliminary injunction determinations." App. 115a. But Defendants have never harbored this position—not when they filed for mandamus, which the Legislative Intervenors conspicuously did not join, and certainly not now, as their response brief makes clear that the Legislature does not intend to act on this matter until (if at all) after the merits appeal is resolved. Because the mandamus panel far exceeded the bounds of the writ, the order below should be stayed and, in due course, reversed.

I. The Legislature does not need more time to enact a remedial map.

Defendants seek to confuse the issues by relaundering their complaints about the pace of litigation *prior to* the stay this Court entered in June 2022, which could not and did not supply the basis for mandamus. In its liability-phase order, the district court provided the Legislature 14 days to enact a remedial map before the court would commence its own remedial-phase proceedings. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022). Defendants appealed that order, and just last

week they recited these same complaints in oral argument before the Fifth Circuit merits panel. *That panel* has jurisdiction over Defendants' liability-phase grievances.[1] There was no legitimate reason for Defendants to bring those same grievances to a separate panel in the hopes of finding a favorable audience.

Even the mandamus panel expressly disclaimed that any part of its order hinged on the district court's pre-stay timeline. *See* App. 119a (clarifying that "we express no opinion" about the "propriety of that [pre-stay] timetable"). And any concern about the 14 days provided to the Legislature in June 2022, of course, is mooted by the three-months-and-counting that the Legislature has had to pursue a legislative remedy since this Court vacated its stay June 2023 and the district court rescheduled the remedial-phase hearing.

But the Legislature plainly has no intentions of enacting a map that remedies the likely violation identified by the district court. After the stay was lifted, the Legislature did nothing, and Defendants—including Legislative Intervenors—"strongly object[ed]" to the consideration of *any* new proposed maps. Defs.' App. 109 n.5; *compare* Defs.' App. 129 (Plaintiffs proposing a remedial schedule that would "allow[] for any party, including the Defendant or Defendant-Intervenors, to submit a new or amended map"), *with* Defs.' App. 107 (Defendants asking district court to "reject Plaintiffs' attempt to start the remedial phase over from scratch" after stay was lifted), *and* Defs.' App. 109 (Defendants proposing that the remedial phase be

[1] In his concurrence, Judge Ho recognized that the matter could have been transferred to the merits panel. *See* App.124a at n.2.

limited to consideration of Plaintiffs' joint proposed plan to "allow the Court to evaluate a proposed preliminary remedy in this case based on an appropriately robust record"). And even now in their response brief, Defendants confess that the Legislature has no intention of legislating a remedy until (at the earliest) its liability-phase appeal is resolved. *See* Defs.' Br. 16 ("It makes no sense for the Louisiana legislature to effect a remedy against itself while seeking to demonstrate that the district court was wrong to conclude that the Plaintiffs[] are entitled to a remedy."); *see also, e.g.*, Defs.' App. 84:20–25 (Speaker Clay Schexnayder admitting to stating on the Louisiana House floor that holding a special session was "unnecessary and premature until the legal process is played out in the court systems").

Thus, the mandamus order turns on a factual predicate—that the Legislature needed more time to consider passing a remedial map—that is entirely belied by the evidentiary record and by Defendants' own representations to the district court, multiple Fifth Circuit panels, and this Court. If mandamus is to be cabined to extraordinary circumstances, the mandamus panel must not be permitted to second guess a district court's discretion in setting a remedial hearing to effectuate its preliminary injunction on grounds that were never requested.

II. Defendants' complaints have been rejected by every court to hear them, including the mandamus panel.

The arguments that Defendants *did* advance in service of their mandamus petition—some of which are repeated in their briefing here, and others of which have been abandoned—have thus far failed to persuade a single judge, for good reason.

The remedial hearing needed to be canceled, Defendants say, because the district court has not yet reviewed briefing on the consequences of this Court's decisions in *Allen v. Milligan*, 599 U.S. 1 (2023), or *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*). But neither decision is inconsistent with the district court's application of Section 2—not *Allen*, which affirmed a three-judge panel that applied the law in the same way as the district court here, and not *SFFA*, which has nothing to do with redistricting processes to remedy racial discrimination that violates federal law. *Compare* Defs.' Br. 21 (arguing that the preliminary injunction order "relied on caselaw that is no longer state-of-the-art"), *with Allen*, 599 U.S. at 19 ("*Gingles* has governed our Voting Rights Act jurisprudence since it was decided 37 years ago."). The Fifth Circuit merits panel, meanwhile, did solicit briefing on the appropriate course in light of this Court's recent decisions, and it was not persuaded by Defendants' request for remand. *See* App. 7a, 9a. It further made clear that the parties' views on *Allen* "and any other developments or caselaw that would have been appropriate for Rule 28(j) letters" would be heard and considered by *that panel*. App. 7a. The mandamus panel, meanwhile, altogether ignored Defendants' plea for further district court consideration of *Allen* and *SFFA*, apparently recognizing the argument's frivolity. *See also* App. 116a (rejecting Defendants' invitation to relitigate the merits).

Defendants also complain that they lacked adequate time to prepare for the preliminary injunction hearing, notwithstanding that they received an extension and prepared *nine* expert reports covering every significant topic to be litigated. *See*

Robinson v. Ardoin, 605 F. Supp. 3d 759, 791–815, 843 n.349. But once again, Defendants' arguments about legal error in the liability-phase proceedings are reserved for the Fifth Circuit merits panel considering the liability-phase appeal. And while Defendants protest the "fairness" of engaging in *any* remedial process on a preliminary injunction posture, Defs.' Br. 12, they offer no precedent or principle for casting aside the force and effect of preliminary injunction proceedings simply because they are "preliminary," *id.* (citing res judicata and issue preclusion cases—rather than preliminary injunction cases—to contend that Plaintiffs' claim has not been "actually litigated and resolved"). Defendants' request to effectively nullify the preliminary injunction order by bypassing any remedial process that would effectuate it has been repeatedly and appropriately rejected by every court to consider it. *See* App. 117a n.4 (mandamus panel rejecting Defendants' contention that the preliminary injunction became moot after the 2022 elections); Notice, *Robinson v. Ardoin*, No. 22-30333 (5th Cir. Aug. 22, 2023), ECF No. 280-1 (merits panel calendaring oral argument instead of vacating and remanding as Defendants requested); App.62a (district court denying motion to cancel hearing on remedy); *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) (motions panel denying Defendants' request to stay injunction); *Robinson v. Ardoin*, No. 22-211-SDD-SDJ, 2022 WL 2092551 (M.D. La. June 9, 2022) (district court denying Defendants' request to stay injunction).

III. A stay is necessary to prevent irreparable harm.

Defendants contend that any harm to Plaintiffs from enduring yet another election under a map found likely to violate federal law is outweighed by the harm to

the State of having to endure a preliminary remedy before final resolution on the merits. But Defendants ignore the key point that it is Plaintiffs—and not Defendants—who have persuaded a court of their likely success on the merits. And not only has the district court already weighed the equities in granting preliminary relief, *Robinson*, 605 F. Supp. 3d at 851–56, but also the Fifth Circuit merits panel is fully equipped to evaluate them on appeal. Defendants' attempt to relitigate the equitable bases for the preliminary injunction on mandamus is wholly unfounded.

In any event, Defendants posit a false dichotomy between preliminary relief and final resolution on the merits. Having established a likelihood of success on the merits, Plaintiffs are entitled to a remedial plan that prevents the irreparable harm that may result from the election calendar *until a trial on the merits can be held*. Accordingly, this Court should stay the writ of mandamus and accompanying mandate so that the district court can hold the remedial hearing at the soonest opportunity to ensure that a lawful map is available *if needed*. Meanwhile, the Legislature remains free to work concurrently at its own remedy, and the parties may proceed to trial as the district court's calendar permits.[2] If Defendants succeed at trial, the district court's interim map may never prove necessary. This—and not emergency mandamus substituting for an appeal—would follow the "ordinary course" of litigation, *Ardoin v. Robinson*, 143 S. Ct. 2654, 2654 (2023), where preliminary

[2] Defendants cite their representation to the Fifth Circuit merits panel last week that final resolution is needed by "late May 2024," Defs.' Br. 20, but they neglect to include their explanation that, because of statewide elections this fall, new state leadership will not be seated until January, preventing any serious legislative effort or trial until February.

injunction proceedings (subject to appeal) are followed by merits proceedings (subject to appeal). *See generally*, *Singleton v. Allen*, No. 2:21-cv-1291-AMM, 2023 WL 5691156 (N.D. Ala. Sept. 5, 2023) (describing parallel Section 2 litigation proceeding on precisely this course). If Defendants were serious about seeking to expedite this litigation to final judgment, they would join Plaintiffs in seeking to vacate the mandamus order, which only works to unnecessarily delay the proceedings.

CONCLUSION

The Court should stay the writ of mandamus and accompanying mandate.

Respectfully submitted,

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October 11, 2023